
(2019) 06 GUJ CK 0025
In the Gujarat High Court

Case No : ??R/Special Civil Application No. 9285 Of 2019

Bhalabhai Jesingbhai Sarvaiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-06-2019

Acts Referred:

Citation : (2019) 06 GUJ CK 0025

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Nilesh M Shah, Krina Calla

Final Decision : Allowed

Judgement

N.V.Anjaria, J

1. In the facts and circumstances of the case and having regard to the consent and request of the parties appearing through their respective learned

advocates, the petition was taken up for final consideration. Rule returnable forthwith. Learned Assistant Government Pleader Ms.Krina Calla waives

service of notice of Rule on behalf of the respondentÂ?State and its authorities.

1.1 Heard learned advocate Mr.Nilesh Shah for the petitioners and learned Assistant Government Pleader for the respondents.

2. The petitioners have prayed to set aside order dated 19.10.2018 passed by respondent No.3 â?" Deputy Executive Engineer, Surendranagar,

whereby though the petitioner is granted the benefit of Resolution dated 17.10.1988, the same is granted from 01.01.2006 instead of 01.01.1989, when

the petitioner was initially appointed. It is further prayed to direct the respondents to give the benefit under Resolution dated 17.10.1988 with effect

from 01.01.1989 notionally upto 16.05.2006 and to pay the difference of salary.

3. The petitioner was appointed as daily wagger under respondent No.3 in the year 1984. His services came to be terminated on 21.08.1987 which led the petitioner to raise industrial dispute by invoking the jurisdiction of the Labour Court, Surendranagar, by way of Reference (LCS) No.217 of 2001.

The reference was allowed by judgment and award dated 16.05.2006. Respondent No.3 was directed to reinstate the petitioners with back wages.

The respondents filed Special Civil Application No.12604 of 2007 to challenge the said judgment and award of the Labour Court, but the same came to be dismissed by this Court on 09.01.2013.

3.1 Respondent No.3 passed order dated 02.09.2013 reinstating all the three petitioners. The petitioners had to file recovery application as they were not paid wages. The petitioners had also to file Special Civil Application No.13024 of 2016 since the respondents had not given the benefits under

Resolution dated 17.10.1988. In the said Special Civil Application No.13024 of 2016, this Court passed order dated 08.08.2016, directing the

respondents to take necessary decision within stipulated time in view of the decision of the Supreme Court in State of Gujarat and others Vs. PWD

Employees' Union and others [(2013) 12 SCC 417].

4. Despite the directions, the authorities did not decide the case of the petitioners under the guise that recovery applications were pending. Ultimately, by communication order dated 19.10.2018, respondent No.3 directed for grant of benefits of Resolution dated 17.10.1988 to the petitioners.

However, the same was given from 01.07.2010 reckoning the date of appointment to be 01.01.2006. The grievance of the petitioners is that past

services from 1984 to 31.12.2005 were not considered. A bare look of the decision reflected in communication dated 19.10.2018 whereby the benefits

are granted to the petitioner, it states that the petitioners' appointments were fresh appointments and the High Court had stayed the earlier period of services.

5. The above reason is manifestly incorrect inasmuch as the petitioners were reinstated and they are reinstated by the Labour Court. Their services

were required to be counted. Even the writ petition against the judgment and order of the Labour Court was dismissed. It is not at all correct to take a

view taken by the authorities that the appointment of the petitioners when they were reinstated, was an appointment afresh. It was an appointment

with continuity of service. Therefore, respondent No.3 ought to have counted the services of the petitioners from the initial date taking into account the entire span of service.

6. In the aforesaid view, the impugned decision of respondent No.3 reflected in communication dated 19.10.2018 cannot sustain. The same is set

aside. The case is remanded to respondent No.3 for passing a fresh appropriate order in light of what is held above. The necessary order with the

conferment of necessary benefits to the petitioners shall be passed by the competent authority of the respondents within a period of six weeks from

the date of receipt of copy of this order and the necessary benefits including arrears as may arise shall be paid within further two weeks.

7. This petition is allowed accordingly. Rule is made absolute to the aforesaid extent. Direct service is permitted.