

(2014) 04 GUJ CK 0072

In the Gujarat High Court

Case No : Letters Patent Appeal No. 170 of 2013

Bhavnagar District Panchayat

APPELLANT

Vs

Shankarbhai Dhanjibhai Solanki

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 16
Industrial Disputes Act, 1947 — Section 25(B), 25B

Citation : (2014) LabIC 2431

Hon'ble Judges : V.M. Sahai, J; Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : H.S. Munshaw, Advocate for the Appellant; Sejal K. Mandavia, Advocate for the Respondent

Judgement

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Kaushal Jayendra Thaker, J.—By way of the present Letters Patent Appeal, Bhavnagar District Panchayat & Ghogha Taluka Panchayat have felt aggrieved by the judgment and order dated 19.7.2012 passed by the learned single Judge in Special Civil Application No. 6467 of 2002 whereby the learned single Judge allowed the writ petition filed by the respondents herein--original petitioners and quashed and set aside orders dated 27.6.2002 and 30.7.2002. The parties are referred to as they appeared before the learned single Judge i.e. respondents herein--original petitioners and appellants herein--original respondents.

Facts:--

2. The facts in brief are that the petitioners are working as Peon in the respondent No. 2's office for the last 15 years. On 6.6.1990, the respondents have given benefit of permanency to the petitioners and it was decided to give benefit of Government Resolution dated 17.10.1988 to the petitioners. Thereafter, 24.11.1997, the respondent No. 2 passed order withdrawing the benefits which are granted to the petitioners in the year 1990. The said order

was challenged by the petitioners by filing Regular Civil Suit No. 873 of 1997. The Trial Court rejected application Exh. 5. The said order was challenged by the petitioners by filing Civil Misc. Appeal No. 16 of 1999 and the Appellate Court quashed and set aside the order dated 24.11.1997 on the ground that it was passed without hearing the petitioners. Thereafter, instead of hearing the petitioners, the respondents terminated the service of the petitioners by order dated 3.7.2001. Therefore, the petitioners filed Contempt Application No. 75 of 2001. In the said matter, advocate for the respondents made a statement that they would withdraw the said order and accordingly, contempt application was disposed of. Thereafter, on 27.6.2002, the respondent No. 2 has passed the order withdrawing the benefits that were granted to the petitioners in the year 1990. Vide order dated 30.7.2002, the respondent No. 2 placed the petitioners to their original position i.e. part time employees and the petitioners were given duty for four hours and also passed an order for recovery of the amount paid to the petitioners.

3. Being aggrieved by the said order, the petitioners preferred writ petition being Special Civil Application No. 6467 of 2002 which came to be allowed by the learned single Judge.

Submissions of The Appellants (Respondents)

4. Mr. H.S. Munshaw, learned counsel appearing for the original respondents has submitted that the order passed by the learned single Judge is vulnerable as there is distinction between the petitioners and the persons of Special Civil Application No. 23507 of 2007 which order was relied upon by the learned single Judge. The petitioners are daily wage peons and the petitioners of Special Civil Application No. 23507 of 2007 were clerks. He further urged that the judgment of the learned single Judge requires reconsideration as in the case on which the learned single Judge and the petitioners relied was not meant for peon. They were not casual labourers but they were peon on fixed salary and, their level was higher. The learned single Judge has failed to appreciate that the petitioners were not working on any sanctioned and permanent post but were provided work on ad hoc temporary and daily wage basis depending upon the availability of work and funds. He further submitted that the audit department had objected to granting of benefits to the petitioners and therefore, it was required to correct the error by way of passing fresh order by the respondent No. 2 on 27.6.2002.

5. This Court admitted the present Letters Patent Appeal on 8.2.2013 and granted status-quo qua service condition for entitlement of the benefit by order dated 29.4.2013 passed in the Civil Application No. 1640 of 2013 for stay. The said order is extracted below:--

"We have heard Mr. Munshaw, learned advocate for the applicants and Ms. Sejal Mandavia, learned advocate for the respondents.

Considering the facts and circumstances of the case, it appears that, as stated by Ms. Sejal Mandavia, learned advocate for the respondents, at present,

respondent is in service and has got the benefit of Government Resolution which have been referred to by the learned single Judge. Under this circumstances, status quo service condition for entitlement of the benefit, as prevailing on today shall be continued until final disposal of the Letters Patent Appeal. The application stands disposed of accordingly. Rule is discharged."

