

(2019) 06 GUJ CK 0024

In the Gujarat High Court

Case No : ??R/Special Civil Application No. 8710 Of 2019

Gujarat Forest Produces Gatherers And Forest Workers Union
Thru. President Pravinbhai Ratilal Vyas

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 24-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 309
Industrial Disputes Act, 1947 — Section 25(B)

Citation : (2019) 06 GUJ CK 0024

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

Bench : Single Bench

Advocate : Krunal D Pandya, Manan Mehta

Final Decision : Disposed Of

Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr.Krunal D. Pandya for the petitioners and learned Assistant Government Pleader Mr.Manan Mehta for the

respondents.

2. Petitioner No.1 is Gujarat Forest Produces Gatherers and Forest Workers Union, whereas petitioner Nos.2 and 3 are the Daily Wagers appointed

under the Forest Department. The petitioners have prayed as under,

(i) To grant regular pay scale, HRA, Pay increments etc) group insurance, annual increment, festival holidays, national holidays, leave encashment

seventh pay commission benefits etc. granted in GR dated 17.10.1988 same in stated in communication/issued by the respondent, from the date of the

entitlement along with interest.

(ii) To examine the case of the petitioner within stipulated period and immediately grant all benefits of the GR dated 17.10.1988 including Sunday leave, House Rent Allowance, Pension, Gratuity, Provident Fund and all 3 increments etc.

(iii) To grant all benefits as per the direction of the Hon'ble Supreme Court in the State of Gujarat vs. PWD Employees Union (Reported in 2013 (2)

GLH 692).

3. Petitioner No.2 was appointed on 01.11.2000, whereas petitioner No.3 was appointed on 01.07.1981 as daily rated workmen. Both petitioner

Nos.2 and 3 have retired from service having reached the age of superannuation. Their grievance is that even as they reached the age of retirement,

still however they have not been extended the benefit of Resolution dated 17.10.1988 of the State Government.

3.1 It is not in dispute that the Deputy Conservator of Forest, Sanand and the Deputy Conservator of Forest, Bhavnagar have passed

communications and orders dated 29.11.2014 and 20.01.2015 in case of petitioner Nos.2 and 3 respectively, whereby it is recommended to grant

the benefits to the petitioners flowing from the Resolution dated 17.10.1988 of the Road and Building Department read with Resolution dated

15.09.2014 of the Forest Department.

3.2 In the aforementioned orders dated 29.11.2014 and 20.01.2015, the competent authority mentioned that as per record available in the office,

petitioner No.2 had completed 240 days or more in each of the eighteen years from 29.10.2010. Similarly, petitioner No.3 was found to have

completed 240 days or more from the sixteen years of his service of each year as on 15.09.2014. The orders mention further that both the petitioners

are entitled to the benefits as per condition No.3 of Resolution dated 15.09.2014. Clause No.3 of the said Resolution inter alia provides that those

daily rated workmen who have completed fifteen years of service as per the provisions of Section 25(B) of the Industrial Disputes Act, 1947, on

29.10.2010 or thereafter would be entitled to the pay scale of Rs.4440-7440 (Grade Pay Rs.1,300/-), dearness allowance, local compensatory

allowance, pension, gratuity under the pension scheme. They would also be entitled to the miscellaneous leave, half pay leave etc. as well as other

leaves and increment as mentioned in the said clause 3 of the Resolution.

3.3 Since the petitioners did not receive the aforesaid benefits sanctioned, they through their Union addressed notice&Arepresentation dated

12.10.2018 to the competent authority. Ever since nothing yielded, the present petition came to be filed.

4. When the competent authority has found on facts and from the record that both the petitioners are entitled to the said benefits under said

Resolutions dated 15.09.2014 read with Resolution dated 17.10.1988, there is no reason to delay the conferment and payment of said benefit to the

petitioners. The limited grievance of the petitioners as voiced on their behalf is that despite the competent authority having approved the release of

benefits, the same is not being paid.

