

(2017) 06 GUJ CK 0050
In the Gujarat High Court
Case No : 1439 of 2015

EXECUTIVE ENGINEER PANCHAYAT(MAA & M)DEPARTMENT & ANR. APPELLANT

Vs

SAMUDABHAI JYOTIBHAI BHEDI & ORS. RESPONDENT

Date of Decision : 07-06-2017

Acts Referred:

Industrial Disputes Act, 1947, Section 25B - Definition of continuous service

Citation : (2017) 06 GUJ CK 0050

Hon'ble Judges : Akil Kureshi, Biren Vaishnav

Bench : Division Bench

Advocate : HS MUNSHAW, RAJESH P MANKAD

Judgement

1. This appeal is filed by the Dahod district panchayat challenging the judgment of the learned Single Judge dated 07.08.2015 passed in Special Civil Application No.67 of 2012. At the center of the controversy is the right of a daily wager employee who was later on, as per the Government Resolution, regularized in service to receive pension. Learned Single Judge having directed the panchayat and State authorities to grant such pension, the panchayat is in appeal before us. To appreciate the controversy, we may refer to the relevant facts in brief.

2. The employeeoriginal petitioner joined services of the panchayat as the labourer on daily wage basis on 28.05.1977. According to him, since then he was employed virtually and uninterruptedly and all throughout the period and in the process had completed more than 10 years of continuous service as provided in section 25B of the Industrial Disputes Act. In other words, in all those years, the petitioner had put in more than 240 days of actual work. On the basis of Government Resolution dated 17.10.1988, his service was also regularized with effect from 31.01.2006. He retired on crossing the age of superannuation on 31.01.2009. According to him, he had completed 22 years of continuous service which should qualify for pensionary benefits. Since such benefits were not

granted, he approached the High Court by filing the said writ petition inter alia praying for a direction that the respondents should pay to the petitioner pension with interest.

3. The stand of the respondents emerging from the record is that to receive pension, an employee must have put in a minimum 10 years of service. Since the petitioner was regularized only in the year 2006 and retired in December, 2009, he had put in barely three years of regular service. Since regular service is way below minimum 10 years of service required for pension, his claim for pension was rejected.

4. Before the learned Single Judge, the petitioner relied on the Government Resolution dated 17.10.1988 and a subsequent clarificatory circular dated 30.05.1989 to contend that even service prior to the regularization as long as the years during which the employee had completed continuous one year of service, would qualify for pensionary benefits. Learned Single Judge accepted the contention and by the impugned judgment, directed the respondents to consider the past service of the petitioner rendered as daily wage for the purpose of pensionable service provided in a particular year he had completed 240 days of service. The pension was to be released within specified time with interest at the rate of 9% per annum. It is this judgment that the panchayat administration has challenged before us in this Letters Patent Appeal.

5. Facts are not seriously in dispute. According to the petitioner, he had completed in all close to 22 years of service with the Panchayat, during which, he had worked for more than 240 days in each year. Even if this claim of having put in 240 days of actual service in each of the 22 years is subject to verification, even the original respondents do not dispute that the petitioner had completed far more than 10 years of such service. It was precisely because of this reason granting benefit of Government Resolution dated 17.10.1988, he was regularized in services on 31.03.2006. From such date onwards till he retired, the employee had concededly put in just over three years of service. The crucial question therefore is would the past service of completed years prior to regularization would count towards pensionary benefits.

6. As is well known, under Government Resolution dated 17.10.1988, the Government decided to grant benefits of regularization and permanency to daily rated workers who had completed more than 10 years of actual service prior to such date, of course subject to certain conditions. One of the clauses in the said Government Resolution was that the benefit of regularization would be available to those workmen who had completed more than 10 years of service considering the provisions of section 25B of the Industrial Disputes Act. They would get benefits of regular pay scale and other allowances, pension, gratuity, regular leaves etc. They would retire on crossing age of 60 years. That the period of regular service shall be pensionable.

7. This Government Resolution led to several doubts. The Government itself

therefore came up with a clarificatory circular dated 30.05.1989, in which, several queries which were likely to arise were clarified and answered. Clause 6 of this circular is crucial for our purpose. The question raised was that an employee who had put in more than 10 years of service as on 01.10.1988, would be granted the benefit of Government Resolution dated 17.10.1988. In that context, the doubt was whether for the purpose of pension, the past service of completed years prior to regularization would be considered or whether the pensionable service would be confined to the service put in by the employee after he is actually regularized. The answer to this query was that those employees who had put in more than 10 years of service as per Government Resolution dated 17.10.1988 would get the benefit of pension. For such purpose, those years during which the employee had fulfilled the provisions of section 25B of Industrial Disputes Act, such years would qualify for pensionary benefit.

