

(2022) 07 GUJ CK 0086

In the Gujarat High Court

Case No : R/Special Civil Application No. 15777 Of 2019

Jetuben Vajabhai Kamejalia

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226
Bombay Civil Services Rules, 1959 — Rule 230, 248
Industrial Disputes Act, 1947 — Section 25B

Citation : (2022) 07 GUJ CK 0086

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Nilesh M Shah

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Mr. Soaham Joshi, learned AGP waives service of notice of rule on behalf of respondent State.

2. Fixation of pension on the basis of not counting service of the petitioner from the initial date of appointment despite specific directions from this court in the order dated 07.04.2016 passed in Special Civil Application No. 16114 of 2013 in case of the petitioner has resulted in filing the present petition. The present petition is challenging the order dated 18.10.2008 passed by the respondent no. 4.

3. Earlier the present petitioner had filed the aforesaid petition being Special Civil Application No. 16114 of 2013, prayer of which reads as under:

"(17)(A) to issue writ or writs in the nature of mandamus and/or any other writ or orders or directions.

(B) to quash and set aside order dtd.18/10/2008 Annexure B passed by

respondent No.1 to the extent of not granting pension and gratuity on the basis of 29 years.

(C) to hold that resolution dtd. 24/3/2006, Annexure-E passed by the Road & Building Department excluding the tenure prior to regularization from entire tenure for the purpose of computing pensionable service as dehorse the authority and ultra vires and against the settled and codified law of the law.

(D) to direct the respondents to calculate pension and gratuity on the basis of 29 years service and to pay the difference amount of pension (including revision of pay) and gratuity to the petitioner with 12% interest from 1/6/2008 till the realization.

(E) During the pendency of the petition by way of interim order, to direct the respondents to consider the entire period of 29 years service, of the petitioner for the purpose of calculation the pension and gratuity.

(f) to grant any other relief as this Honble Court may deems fit in the interest of justice.

(G) to allow this petition with costs.”

4. The co-ordinate bench of this court extensively therein referring to the judgement delivered on 09.02.2016 in Special Civil Application No. 16904 of 2015 considered the issue of granting of pensionary benefits in light of the decision of the court in case of Tribhovanbhai Jerambhai vs. Dy. Executive Engineer, Sub-Division, R & B Department [(1998) 2 GLH 1] and held as under:

“1 By this writ application, the writ applicant a retired employee of the District Panchayat of Surendranagar has prayed for the following reliefs:

(17)(A) to issue writ or writs in the nature of mandamus and/or any other writ or orders or directions.

(B) to quash and set aside order dtd.18/10/2008 Annexure B passed by respondent No.1 to the extent of not granting pension and gratuity on the basis of 29 years.

(C) to hold that resolution dtd. 24/3/2006, Annexure-E passed by the Road & Building Department excluding the tenure prior to regularization from entire tenure for the purpose of computing pensionable service as dehorse the authority and ultra vires and against the settled and codified law of the law.

(D) to direct the respondents to calculate pension and gratuity on the basis of 29 years service and to pay the difference amount of pension (including revision of pay) and gratuity to the petitioner with 12% interest from 1/6/2008 till the realization.

(E) During the pendency of the petition by way of interim order, to direct the respondents to consider the entire period of 29 years service, of the petitioner for the purpose of calculation the pension and gratuity.

(f) to grant any other relief as this Honble Court may deems fit in the interest of justice.

(G) to allow this petition with costs.

2 This issue is squarely covered by the judgment and order dated 9th February, 2016 passed in the Special Civil Application No.16904 of 2015. The said order reads thus:

1 Rule returnable forthwith. Mr. Rashesh Rindani, the learned Assistant Government Pleader waives service of notice of rule for and on behalf of the respondents.

2 By this writ application under Article 226 of the Constitution of India, the petitioner a retired government servant has prayed for the following reliefs:

11(A) Your Lordships may be pleased to allow this petition with costs and be pleased to issue a writ of mandamus or any other appropriate writ, order or directions directing the Respondent Authorities to forthwith pay Pension, Gratuity and other monetary benefits to the petitioner herein on the basis of his date of employment as 20/09/1986 as per the Government Resolution dated 17/10/1988 and the Judgment and Order dated 08/12/2011 passed by this Honble Court in Special Civil Application No.7725 of 2002 alongwith 12% simple interest per annum on the delayed payment.

(B) Your Lordships may be pleased to grant such further and other reliefs, as may be deemed to be just and proper.