6. Mr. Munshaw further submitted that the facts and material on record were not at all considered by the learned single Judge. The original petitioners were employed purely on temporary, ad hoc and daily wage basis by the appellant No. 2--Ghogha Taluka Panchayat without following due procedure of recruitment. The original petitioners were not working on any sanctioned and permanent post but were provided work on ad hoc, temporary and daily wage basis depending upon the availability of work and funds. He further submitted that no procedure much less that even calling names from employment exchange was followed and hence, the original petitioners were not entitled to any benefits except the wages under the provisions of the Payment of Minimum Wages Act. He further submitted that the original petitioners were not working on repairs and maintenance work and the Government Resolution dated 17.10.1988 was meant for only daily wage labourers and workmen on repairs and maintenance work. The learned single Judge has misinterpreted the Government Resolution dated 17.10.1988 by holding that the original petitioners are entitled to the benefits flowing from the said resolution. He further submitted that the Audit department had objected against release of such benefits during the audit of the books of accounts of the Taluka Panchayat and, therefore, fresh order dated 27.6.2002 was passed by the appellant No. 2. He further submitted that grant of benefit under Government Resolution dated 17.10.1988 would cause heavy burden to the public exchequer.

7. The Government of Gujarat, Roads and Buildings Department issued a Resolution No. W.C.E./1588/(5)/(2)/G2 dated 17-10-1988 which is extracted below:--

"Regarding acceptance of recommendations of Committee for demand of labour association constituted under the Chairmanship of Shri Dolatbhai Parmar, Minister of Road and Building Department, Skilled Labours Rojanddar.

GOVERNMENT OF GUJARAT Road and Building Department, Resolution No. W.C.E/1588/(5)/(2)/G2 Block No. 14, Sardar Bhavan, Sachivalaya, Gandhinagar. Date: 17-10-88

Read:--

Resolution of Road and Building Department dated 24/3/88, No. W.C.E./1588/(5)/G

Gujarat Rajya Karmachari Maha Mandal, Gujarat Rajya Jaher Bandhkam Majoor Mandal and various associations have made representations to the Government regarding pending questions since long time of daily wagers working under the

various departments of State and their demand. Therefore, State Government has vide resolution of Road and Building Department dated 24/3/88 No. W.C.E./1588/(5)/G constituted a committee under the Chairmanship of Shri Dolabhai Parmar, Minister of Road and Building Department for making necessary recommendations after studying the moral demands of labour associations and their questions. After studying in detail regarding salary, regarding service and regarding other benefits of labours and workers who were engaged as daily wagers for maintaining and repairing the constructions in various departments of State mainly like Road and Building Department, Water Resources Department, Forest Department, Agriculture Department, Narmada Development Department, Water Resources and Panchayat and Rural Housing Department and in other departments, the committee has submitted its report to the Government.

Resolution:--

Government has taken into consideration the report submitted by committee and accordingly it is hereby decided to accept all the recommendations made by the committee. Accordingly, it is resolved to give salary and other benefits regarding service to the skilled workers, daily wagers working under the various departments of State.

(1) It is resolved to pay daily wage as per existing Minimum Wages Rules to the daily wagers, skilled labours whose service is less than 5 years as on date 1/10/88. Upon more than 240 days presence in the first year of service, they are entitled to get leave on Sunday along with pay, medical facilities and leave on National holidays.

(2) As per provisions of Section 25(B) of Industrial Disputes Act, it is resolved to pay daily wage of days of presence and wage of leave of Sunday to the daily wagers skilled labours whose service is more than 5 years but less than 10 years as on 1/10/88 as per the Rules of pay scale of concerned category after calculating monthly fix salary and after calculating dearness allowance as per existing rate, the monthly salary and by calculating it as on daily wage basis. Moreover, they are entitled to get total 14 miscellaneous leave including two days optional leave in a year, leave on Sunday and leave on National Holidays with salary and medical facilities and also benefits of deduction of General Provident Fund as per Rules.

(3) As per the Section 25(B) of Industrial Disputes Act, the service of those daily wagers skilled workers is more than 10 years as on 1/10/88 shall treated as permanent and it is resolved to pay to them Salary, Dearness Allowance, House Rent Allowance and C.L.A. by putting these permanent skilled workers in the running pay scale of concerned category. They are entitled to get benefits of Pension, Gratuity and General Provident Fund as per existing rules. Moreover, they are entitled to get total 14 miscellaneous leave including two days optional leave, 30 days earned leave and 20 days half pay leave in a year and leave on Sunday every week and for leave on national holiday. The retirement age of

permanent skilled workers shall be 60 years and the duration of time of permanent service shall be treated as pensionable. As per the Section 25(B) of Industrial Disputes Act, as on 1/10/88, the skilled workers who have completed 15 years, shall be given one increment in the concerned category, who has completed 20 years, shall be given two increments and who have completed more than 25 years shall be given three increments and accordingly their salary shall be fixed as on 1/10/88.

