

(2000) 06 GUJ CK 0063

In the Gujarat High Court

Case No : Special Civil Application No. 4949 of 1986

Jethabhai Ranabhai Solanki

APPELLANT

Vs

State Government of Gujarat

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2000) 06 GUJ CK 0063

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : M.D. Rana, for the Appellant; Patel Advocates for Respondent No. 1 and Hansa Punani, AGP for Nos. 1 and 2, for the Respondent

Judgement

J.N. Bhatt, J.—The question, which requires determination and adjudication of Art. 226 of the Constitution of India, is as to whether, the petitioners are entitled to the pensionary benefits or not ?

2. Petitioner is the President of Moj Irrigation Division Employees" Association, which is a recognised Union under the Trade Unions Act, and the present petitioner, in spite of his capacity as President and for and on behalf of the employees and pensioners, mentioned in the tabular form, in para - 2 of the petition (who will be hereinafter referred to as petitioner Nos. 1 to 5 for the sake of convenience).

3. Petitioners were employees of the respondent No.1, Gujarat State and they were working in the Moj Irrigation Project and were posted, at Upleta Office, it was under the jurisdiction of Deputy Engineer, Irrigation, Sub-Division, Dhoraji, Dist. Rajkot.

4. The respondent No.1, is the State, No. 2 is Deputy Engineer & Administrative Head of the Said Project and Respondent No.3 is an Accountant General.

5. Initially, the petitioner along with many other persons, were appointed as Daily Rated Employees and they were performing their duties, as such, for a long

time on Daily Rated basis and they were not given benefit of permanency. Therefore, the President of the Union had made Reference Application under Sec. 10(1)(c) of the Industrial Disputes Act, 1947, raising 5 demands, including to make them permanent on the establishment of the Respondent Department, though succeeded and award was pronounced on 28th January 1981, and it has become final as the writ petition, challenging the award, came to be rejected by this Court. Resultantly, the employees including the petitioners of the said project, came to be made permanent w.e.f. 01.11.1972 and award had, already, been implemented.

6. After a prolong legal battle, against the respondent, one petition was filed for contempt, wherein, the Court directed the respondent to implement the award. Unfortunately, the present petitioners Nos. 1 to 5 were not given the pensionary benefit and the resultant, peculiar game, after the direction of this Court in Spl. C.A. No. 68 of 1984, it is not understood as to why, the award was not, fully, complied with.

7. Petitioners are claiming to be permanent employees of the said department, as they are appointed since 1965. It is the case of the petitioners, that they are fully qualified and eligible for claiming the benefits along with full gratuity on the basis of the years, they have invested. Out of original 5 employees, petitioner Nos. 1 to 4 stepped down from office for the reason that, on account of the superannuation. The petitioner at Sr. No.5, expired leaving behind, widow alone, who, also, does not get pension and gratuity benefit, withheld on this premises, the petition is filed contending that, there is a violation of Art. 14 and 16 of the Constitution of India.

8. The award of the Labour Court is placed on record. It is recorded by the Presiding Officer, Labour Court, Rajkot on 28.1.1981. The Respondent Authority was further directed by this Court, in Division Bench decision recorded on 20.3.1985, in Spl.C.A. No. 68 of 1984, to implement award immediated and to make the 20 persons permanent, who were parties in the award, w.e.f. 1.11.72, with further direction to the concerned Department of the Government to give them all the consequential benefits.

9. Thereafter, the Respondent Authority made 20 workers, as per the award, permanent and the petitioner Nos. 1 to 5 are workmen out of the 20 workers. Therefore, there is no dispute about the fact that, the petitioners are covered by the award. Therefore, they were given permanent status from 1.11.1972.

10. The dispute revolves around about the eligibility for pension. Respondent Authority has contended that, as per the prevalent Rules, the Government Servant is eligible for pension, on completion of his 10 years qualified service as permanent or temporary or workcharged employee. According to their contention, daily rated employees are not entitled to the pension. Only one person, out of 5 petitioners, Mr. Mohabatsinh Harishing, who retired on 27.2.82, is granted pensionary benefit because, he had completed pensionable services,

as per the contentions raised by the Respondent Authority. He has been paid his pension accordingly.

11. Respondent Authority has contended that, the petitioner No.1, Mesur Poonabhai, No.2, Vejananad Laxman, No.3 Thakarshi Gopabhai are not entitled to pension as they have not completed pensionable services, in that, it has been contended that, the confirmation in the permanent services is w.e.f. 1.11.72, and thereafter, they have not completed qualifying services for pension.

