

(2022) 02 GUJ CK 0083

In the Gujarat High Court

Case No : R/Special Civil Application No. 15220 Of 2020

Haresh Valji Nagpara

APPELLANT

Vs

Government Of Gujarat

RESPONDENT

Date of Decision : 21-02-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B

Citation : (2022) 02 GUJ CK 0083

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Navaldan R Langa, Kurven Desai

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. RULE returnable forthwith. Mr.Kurven Desai learned AGP waives service of rule on behalf of the respondent.

2. The petitioner claims all the benefits of resolution dated 17.10.1988 on the basis of an award of the Labour Court dated 15.12.2005 which directs that the petitioner be reinstated with 20% of back-wages.

The award of the Labour Court was confirmed by an oral order dated 24.12.2013 in Special Civil Application No.25328 of 2006.

3. The petitioner was appointed as a daily-wager in June 1986 and was illegally terminated in 1988 and as a result of that, he had to approach the Labour Court as stated herein above.

4. Mr.N.R.Langa learned counsel for the petitioner would submit that the petitioner is similarly situated employee of the petitioners of Special Civil Application No.18284 of 2019, wherein, this Court by an order dated 24.06.2020 held as under:

"7. In view of the fact that this Court, by an order dated 13.4.2010 passed in Special Civil Application Nos.4431 with 4432 to 4436 of 2010 has modified the award and granting continuity of service, the respondents are directed to consider the case of the petitioners for extending the benefits of GR dated 17.10.1988 in accordance with the decision of PWD and Forest Employees Union (Supra) Such a decision shall be taken by the concerned respondents within a period of Eight Weeks from the date of receipt of certified copy of this order. It will be open for the respondents if they want to consider the case of the petitioners in context of prayer (C) of the petition after verifying the records."

5. Learned AGP Mr.Kurven Desai would rely on the affidavit in reply on behalf of the respondents and submit that since the benefits of 'continuity of service' was not specifically referred to the award of the Labour Court, the benefit of the resolution dated 17.10.1988 cannot be granted. Moreover, the resolution was only applicable to the daily workman serving in the Forest and Environment Department.

6. Considering the submissions made by the learned counsels for the respective parties, this Court recently in the case of Vishnuji Sursingji Thakore Versus State of Gujarat rendered in Special Civil Application No.66 of 2019, relying on the decision in case of Gurpreet Singh v. State of Punjab and Haryana [(2002) 9 SCC 492] held as under:

"9. Emphasis is made by Mr.Mishra on the observations of the Division Bench that when there is an award of reinstatement, continuity of service would follow as a matter of law. Decision in case of Nandkishore Shravan Ahirrao v. Kosan Industries (P) Ltd. [AIR 2020 SC 1776] is also relied upon and paragraphs 6 to 8 are referred to. Reliance is also placed on the decision in case of Gurpreet Singh v. State of Punjab and Haryana [(2002) 9 SCC 492].

10. Mr.Mishra would also rely upon the Division Bench decision of this Court in Letters Patent Appeal No.485 of 2017 dated 20.07.2021. It was relied upon by the coordinate bench of this Court while dealing with an order in case of Hamirbhai Meghabhai Gohil v. State of Gujarat passed in Special Civil Application No.21123 of 2018 on 3. 01.2022. Paragraphs 11 to 20 of this order read as under:

"11. The facts, as narrated hereinabove, are not in dispute. The Labour Court vide award dated 29.03.2007 while examining the case of the present petitioner and the co-employee namely Danabhai Kalabhai in Reference (LCS) No.184 of 2000 has directed the respondent authorities to reinstate him on his original post. However, it appears that no directions were issued with regard to continuity of service. Shri Danabhai Kalabhai had approached this Court by filing Special Civil Application No.18154 of 2015 claiming the same relief as claimed by the present petitioner since he was denied the benefit flowing from the Government Resolution dated 17.10.1988. A similar contention was raised, which is raised in the present petition that since the Labour Court did not observe with regard to

continuity of service, the benefit of the Government Resolution dated 17.10.1988 cannot be extended to the petitioner. The Coordinate Bench of this Court after survey of judgments of the Apex Court has held that once the Labour Court has directed reinstatement, the same would include continuity of service.