5. At this stage, it deserves to be mentioned that the Supreme Court in the State of Gujarat vs. PWD and Forest Employees Union and others, being

Civil Appeal Nos.1684&1686 of 2019, decided on 15.02.2019, considered the application of Resolution dated 15.09.2014 of the Forest Department

together with Resolution dated 17.10.1988 of the Road and Building Department with reference to its own decision in State of Gujarat and others Vs.

PWD Employees' Union and others [(2013) 12 SCC 417] .The appellant&State had accepted the entitlement of service benefits to the daily&rated

workmen as flowing from Resolutions dated 17.10.1988 and 15.09.2014 as interpreted by the decision in PWD Employees Union and others (supra),

however, with certain exceptions and qualifications.

5.1 The relevant part from the decision of the Apex Court in PWD and Forest Employees Union and others (supra) reads as under, in which the

submission of the appellant&State was recorded,

â??12. The appellant has, in the written submissions, generally accepted the position given above. However, the appellant has given this acceptance

subject to following exceptions:

(i) In the category mentioned at Serial Nos. 3, 4, 5 and 6, every worker is not entitled to the pay scale mentioned by them as per GR dated October 17,

1988 or in the corresponding scale on October 29, 2010 because once they become permanent, they will have to be fitted in the job description in

terms of the Gujarat Civil Services (Revision of Pay) Rules, 2009 (hereinafter referred to as the â??Rulesâ??) as revised from time to time and not

by Minimum Wages Act. Any anomaly within the same job description between

people who have been regularly appointed and these workers of the respondent union would mean that everybody else will ask for it not only in this department, but other department of Government will have great difficulty in adhering to it. The pay scale mentioned in Serial Nos. 3, 4, 5 and 6 cannot be applied across the board.

(ii) The old Pension Scheme has been scrapped by the Government and Contributory Pension Fund (CPF) Scheme/New Pension Scheme (NPS) has been introduced with effect from April 01, 2005. Therefore, CPF Scheme/NPS has been made applicable under the GR dated September 15, 2014, and the benefits of the same are being granted to the workers of the respondent union.

(iii) Similarly, the old General Provident Fund (GPF) Scheme has been scrapped by the Government and CPF Scheme has been introduced with effect from April 01, 2005. Therefore, CPF Scheme has been made applicable, and the benefits of the same are being granted to the workers of the respondent union.

(iv) The worker is given benefit of past services considering the earlier period on which he worked for more than 240 days in a year.

(v) The GR dated October 17, 1988 provides for 14 days of casual leave including 2 days of voluntary leave/optional leave. However, due to inadvertent translation errors, the judgment passed by this Court directed 14 days of casual leave in addition to 2 days of voluntary leave/optional leave. Therefore, the GR dated September 15, 2014 has incorporated the two days of voluntary leave/restricted leave and 12 days of casual leave which is applicable to all Government employees.â??

5.2 The Apex Court thereafter observed to hold as

Â â??Having regard to the above, we are confining our discussion to the aforesaid exceptions taken by the appellant. In the first instance, it is pointed out by the appellant that even if the respondents become permanent, they would be entitled to be fitted in the job description in terms of the Rules.

What is emphasised is that even after regularisation, their pay scales cannot be more than the pay which is given to the employees who are taken on

permanent basis. This appears to be a very sound argument. The only plea was that whatever is given to such employees in other departments, same

benefit be extended to the respondents as well. It is difficult to countenance this

