

(2023) 10 GUJ CK 0103

In the Gujarat High Court

Case No : R/Special Civil Application No. 11058 Of 2023

Chimanbhai Chhaganbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-10-2023

Acts Referred:

Citation : (2023) 10 GUJ CK 0103

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Dipak R Dave, Sahil Trivedi, Pradip J Patel

Final Decision : Disposed Of

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Hem Dave for learned Advocate Mr. Dipak R. Dave for the petitioners, learned AGP Mr. Sahil Trivedi for the respondent-State and learned Advocate Mr. Pradip J. Patel for the respondents No. 2 and 3.

2. Rule returnable forthwith. Learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondent – State.

3. By way of this petition, the petitioners have sought for the following prayers: -

"6(A) This Hon'ble Court may be pleased to issue a writ of mandamus and/or a writ in the nature of mandamus and/or any other appropriate writ, order or direction

(i) to hold and declare that action on part of the respondents in not making full payment of pensionary benefits including gratuity to the petitioners by counting their entire length of service from date of joining till date of retirement as illegal, unjustified, arbitrary and further be pleased to direct the respondents to re-fix and pay the pension and gratuity of the petitioners by counting their service from date of joining until the date of retirement;

(ii) to hold and declare that the petitioners shall be paid all other benefits like Public Holidays, Transport Allowance, Medical Allowance, Group Insurance at par with the permanent employees.

(iii) to hold and declare that the petitioners are entitled to benefits of leave encashment at par with permanent employees and be pleased to further direct the respondents to pay amount of leave encashment of leave standing in the account of the petitioners;

(iv) to direct the respondents to pay difference of pensionary benefits, gratuity amount, other benefits and leave encashment with 18% interest from the date when it fell due;

(B) Pending the admission hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the respondents to immediately revise the pension of the petitioners on the basis of their total length of service.

(C) Any other and further relief or reliefs to which this Hon'ble Court deemed fit, in the interest of justice may kindly be granted."

4. At the outset, learned Advocate Mr. Dave would not press the Prayer 6(A)(ii) at this stage, more particularly seeking for benefits of Public Holidays, Transport Allowance, Medical Allowance, Group Insurance etc., more particularly since the said issues are stated to be pending consideration of the Hon'ble Apex Court, and whereas learned Advocate would request liberty to revive the said prayer in case the matter is decided by the Hon'ble Apex Court in favour of the workmen concerned. Having regard to the same, liberty as sought for, is reserved in favour of the petitioners.

5. Learned Advocate for the petitioners would submit that the issue in the present petition pertains to grant of benefit of 300 days unavailed earned leave and not calculating the retirement benefits of the petitioners from the date of appointment.

5.1 Learned Advocate would further submit that the issue involved in the present petition which is in relation to payment of leave encashment for 300 days leave as also counting the retirement benefits available to the petitioners from the date of their appointment, is no more res-integra in view of decision of Hon'ble Supreme Court dated 01.09.2022, in Special Leave Petition (C) No. 7229 of 2022. Learned Advocate for the petitioners would also submit that present petitioners were working with the concerned respondent department for approximately more than 3 decades and they had retired upon attaining the age of superannuation and therefore considering their continuous service they are entitled for the benefits of leave encashment as well as pension and gratuity.

5.2 Learned Advocate would also rely upon the Government Resolution dated 24.01.2023, of Road and Building Department, Sachivalaya, Gandhingar, wherein the State Government has resolved as under:

"At the end of active deliberations, subject to the following conditions, it is hereby prescribed to pay gratuity to the daily wagers working in offices under various departments of the State within the maximum limit of 33 (thirty-three) years as per the Resolution dated 21.10.2020 of this Department:

(1) The concerned Department will have to check the eligibility of the daily wagers as per the Payment of Gratuity Act, 1972, of the Government of India.

(2) The order of this Department will also apply to the cases of retired/deceased daily wagers/work-charge employees after issuance of the resolution dated 24.03.2006 of this Department.

(3) The concerned Department will have to pay gratuity to the daily wagers/work-charge employees, for the services rendered before becoming permanent, upon verifying their eligibility as per the resolution dated 21.10.2020 of this Department. Whereas, the payment of gratuity for the pensionable services after becoming permanent will be made by the Director, Pension & Provident Fund Office. The Department will ensure that the gratuity is paid within the maximum limit of 33 years by counting both the services together and in any case no double payment is made.

(4) The payments made to the daily wagers/work-charge employees under the Resolution dated 21.10.2020 of this Department before issuance of this order will not be reopened."

6. Insofar as the aspect of leave encashment is concerned, learned AGP has brought to the notice of this Court to a circular dated 07.10.2022, wherein the Government has also taken a policy decision which reads as under: -

"According to the decision of the Supreme Court, since the retiral benefits given to the daily wagers under the resolution dated 17.10.1988 also includes the benefit of leave encashment, therefore the daily wagers are entitled to the benefit of leave encashment as per Clause (5) of the State Litigation Policy of the Government. The instructions in this regard are circulated after consultation and as per the approval received through the informal note dated 3.10.2022 of the Finance Department.

With regard to the various claims filed before the Hon'ble Court, after verifying the service record of the petitioners – daily wagers and after calculating as per rules and the policy of the Government applicable to the regular services, the benefit of encashment of earned leaves (within the maximum limit of 300 earned leaves) shall be paid in the following terms :

(1) The petitioners - daily wagers who have retired and completed 70 years as on 1.10.2022 shall be paid latest by 31.10.2022.

(2) Rest of the petitioners – daily wagers shall be paid within a period of three months, i.e. on or before 31.12.2022."

7. It is also not in dispute that for counting entire length of service for payment

of retiral benefits, the decision of this Court in the case of Executive Engineer, Panchayat (Maa & M) Department Vs. Samudabhai Jyotibhai Bhedi, reported in 2017 (4) GLR 2952 would be applicable.

8. The above factual position could not be controverted by learned Assistant Government Pleader for the respondent – State.

9. Considering the above position, in the considered opinion of this Court, the present petition could be disposed of with the following directions, which would meet the ends of justice.

(A) The respondent No.2 shall undertake scrutiny of case of the petitioners herein, within a period of 04 weeks from the date of receipt of this order, and whereas upon such scrutiny, if they are found eligible, then a proposal shall be forwarded by the respondent No.2 to the State Authorities in this regard within such time.

(B) Upon such proposal being received by the concerned Department, the same shall be considered and a final decision including payment of benefits shall be taken by the State within a period of 08 weeks from the date of receipt of such proposal.

10. With the above observations and directions, the petition stands disposed of. Rule made absolute to the aforesaid extent. Direct service is permitted.