

(2021) 08 GUJ CK 0071

In the Gujarat High Court

Case No : R/Special Civil Application No. 16903 Of 2020

Bhagavanji Bhulaji Thakor & 13 Other(S) APPELLANT

Vs

State Of Gujarat & 7 Other(S) RESPONDENT

Date of Decision : 25-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 25B

Citation : (2021) 08 GUJ CK 0071

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Vidhi J Bhatt, Dhvani Tripathi

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Rule. Learned AGP waives service of notice of rule for the respondent-State.
2. In the present writ petition, the petitioner has prayed for the directions to give him benefits as per the decision of this Court vide order dated 18.03.2011 passed by the Division Bench in Letters Patent Appeal No.958 of 2001 and other cognate appeals.
3. Learned advocate Ms.Vidhi Bhatt has submitted that the daily- wage employees working in various Government offices /departments are to be extended all the benefits that are admissible to permanent or regular employees in the establishments of the State. The said benefits include :
(a) Public Holidays, (b) Transport Allowance, (c) Leave Travel Concession, (d) Arrears of pay as per the 5th Pay Commission Recommendations from 01.01.1996 to 31.12.1997, (e) Leave encashment at the time of retirement and death, (f) Counting of service from the date of joining for the

purpose of computing pension, gratuity and other pensionary/retirement benefits, and (g) Higher scales of pay after completion of 9, 18 and 27 years

of service in lieu of promotion. She has submitted that the said issue is squarely covered by the decision dated 18.03.2011 passed in Letters Patent

Appeal no. 958 of 2001 reported in 2011 (2) GLR 1290 and decision dated 28.12.2018 passed in Letters Patent Appeal no. 1588 of 2018 and also, by a

decision of the Division Bench passed in the matter between Executive Engineer, Panchayat vs. Samudabhai Jyotibhai Phedi reported in 2017 (4)

GLR 2952. However, by ignoring and turning a blind eye to the settled law and various decisions of this Court, the respondent authorities have decided

not to grant the petitioners all the benefits that are admissible to those employees who are governed by Government Resolution dated 17.10.1988.

4. Learned advocate Ms.Vidhi Bhatt has submitted that those daily- wagers, who approached this Court got all the benefits of Government Resolution

dated 17.10.1988. It is submitted that the respondent authorities ought to have considered the representations made by the petitioners and granted

them the same benefits, however, no action in the direction of extending the same benefits to the petitioners has so far been initiated by the respondent

authorities. She has further placed reliance on the judgment dated 18.11.2019 passed by this Court in Special Civil Application No.21408 of 2016 and

submitted that the said judgment is confirmed by the Division Bench vide order dated 25.09.2020 passed in Letters Patent Appeal No.613 of 2020.

She has submitted that all the benefits arising from the judgment of the Supreme Court and the judgment of this Court, have been granted to the

employees of the Agriculture and Cooperation Department vide Government Resolution dated 06.01.2014 and the office orders dated 28.09.2017 and

18.07.2016 to the daily wagers working in the said department. It is submitted that the daily wagers working in all the departments of Government of

Gujarat are paid the benefits of Transport allowance, Traveling Allowance, Leave Encashment and LTC available to class-IV employees. She has

submitted that the petitioners are also similarly situated employees/daily-wagers working in the respondent department and hence, they are also

entitled to the similar benefits, which are conferred to the employees of other departments.

5. Learned AGP has vehemently submitted that the writ petition may not be allowed since the State is yet to examine whether the petitioner would be

entitled to such benefits.

6. I have heard the learned advocates appearing for the respective parties. The documents and judgments, on which the reliance is placed are also perused.

7. It is not in dispute that the petitioners are granted the other benefits as per the Government Resolution dated 17th October, 1988 and they are

seeking ancillary benefits like Leave Encashment, Travelling Allowance etc, which are available to the Class-IV employees. The aforesaid grant of

ancillary benefits was subject matter of consideration before the Division Bench in Letters Patent Appeal No. 958 of 2001. By the judgement and

order dated 18th March, 2011, this Court has held that the daily-wagers, who are conferred the benefits under the resolution dated 17th October, 1988

cannot be discriminated or denied the benefits as mentioned hereinabove and they are also entitled to the same. The Division Bench has observed

thus:-

4. Bare reading of above stipulations contained in the G.R. Dated 17.10.1988 makes it crystal clear that upon completion of ten years of service, in

terms of the provisions of Section 25B of the Industrial Disputes Act, 1947, on or before 1.10.1988, daily rated employees to whom the G.R. applied

were to be treated as permanent employees with concomitant benefits. It is further clarified and resolved in clause (10) of subsequent resolution dated

18.7.1994 that the employees, who were completing 5/10/15 years of continuous service due to which whose categories would change should be

immediately accorded benefits of the category in which such employees would fall. Government Resolution dated 18.7.1994 is, according to its own

preamble, meant to supersede earlier instructions issued vide government resolution dated 3.11.1990. The instructions are primarily meant to regulate

treatment of daily rated employees, who had completed one or more years of service on 1.10.1988, with the stipulation that such employees shall

continue to be treated as daily rated employees. Detailed instructions have been issued in said government resolution for categorizing such daily rated

employees and maintaining their seniority lists, as also for regulating their pension and termination of their service by way of retrenchment. At the end,

in Clause 15 of the government resolution, it is stipulated that the word 'permanent' as used in G.R. Dated 17.10.1988 is intended to provide protection

of service but not for treating such employees on regular establishment of the government.

