

(2019) 06 GUJ CK 0013
In the Gujarat High Court

Case No : R/Special Civil Application No. 2115 Of 2019

Gandubhai Bhanabhai Zapda

APPELLANT

Vs

Executive Engineer

RESPONDENT

Date of Decision : 21-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 06 GUJ CK 0013

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

Bench : Single Bench

Advocate : Mukesh H Rathod, Krina Calla

Final Decision : Allowed

Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr.Mukesh Rathod for the petitioner and learned Assistant Government Pleader Ms.Krina Calla for the respondents.

2. The petitioner has prayed to set aside letter dated 24th January, 2018 so as to set-at-naught the endorsement dated 21st June, 2018 passed by the

respondents. By the said endorsement below the said letter, the petitioner is denied the benefits of 6th Pay Commission on the ground that the

appointment of the petitioner was subsequent to 17th October, 1988. The petitioner has further prayed for grant of benefits of 6th Pay Commission

with effect from 01st January, 2006 and pay the consequential benefits including the arrears.

3. Noticing the facts from the record of the petition, the petitioner was taken in service as Labourer with effect from 20th December, 1991. At one

stage in the year 1995, services of the petitioner was terminated but accepting the Labour Court's award, the authorities reinstated the petitioner in the

year 2007. Continuity of service was counted and in view of the orders passed granting the benefits of State Government Resolution dated 17th

October, 1988, the petitioner has been getting benefits of permanent employees including the benefit of leave, public holidays, retirement benefits etc.

3.1 As the State Government accepted the recommendations of 6th Pay Commission for its employees to be granted from 01st January, 2006,

petitioner made request to extend the said benefits to him by making representation dated 23rd January, 2018. It is stated that the Deputy Executive

Engineer, Jetpur forwarded the said representation by letter dated 24th January, 2018 to the Executive Engineer for further process.

4. However, it appears that the Executive Engineer rejected the request of the petitioner and made aforesaid endorsement that since the petitioner

was appointed after 17th October, 1988, the request of the petitioner for grant of benefits of 6th Pay Commission was not acceptable.

5. The denial of benefits of the 6th Pay Commission to the petitioner is thus on the ground that the petitioner was appointed after 17th October, 1988

and as per the instructions, in view of the said cut-off date, petitioner is considered not entitled to get 6th Pay Commission pay-scale and benefits.

6. The identical issue arose in case of Kalubhai Nathubhai Sonagara v. State of Gujarat being Special Civil Application No.2700 of 2016 decided on

30th November, 2017 by this Court. What is discussed, observed and held in paragraphs 5.1 to paragraph 6 in decision in Kalubhai Nathubhai

Sonagara (supra) directly applies to the present case. They are as under.

5.1 In Patel Tarunkumar Shankarlal v. State of Gujarat being Special Civil Application No.12527 of 2013 with cognate petition, the petitioners

were the employees of Gujarat Maritime Board who were work-charge employees appointed after 31st March, 1989. Their grievance was similar to

one involved in the present petition and that they were not given benefits of 6th Pay Commission, although all the work-charge employees appointed

prior to 31st March, 1989 were granted the benefits. While contesting the said petition, respondents relied on Circular dated 31st March, 1989 of the

Road & Building Department adopted by it, which was in connection with the State Government Resolution dated 17th October, 1988 and according

to the said Circular, conversion from daily-wagers to work-charge was restricted after 31st March, 1989 and appointment of daily-wagers was

prohibited. Raising the said cut-off date, those petitioners were denied the benefits of 6th Pay Commission that they were appointed after the said

date. The direction was prayed before the Court for grant of 6th Pay Commission benefits. The said petition came to be allowed by judgment dated

06th August, 2015. Learned Single Judge observed that it was incomprehensible that after having extending the benefits of 5th Pay Commission

recommendations with effect from 1998 for the petitioners, 6th Pay Commission benefits were denied and it was further observed that there was no

rationale or basis for placing reliance on Circular dated 31st March, 1989. the decision in Patel Tarunkumar Shankarlal (supra) came to be confirmed

in Letters Patent Appeal No.1230 of 2015, decided on 23rd September, 2015 wherein the Court emphasise the equal treatment to be accorded to the

homogeneous class of persons and disapproved the prescription of cut-off date. Special Leave Petition Nos.34352-34353 of 2015 came to be

dismissed by the Apex Court on 04th January, 2016. The principle in the aforesaid decision directly applies to the case of the present petitioner.

5.2 Exactly similar was the case of Mansukh Arjanbhai Bhakhotara v. State of Gujarat being Special Civil Application No.2723 of 2016 decided on

23rd March, 2016. Those petitioners were identically placed with the present petitioners, who were daily-wagers of the Irrigation Department as the

present petitioner is, and claimed benefit of 6th Pay Commission as per the State Government Resolutions dated 27th February, 2009 and 15th March,

2010. The said petition was allowed by negating same defence raised and the respondents were directed to calculate and pay the necessary benefits

as per the 6th Pay Commission recommendations.

5.3 Decision in Mansukh Arjanbhai Bhakhotara (supra) was carried in Letters Patent Appeal No.768 of 2016 which was decided and dismissed as

per order dated 07th July, 2017. While dismissing the Letters Patent Appeal, the Court relied on Patel Tarunkumar Shankarlal (supra).

6. In view of the above settled legal position, there is no gainsaying that the petitioner herein belongs to the similar class of person to be treated equally

with Patel Tarunkumar Shankarlal (supra) and Mansukh Arjanbhai Bhakhotara (supra), to be extended the benefits of 6th Pay Commission

recommendations. Denial of benefits to the petitioner is violation of fundamental rights of the petitioner under Articles 14 and 16 of the Constitution.â??

7. In view of above, the petition deserves to be allowed. Denial to the petitioner the benefits of 6th Pay Commission on the ground of cut-off date

cannot stand valid in eye of law. Such decision of the respondents is illegal and arbitrary. The State Government is directed to consider for grant of 6th

Pay Commission benefit to the petitioner as well as consequential benefits arising therefrom. The respondent " State and its authorities are directed

to take such decision and pay to the petitioner within 10 weeks from the date of receipt of this order the amount payable under the 6th Pay

Commission pay-scale. It is further provided that if the benefits are not paid to the petitioner as above within the period stipulated above, it shall carry

interest at the rate of 6% from the date of filing of the present petition, that is 01st February, 2019.

The petition is allowed in the aforesaid terms.