

(2022) 02 GUJ CK 0095

In the Gujarat High Court

Case No : R/Special Civil Application No. 14612, 15274 Of 2019, Civil Application
(For Direction) No. 1 Of 2022

Jaswant Mandabhai Sumad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 02 GUJ CK 0095

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : UT Mishra, Kurven Desai

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 Rule returnable forthwith. Mr.Kurven Desai, learned Assistant Government Pleader waives service of rule on behalf of the State-respondent. With the consent of the learned advocates, taken up for final hearing.

2 In both these petitions under Article 226 of the Constitution of India, the prayer of the petitioners is that the benefits of the Resolution dated 17.10.1988 be granted to the petitioners from the date the petitioners completed ten years of service and counting the date of initial appointment as the relevant date. The case of the petitioners is that they have been working with the department since many years. Service details of each petitioner is shown in tabular form as above.

Service Details of Petitioners of SCA No.14612 of 2019

Sr No.

Name of workman

Designation

Dt of Appointment

Age

1

Jaswant Mandabhai Sumad

Computer Operator

12.05.2003

37

2

Vijaysinh Natubhai Chauhan

Ward Servant

01.01.1995

38

3

Sarojben Mohanbhai Parmar

Aayaben

01.01.1998

41

4

Dayaben Devambhai Vala

Aayaben

01.01.2019

55

Service Details of Petitioners of SCA No.15274 of 2019

Sr No.

Name of workman

Designation

Dt of Appointment

Age

1

Dineshbhai Laxmanbhai Solanki

Ward Servant

01.01.2000

40

2

Rashida Mamadbhai Baloch

Aayaben

01.01.2003

38

3

Paruben Danabhai Chavda

Aayaben

01.01.1983

50

2.1 Their services were terminated and on the challenge to the termination by the petitioners before the Labour Court, the Labour Court allowed the references and granted reinstatement with continuity of service with 10% backwages. On a challenge before this Court by the employer, the awards were modified, inasmuch as, the backwages were set aside.

2.2 The case of the petitioners is that the benefits of the Resolution dated 17.10.1988 based on the awards granting continuity of service should be granted from the first date of appointment which are mentioned above.

3 Mr.U.T.Mishra, learned counsel for the petitioners, would rely on an oral order dated 18.06.2018 passed in Letters Patent Appeal No.1268 of 2017, para 5 to 7 of which read as under:

“(5) Thus, the upshot of the aforesaid facts and discussion is that the present respondent workman is denied 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 respondentworkman 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.

(6) We are in complete agreement with the observations made by the learned Single Judge in order dated 05.05.2016 passed in Special Civil Application No.7713 of 2016.

(7) For the forgoing reasons, the Letters Patent Appeal fails and is accordingly dismissed. The order dated 05.05.2016 passed by the learned Single Judge in Special Civil Application No.7713 of 2016 shall be complied with by the appellants. Necessary orders granting the aforesaid benefits, as observed by the learned Single Judge, shall be paid to the respondent workman within a period of 03 (three) months from today.”

4 In view of the aforesaid observations of the Division Bench, the petitions are allowed. The stand of the respondents in denying the benefits flowing from the Government Resolution dated 17.10.1988 without considering the award having granted continuity of service is set aside. Once it has been established that the petitioners have been reinstated with continuity of service, the benefits of the Resolution dated 17.10.1988 ought to be granted to the petitioners from their initial date of appointment.

The respondent shall carry out the exercise of computing the benefits to be paid within a period of 12 weeks from the date of receipt of copy of this order. The petitions are allowed, accordingly. Rule is made absolute to the aforesaid extent.

It is clarified that while extending the benefits of the Resolution dated 17.10.1988, the five allowances and leave encashment for the present shall not be granted to the petitioners. Their case for such benefits be considered subject to the outcome of the decision of the Hon’ble Supreme Court in the pending Special Leave to Appeal.

In view of disposal of the main matter, civil application also stands disposed of, accordingly.