3 The case of the petitioner may be summarized as under:

3.1 The petitioner was appointed as a daily wage employee in the Irrigation Department. The Industrial Tribunal, Bhavnagar vide award dated 8th November, 2001 in the Reference (IT) No.26 of 1996 directed the authorities to reinstate the petitioner and similarly situated workmen and also granted them the benefits they were entitled to in accordance with the Government Resolution dated 17th October, 1988. The State Government being dissatisfied with the award challenged the same before this Court by filing the Special Civil Application No.7725 of 2002 [State of Gujarat vs. Nirubha Vajubha Sarvaiya and others]. The learned Single Judge of this Court vide judgment and order dated 8th December, 2011 modified the award and partly allowed the said petition. The learned Single Judge made the following observations in paras 3.0, 3.1 and 3.2 as under:

3.0 Taking into consideration the totality of the facts of the case, this Court deems it proper that the award and order dated 8th November 2001 be modified by substituting the direction issued by the learned Member of the Industrial Tribunal for treating them permanent from the date of publication of the award and giving them the benefits of permanency from that day, by a direction that, 'the authorities shall take into consideration the date of entry as set out by the

authority itself in a tabular Statement marked as 'II', Page 136 in Column No. 3 of that Statement and give them the benefits flowing from Government Resolution dated 17th October 1988 on the basis of the said dates'. Along with the date of entry, the authorities shall take into consideration the number of days worked by the workmen, which are placed on record by way of 'Attendance Sheet', which is produced at Page 137 as mark 'III', which is verified by the authorities after this Court directed them to do so.

3.1 By this direction, the interest of justice will stand served, so far as respondent Nos. 1 to 5 and 7 to 22 are concerned. But, so far as respondent No. 6 is concerned, he having expired on 6th November 2001, just a day prior to the date of award, it is directed that, in his case, the authorities shall consider the number of days worked by him from date of entry till the date he expired.

3.2 The communication dated 11th November 2011 is to be complied with by changing the Schedule annexed to it in light of the direction issued herein above.

3.2 Pursuant to the judgment and order dated 8th December, 2011 referred to above, the respondent No.2, with the approval of the respondent No.1, passed an order dated 8th August, 2013, wherein the date of joining of the petitioner in service has been shown as 20th September, 1986.

3.3 It appears that by an order dated 28th February, 2014, the office of the Pension and Provident Fund prepared the papers of pension of the petitioner as evident from the page - 42 to this petition. The petitioner was informed about the same vide letter dated 13th March, 2014, which is at page 43 to this petition. However, thereafter, there is no further development in the matter, and therefore, the petitioner had to come before this Court.

4 Mr. Rindani, the learned Assistant Government Pleader appearing on behalf of the State - respondent clarified his stance. According to him, it is not in dispute that the petitioner was appointed as a daily wager. According to him, although the Industrial Tribunal passed an award regularizing the services of the petitioner, yet the said order was modified to a certain extent by a learned Single Judge of this Court and such modification has some bearing on the issue in question. He further clarified that the services of the petitioner have been regularized from 2011 and the petitioner attained the age of superannuation in 2013. Mr. Rindani also clarified that all the benefits which accrued in favour of the petitioner, as provided in the Government Resolution of 17th October 1988, have been conferred upon him. However, according to Mr. Rindani, the petitioner is not entitled to pension. According to Mr. Rindani, the continuity of service cannot be given for the purpose of regularization as it will amount to overreacting the order passed by the learned Single Judge modifying the award.

5 Mr. Rindani invited my attention to the Government Resolution passed by the State Government dated 24th March, 2006 which is at page 60 to this petition. The said resolution provides that the continuity of service should not be given even if the services are regularized ultimately.

6 Mr. Rindani invited my attention to the following averments made in the affidavit-in-reply filed on behalf of the State respondent:

3. At the outset, I say and submit that the prayers as sought for by the petitioner deserve a closer consideration. It also needs to be inquired as to whether the prayer sought for by the petitioner in actuality is fortified by the judgment of this Honble Court dated 08.12.2011 passed in Special Civil Application No.7725 of 2015 as claimed for by the petitioner since there is no direction even for namesake in the said order for payment of pensionary and mandatory benefits to the petitioner as prayed for by the same in the present petition. Per say, a cursory consideration of the available record pertaining to the controversy raised in the present petition would reveal of an acute absence of congruence in the claim made in the captioned petition, the prayers prayed for in the petition, viz viz the records pertaining to the present controversy and the policy of the State Government in that regard. The following paras if the present affidavit in reply would further bring forth the glaring contradiction interese the claims of the petitioner and the record pertaining to his claims as also the policy of the State Government.

