

(2014) 08 GUJ CK 0066
In the Gujarat High Court

Case No : Special Civil Application Nos. 522, 2423 and 567 of 2012 and 17239 of 2011

Desai Vikarambhai Shaharbhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 08 GUJ CK 0066

Hon'ble Judges : G.R. Udhwani, J

Bench : Single Bench

Advocate : Shashikant S. Gade, Advocate for the Appellant; Ronak Raval, Vrunda C. Shah and Neeraj Ashar, AGPs, Advocate for the Respondent

Judgement

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G.R. Udhwani, J.—The petitioners expect the benefit under the Government Resolution dated 17.10.1988 produced at Annexure "A" which fixes the pay and other benefits for semi-skilled workmen on the criteria specified therein.

2. Reliance is placed upon the decision of this Court in Special Civil Application No. 515 of 2012 decided on 06.01.2014 in Gujarat Forest Produce Gatherers and Forest Workers Union and others vs. State of Gujarat and others whereby this Court after referring to the decision in State of Gujarat and Others Vs. PWD Employees Union and Others etc., more particularly para 26 directed the respondent-State to consider the case of the similarly situated persons. The observations/directions contained in para No. 21 to 26 of the said decision are reproduced as under:

"21. In view of the aforesaid observation, we find that the full Bench of the Gujarat High Court in Gujarat Forest Producers, Gatherers and Forest Workers Union(supra) proceeded on erroneous premises to hold that the Resolution dated 17th October, 1988 is applicable only to the daily wage workers of Forest

Department engaged in building maintenance and repairing work. The conclusions in the said judgment are not sustainable otherwise also. We have already noticed that the Resolution of the State Government dated 17th October, 1988 is not limited to any particular department, it applies to all the departments including Road and Building, Forest and Environment Department, Water Resources Department, etc. We have also noticed that the Committee headed by the Minister of Road and Building Department looked into the wages of daily wage workers and work related facilities provided to the daily wage workers engaged in building maintenance and repairing work in different departments, only for the purpose of its recommendations. The Committee has not limited the recommendations amongst the daily wage workers engaged in building maintenance and repairing work in different departments by its aforesaid Resolution. It is applicable to all daily wage workers including semi skilled workers performing any nature of job, working in different departments of the State including the daily wage workers of the Forest Department performing work other than building maintenance and repairing work.

22. The impugned order passed by the learned Single Judge and the Division Bench arise out of the final order and judgment dated 29th October, 2010 passed in SCA No. 8647/2008 and connected matters. The said order has reached finality in absence of any challenge before the higher Court and hence became binding between the parties i.e. the appellant-State of Gujarat and the respondents-Employees Union. Therefore, none of the parties including appellants-State of Gujarat can rely on Full Bench decision in Gujarat Forest Producers, Gatherers and Forest Workers Union (supra) to scuttle the decision and direction given by the Gujarat High Court in SCA No. 8647/2008 and connected matters.

23. The decisions in Uma Devi (supra) and A. Umarani (supra) were regarding the question concerning regularization of employees entered by back door method or those who were illegally appointed encouraging a political set up, in violation of Article 14 and 16 of the Constitution of India. We are of the opinion that both the aforesaid decisions are not applicable in the present case i.e. to the members of the respondent-Employees Union for the following reasons:

(i) The Secretary, Forest and Environment Department of the State of Gujarat by his order dated 3rd May, 2008 held that initially the entry of the daily wagers do not suffer from any illegality or irregularity but is in consonance with the provisions of Minimum Wages Act. Therefore, the question of regularization by removing procedural defects does not arise.

(ii) The Gujarat High Court by its judgment dated 29th October, 2010 passed in SCA No. 8647 of 2008 while noticing the aforesaid stand taken by the State also held that the nature of work described in the order dated 3rd May, 2008 shows that the daily wage workers are engaged in the work which is perennial in nature.

(iii) The case of A. Uma Rani (supra) related to regularization of services of

irregular appointees. In the said case this Court held that when appointments are made in contravention of mandatory provisions of the Act and statutory rules framed therein and in ignorance of essential qualifications, the same would be illegal and cannot be regularized by the State.

24. Thus, the principal question that falls to be considered in these appeals is whether in the facts and circumstances it will be desirable for the Court to direct the appellants to straightaway regularize the services of all the daily wage workers working for more than five years or the daily wage workers working for more than five years are entitled for some other relief.

25. As per scheme contained in Resolution dated 17th October, 1988 all the daily wage workers were not entitled for regularization or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

"(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(iii) Daily wagers and semi skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/she will be eligible for getting medical allowance and deduction of provident fund.

(iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly."

26. Considering, the facts and circumstances of the case, the finding of Gujarat High Court dated 29th October, 2010 in SCA No. 8647/2008 and connected matters and the fact that the said judgment is binding between the parties, we

are of the view that the appellants should be directed to grant the benefit of the scheme as contained in the Resolution dated 17th October, 1988 to all the daily wage workers of the Forest and Environment Department working for more than five years, providing them the benefits as per our finding at Paragraph 25 above. The appellants are directed accordingly. The judgment and order passed by the learned Single Judge dated 29th October, 2010 as affirmed by the Division Bench by its order dated 28th February, 2012 stands modified to the extent above. The benefit should be granted to the eligible daily wage workers of the Forest and Environment Department working for more than five years including those who are performing work other than building maintenance and repairing but they will be entitled for the consequential benefit w.e.f. 29th October, 2010 or subsequent date from which they are so eligible within four months from the date of receipt/production of the copy of this order. The appeals stand disposed of with the aforesaid observation and directions to the appellant-State and its authorities. There shall be no separate orders as to costs."

3. Having considered the rival contentions, the directions issued in the aforementioned petition should form part of the direction in this petition and accordingly these petitions are allowed. The respondents are directed to examine and decide the case of each of the petitioners individually as per the direction issued by the Hon"ble Supreme Court in para 26 in PWD Employees Union (supra). The respondents shall take such decision within four months from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.