(2) Now, the appointment of new daily wage skilled workers is totally restricted. If any appointment of new daily wage skilled worker is made by any officer then the total responsibility of regarding the same shall be on that officer and the salary which is paid to such worker shall be recovered from the salary of this officer.

(3) As Government has decided to implement the recommendations of Committee from 1/10/88, implementation of this order shall be made from 1/10/88.

(4) These orders are published after getting permission of Finance Department dated 14/10/88 and permission of General Administration Department dated 17/10/88.

On the name and order of Governor of Gujarat

Sd/-

(H.K. Abani)

Under Secretary to Government Road and Building Department Outward No. GUJSANWMEHS ANA/EC- 2-2955/YEAR-89 Date: 1/8/89 Copy forwarded to:-- Deputy Executive Engineer, Gujarat Water Resources Department, Mehsana/ Pratij/Harij/Kalol, for information and implementation."

8. We have extracted the contents of the Government Resolution so that the controversy can be tested on the touchstone of applicability or otherwise of the Government Resolution.

9. The learned single Judge while allowing the writ petition has relied upon the judgment dated 27.7.2006 (Reported in 2006 Lab IC 3619) of this Court rendered in Special Civil Application No. 23507 of 2005 where the Government Resolution and the challenge was similar to that in this case though sought to be distinguished by learned counsel for the concerned authorities. Paragraphs 18, 10 and 11 of the said judgment is extracted below:--

"18. As per item No. 2, if the daily wager has completed more than five years but less than ten years service according to the provisions made in Section 25B of the I.D. Act, 1947, then, such daily wagers are entitled to the basic salary of Rs. 750.00 plus permissible dearness allowance and are also entitled for the benefit of weekly off, optional leave, 14 days CL and facility of leave with salary. Over and above that, they are also entitled for medical facility and provident fund as

per item No. 2. Item No. 3 is relevant for the purpose of this case. It provides that those daily wagers who have completed more than ten years service as per the provisions made in Section 25(B) of the ID Act and such permanent labours will be eligible for being placed in the pay scale of Rs. 750-940 with dearness allowance, house rent allowance, local compensatory allowance. It has also been resolved as per item No. 3 of the said resolution that they should be given the benefits of pension, gratuity, general provident fund etc. in accordance with the existing rules. Over and above that, they will be given two days optional leave per year, 14 days casual leave, 30 days earned leave and 20 days half pay leave (medical leave) in addition to weekly off of Sunday and the leave of national festivals. Retirement age of such permanent labours will be of 60 years and the period of their continuous service will have to be considered as pensionable service. It is necessary to note that in respect of the present petitioner, the petitioner has received from the respondents an amount of gratuity and encashment of leave which is relating to item No. 3 and, therefore, it is certain that the petitioner has been satisfying the requirement of item No. 3 of the said resolution that he has completed ten years service within the meaning of Section 25B of the ID Act, 1947 and therefore, benefit of gratuity and encashment of leave has been granted in favour of the petitioner. If such benefits were paid to the petitioner, then, why the benefit of pension has not been given to the petitioner and why technical objection has been raised that he has not completed 10 years service wherein each year he is required to have continuous service of 240 days. This aspect has not at all been taken into consideration by the respondents. Not only that but from item Nos. 1 and 2, the petitioner was entitled for weekly off and festival holidays with wages and then, why that period was not included in his actual working days as mentioned at page 33 certified by the Deputy Executive Engineer wherein only actual working days have been mentioned but in the actual working days, weekly off and the festival holidays for which the petitioner was entitled and received wages for such holidays were not included by the respondent department and, therefore, according to my opinion, once the benefit of gratuity and encashment of leave relating to item No. 3 has been granted by the respondents to the petitioner, then, there was no justification on the part of the respondents in denying the benefit of pension to the petitioner and why the days of actual work rendered by the petitioner alone have been considered without including therein the days of weekly off and festival holidays for which the petitioner was paid wages according to the said GR dated 17.10.88. If that would have been included in the actual working days of the petitioner for the year 1982 and 1983, then, there would not have been short fall for 240 days service for the said year and this question would not have arisen and the petitioner would have enjoyed the benefit of pension. All this has happened only because of the erroneous interpretation of the GR dated 17.10.1988."