12. Finally, the Coordinate Bench of this Court in the case of Shri Dananbhai Kalabhai vide order dated 22.12.2016 has observed thus:-

"15. Resultantly, the petitioner is ENTITLED to the benefits claimed for by him, more particularly, the benefits flowing from the Government Resolution dated 17.10.1988, treating his service to be CONTINUOUS. He shall be given all other benefits including consequential benefits from 01.10.1988 to 29.03.2007. DISPOSED OF, accordingly.

13. The judgment dated 22.12.2016 was subject matter of challenge before the Division Bench in Letters Patent Appeal No.485 of 2017. The Division Bench by the order dated 20.07.2021 rejected the appeal by observing thus:-

"6. We do not find substance in both the aforesaid submissions of the learned counsel appearing for the appellants. So far as the aspect of delay is concerned, a Coordinate Bench of this Court in an order passed in a Review Application being Misc. Civil Application No.1 of 2017 in Letters Patent Appeal No.906 of 2016 decided on 01.05.2018 has observed in paragraphs 19 and 20 as under:

"19. Keeping in view the aforesaid decisions, if the facts of the present case are examined, it transpires that the applicant workman had worked with the respondent authorities during the period between November, 1987 to November, 1999. On 30.11.1999, his services came to be terminated. Thereafter, demand notice was issued by the applicant – workman on 26.02.2013. When the reply was not given, applicant filed a complaint before the Assistant Labour Commissioner, Bhavnagar and thereafter dispute was referred to the Labour Court, Bhavnagar. It is not in dispute that the present respondents did not challenge the order of making reference to the Labour Court by filing appropriate proceedings before the appropriate Court. It is true that there was a delay of 14 years in raising the dispute. However, from the record, it is revealed that dispute was existed as after terminating the services of the applicant, his juniors were continued and even thereafter new workers were employed by the respondents. Thus, the dispute was alive.

20. Learned advocate Mr. Trivedi is right in submitting that if the respondents were aggrieved by the factum of delay in making reference, it was for them to challenge the order of making reference by the competent authority when the same was made to the Labour Court. Thus, when the order of making reference was not challenged by the respondents, said aspect is also required to be considered while deciding the issue involved in the matter."

7. So far as the second submission as regards continuity of service is concerned, we referred to an order passed by a Coordinate Bench of this Court in Letters

Patent Appeal No.1527 of 2019 decided on 23.06.2021 wherein the Court has observed as under:

"5. On the other hand, Mr.Chaudhari, learned advocate for the respondent has taken us through different orders passed by this Court in similar facts and circumstances, and has heavily relied upon decision of Honourable Supreme Court in the case of Nandkishore Shravan Ahirrao v. Kosan Industries Private Limited [2020 LLR 813]. He would submit that the Honourable Supreme Court has held therein that once a person is reinstated, continuity of service would follow as a matter of law and, therefore, the learned Single Judge has committed no error in allowing the petition. He would, therefore, submit that the appeal be dismissed.

6. We have heard learned advocates appearing for the parties. We have also gone through the judgment and award dated 8.11.2016 passed by the Labour Court, Surendranagar, whereby the workman is reinstated but continuity of service is not granted to him and we find that it is erroneous. In case of Gurpreet Singh (supra), which has been relied upon by learned Single Judge, it has been specifically held by Honourable Supreme Court that reinstatement in service would follow continuity of service. In the case of Nandkishore Shravan Ahirrao (Supra), it is held as under:-

"7. Ex facie, the Labour Court having awarded reinstatement to the appellant, continuity of service would follow as a matter of law. The award of the Labour Court dated 27 February 2008 does not specifically deny continuity of service. Hence the observation of the High Court to the effect that the Labour Court had denied continuity of service is erroneous and would accordingly stand corrected in terms of what has been observed herein-above. The appellant would be entitled to continuity of service."

7. Similar is the ratio laid down by Honourable Supreme Court in the case of Gurpreet Singh (supra). Hence, the case is squarely covered under the above decisions of the Apex court. Hence, the appeal is meritless and accordingly, appeal is dismissed. Interim relief, if any, stands vacated. In view of above order, Civil Application would not survive and the same is disposed of."

