

(2022) 03 GUJ CK 0064

In the Gujarat High Court

Case No : R/Special Civil Application No. 13561 Of 2021

Kailashben Bharatbhai Bhavsar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 03 GUJ CK 0064

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Krishnan M Ghavariya, Surbhi Bhati

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 While issuing notice, this Court passed the following order:

"Heard learned Advocate Mr. Krishnan M. Ghavariya on behalf of the petitioners and learned AGP Mr. Hardik Mehta on behalf of the respondent-State.

2. Learned Advocate Mr. Ghavariya on behalf of the petitioners would submit that the application made by the petitioners for being granted lumpsum compensation as per the policy of the State Government vide Resolution dated 5.7.2011 has been rejected by way of impugned order dated 13.2.2020 on the ground that the deceased husband of the petitioner no.1 and father of petitioner no. 2 was working as a Daily Rated employee and hence would not be entitled as per the said scheme.

3. Learned Advocate Mr. Ghavariya would further submit that the deceased employee, had been granted the benefit of Government Resolution dated 17.10.1988 and whereas the said employee had been regularised in service and hence, could not be categorised as Daily Rated employee.

4. Having regard to the submissions made by learned Advocate for the petitioner,

issue Notice to the respondent returnable on 13.10.2021.

5. Learned AGP waives service on behalf of respondent no.1.”

2 The facts in brief would indicate that the father of the petitioner No.2 was working as a regular labourer appointed in the year 1976 i.e. on 21.07.1976. He died on 23.01.2020. On his death, the petitioner made an application for financial assistance in January 2020. That was rejected on 13.02.2020 on the ground that since the husband of the petitioner No.1 and father of petitioner No.2 was a daily wager, in accordance with the Clause in the resolution dated 05.07.2011, they were not entitled to lumpsum compensation.

3 Rule returnable forthwith. Ms.Surbhi Bhati, learned Assistant Government Pleader waives service of rule on behalf of the State – respondent.

4 Mr.Krishnan Ghavariya, learned advocate for the petitioners, would submit that the issue is covered by a decision rendered by this Court in Special Civil Application No.11554 of 2021, where the Court has held as under:

“6 Having considered the submissions made by the learned counsels for the respective parties, it will be apt to consider the first decision in line rendered by this Court (Coram : Hon’ble Ms.Justice Abhilasha Kumari,J.) in Special Civil Application No. 1795 of 2013. Therein too, the claim of the petitioner for financial benefits in lieu of compensation were denied. After extensively hearing the parties, the Court opined that it was strange for the respondents to contend that the services of the petitioner were regularized and were converted into “permanent daily wager”. There is no concept of permanent daily wager. Extensively relying on the decision in the case of State of Gujarat and ors vs. Mahendarakumar Bhagwandas, which was reproduced in para 9 of the decision, the Court in no uncertain terms held that there was no concept of permanent daily wager. The relevant paras 8 to 11 of the decision reads as under:

“8. A strange ground is taken in Paragraph7 of the affidavitinreply filed by respondent No.2, wherein it is stated that the “service of the petitioner was regularised and his service was converted as permanent dailywager”. There is no concept of a “permanent dailywager” in service jurisprudence. What the term “permanent dailywager” means can only be explained by the second respondent. Mr.Niraj Ashar, learned Assistant Government Pleader, has remained unsuccessful in satisfying this query of the Court. In the order dated 28.03.2008, whereby the services of the petitioner's father were made permanent, respondent No.2 has used the word “permanent” and not “permanent dailywager”. The term “permanent dailywager”, therefore, appears to have been coined by respondent No.2, presumably with a view to taking the case of the petitioner out of the scope and ambit of the Government Resolution dated 05.07.2011.