5. As noted earlier, subsequent G.R. dated 18.7.1994 is expressly superseding the instructions contained in government resolution dated 3.11.1990 but

does not supersede original G.R. dated 17. 10.1988. It is also an admitted position that most of substantive benefits of permanent service are already

accorded to the employees concerned in terms of G.R. dated 17.10.1988. Under such circumstances, it was argued that nomenclature for treating the

employees concerned as permanent was clarified by the government, and hence, denial of few benefits was justified and in order. However, no

ground or rational basis could be made out for grant of most of the benefits to most of the employees in terms of G.R. dated 17.10.1988 and for denial

of the remaining few benefits. Once the employees concerned were, in fact, treated for all purposes as permanent employees in terms of G.R. Dated

17.10.1988, any discrimination or denial of benefits for a segment of such employees, who were subsequently rebranded as ""daily wager"" (rojamdar)

by G.R. dated 18.7.1994, could not be rationally explained and could not be countenanced in the face of Articles 14 and 16 of the Constitution. Nor

can the State Government legally take away the rights conferred and benefits, already accorded to the employees concerned by or under a subsequent

government resolution, which expressly supersedes earlier instructions and not earlier G.R. dated 17.10.1988 by which the benefits were accorded to

the employees. It also sounds absurd and baseless that employee employed on daily wage basis for 15 years would be made permanent under G.R.

dated 17.10.1988 but subsequently rebranded and treated as a daily wager. The submission of learned AGP that such employees had to continue as

daily wage employee, with limited benefits in terms of subsequent G.R. dated 18.7.1994 and that they were at best ""permanent daily wage

employees"", is contradictory and has no backing of any legal provision or precedent. Therefore, there is no reason to interfere with the impugned

common judgment except for the clarification made hereunder.

8. The aforesaid order of the Division Bench was implemented by one of the departments in the State Government and accordingly vide resolution

dated 6th January, 2014, in which, it was decided that all the daily- wagers, who are given the benefits under the resolution dated 17th October, 1988

are entitled to the ancillary benefits, which are conferred to Class-IV employees. Thus, the State Government has implemented the judgment with

regard to the daily-wagers working in the Agriculture and Cooperation Department.

9. In similar issue raised by the employees of the Gujarat Water Supply and Sewerage Board, the Division Bench vide judgment and order dated 16th

July, 2014 passed in Letters Patent Appeal No. 325 of 2013 and allied matters has held thus;-

9.2 In the case of State of Gujarat & Ors. v. PWD Employees Union & Ors, reported in (2013) 12 SCC 417, after considering all the case laws and

the facts and circumstances of the case, the Supreme Court directed to grant benefit of the scheme as contained in the Government Resolution dated

17.10.1988 to all the daily wage workers of the Forest and Environment Department working for more than five years. Incidentally, it is relevant to

note here that the aforesaid case pertains to daily wagers of the Forest Department, who have been in service for about 5- 0 years as on 29.10.2010,

for more than 240 days for large number of years, doing full time work of a perennial nature. 9.3 In the case of Nand Kumar v. State of Bihar,

reported in (2014) 5 SCC 300, it is held that the regularization / absorption is not a matter of course. It would depend upon the facts of the case

following the rules and regulations and cannot be de hors the rules for such regularizations / absorptions.

10. Admittedly, there is no dispute about the fact that the respondents in above Letters Patent Appeals are daily wagers. Before us, there are two sets

of daily wagers. One set of daily wagers appointed upto the year 1988 are given all benefits flowing from the Government Resolution dated 17.

10.1988. However, benefits like Transport Allowance, Traveling Allowance, Transfer Traveling Allowance, Leave Encashment and Leave Travel

Concessions have not been extended to them. Whereas another set of daily wagers were appointed after 30.11.1994 and they are not given any

benefits flowing from the Government Resolution dated 17.10.1988, though they have put in more than five/ten/fifteen years of service.