"10. Before going into the factual aspect, the Division Bench of this Court has on occasion to interpret the Government resolution dated 17th October, 1988 in

Letters Patent Appeal No. 1134 of 1997 in Special Civil Application No. 11071 of 1993 with Civil Application No. 8843 of 1997 decided on 10th March, 2004 in case of Karshan K. Rabari v. State of Gujarat."

"11. The relevant discussion interpreting the word "permanent" which has been incorporated in Government Resolution dated 17th October, 1988, Division Bench of this Court interpreted in para 5 is quoted as under:

"5. The question for consideration is interpretation of Government Resolution dated 17-10-1988, whether the petitioners are entitled to all the benefits/facilities admissible to permanent Government employees after being made permanent or they are entitled to only those stated in the Resolution. Shri Yatin N. Oza, learned Senior Counsel contended that the petitioners cannot be described as daily wagers after issuance of the Resolution dated 17-10-1988. They have become permanent, therefore, they merge into the common pool of other permanent employees of the State Government. That being so, all benefits are admissible and available to them. Shri R.C. Kodekar, learned Assistant Government Pleader, submits that petitioners are not entitled to further facilities over and above the Resolution dated 17-10-1988. From the perusal of the records, it is absolutely clear that the Resolution dated 17-10-1988 is a result of settlement between the State Government and Gujarat Rajya Karmachari Maha Mandal, Gujarat Rajya Jaher Bandhkam Majoor Mandal, and various Associations, having made representations to the Government regarding pending questions since long time working under various Departments of State Government.

.....It is inclusive description of the items mentioned expressly in the Resolution. Such rights flow to permanent employees automatically from the relief of regularisation to which no objection can reasonably be taken. (See Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., . After having extended the benefits, the respondents cannot backtrack and dilute the Resolution dated 17-10-1988, and pass orders/instructions contrary to the said Resolution, simply because, it thought that extending these benefits would entail extra expenditure, which seems to be the cause for issuing clarifications and instructions. Any change in the Resolution could be discussed and decided in the same way in which the Resolution dated 17-10-1988 came to be passed. There is no justification to curtail the benefits given to the daily wagers in the said Resolution. Profitable it would be to refer to paragraph 28 of the Apex Court decision in Chief Conservator of Forests (supra):--

28. Insofar as the financial strain on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lacs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood of Rs. 300 crores a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem.

We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these applies, should apply, *proprio vigore*, to all casual labourers of the Forests Department or any other Department of the Government."

Submissions of The Respondents (Petitioners)

10. Learned counsel Ms. Sejal K. Mandaviya appearing for the petitioners has submitted that the said decision rendered in Letters Patent Appeal No. 317 of 2007 was challenged by the respondents before the Hon"ble Supreme Court by way of Special Leave to Appeal (Civil) No. 3949 of 2009 which came to be dismissed by order dated 26.10.2009. The said order of the Hon"ble Supreme Court is extracted below:--

"Delay condoned. On facts, the Special Leave Petition is dismissed. It is brought to our notice that the sole respondent is already retired. Having regard to the facts and circumstances, we consider that this is not a fit case for interference under Article 136 of the Constitution of India. However, the questions of law raised are left open."

11. The Hon"ble Supreme Court has kept the question of law open. But facts go to show that the law as propounded by the Division Bench in Letters Patent Appeal No. 317 of 2007 and the question of law in this matter was not different and the learned single Judge has rightly applied the ratio of Letters Patent Appeal No. 317 of 2007.

Findings:--

12. The issue is now decided in favour of the petitioners. If the Government Resolution dated 17.10.1988 is made applicable by interpretation for daily wages clerks, we have no hesitation in holding that the petitioners who are peons and form a class of employees are also entitled to the benefit of Government Resolution dated 17.10.1988, the said Government Resolution will definitely be applicable to the petitioners or else it will cause discrimination not permissible under Articles 14 and 16 of the Constitution of India. It cannot be said that they were on higher post than the daily wages clerk.