14. Thus, the directions issued by this Court in the case of coemployee Shri Danabhai Kalabhai, who was the party to the Reference (LCS) No.184 of 2000 have become final and accordingly, the petitioner, whose reference is decided with the common award along with Shri Danabhai Kalabhai, cannot be denied the benefits, which are conferred to Shri Danabhai Kalabhai.

15. In the order dated 18.06.2018 passed in Letters Patent Appeal No.1268 of 2017, while dealing with the same issue, the Division Bench has held thus:-

5.Thus, the upshot of the aforesaid. facts and discussion is that the present respondent - workman is dented. the benefits flowing from the Government Resolution. dated 17.10.1988 only on the ground that he had not completed 240

days in a year and his "continuity of service", as granted, by the Labour Court vide award dated 23.07.2007 and confirmed by this court, cannot be considered. The stand taken by the present appellants that the respondent — workman is not entitled to the benefits of the Government Resolution dated 17.10.1988 deserves to be deprecated. Once it has been established by this court that the respondent — workman is reinstated in service with continuity of service, the workman would be entitled to get the benefits flowing from the Government Resolution dated 17.10.1988, and such benefits cannot be denied to the respondent-workman only on the ground that he has not worked for 240 days. He was forced to live without work because of his illegal termination. The appellants. cannot take benefit of their illegal action. The termination of the respondent — workman was found to be illegal and contrary to the provisions of the Industrial Disputes Act, 1947. The effect of continuity of service is to be conferred from the year 1996, when he was appointed as a daily wager. The impugned order dated 15.04.2016 is blissfully silent about denying the benefits of the Government Resolution dated 17.10.1988 to the workmen who have been reinstated with continuity of service. The Government Resolutions dated 17.10.1988 and 01.05.1991 envisage grant of benefits of pay fixation, pension, etc. to the daily wagers, who have completed certain number of years of service.

16. In the order dated 27.03.2018, the Division Bench, while examining the similar issue in Letters Patent Appeal No.553 of 2017 and allied appeals, has held thus:-

3. However, according to learned advocate for the employer who argued the case before learned Single Judge, workman Govindbhai Haribhai Solanki had not actually worked between 1989 and 2006 and attained the age of superannuation on completion of 60 years in the year 2009 and thus, he had hardly worked for 3 years and not entitled to get the benefit of Government Resolution dated 17.10.1988. Another workman Javalben Palaben Kantaria, she was reinstated in the year 2006 pursuant to the order of this Court and retired on 17.1.2016 on attaining the age of superannuation and had put only 9 years and therefore she also would not be entitled to the benefit of above Government Resolution. Various other contentions were raised based on the scheme of Government Resolution dated 17.10.1988 that it was a policy decision and a self-contained mechanism worked out to grant certain benefits to daily rated/causal workers and cannot have any nexus with provisions of Industrial Dispute Act. However, learned Single Judge based on decision of the Apex Court to which reference was made in para 7 of the judgement and material on record as emerged in the writ petition and interpretation put forth of Government Resolution dated 17.10.1988 in all such cases, the significance of expression "continuity of service" was considered and ultimately held that if the contention of learned advocate for the employer about actual length of service rendered by the workman is considered provisions contained in Government Resolution as well as Section 25B of I.D.Act, 1947 referred to therein will be nugatory. At the same time benefits awarded by the Labour Court of Government Resolution dated 17.10.1988 to the workman

was modified and held that the workman would be entitled to the benefits under Government Resolution dated 17.10.1988 by treating them in continuous service from the initial date of their appointment till the date of superannuation with a rider that for the period for which backwages were denied to them, workmen would be entitled to receive only notional benefits under G.R. Dated 17.10.1988.

4. The above conclusion of learned Single Judge based on various orders passed by this Court and interpretation put forth in such decision it cannot be said that period of service namely length of service of each of the workman is to be considered from the date of the award for conferring benefits under G.R.dated 17.10.1988.

17. Thus, there is a constant view taken by the Division Benches, which are subsequent to the judgment dated 12.07.2016 passed in Letters Patent Appeal No.492 of 2016, on which the reliance is placed by the respondents that once the Labour Court orders reinstatement, continuity to such employee cannot be denied merely because the Labour Court has failed to record the expression "continuity of service".