4. It is submitted that if the pleadings made in the petition were to be considered, it would arise that post the passing of the judgment and order dated 08.12.2011 in Special Civil Application No.7725 of 2002 and in due compliance thereto, the respondent authorities and more particularly the deponent, passed order dated 10.10.2013, whereby, benefits as would accrue to the petitioner under the Government Resolution dated 17.10.1988 were conferred. A closer consideration of the order dated 10.10.2013 would yield that the petitioner was conferred such benefits accruing to him on account of application of para 1 of GR dated 17/10/1988 from 08.11.2006. In other words it was resolved vide the said order dated 10/10/2013 that the petitioner had completed 5 years of service as per the prescriptions of para 1 of GR dated 17/10/1988 on 08/11/2006 and therefore all benefits accruing to him on account of his such qualifying service were accordingly made available to him. It goes without saying that thereafter all benefits as would accrue to the petitioner as a regularized daily wage while taking into consideration prescription of the GR dated 17/10/1988 would follow. Differently said, the petitioners eligibility of avail benefits upon completion of qualifying service of 5-10 years and over 10 years would be subsequently determined and all benefits as would accrue to the same on completion of such qualifying services respectively would accordingly be made available. Considering the records of the petitioner with regards his service rendered and after taking into consideration the fact that the same completed 5 years of qualifying service (as requisited by GR dated 17/10/1988) on 08/11/2006, the same would have completed further 5 years on 08/11/2011 and it would only be thereafter i.e. completion of 10 years that benefits of permanency would be made available to the petitioner as per para 2 of GR dated 17/10/1988. A copy of the Government Resolution dated 17.10.1988 is annexed herewith and marked as Annexure R I. It is submitted that accordingly on the basis of the service records of the

petitioner and the prescriptions of GR dated 17/10/1988 it would arise that the petitioner completed 10 years of qualifying service on 08/11/2011 and therefore all benefits of permanency could be conferred upon him from 08/11/2011. Thus it would not be in dispute that the aspect of determining pensionable service and consequent benefits accruing therefrom (as prescribed in the GR dated 17/10/1988) could have arisen only after the petitioner attained permanency could be conferred upon him from 08/11/2011. Thus it would not be in dispute that the aspect of determining pensionable service and consequent benefits accruing therefrom (as prescribed in the GR dated 17/10/1988) could have arisen only after the petitioner attained permanency. What would also not be undisputed is the fact that the petitioner after attaining permanency may also have to retire from his active service on attaining 60 years which has been determined as the date of retirement as per GR dated 17/10/1988. Thus while bearing the said prescriptions in mind, it becomes a matter of record that (1) the petitioner would be conferred permanency from 08/06/2011 with all consequential benefits including retirement benefits (2) the petitioner including would retire from active service upon attaining permanency after age of 60. It is submitted that the records of the petition as also the pleadings made therein suggest that the petitioner attained the age of retirement in 2013 i.e. 2 years after permanency was conferred upon him. Since the same retired in 2013, as a permanent daily wager, determination of pensionable service for the purpose of retirement benefits became imperative.

5. Apropos to the above and in furtherance thereto the State Government vide its resolution dated 24/03/2006 had prescribed the criteria for determination of pensionable service in cases of daily wagers having attained permanency on account of application of GR dated 17/10/1988. Since the petitioner was one such daily wager having attained permanency on account of the application of GR dated 17/10/1988, the said policy of the state government with regards determination of pensionable service of permanent daily wagers as envisaged in the GR 24/03/2006 became applicable to his case. A copy of the Government Resolution dated 24.03.2006 is annexed herewith and marked as Annexure R II.

A perusal of the stipulations of the said GR dated 24/03/2006 would reveal that pensionable service of permanent daily wagers was to be considered from the date they attain permanency. Application of the said stipulation to the case of the petitioner would yield that the same has only afforded 2 years of service which can be considered for the purpose of payment of pension (2011 being the year in which the same attained permanency and 2013 being the year when he retired) when the same in actuality ought to have afforded 10 years for becoming eligible for pension even as per GR dated 17/10/1988. Taking such facts of the case of the petitioner and law in the form of policy of the State Government as is in vogue vide GR dated 24/03/2006, the prayers as sought for by the petitioner would become inconsequential.