9. The nomenclature of “permanent dailywage employee” came up for discussion before the Division Bench of this Court in the case of State of Gujarat & Anr V. Mahendrakumar Bhagvandas & Anr., reported in 2011(2) GLR 1290. This is what

the Division Bench held:

"5. ...Once the employees concerned were, in fact, treated for all purposes as permanent employees in terms of G.R. dated 17.10.1988, any discrimination or denial of benefits for a segment of such employees, who were subsequently rebranded as "daily wager" (rojamdar) by G.R. dated 18.7.1994, could not be rationally explained and could not be countenanced in the face of Articles 14 and 16 of the Constitution. Nor can the State Government legally take away the rights conferred and benefits, already accorded to the employees concerned by or under a subsequent government resolution, which expressly supersedes earlier instructions and not earlier G.R. dated 17.10.1988 by which the benefits were accorded to the employees. It also sounds absurd and baseless that employee employed on daily wage basis for 15 years would be made permanent under G.R. dated 17.10.1988 but subsequently rebranded and treated as a daily wager. The submission of learned AGP that such employees had to continue as daily wage employee, with limited benefits in terms of subsequent G.R. dated 18.7.1994 and that they were at best "permanent daily wage employees", is contradictory and has no backing of any legal provision or precedent. Therefore, there is no reason to interfere with the impugned common judgment except for the clarification made hereunder."

10. The contention in the affidavit in reply that the father of the petitioner was a "permanent dailywager" and, therefore, could not be given the benefit of the Government Resolution dated 05.07.2011 is, therefore, contrary to the principles of law laid down by the Division Bench in the above judgment and also to their own order dated 28.03.2008 by which the petitioner's father was made permanent.

11. A submission has been advanced by Mr. Niraj Ashar, learned Assistant Government Pleader, that the services of the petitioner's father were regularised under the Industrial Disputes Act and not under the Gujarat Civil Services Rules, therefore, he cannot be said to be a permanent employee. Another submission advanced is that as the petitioner's father was not appointed under the Gujarat Civil Services Rules, he cannot get benefit of the Government Resolution dated 05.07.2011. Both these submissions deserve outright rejection. It is a matter of record that the petitioner's father was initially appointed as a dailywager with effect from 01.01.1981 and his services came to be made permanent with effect from 01.01.1986, by the order dated 28.03.2008. It is the permanent nature of the appointment of the petitioner's father at the time of his death that is to be considered for the benefit under the Government Resolution dated 05.07.2011 and not whether he was initially appointed as a dailywager. The submission that the petitioner's father was appointed under the Industrial Disputes Act, is factually and legally incorrect. Having been engaged as a dailywager in the year 1981 and thereafter, being accorded permanent status with effect from 01.01.1986, there is no question of appointment under the Gujarat Civil Services Rules. The contention raised by learned Assistant Government Pleader is totally

irrelevant and out of context.”

6.1 The same was confirmed by the Division Bench of this Court in Letters Patent Appeal No. 1234 of 2017. Para 8 of the Division Bench judgment reads as under:

“8. In this case, it is not in dispute that late father of the respondent herein was initially appointed as a daily wager and thereafter, his services were regularized vide order dated 28.03.2008. A copy of such order is also placed on record. As per the terms of the said order, it is made clear that late father of the respondent herein would be entitled to the benefits of regular employees including retiral benefits, seniority, etc. There is also specific observation that in the event of a proposal for resignation, notice of resignation also should be issued before tendering the resignation. Further, we have also perused the Government Resolution dated 5.7.2011. While it is true that para 3 clause 2 of the Government Resolution dated 5.7.2011 states that such scheme of paying compensation amount is applicable to the employees, who are regularly recruited persons, but there is a specific clause which excludes applicability of the scheme to the category of persons namely, daily wager, casual worker, apprentice, adhoc, contract or reemployment. If both the clauses are conjointly read, it is clear that this scheme is to be extended to all the persons, who are on regular services on the date of death of the deceased employee. As the scheme itself is a beneficial scheme for the employees, who die in harness, the respondent herein cannot be denied the same on the ground that late father of the respondent was initially recruited as a daily wager. While it is also true that initially late father of the respondent was appointed as a daily wager in the year 1981, after considering his length of services, his services were regularized with effect from 1.1.1986, extending all the benefits payable to regular employees vide order dated 28.3.2008 passed by the appellant No.2 herein. If the conditions of regularisation order given while appointing the late father of the respondent herein are considered, with reference to various clauses under the scheme of the Government Resolution dated 5.7.2011, we are of the view that the respondent herein is entitled for all the benefits. Moreover, the Division Bench of this Court in the judgment in the case of State of Gujarat & Anr. V. Mahendrakumar Bhagvandas & Anr., reported in 2011(2) GLR 1290 has held in paragraph No.5 as under:

