

(2020) 01 GUJ CK 0026
In the Gujarat High Court

Case No : R/Special Civil Application No. 6594 Of 2019

Jaysinh Devidanji Gadhvi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 GUJ CK 0026

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : KM Sheth, Ishan Josh

Final Decision : Disposed Of

Judgement

Biren Vaishnav, J

1. In this petition, under Article 226 of the Constitution of India, the prayer of the petitioner reads as under:

"(B) This Hon'ble Court may be pleased to quash and set aside the impugned order dated 3.1.2019 passed by the respondent No.1 at Annexure 'A' to this petition, by way of issuing suitable writ, order or direction under Article 226 of the Constitution of India;"

2. The facts in brief are as under:

2.1. The petitioner was appointed as Daily Rojamdard on 23.1.1989. His services were terminated on 31.5.1990. He approached the Labour Court. The Labour Court allowed the reference of the petitioner on 28.2.1994 directing the petitioner be reinstated with continuity of service and with back wages. In a petition filed at the behest of the employer, this Court vide an order dated 26.7.2010 confirmed the award as far as continuity of service and reinstatement is concerned. However, the award so far as back wages is concerned was set aside. The petitioner was reinstated on 21.4.2011. He reported for duty on

4.5.2011. He was placed in the pay scale of permanent Rojamdard of Rs.2,550/-. It appears that pursuant to representations made on the correspondence inter se between the parties, the respondents by the impugned order opined that the benefit of Government Resolution of 17.10.1988 will not be made available to the petitioner.

3. The State, in support of their decision, has filed affidavit-in-reply. The stand of the State is that since the petitioner was appointed on 23.1.1989, i.e. after cut of date of 17.10.1988, he cannot be given the benefit of Government Resolution dated 17.10.1988.

4. Mr.Sheth, learned counsel for the petitioner has drawn attention of this Court which is not disputed by the learned AGP that the issue is covered by the judgment dated 16.7.2014 in Letters Patent Appeal No.325/2013 and allied matters in the case of Gujarat Water Supply and Sewerage Board v. PWD Employees Union and others of the Division Bench of this Court. The stand of the Government in this petition has been dealt with by the Division Bench of this Court. Paragraph Nos.11 to 13 of Gujarat Water Supply and Sewerage Board (Supra) are relevant, which read as under:

"11. As regards daily wagers appointed upto the year 1988, it is the case of the appellants that the benefits accorded to the permanent employees could not be extended to them as they do not hold any post. It has come to our notice that similar issues were raised in Special Civil Application Nos.5699 of 1987; 517 of 1988 and 6783 of 1988, decided on 02.05.2000. The petitions were allowed with a direction that all the workmen concerned be treated as permanent employees at par with other regular employees and that they shall be granted all the benefits as such. Being aggrieved with the said order, Letters Patent Appeal No.958 of 2001 and cognate matters were filed which were decided on 18.03.2011. Notwithstanding the fact that earlier in Special Civil Application No.26790 of 2007 and cognate matters, the learned Single Judge had vide Order dated 01.07.2009 rejected similar contention of the petitioner and the said Order was upheld in Letters Patent Appeal No.2117 of 2010 decided on 11.10.2010; the Division Bench of this Court dismissed Letters Patent Appeal No.958 of 2001 and cognate matters, reported in (2011) 2 GLR 1290. The said judgment and order was challenged before the Supreme Court which was rejected vide Order dated 09.11.2012 recorded in Special Leave to Petition (Civil) Nos.35043-35048 of 2012. Thus, the decision of this Court in Letters Patent Appeal No.958 of 2001 and cognate matters, decided on 18.03.2011 has attained finality and all issues are properly addressed. The learned Single Judge has rightly observed that the grievance raised by the respondents, i.e original petitioners in Special Civil Application No.1563 of 1992 is already answered by the Division Bench of this Court. We are in full agreement with the above decision rendered by the learned Single Judge. Independent of this, we are of the considered opinion that these benefits in nature of allowances and concessions are incidental to services and they should be normally granted to such employees when they are treated at par

with other regular employees. In view of the above, Letter Patel Appeal No.789 of 2013 fails and is accordingly, dismissed.

12. Now, we may case of the daily 30.11.1994. It is appellants that the proceed to examine the wagers appointed after the contention of the Board had taken a policy decision on 30.11.1994 that no new daily wagers be appointed. Still, they were appointed without prior permission or even intimation to the higher authorities, for which penalties are imposed on number of officers for breach of administrative instructions issued on 30.11.1994. The appointment as daily wagers at the grass root level are without following any regular procedure laid down for regular recruitment and therefore they do not have any right of regularization or the benefits flowing from the Government Resolution dated 17.10.1988.

13. It is an admitted position that the appellant - Board adopted the Government Resolution dated 17.10.1988 as a policy vide its circular dated 08.06.1989. The said Resolution, inter-alia, provides that no appointment as daily wager shall be made by any office thereafter. Still, daily wagers continued to be appointed by the Board and they were given benefits flowing from the aforesaid Government Resolution. Thereafter the appellant Board reiterated its policy vide another Circular dated 30.11.1994 that no daily wager shall be appointed but still hundreds of daily wagers came to be appointed after 30.11.1994 and now the Board denies to extend the benefits flowing from the Government Resolution dated 17.10.1988 to such daily wagers appointed after 30.11.1994 terming their appointment as illegal, which cannot be accepted as it is arbitrary and bad in law. On one hand, the Board issues circular that no daily wagers shall be appointed from 30.11.1994 and still the very Board appoint hundreds of daily wagers in gross violation of their own policy and after passage of more than 15 years terming the action of appointing these daily wagers as illegal cannot be accepted and needs to be rejected. The Board cannot punish others for their own wrongdoings. It is a settled legal proposition that a person alleging his own infamy cannot be heard at any forum. If a person has committed a wrong, he cannot be permitted to take the benefit of his own wrong."

5. In view of above, the respondents are directed to consider the case of the petitioner and advance the benefits of Government Resolution dated 17.10.1988 in accordance with the law within a period of six weeks from the date of receipt of writ of this order.

6. With the aforesaid direction, the petition stands disposed of.