6. It is submitted that therefore the prayers of the petitioner to the effect of

considering his entire service for the purpose of pensionary and mandatory benefits would be contrary to a governing policy of the State Government. Besides, such policy of the State Government has also not been challenged by the petitioner and therefore such prayer of the petitioner contrary to a policy of the State Government would even otherwise become illegal and unsustainable. The petitioner, as already explained above cannot be said to have elapsed the requisite pensionable service of 10 years so as to make himself eligible for availing pension as per the policy of the State Government envisaged in GR dated 24/03/2006 and therefore his case has been accordingly dealt with by the deponent. As such in absence of any challenge to the said policy of the State Government, the petitioner cannot be made an exception to its application since such exceptional treatment to the petitioner would be violative of Article 14 of the Constitution of India. Moreover if the case of the petitioner were at all considered/entertained, the same would serve to be a disastrous precedent.

7 Mr. D.G. Shukla, the learned advocate appearing for the petitioner submitted that it is a settled position of law that the continuity of service could not have been denied once the services are regularized. He seeks to rely on a decision of this Court rendered by a learned Single Judge in the case of Tribhovanbhai Jerambhai vs. Dy. Executive Engineer, Sub-Division, R & B Department [(1998) 2 GLH 1]. He submitted that once a daily rated workman is treated to be permanent under the Resolution dated 17th October 1988, his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularization is taken into consideration for the purpose of computing pension or making pension available to such retired employee.

8 Mr. Shukla also placed reliance on one unreported judgment delivered in the case of Rupaben Dahyabhai Parmar vs. State of Gujarat [Special Civil Application No.852 of 2003] decided on 12th September, 2012.

9 Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the petitioner is entitled to draw pension.

10 It is not in dispute that the petitioner has been regularized in terms of the Government Resolution dated 17th October, 1988. Mr. Rindani, the learned Assistant Government Pleader made himself clear that whatever benefits extended so far in favour of the petitioner are flowing from the Government Resolution dated 17th October, 1988. However, the petitioner is not entitled to draw pension.

11 The Government Resolution dated 17th October, 1988 confers the following benefits:

(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(iii) Daily wagers and semi skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/she will be eligible for getting medical allowance and deduction of provident fund.

(iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly.

12 In the case of Tribhovanbhai (supra), the learned Single Judge took the view observing as under:

4. The short question which concerns the issue before me is whether the petitioner is entitled to pension or not. Primarily, the question of pension in pensionable service has been determined under Section III of the Bombay Civil Services Rules, 1959 commencing from Rule 230 onwards. It has been contended by the learned counsel for the respondents that the petitioner being on daily wages, was not holding a pensionable service under Section 230 nor he falls in the exception to the Rule provided thereunder, therefore, the services rendered on daily wages basis prior to his becoming permanent cannot be considered as qualifying service for the purpose of pension.

5. It was urged also that the service has been declared as pensionable by the resolution dated 17.10.1988 by the Government, which deems a daily rated workman on completion of ten years service as on 1.10.1988 or thereafter as deemed to be in permanent service and has been made entitled to pension. However, for the purpose of entitlement of pension under resolution the service on regular basis only has to be counted for determining qualifying service and entitled to pension. As the petitioner has not been on permanent basis after he can be deemed to have become permanent as on 1.10.1988, for the qualifying

period of ten years he is not entitled to pension.

6. This plea, in my opinion, cannot be sustained being contrary to record and Government's own decision.

7. Rule 230 of Bombay Civil Services Rules says that unless in any case it is otherwise provided by or under the Rules a Government Servant is considered in pensionable service if he holds substantively a permanent post in Government service. The argument is that though the petitioner may be treated as permanent under Resolution dated 17. 10.1988, he cannot be deemed to holding a permanent post. Without going into this contention it may be noticed that rule itself envisages that a person may be otherwise eligible to pension if so provided by or under the Rules. In this connection, attention has been drawn to Rule 248 of the Rules.

8. Rule 248 of the Bombay Civil Services Rules provide that Government may by general or special order permit service other than pensionable service for performing which a government servant is paid from State revenues or from a local fund to be treated as a duty counting for pension. In issuing such order the Government is to specify the method at which the amount of duty shall be calculated and may impose any condition which it thinks fit. Thus Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension.