13. The findings of facts recorded by the learned single Judge in the impugned decision (in Special Civil Application No. 6467 of 2002) in paragraphs 4 to 7 is extracted below so as to demonstrate that there is no illegality in the said judgment:--

"4. Learned counsel for the petitioner further contended that the identical issues involved in this petition came up consideration in Special Civil Application No. 23507/2005 with Civil Application which came to be allowed by the judgment and order dated 27.07.2006 wherein, after considering the judgment of this court and Apex Court in paras 12 & 13 it was observed as under:

"12. Ultimately, Division Bench has allowed Letters Patent Appeal and interpreted

the Government Resolution dated 17th October, 1988 to the effect that petitioners are entitled to all the benefits available to permanent employees of the State Government under the Government Resolution dated 17th October, 1988 and no order diluting/referring reversing the same can/could be passed by any of the authority/functionary of State Government. Therefore, looking to the length of service as daily wages clerk having the benefit in salary as per resolution dated 17th October, 1988, the petitioner has completed more than 20 years service, therefore, according to the Government Resolution dated 17th October, 1988, he became a permanent employee as interpreted by the Division Bench of this Court as referred above.

Therefore, it is not in dispute between the parties the length of service of petitioner who has completed 21 years service with the respondents. Therefore, considering the undisputed facts of length of service, according to my opinion, petitioner is entitled for all the benefits of Government Resolution dated 17th October, 1988, 19th September, 1991, 24th April, 1998 and 24th March 2006 being a permanent employee at par with Government employee including the benefit of pension/gratuity and other admissible benefits from the resolution. The petitioner has retired from service on 30.11.2005 after completion of continuous service of more than 21 years service.

13. In view of this, present petition is allowed. It is directed to the respondent to pay all the benefits which accrued from the Government resolution dated 17th October, 1988, 19th September, 1991, 24th April, 1988 and 24th March, 2006 in favour of the petitioner with difference and arrears of wages and also pay all the retirement benefits as if the petitioner is being a permanent employee of the State Government/District Panchayat will get whatever benefit, same may be paid to the petitioner by respondent within a period of three months from the date of receiving the copy of the said order."

5. Learned counsel for the petitioners further contended that the petitioners were working in the same Panchayat and, therefore, they are entitled for the benefit flowing from the order of Single Judge. The order which was challenged in LPA No. 317/2007 was came to be dismissed by the order and judgment dated 07.01.2008.

6. In this view of the matter, the case of the petitioners is squarely covered by the decision of this court.

7. I have heard Ms. Sejal and Mr. Chauhan, learned counsels for the parties. Considering the fact that the petitioners are working in the same Panchayat, this court has held that the benefit of Government Resolution dated 17.10.1988 be extended to them and the said order was confirmed by the Hon'ble Division Bench in LPA No. 317/2007 only on that ground all the petitioners are required to be granted the benefit of Government Resolution dated 17.10.1988."

14. We find that similar question of law arises in this matter which was there before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 3949 of

2009. In the impugned decision dated 19.7.2012 passed by the learned single Judge in Special Civil Application No. 6467 of 2002, while allowing the writ petition, the reliance placed by the learned single Judge on the decision rendered in Special Civil Application No. 23507 of 2005 cannot be found fault with though it is submitted by learned counsel Mr. H.S. Munshaw that Government Resolution dated 17.10.1988 will not apply to the posts held by the petitioners. The grounds urged by the petitioners in the writ petition found favour with the learned single Judge and it finds favour with us also. We are in complete agreement with the view taken by the learned single Judge and in our opinion, the impugned orders were rightly quashed and set aside by the learned single Judge and the petitioners are held entitled to all the reliefs granted by the learned single Judge.

15. It cannot be said that the facts and material on record were not considered by the learned single Judge. The contention of the appellants that the original petitioners were employed purely on temporary, ad hoc and daily wage basis by the appellant No. 2--Ghogha Taluka Panchayat without following due procedure of recruitment and that the original petitioners were not working on any sanctioned and permanent post but were provided work on ad hoc, temporary and daily wage basis depending upon the availability of work and funds did not find favour with the learned single Judge. In fact, in the affidavit-in-rejoinder, the original petitioners have clearly stated that they were not part time peons but working since 1982-83 and they have been working continuously. The contents of the affidavit-in-rejoinder were never disputed by the appellants before the learned single Judge. It was further contended in the affidavit-in-rejoinder that in other Talukas of Bhavnagar district, other persons are getting benefit of the Government Resolution dated 17.10.1988 and there was another petition also being Special Civil Application No. 8719 of 1997. All these facts have been considered by the learned single Judge and, therefore also, this ground also does not find favour with us.