11. As regards daily wagers appointed upto the year 1988, it is the case of the appellants that the benefits accorded to the permanent employees could

not be extended to them as they do not hold any post. It has come to our notice that similar issues were raised in Special Civil Application Nos.5699 of

1987; 517 of 1988 and 6783 of 1988, decided on 02.05.2000. The petitions were allowed with a direction that all the workmen concerned be treated as

permanent employees at par with other regular employees and that they shall be granted all the benefits as such. Being aggrieved with the said order,

Letters Patent Appeal No.958 of 2001 and cognate matters were filed which were decided on 18.03.2011. Notwithstanding the fact that earlier in

Special Civil Application No.26790 of 2007 and cognate matters, the learned Single Judge had vide Order dated 01.07.2009 rejected similar contention

of the petitioner and the said Order was upheld in Letters Patent Appeal No.2117 of 2010 decided on 11.10.2010; the Division Bench of this Court

dismissed Letters Patent Appeal No.958 of 2001 and cognate matters, reported in (2011) 2 GLR 1290. The said judgment and order was challenged

before the Supreme Court which was rejected vide Order dated 09.11.2012 recorded in Special Leave to Petition (Civil) Nos.35043-35048 of 2012.

Thus, the decision of this Court in Letters Patent Appeal No.958 of 2001 and cognate matters, decided on 18.03.2011 has attained finality and all

issues are properly addressed. The learned Single Judge has rightly observed that the grievance raised by the respondents, i.e original petitioners in

Special Civil Application No.1563 of 1992 is already answered by the Division Bench of this Court. We are in full agreement with the above decision

rendered by the learned Single Judge. Independent of this, we are of the considered opinion that these benefits in nature of allowances and

concessions are incidental to services and they should be normally granted to such employees when they are treated at par with other regular

employees. In view of the above, Letter Patel Appeal No.789 of 2013 fails and is accordingly, dismissed.

12. Now, we may proceed to examine the case of the daily wagers appointed after 30.11.1994. It is the contention of the appellants that the Board

had taken a policy decision on 30.11.1994 that no new daily wagers be appointed. Still, they were appointed without prior permission or even intimation

to the higher authorities, for which penalties are imposed on number of officers for breach of administrative instructions issued on 30.11.1994. The

appointment as daily wagers at the grass root level are without following any regular procedure laid down for regular recruitment and therefore they

do not have any right of regularization or the benefits flowing from the Government Resolution dated 17.10.1988.

10. The Division Bench has specifically held that the daily wagers appointed after the resolution dated 17th October, 1988, are also entitled to the

benefits of Transport allowances, Traveling Allowances, LTC and Leave Encashment. Thereafter, in another judgment dated 28.12.2018 passed in

Letters Patent Appeal No.1567 of 2018 and allied matters, the Division Bench after survey of all the judgments has reiterated that daily wagers are

entitled to all the benefits of a regular employee after he is granted the benefit of the Government Resolution dated 17.10.1988.

11. The aforesaid order was challenged before the Supreme Court in Special Leave Petition No. 29108-29114 of 2014. By the judgment and order

dated 14th August, 2015, the SLPs were disposed of since the concerned appellants i.e. Gujarat Water Supply and Sewerage Board accepted the

decision of the Division Bench and granted the benefits of the employees as ordered by the Division Bench. As observed by the Division Bench in the

aforesaid judgment and order dated 16th July, 2014, the applicability of the resolution dated 17th October, 1988 have been extended to various

departments of the State of Gujarat. It is now well settled that the resolution dated 17th October, 1988 have been made applicable to daily wage

workers, who are serving in all the departments of the State of Gujarat. The Supreme Court in the case of the State of Gujarat Versus PWD and

Forest Employees Union & Ors, reported in 2013 (12) SCC 417 has observed that the benefits of the provisions of Government Resolution dated 17th

October, 1988 apply to all the departments of State.

14. Thus, the daily wagers working in the respondent department cannot be discriminated and they are entitled to the benefits like Transport

Allowances, Traveling Allowances, LTC and Leave Encashment and other ancillary benefits mentioned in the para 79(A), which are granted to Class

IV employees and also as specified in the resolution dated 6th January, 2014, order dated 28.09.2017 and order dated 18.07.2016 passed by the

Agriculture and Cooperation Department. Once, the provisions of Government Resolution dated 17th October, 1988 are made applicable to all the

daily-wagers in all the departments, the petitioners are entitled to the same benefits, as conferred to other daily wagers, who are working in the

Agriculture and Cooperation Department. It is pertinent to note that the issue is also covered by the various judgments of this Court against

Respondent No.1-department also.

15. In this view of the matter, the present petition succeeds. The respondents hereby directed to grant the benefits to the petitioners as conferred to

the similarly situated employees, after implementation of the judgment and order passed by the Division Bench dated 18th March, 2011 in Letters

Patent Appeal No. 958 of 2001 and allied matters the judgment and order dated 16th July, 2014 passed in Letters Patent Appeal No.325 of 2013 and

allied matters and judgment dated 28.12.2018 passed in Letters Patent Appeal No.1567 of 2018 and allied matters. The present writ petition is allowed

in terms of the judgments and orders of Division Bench as mentioned herein above.

16. Necessary orders conferring the benefits of similar situated persons to the petitioners shall be passed within a period of three months from the date

of receipt of the writ of this Court.