submission which we find to be legally impermissible. That is hardly any justifiable response to rebut the same. It is to be kept in mind that members of respondent union were all engaged on daily wage basis. No doubt, the appellant Government decided to confer certain benefits upon these daily wage workers depending upon the number of years of service they put in. Judgment dated July 09, 2013 proceeds on that basis. Under certain circumstances, namely, on completion of specified number of years of service on daily wage basis, these daily wage workers are entitled to become permanent. On attaining the status of permanency/regular employees, they become at par with those employees who were appointed on permanent basis from beginning, after undergoing the proper selection procedure on proving their merit. These daily wagers cannot be given the pay scales which are even better than the pay scales given to regularly appointed employees. The Rules are statutory in nature which have been framed in exercise of powers conferred by the proviso to Article 309 of the Constitution. On becoming permanent, such daily wagers can, at the most, claim that they be fitted in the job descriptions in terms of the said pay rules and their pay be fixed accordingly. The appellant is ready to do that. We, therefore, accept the plea mentioned in exception (i) above.â?? (para 13)

5.3 The conferment of benefits of GPF and CPF Scheme/New Pension Scheme was clarified with reference to cut-off date of 01.04.2005 as under,

â??Insofar as plea at paras (ii) and (iii) is concerned, the appellant intends to deny the benefit of GPF on the ground that w.e.f. April 01, 2005, CPF

Scheme/NPS has been introduced. However, on that basis, all such employees cannot be denied the benefit of GPF. The earlier pension scheme

continues to annued to the benefit of those who enter the service before April 01, 2005. Therefore, all those daily wagers who become entitled to get

the status of regular/permanent employees before April 01, 2005 has to be given the benefit of GPF. To put it otherwise, April 01, 2005 would be

treated as cut-off date. All those persons who would be entitled to regularisation/permanent status prior to April 01, 2005 shall be given the benefit of

earlier scheme i.e. GPF. However, those who attain this status after April 01, 2005 shall be governed by CPF Scheme/NPS.â??

(para 14)

5.4 It was further observed that only those years would be taken into

consideration wherein workers had worked for 240 days or more in the year as under,

â??Insofar as exception (iv) mentioned by the appellant is concerned, there appears to be some merit therein. For counting the number of years for giving benefit to the workers in terms of judgment dated July 09, 2013, only those years would be taken into consideration wherein these workers had worked for 240 days or more in a year i.e. in consonance with the GR dated October 17, 1988. Furthermore, there is no direction in the judgment of this Court to the effect that the period of service of 240 days in a year should be only in the initial year and not thereafter. In fact, when the learned senior counsel for the respondents were confronted with the aforesaid position, they conceded to this position.â??

(para 15)

5.5 The Supreme Court thereafter observed as regards casual leave in a year to be made available to the employees as under,

â??Insofar as exception (v) noted above is concerned, it is not in dispute that regular employees are entitled to 12 days of casual leave in a year i.e.

applicable to all Government employees and the respondents could not dispute this. The respondents workers who have been working on daily wage

basis cannot be given casual leave which is more than the entitlement extended to regular Government employees. We accept the plea of the

appellant that GR dated October 17, 1988 which provides for 14 days casual leave including 2 days of voluntary/optional leave is the result of

inadvertent transaction error. Even otherwise, as pointed out above, the casual leave for daily wagers cannot be more than the regular Government

employees. We, therefore, hold that the respondents employees shall be entitled to 12 days of casual leave and 2 days of voluntary leave/restricted

leave.â?? (para 16)

6. While giving benefit of orderÂcumÂcommunications dated 29.11.2014 and 20.01.2015 to petitioner Nos.2 and 3, the respondent authorities shall

take into account the aforesaid directions of the Supreme Court in PWD and Forest Employees Union and others (supra).

In other words, the benefits to both the petitioners under Resolution dated 15.09.2014 and under Resolution dated 17.10.1988 shall be available by

reading and applying them with above observations and directions of the

Supreme Court.

7. The respondents are directed to confer the necessary benefits upon the petitioners accordingly in terms of aforementioned order.

communications dated

29. 11.2014 and 20.01.2015 read with the decision of the Supreme Court in PWD and Forest Employees Union and others (supra), so as to avail the

same within a period of six weeks from the date of receipt of the writ of the present order.

The petition stands disposed of with the aforesaid directions. Notice is discharged.