16. The next contention raised by the appellants that no procedure much less that even calling names from employment exchange was followed and hence, the original petitioners were not entitled to any benefits except the wages under the provisions of the Payment of Minimum Wages Act is concerned, it was never the case of the appellants. The factum of Minimum Wages Act and all those facts are dealt with by the learned single Judge. It can not be said that the learned single Judge has wrongly relied upon the judgment rendered in Special Civil Application No. 23507 of 2005 : (2006 Lab. IC 3619). Furthermore, whether the original petitioners were working as labourers on repairs and maintenance work of R & B Department is not gone into because the question of law is whether the Government Resolution dated 17.10.1988, the benefit of which was given and thereafter in the year 2002, passing fresh order seeking recovery from the petitioners will also be against the mandate of the Hon"ble Supreme Court in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, of the said judgment reads as under:--

"26. From the record that has been produced before us, there is not an iota of doubt that officials of the State Government, responsible for issuing Resolution dated 18.12.1989, were ignorant of the amended provisions of the FR. 22-G and it is their inaction, negligence and carelessness which has created all the chaos in the case on hand. Further, until January 1999, the officials of the Education Department of the Government of Bihar were unaware of the amendment in the said rule until the Accountant General, Government of Bihar, on a query being made to him by the Director of Secondary Education, who is the Head of the Department of the Secondary Education in the State of Bihar, vide his letter dated 8.1.1999, responded to the said query that the officials of the Education Department came to know of the amendment in FR. 22-C. That apart, it also appears from the record produced before us that while the Finance Department of the Government of Bihar was in favour of making the amended provisions of FR. 22-C applicable to the appellants-teachers after having come to know that the said rule did not exist and had been substituted, the Department of Human Resource Development, Government of Bihar, wanted to apply the un-amended provision to the appellants-teachers so as to make available the benefit of additional increment provided for under FR. 22-C to its teachers, unaware of the fact that even under FR. 22-C they were not entitled to the additional increment as they were not discharging duties and responsibilities of greater importance on the promoted post. This further goes on to show that the authorities in the State of Bihar were not even aware of the basic requirement for grant of additional increment and the decision appears to have been taken without proper application of mind. Otherwise, there was no reason for the Finance Department to state in the counter-affidavit filed before the High Court that any affidavit filed on behalf of the Education Department may be ignored as Finance Department was the competent authority. In this very affidavit, the Finance Department while admitting that the pay fixation by the Education Department was wrong, stated as under:--

"...the fixation of pay under Fundamental Rule 22-C has wrongly been made as it was not in existence. Pay fixation on the basis of a non-existent rule is a bona fide mistake."

27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in

the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram Vs. State of Haryana and Others*, ; *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, ; *Union of India (UOI) and Another Vs. M. Bhaskar and Others*, ; *V. Gangaram Vs. Regional Joint Director and others*, ; *Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others*, ; *Purshottam Lal Das and Others Vs. The State of Bihar and Others*, ; *Punjab National Bank and Others Vs. Manjeet Singh and Another*, ; and *Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.*, (2000) 10 SCC 99.

28. Undoubtedly, the excess amount has been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."

17. Therefore, just because audit department had objected, their audit objection is also illegal and has been rightly quashed.

18. The next contention raised by the appellants that at the relevant point of time, the benefits were conferred at the Taluka Panchayat level and, therefore, necessary corrective actions taken at that level are required to be upheld. If the corrective steps should have been taken, it should have been taken immediately and they could not have waited for a period of 14 years. Therefore, the decision of the appellants withdrawing benefit of Government Resolution dated 17.10.1988 to the petitioners is illegal and was rightly quashed by the learned single Judge.

Final Conclusion:--

19. In the result, the present Letters Patent Appeal fails and is accordingly dismissed. The judgment and order dated 19.7.2012 passed by the learned single Judge in Special Civil Application No. 6467 of 2002 stands confirmed. The status quo granted by this Court shall stand vacated. There shall be no order as to costs. At this stage, Ms. Sejal Mandaviya, learned counsel appearing for the original petitioners drew our attention that the appellants are not paying any ancillary benefits including revision of pay to the respondents herein on the

ground that Letters Patent Appeal is pending and for other reason, the same is not being paid. Since we have dismissed the present Letters Patent Appeal and vacated the order of status quo, we direct the appellants herein--original respondents to pay all ancillary benefits including revision of pay to the respondents herein--original petitioners within a period of four months from today.