18. Even otherwise, the case of the petitioner is similarly situated to the co-employee, Shri Danabhai Kalabhai, in whose case the orders passed by this Court have become final where the identical prayers made seeking the benefit of the Government Resolution 17.10.1988 from 1. 10.1988 to 29.03.2007 have been granted by this Court the only difference is that Shri Danabhai Kalabhai is still in service, whereas the present petitioner has retired after rendering 39 years of service on 30.06.2017.

19. The Supreme Court in the case of Gurpreet Singh vs. State of Punjab & Ors., (2002) 9 SCC 492 has also held that once the termination is set aside, the employee cannot be denied continuity of service once reinstatement is directed. The Apex Court has held thus:-

"3. Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside the part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity with the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stands allowed in part to the extent indicated above."

20. Accordingly, the present petition is allowed. The respondents are directed to confer the benefits flowing from the Government Resolution dated 17.10.1988 with effect from the petitioner will be entitled to such from 1. 10.1988 notionally

up to 29.03.2007 and thereafter, the respondents are directed to give difference of salary from 30.03.2007 to 30. 06.2017 and pay arrears accordingly. The respondents are also directed to grant retirement benefits like pension, gratuity and leave encashment to the petitioner as per the law enunciated by the Supreme Court in the case of P.W.D, Employees Union and Others (supra)."

11. Reliance is also placed on a decision in case of Shivuben Ambabhai Vasani v. State of Gujarat passed in Special Civil Application No.14297 of 2019. The relevant paragraphs read as under:

"8. I have heard the learned advocates appearing for the respective parties.

9. As noted hereinabove, the award of the Labour Court dated 30. 10.2012 in Reference (LCR) No.219 of 2001 has become final. By the said award, the respondents were directed to reinstate the petitioner without any back wages, however, the Labour Court has failed to observe anything with regard to continuity of service. At this stage, it would be apposite to refer to the decision of the Division Bench. The Division Bench in a similar set of facts while examining the provisions of the Government Resolution dated 17.10.1988 has held thus:-

"8. The undisputed fact in the present appeal is that the respondent-workman was terminated from the service in the Year-1998 and his termination was quashed and set aside by the award dated 12.01.2007. The Labour Court had directed the present appellants to reinstate the present respondent-workman without backwages on his original post, however, no specific reference was made regarding continuity of service. The Apex Court in the case of Gurpreet Singh (Supra) has specifically observed that once the termination is set-aside, the workman will be entitled for continuity of service since the same is not fresh appointment, but it is a case of reinstatement.

Accordingly, the workman was reinstated by the order dated 06.10.2008 on his original post, and thereafter, also, it is undisputed fact he was conferred the benefit of regular pay-scale till he retired on 13.11.2013 after rendering 5 years of service.

9. It is no more res-integra that, as per Resolution dated 17. 10.1988, the workman would be entitled to pension and other retirement benefits after completion of 10 years of service. In present case, the termination of the workman is found to be illegal and he was reinstated in service and was also paid regular pay scale. Thus, he was forced to remain unemployed for the interregnum period. The Labour Court, after examining the documents on record, has given a specific finding that the workman had worked for 12 years before his termination and he had also completed 240 days service. Thereafter, he was reinstatement on 06.10.2008 and till his retirement on 30.11.2013, he had completed 5 years. The learned Single Judge has allowed the writ petition and has only directed the Pension Fixation Authority to pass appropriate orders of fixation in accordance with law and it is further directed to forward the papers in that regard to the Pension Sanctioning Authority, who after receipt of the same,

shall pass appropriate= orders. The learned single judge has only given a direction to the appellants to pass appropriate orders to fix the pension in accordance with law. This Court does not find any illegality or infirmity in such directions of passing appropriate orders for fixing the pension.”

10. The Coordinate Bench in the judgment dated 24.07.2018 passed in Special Civil Application No.2192 of 2017 while examining analogous facts has observed thus:-

“3. The Labour Court in its judgment and award, though directed the reinstatement of the petitioner, did not expressly confer the benefit of continuity of service, therefore, the moot question is whether the petitioner would be entitled to continuous service when the same was not expressly granted by the Labour Court while ordering reinstatement.

