(1999) 04 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No''s. 3243 and 3382 of 1996

Husainbhai Nanubhai Quareshi APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 09-04-1999

Acts Referred:

Citation : (1999) 04 GUJ CK 0009

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : D.T. Shah, for the Appellant; B.Y. Mankad, AGP, for Respondents No. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—In these two petitions identical issues have been raised for consideration of this court by the learned counsel for the petitioners as well as the same proceed on almost similar facts and arises from the same department and same category of services, these matters are being taken up for hearing together and are being disposed of by this common order.

2. The petitioners are the retired workcharged employees of the respondent. If we go by the services which are being rendered by the petitioners to the respondents as workcharged employees, it fall short of the qualifying services making them eligible for pension. However, it is not in dispute that in case the services which have rendered by the petitioners to the respondent as daily wager prior to taking them in workcharge establishment then certainly they have the qualifying services to the extent of making them eligible for pension and as a result thereof they are entitled for all the retirementary benefits as provided under the Bombay Civil Services Rules as well as the Government Resolution dated 17th October, 1988.

3. The contention of the learned counsel for the petitioners is that the daily wages services of the petitioners as daily wagers rendered by them prior to they

have been brought in the workcharged establishment by the respondent are countable towards the qualifying services for pension. Whereas the contention of the learned counsel for the respondents is that the same cannot be countable and for which reliance has been placed on some of the provisions of Bombay Civil Services Rules. The petitioners made reference to the Government Resolution No.WCE/1588/(5)(2)/G2 dated 17th October, 1988 which inter-alia, what the learned counsel for the petitioners contend, provides that if the daily wager has put in more than ten years services as on 1-10-1988 he shall be entitled for pension, gratuity etc. However, this point does not detain much to this Court as these matters are squarely covered by the two decisions of this court one given by the learned Single Judge in special civil application No.2836/98 decided on 27th August, 1988 and second of the Division Bench in L.P.A. No.1495/97 decided on 6th August, 1998. Learned counsel for the respondent also does not dispute that these matters are covered by these two decisions.

4. In the result, these two writ petitions are allowed and the order impugned in these special civil applications under which the claim of the petitioners for pension, gratuity etc. are denied are hereby quashed and set aside. Rule is made absolute.

5. The petitioners are the low paid employees. It is unfortunate that they have to come before this Court twice. Litigation highly costs nowadays and it is certainly very very onerous and difficult for the persons of the category to which the petitioners belong to approach this Court. How they could have managed the finance for approaching to this court for filing of the petitions twice is a matter of experience and realisation. In view of these facts, I consider it to be a fit case where the petitioners are to be compensated for these expenses by awarding costs. The respondents are directed to pay Rs.5000/- as costs in each petition. This cost has to be paid by the respondent by Account Payee Draft drawn in favour of the petitioners at the place mentioned in the special civil applications. This amount of costs has to be paid to the petitioners within a period of one month from the date of receipt of writ of this order and the receipt of payment thereof has to be produced before this court.

6. Now the question does arise for the consideration of this court whether the petitioners should be awarded interest on the amount of retirementary benefits ultimately found payable to them by the respondents. This Court has considered this aspect and found that as per the resolution of the State Government dated 17th October, 1988, the services rendered by the daily wagers subject to the condition provided therein are countable towards qualifying services. It is really unfortunate that merely because earlier to this resolution, the petitioners have been taken in workcharge services they cannot be deprived of these benefits which are accrued to the daily wagers under resolution dated 17th October, 1988. In case such an interpretation is given to the resolution of 17th October 1988, which is sought to be pressed by the learned counsel for the respondents then certainly it will make discrimination more precisely a hostile discrimination

without there being any basis for the same. Those daily wagers who could not come in the workcharge establishment before 17th October, 1988 they will be benefitted for all these benefits as given out under the said resolution but not those daily wagers who have come in the workcharged establishment earlier to this resolution. The sum and substance of this resolution is that the daily wages services subject to the condition laid down therein are countable towards the qualifying services for pension and if the daily wages services of the petitioners is of that quality and requirement as what it is contemplated under the said resolution, the same cannot be excluded from consideration and counted towards the qualifying services of pension. If such an interpretation is given to this resolution then certainly it will be contrary or unconstitutional as being violative of Articles 14 and 21 of the Constitution. These petitioners are the low paid employees and though otherwise they were entitled for pension, gratuity and other retirementary benefits as per the resolution of 17th October, 1988 very arbitrary approach has been taken by none other than the officers and functionaries of a Welfare State, which resulted in deprival of monetary benefits to these persons. It is not unknown that the retirees from the Government services are keeping their amount which they receive towards their retirementary benefits in the fix term deposits or invests in some other benefit scheme so that they get the monthly return and from pension and this monthly return they may be able to meet out the expenses of bare necessities of life. Looking to the facts of this case as well as the underlying object, purpose and intention of the resolution dated 17th October, 1988 and the two decision of this court, reference of which has been made above, I consider it to be a fit case where the petitioners are to be given the interest on the amount of retirementary benefits for which they are found entitled. The respondents are directed to pay to the petitioners interest on retirement dues as found payable to them at the rate of 12% from the date of filing of these special civil applications i.e. in the special civil application No.3243/96 w.e.f. 30th April, 1996 and in the special civil application No.3382/96 w.e.f. 2nd May, 1996 respectively.