8. Two things immediately emerge from this clarification. First is that the query raised was precisely what is the dispute before us and second is that the clarification of the Government was unambiguous and provided that every year during which the employee even prior to his regularization had put in continuous service by fulfilling the requirement of having worked for not less than 240 days as provided under section 25B of the Industrial Disputes Act, would count towards qualifying service for pension. In view of the clarification by the government itself, there is no scope for any further debate. The petitioner was correct in contending that having put in more than 10 years of continuous service as a labourer in the past, he had a right to receive pension upon superannuation. This is precisely what the learned Single Judge has directed, further enabling the employer to verify as to in how many years he had put in such service and then to compute his pension.

9. Learned counsel Shri Munshaw for the Panchayat however drew our attention to some other clauses of the said clarificatory circular dated 30.05.1989. None of these clauses have a direct bearing on the controversy at hand. These clauses merely refer to from which point of time such benefits may be available. It may be that benefits of regular services such as regular pay scale, leave, gratuity and pensionary benefits may be available only after regularization of an employee. However, this does not mean that his past continuous service would be wiped out for the purpose of pensionary benefits. The stand of the authorities that only that service which the employee had put in after actual order of regularization would count for pension is thus in conflict with the Government circulars itself.

10. The issue can be looked from slightly different angle. As it likely to happen in many cases and appears to have happened in the present case, actual order of regularization may not be passed immediately upon an employee having put in 10 years of continuous service for variety of reasons such as inaction on the part of the employee to press for such benefits, verification needed at the hands of the administration and sometimes, sheer inertia may delay actual regularization. Would that mean, the benefit of pension would be denied to an employee

because after the belated regularization he did not have sufficient time to render 10 years of qualifying service? The answer has to be in the negative.

11. In the past, same or similar issues have traveled to the Division Benches in Letters Patent Appeals. Learned Single Judge in case of Tribhovanbhai Jerambhai v. Dy. Executive Engineer, SubDivision, R & B Deptt. & Anr. reported in 1998 (2) GLH 1, held that once a daily rated workman is treated to be permanent in terms of resolution dated 17.10.1988, his entire continuous service from the date of entry till retirement including his services rendered prior to the date of his regularization has to be taken into consideration for the purpose of computing pension or for making pension available to the employee. This decision was carried in appeal by the employer before the Division Bench. The Division Bench by order dated 04.04.2003 noted that the appeal had become time barred. Even on merits, the Division Bench was not inclined to take a different view.

12. In case of Surendranagar Dist. Panchayat and Anr. v. Umarkhan Alikhan Malek and ors., Division Bench of this Court in its judgment dated 29.03.2016 rendered in Letters Patent Appeal No.2047 of 2004, considered the issue where the employee had sought pensionary benefits having worked from the years 1978 to 1991. The learned Single Judge applying the formula of section 25B of the Industrial Disputes Act held that the employee had put in continuous service for more than 10 years as a daily wager. He was entitled to benefit of Government Resolution dated 17.10.1988 including the benefits of pension. The administration had merely contended that the workman had not put in actual 10 years of service after regularization before he can seek pensionary benefits.

13. Yet again, the Division Bench of this Court in case of Chhaganbhai Ranchhodbhai Rathod v. Dy Executive Engineer, vide judgment dated 06.08.1998 rendered in Letters Patent Appeal No.1495 of 1997, took up the issue of pensionary benefits of a daily wager in terms of Government Resolution dated 17.10.1988. The controversy was whether the employee had put in 10 years of service during which he had worked for not less than 240 days in every year. Learned Single Judge having rejected the petition, the employee had filed the said Letters Patent Appeal. The Division Bench applying the provisions of Section 25B of the Industrial Disputes Act, held that the workman had put in such service of a minimum 10 years and consequently granted the benefits of pension in terms of Government Resolution dated 17.10.1988. Here also the authorities had not raised a contention which is sought to be raised before us.

14. Be that as it may, in view of the discussion above, we find no merits in this appeal. The same is therefore dismissed.

15. In view of the order passed in present Letters Patent Appeal, Civil Application No.13101 of 2015 will not survive and hence, the same is also disposed of.