9. In the resolution dated 17.10.1988, it has been envisaged that those workman who as on 1.10.1988 or thereafter completes ten years of continuous service to be counted in accordance with provisions of Section 25B of the Industrial Disputes Act shall be deemed to be permanent and amongst other benefits conferred on being treated as permanent their age of superannuation was fixed at 60 years and they were made entitled for pensionary benefit. By yet another resolution dated 30.5.1989 (Annexure E), in which a specific query was raised at item No (6) with reference to resolution dated 17.10.1988, about the calculation of purpose of entitlement to pension in connection with the pensionary benefits made available to those daily wagers who are deemed to be permanent on completion of ten years of service and it was specifically made clear that within the meaning of resolution dated 17.10.1988, the service which is to be counted is that which can be said as continuous within the meaning of Section 25B with effect from the date of entry in the service is duty counted for the purpose of pension and pension has to be accordingly determined. This does not say that qualifying service is to be counted with effect from date of becoming permanent. This leaves no room of doubt that the resolution dated 17.10.1988 along with clarification issued on the various aspects of it vide resolution dated 30.5.1989 is in consonance with the provisions of Rule 248 of the Bombay Civil Services Rules, 1959 which provide that Government has not only power by general or special order to permit service other than pensionable service, for performing which a Government servant is paid from State revenues or from a local fund, to be treated as duty counting for pension and in issuing such an order Government

is to specify the method by which the amount of duty shall be calculated for the purpose of pension. Once the Government has made it clear that those who have completed ten years of service as daily rated workman are to be deemed permanent with effect from and after 17.10.1988 and are entitled to various benefits on that basis including pension and thereafter has provided by the resolution dated 30.5.1989 that the continuous service for the purposes of pension, made available to employees under resolution dated 17.10.1988, is to be counted with effect from the date of entry in the service provided it can be continuous within the meaning of Section 25B of the Industrial Act, thus making it clear that once a daily rated workman is treated to be permanent under the resolution dated 17.10.1988 his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularisation is taken into consideration for the purpose of computing pension or making pension available to such retired employee.

10. There is yet another aspect of the matter. Assuming that Bombay Civil Services Rules do not provide for grant of pension to those, who are not holding a permanent post in the service, then it must be held that daily rated workman working on daily wages, are ex cadre employees and not governed by particular service rules, but are governed by terms of employment under which they have been engaged. This further leads to conclusion that area of employment on daily wages is not covered by statutory rules either promulgated under Act 309 or by other legislature enactment. That is the area left uncovered by specific law, and such employment is in exercise of general executive powers of the State and terms and conditions of such employment is governed by terms of order under which such employment is made and shall be further governed by orders made by State in exercise of its executive power from time to time. The resolution dated 17.10.88 and 30.5.89 shall thus govern the terms of employment of such employees. If considered from this view, the conclusion will be the same.

11. In view of the aforesaid, I have no hesitation in coming to the conclusion that resolution dated 17.10.1988 read with resolution dated 30.5.1989 read with Rule 248, of the Bombay Civil Services Rules, the petitioner is entitled to pensionary benefits by counting the entire period of service from 1966 to 1994 until the date of his retirement which is to be counted continuous under Section 25B of the Industrial Disputes Act as qualifying service and determining the pension payable to the petitioner who has retired on 31.1.1994, on that basis.

13 Following Tribhovanbhai (supra) in the case of Rupaben (supra) , a learned Single Judge took the view observing as under:

5. Heard learned advocates for both the sides. Perused the papers on record. The issue involved in this petition is squarely covered by the decisions of this Court. This Court in the case of Tribhovanbhai (supra) has held that once a daily rated permanent under the resolution dated 17.10.1988, his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularization is taken into consideration for the purpose of computing

pension or making pension available to such retired employee. Therefore, the plea of the respondents that the services rendered by the petitioner prior to his confirmation in service cannot be taken into consideration has no merit inasmuch as the petitioner has also relied upon the same Resolution. In the resolution dated 17.10.1988 it has been envisaged that those workmen who as on 01.10.1988 or thereafter complete ten years of continuous service to be counted in accordance with provisions of Section 25 B of the I.D. Act shall be deemed to be permanent and amongst other benefits conferred on being treated as permanent their age of superannuation was fixed at 60 and they were made entitled for pensionary benefits. The same view is reiterated in the case of Karshanbhai (supra) and the unreported decision of this Court.

6. The continuous service for the original petitioner is to be counted from the date of entry in service until he retired including his services rendered prior to the date of his regularisation for the purpose of computing pension. Therefore the petitioners are entitled to pensionary benefits and the arrears thereupon.

