

(2022) 10 GUJ CK 0096

In the Gujarat High Court

Case No : R/Special Civil Application No. 15629 Of 2021

Ashwinkumar Kishorbhai Khavdu

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B

Citation : (2022) 10 GUJ CK 0096

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Krutarth K Pandya, Kurven Desai

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 Heard Mr.Krutarth Pandya, learned counsel for the petitioner and Mr.Kurven Desai, learned Assistant Government Pleader, for the respondent – State.

2 Mr.Krutarth Pandya, learned counsel for the petitioner, would draw the attention of this Court to an order passed in Special Civil Application No. 14447 of 2021 and allied matters, wherein, this Court has decided the issue with regard to entitlement of the benefits of the Resolution dated 17.10.1988.

3 In the present petition, the facts are as under:

3.1 The date of appointment, the date of termination, the date of the award and the challenge made by the petitioner-workman is as under:

Ashwinkumar Kishorbhai Khavdu

SCA No

15629 of 2021

Date of Appointment

24.12.2003

Date of Termination

30.09.2005

Date of Award

08.03.2016

Special Civil Application No.

2745 of 2017

Cross Application No.

18807 of 2016

Demand Notice

-/10/2018

3.2 The petitioner was engaged as a daily wager with effect from 24.12.2003. His services were terminated on 30.09.2005. On a challenge made to the termination before the Labour Court, the Labour Court by an award in Reference (T) case No. 08 of 2006, set aside the order of termination dated 30.09.2005 and directed reinstatement without backwages but with continuity of service. The petition filed by the State viz. Special Civil Application No. 2745 of 2017 was dismissed. Even cross petition at the hands of the petitioner was dismissed.

4 Mr.Krutarth Pandya, learned counsel for the petitioner, places reliance on an order passed by this Court in Special Civil Application No. 1447 of 2021 and allied matters. Relevant paragraphs Nos. 8 to 10 of the decision read as under:

"8. This Court in case of Balubha Ashabhai Manek & Anr. v. Gujarat Water Supply And Sewarage Board & others rendered in Special Civil Application No.20894 of 2017, in concluding paragraphs, has held as under:

"19. Highlighting the judgments of the Hon'ble Supreme Court in the case of Deepali Gundu Surwase (Supra) where this Court had an occasion to trace the history of the decisions, the reproduction was made. The Division Bench of this Court, looking to the relevant portion of the decision of Deepali Gundu Surwase (Supra) held that Section 25(B) introduces a deeming fiction as to in what circumstances a workman could be said to be in continuous service for the purposes of Section 25(B).

20. Considering the decision in the case of Deepali Gundu Surwase (Supra), it is evident that the Hon'ble Supreme Court in Paragraph No.38 culled out the proposition based on the earlier decisions and held that when there is a wrongful termination, reinstatement with back wages and continuity is a normal way. The Court specifically held that the observations made in J.K. Synthetics Ltd. v. K.P. Agarwal reported in 2007(2) SCC 433 that on reinstatement, the employee

cannot claim continuity of service as of right, is contrary to the ratio of the judgments of three Judges bench.

21. Keeping this position of law in mind, it is explicitly clear that the petitioners are the beneficiaries of the award of the labour Court and implicitly the benefit of continuity of service has to be read in such awards. Their past services have to be treated as services for the purposes of granting them the benefits of Government Resolution dated 17.10.1988 and their tenure during which they were out, cannot be taken to be their disqualification qua denying the benefits of Government Resolution dated 17.10.1988. 22. In view of above, both these petitions are allowed. Rule is made absolute to the aforesaid extent. Direct Service is permitted."

9. In view of the above, the respondents are directed to consider the case of the petitioners for the benefits of Government Resolution dated 17.10.1988 and take a decision on the same within a period of 10 weeks from the date of receipt of copy of this order.

10. In view of above, these petitions are allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent. Direct Service is permitted."

5 In light of the order passed in Special Civil Application No. 14447 of 2021 and allied matters, the petition is allowed. The respondents are directed to consider the case of the petitioners for the benefits of Government Resolution dated 17.10.1988 and take a decision on the same within a period of 10 weeks from the date of receipt of copy of this order. Direct service is permitted.