

(2022) 01 GUJ CK 0095
In the Gujarat High Court

Case No : R/Special Civil Application No. 1358 Of 2021

Ashvinbhai Baldevbhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(B)

Citation : (2022) 01 GUJ CK 0095

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : P C Chaudhari, Meet K. Thakkar

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Mr. Meet K. Thakkar, learned Assistant Government Pleader for the respondent â?" State.

2. With the consent of the learned counsels for the respective parties, the petition is taken up for final hearing today.

3. The short issue involved in this petition is to direct the respondent - authority to extend the benefit of GR dated 17.10.1988 to the petitioner. By way of an interim prayer, the petitioner has prayed to grant the minimum pay scale of Class-III-IV.

4. The facts in brief would indicate that the petitioner was working initially as Work Charge Clerk since 1995. His services were terminated with effect from 8.3.2000. On raising an Industrial Dispute before the Labour Court, the labour Court by an award dated 10.12.2010 allowed the Reference directing the reinstatement with continuity of service with 20% back-wages.

5. On the challenge being made to the award by filing Special Civil Application No.10170 of 2011, the employer filed an appeal before the Division

Bench, which was dismissed by this Court on 5.8.2013. It is under these circumstances, the petitioner has prayed for the benefit of Government

Resolution dated 17.10.1988.

4.1. Mr. Chaudhary would submit that in an identically situated employee of the same department, this Court in Special Civil Application No.2238 of

2013 on 22.10.2018 considering the decisions in the case of State of Gujarat v. PWD Employees Union and others reported in 2013(2) GLH 692 and

State of Punjab v. Jagjit Singh reported in 2017(1) SCC 148 directed the concerned respondents as under:

â??9. Having heard learned counsels for the respective parties, it is not in dispute that the petitioner was engaged as a labourer to carry

out unskilled work with effect from 01.11.1994. Faced with the termination order of 16.03.1997, the petitioner was constrained to approach

the labour Court, which directed reinstatement with continuity of service. The State, failed in its challenge and was therefore bound to

comply with the order of the labour Court granting reinstatement with continuity of service. Having done so, as a model employer, it was

bound to comply with the spirit of the resolution that was envisaged in it i.e. resolution dated 17.10.1988, needless to reproduce relevant

clauses of the resolution, which has been relied now by Shri Pathak. The resolution dated 17.10.1988 is a mathematical formula which

stipulates that a daily wager is entitled to a particular amount of fixation of pay on completion of number of years of service. It clarifies

that, once a daily wager completes stipulated 10 years of service in accordance with Section 25(B) of the Industrial Disputes Act, 1947, he

shall be entitled to a minimum scale of pay of Rs.750 â?" 940/-.

10. It does not lie in the mouth of the State Government to deny such a minimum pay-scale once the petitioner is in service since 1994.

Having succeeded before the labour Court and before this Court in getting his stand vindicated of being reinstated with continuity of

service, ironically it is the State, which now says that since he was not engaged on a regular post of Class-IV employee, he shall not be

entitled to a minimum scale of pay and in accordance with the policy which the

State itself has made. In the judgment of the Honâ??ble

Supreme Court in the case of State of Punjab & Ors., vs. Jagjit Singh & Ors., (supra), the Honâ??ble Supreme Court considered thread

bare the case law on the issue on hand and observed that it is not open for the State as a model employer to deny benefit of minimum scale

of pay to an employee who has discharged his duties continuously. It is not disputed in the facts of the case that, once having granted the

benefit of continuity of service since 1994, it was not open for the State to deny pay parity, at least minimum of the pay-scale for Class-IV

employee and/or the benefits of the Government Resolution dated 17.10.1988, on the principle of â??Equal Pay, for Equal Workâ?. It will

be fruitful to quote para 60 of the judgment in the case of State of Punjab & Ors., vs. Jagjit Singh & Ors. (supra). Para 60 of the judgment

is quoted herein below:

â??60. Having traversed the legal parameters with reference to the application of the principle of â??equal pay for equal workâ?, in

relation to temporary employees (daily-wage employees and the like), the sole factor that requires our determination is, whether the

employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees

holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of â??equal pay for

equal workâ? summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us

to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that

all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular

cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being

randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular

employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to

time. There is, therefore, no room for any doubt, that the duties and

responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post."

11. In light of the law laid down by the Hon'ble Supreme Court, the State is bound to and shall pay to the petitioner, the benefits that he is entitled to, on the number of years of service he having completed in accordance with the Government Resolution dated 17.10.1988. Such benefits in accordance with the Resolution dated 17.10.1988, if not paid, till date shall be computed and paid to the petitioner within a period of six weeks from the date of receipt of certified copy of this order."

6. Considering the aforementioned decisions, the respondents are bound and shall pay to the petitioner, the benefits that he is entitled to, on the number of years of service he having completed in accordance with the GR dated 17.10.1988. Such benefits in accordance with the GR dated 17.10.1988, if not paid, till date shall be computed and paid to the petitioner within a period of eight weeks from the date of receipt of the order.

7. It is clarified that the petitioner shall not be entitled to any arrears and shall be paid benefits only from the date of reinstatement in the year 2013. It is also brought on record by the learned counsel for the petitioner that the petitioner by Office Order dated 22.7.2019 has been granted the benefit of minimum Pay Scale of Rs.14,800/-. Enforcement of this order shall also be done in accordance with law within a period of eight weeks. Rule is made absolute to that extent. Direct Service is permitted.