12. So far as, petitioner No. 5 is concerned, the contention is raised that, the petitioner no.5, retired before the confirmation and the permanent service and therefore, the question of making payment of pension would not arise. In short, contention raised by the respondent Authority, that they are not eligible on the basis of the services rendered as daily wagers, even the Labour Court, after considering all the factors, retrospective date 1.11.72, which is accepted by them and accordingly, they were made permanent and after making them permanent, they have not completed qualifying period of 10 years for earning benefits of pension as per the contention raised on behalf of the Respondent Authority.

13. It appears from the award, that the petitioner and many other employees were working in the said project, long before the date of award was passed and permanency benefits are given, by virtue of the award. The direction of this Court in a writ petition, for the purpose of pension what should be the criteria of the period to be considered as stated in of the Govt. Resolution, No. PAD/5575-(45)-G, dtd. 8th January, 1976 issued by the Public Work Department (P.W.D), Govt. of Gujarat on which the reliance is placed by the petitioners.

14. The question therefore, requires to be decided as to whether, what was the status of the petitioner, before the date of the confirmation and getting benefit of permanency as per the award and subsequent direction of this Court. In this connection, the contentions raised on behalf of the respondent, that they were work charged employees of a project known as Moj Irrigation Work. It has been contended in the affidavit-in-reply on behalf of the Respondent Authority, that the petitioners worked as daily wagers. It will be interesting to note that, the petitioners were, also, granted provisional pension and order was, also, passed to that effect by the Competent Authority on 13.3.1987. In that order, also, same terms and conditions are incorporated. Condition no.1, stipulated that, petitioner No.1, to 4 are the work charge employees on the establishment of the Moj Irrigation Project. Considering the facts and circumstances, the award, directions of this Court and the averment made in the prevalent pension order of the Respondent Authority, the petitioner Nos. 1 to 4, work charged employees, working on the Moj Irrigation Project, as as per the Govt. Resolution No.PAD/5575-(45)-G, dtd. 8th January 1976, the work charged employees on completion of the 5 years continuous services on work charge establishment are entitled to be treated at par with the persons on the temporary establishment under the P.W.D., in the matter of pensionary benefits and G.P. Fund Scheme. Therefore, the half hearted contention raised on behalf of the Respondent

Authority, that the petitioners were not work charged employees before the permanency. Benefits came to be granted cannot be accepted in respect of the petitioner Nos. 1 to 4.

15. In so far as the petitioner No.5, is concerned he died long before the award came to be passed and therefore, it is rightly contended by the Respondent Authority in para 8 of the Affidavit-in-reply that, Masri Kanabhai retired on 22nd September, 1969, on attaining the age of 60 years and therefore, he was not made permanent w.e.f. 1st November 1972. Rest of the work charged employees were made permanent on 1.11.1972. Obviously, therefore, in case of No.5, the contentions raised on behalf of the Respondent Authority, is require to be accepted.

16. In the light of the facts and circumstances of the settled preposition of the law, the petitioners Nos. 1 to 4 namely, No.1 Mesur Poonabhai; No.2 Vejanand Laxman; No.3 Thakarshi Gopabhai and No.4 Mohabatsinh Harishing are found entitled and eligible to claim the pensionary benefit. Since the petitioner No.4, is already granted pensionary benefit and after his death his widow is also given the family pension. Therefore, the Respondent Authority, is directed to grant pensionary benefit as to the petitioner Nos.1, 2 and 3, as the petitioner No.4 is already granted.

17. In so far as, the claim for the gratuity, it has been stated on behalf of the respondent that, the issue does not survive stating that, the petitioners are granted all the benefits including the gratuity, except the pension. Subscribing to this statement, only direction is required to be given is to fixe up the pension and pay the arrears of pension with reasonable rate of interest. 18. In the result, Respondent Authority is directed to grant the pensionary benefits after fixing pension, in respect of the Petitioner Nos.1, No.2, No.3, and petitioner No.4 (whose pension is already fixed and therefore, if not paid, then only) and to pay arrears after fixing the pension as per rules considering the period of work charged and pay the arrears within the period of 6 months from today with interest at the rate of 9% p.a.

19. Petitioner No.2, who expired during the pendency of the application, and since, deceased, the Premature Family Pension, on verification of the legal heirs, by the concerned authority.

20. Accordingly, the petition is partly allowed. Rule is made absolute to that extent.