4. In Vasantika R. Dalia Vs. Baroda Municipal Corporation [1998 (2) LLJ 172], this Court was posed to interpret the judgment and award of the Labour Court which granted the relief of reinstatement to the workmen. The relief of back-wages was denied and the relief of continuity of service was not denied specifically and that in the relief of reinstatement granted, the word ‘continuity’ was not mentioned.

4.1 The Court observed to lay down that “It may be straightaway observed that once the relief of reinstatement is granted, the continuity of service is a direct consequence rather inherent in the relief of this nature.”

It was held that when the relief of reinstatement was granted and the continuity of service was not specifically denied, the workman has to be relegated to the same position as was held by it at the time of termination. When the order of termination was found to be void, the petitioner, it was held, would be entitled to hold the relief of reinstatement with continuity where there was no mention of specific denial to such continuity.

4.2 The Supreme Court in Gurpreet Singh Vs. State of Punjab and others [2002 (92) FLR 838], held that once the plaintiff was directed to be reinstated in service upon setting aside of the order of termination, continuity of service could not be denied. The Court observed that the case was not of fresh appointment but it was one of reinstatement and that being the position, it was observed that the High Court was in error in denying the continuity of service.

4.3 Thus and therefore, even though the judgment and award of the Labour Court had not expressly granted the continuity, at the same time it did not deny the continuity in any expressed terms. The grant of continuity would have to be read with the order of reinstatement. The petitioner would be entitled to be treated continuous in service upon reinstatement. Resultantly, the petitioner would be entitled to be granted the benefits of resolution dated 17.10.1988 accordingly by reckoning his service as continuous from the date of his initial appointment. 4.4 When the award of the Labour Court had not expressly denied

the continuity is to be interpreted as per the principles of law laid down by the Supreme Court in Gurpreet Singh (supra), the concept of continuity could not be distinguished for the purpose of granting any other service benefits. Learned Assistant Government Pleader made a failed attempt to submit that the continuity for the purpose of granting benefits under resolution dated 17.10.1988 may be treated differently. Any such distinction would be artificial distinction."

11. Thus, the respondents are directed to grant the benefits of the Government Resolution dated 17.10.1988 by treating his service as continuous from the date of termination till reinstatement and accordingly, confer the benefits of the Government Resolution dated 17.10.1988."

12. Taking into consideration all the decisions referred to herein above, the common thread has been decided by this Court is that when there is an award of reinstatement by the Labour Court, the award has to be construed to be an award granting continuity of service unless otherwise expressly denied. That is the position of law as held by the Supreme Court in case of Nandkishore Shravan Ahirrao (supra) referred to by the Division Bench in case of Heirs of Decd. Dhirubhai Lavabhai Suvagiya (supra).

13. Even the decision of this Court in case of Hamirbhai Meghabhai Gohil (supra) it has been extensively reproduced above would indicate that based on an award of the Labour Court unless there is an express denial of continuity of service once the termination is set aside, continuity of service has to be read into the order of Labour Court.

14. Accordingly the petition is allowed. The respondents are directed to confer the benefits flowing from the resolution dated 17.10.1988 to the petitioner with effect from 01.10.1988 to 31. 01.2005 notionally and thereafter the respondents are directed to give salary from 1. 02.2005 to the actual date of reinstatement treating the entire period of service from the initial date of appointment as continuous. Necessary orders shall be passed in terms of the directions issued by this Court within a period of three months from the date of receipt of copy of this order. Rule is made absolute. Direct service is permitted."

7. Considering the reasons mentioned in the above referred judgment, the petition is allowed. The respondents are directed to extend the benefits of the resolution dated 17.10.1988 to the petitioner based on his initial date of appointment of 1986 treating the benefits of the Labour Court's award as having granted with continuity of service when it was explicitly not denied as held by this Court in case of Vishnuji Sursingji Thakore (supra). All regular benefits of Government Resolution dated 17.10.1988 including increment shall be granted to the petitioner. Compliance of this order shall be carried out within a period of 10 weeks from the date of receipt of copy of this order. Rule is made absolute to the above extent.