7. In the case of Baiji Nath Gupta(supra), the Apex Court has held that if the pension was not determined in accordance with the rules on account of any laches or grounds on the part of the appellant, the appellant obviously would not be entitled to payment of interest for the delayed payment of pension and if the Government was responsible for the delay, necessarily the appellant would be entitled to the payment of interest on the delayed payment. similar view has been taken by the Apex Court in the case of (1) Uma Agrawal Vs. State of UP, reported in AIR 1999 SC 1212 (199) 3 SCC 438: 1999 SCC (L&S) 742: (1999)2 CLR 156: (1999) 2 SLR 22: (1999)1 LLJ 1335), (2) Vijay L. Mehrotra Vs. State of U.P. and others, reported in (2001) 9 SCC 687 (=2000 Lab IC 2663: (2000)2 LLJ 253: (2000)3 LLN 1: (2000) 2 SLR 686) and (3) Gangahanume Gowda Vs.Karnataka Agro Industries Corpn. Ltd., reported in AIR 2003 SC 1526. Learned counsel for the respondent is unable to dispute the aforesaid proposition.

8. In the premises, petition is allowed. The respondents are directed to compute the pensionary benefits payable to the legal heirs of the original petitioner-workman Shri Dahyabhai Parmar from the date of his retirement till the date of his death i.e. from 31.08.1996 to 21.02.2006 and make payment within a period of three months from the date of receipt of the writ of the order of this Court.

14 Thus, judging the issue in light on the principle of law discussed and explained in the above two decisions, I have no hesitation in coming to the conclusion that the petitioner is entitled to draw pension. So far as the Government Resolution dated 24 th March, 2006 is concerned, the same, in my view, should not come in the way of the petitioner as his right accrued much before the resolution came into force. I am not impressed by the submission canvassed on behalf of the State respondent as regards the observations made by the learned Single Judge in para 3.0 in the case of State of Gujarat (supra) referred to above. It is true that the award was modified to a certain extent, but, in my opinion, such modification has no bearing as such with the right of the

petitioner to draw pension, more particularly, in view of the two decisions referred to above. In my view, para 3.0 should help the petitioner to a certain extent. In so many words, while modifying the award passed by the Tribunal, the learned Single Judge observed that the authorities shall take into consideration the date of entry as set out by the authority itself in a tabular Statement and extend benefits flowing from the Government Resolution 17th October, 1988.

15 For the foregoing discussion, this application succeeds and is hereby allowed. The State - respondent authorities are directed to finalize the pension of the petitioner within a period of four weeks from the date of receipt of the writ of this order and pay the requisite amount with arrears within a period of four weeks thereafter. Rule is made absolute. Direct service is permitted.

3 In view of the above, this writ application succeeds and is hereby allowed. The pension fixing authority shall pass appropriate orders of fixation in accordance with law and shall forward the papers in that regard to the Pension Sanctioning Authority. On receipt of such papers, the Pension Sanctioning Authority shall pass appropriate orders. Let this entire exercise be completed within a period of four months from today.

4 With the above, this application is disposed of. Direct service is permitted.”

5. Essentially therefore the court keeping in mind the provisions of Section 25B of the Industrial Disputes Act, 1947 and in light of the judgement in the case of Tribhovandas (supra) and also in the case of Rupaben Dahyabhai Parmar vs. State of Gujarat rendered in SCA No. 852 of 2003 held that the pension of the petitioner should be fixed keeping in mind these decisions.

6. Mr. Nilesh Shah, learned advocate for the petitioner would submit that despite a specific mention in the pension payment order that the date of appointment of the petitioner was 22.05.1980, for the purposes of pension the date is taken as 01.06.2008.

7. This in fact is in clear violation of the order of this court in the decisions referred to hereinabove.

8. In view of the above, petition is allowed. The impugned order dated 18.10.2008 passed by respondent no. 4 is hereby quashed and set aside. The respondents are directed to revise and calculate pension and other terminal benefits except leave encashment on the basis of the petitioner's initial date of appointment of 22.05.1980. The revised pension and arrears be paid within a period of twelve weeks from the date of receipt of the writ of this court. So far as the issue of leave encashment is concerned, liberty is reserved to the petitioner to agitate the issue as and when the decision in this regard is rendered by the Apex Court in the pending appeal. Rule is made absolute accordingly.