“5. ...Once the employees concerned were, in fact, treated for all purposes as permanent employees in terms of G.R. dated 17.10.1988, any discrimination or denial of benefits for a segment of such employees, who were subsequently rebranded as “daily wager” (rojamdar) by G.R. dated 18.7.1994, could not be rationally explained and could not be countenanced in the face of Articles 14 and 16 of the Constitution. Nor can the State Government legally take away the rights conferred and benefits, already accorded to the employees concerned by or under a subsequent government resolution, which expressly supersedes earlier instructions and not earlier G.R. dated 17.10.1988 by which the benefits were accorded to the employees. It also sounds absurd and baseless that

employee employed on daily wage basis for 15 years would be made permanent under G.R. dated 17.10.1988 but subsequently rebranded and treated as a daily wager. The submission of learned AGP that such employees had to continue as daily wage employee, with limited benefits in terms of subsequent G.R. dated 18.7.1994 and that they were at best "permanent daily wage employees", is contradictory and has no backing of any legal provision or precedent. Therefore, there is no reason to interfere with the impugned common judgment except for the clarification made hereunder."

6.2 The decision of this Court rendered by a Co-ordinate Bench (Coram : Hon'ble Mr. Justice N.V. Anjaria, J.) in Special Civil Application No. 14126 of 2017 and the relevant paras which considered the decision of the Division Bench in Letters Patent Appeal No. 1951 of 2017 read as under:

"5.2 In Manjuben wd/o. Deceased Merambhai Kalabhai Sondarava (supra), the similar question arose. The controversy with regard to interpretation of the clauses of Resolution dated 05th July, 2011 which provided for compensation instead of compassionate appointment. Clause 2 of the Resolution signified that the benefit under the scheme would be available to the regular employees and that the heirs of the daily-wagers were barred from the benefit of Resolution dated 05th July, 2011. In that case, however, the employee was granted benefit of Resolution dated 17th October, 1988 and was made permanent.

5.3 The Division Bench observed thus,

"7. However, in present case, the undisputed fact remains that the deceased employee was initially appointed as Rojanddar Driver, thereafter, he was granted the benefit of Resolution dated 17.10.1988 and was also made permanent. We had called for the service book for ascertaining the true status of the deceased employee. We have examined the service book of the concerned employee. A perusal of the service book reveals that the employee was appointed as a Rojanddar Driver on 20.06.1987. The Initial notings made in the service book, indicates that, after completion of 5 years of service, the deceased employee was granted the benefit of Resolution dated 17.10.1988 and he was also appointed as Work Charge employee having pay of Rs.950/- per month. The said benefit was granted to the deceased employee from 01.01.1995. On 13.01.1999, he was placed under Work Charge establishment. After considering his continuity of service from 20.06.1987 to 01.04.2006, the deceased employee was placed in a regular pay scale of Rs.3050 - 4590/- by an order dated 13.12.2007, and accordingly increments were also fixed and paid. Thereafter, the deceased employee was also granted regular revisions of pay. The noting dated 05.09.2012 indicates that from 01.01.2006, his post has been mentioned as a "Driver" and his pay was fixed at Rs.6510/- with effect from 01.07.2006, his grade pay was increased at Rs.1900/- and his revised pay band as on 01.07.2006 was of Rs.5200 - 20,200/-. He expired while in service on 02.02.2013."

5.4 It was thereafter held by the Division Bench that the distinction as sought to be made out was not tenable in law. While learned advocate for the respondent Board tried to harp that even if the benefit of Resolution dated 05th July, 2011 could be extended, the Division Bench held it to be extendable since employee was on the workcharge. This contention find emphatic answer from the following observations of the Division Bench in Manjuben wd/o. Deceased Merambhai Kalabhai Sondarava (supra),

"12. In the opinion of this Court, no such distinguishing feature has been incorporated in the Resolution dated 05.07.2011. The same only refers to the employees of Class III and IV working under the State Government. Clause 2 specifically confers benefit of compensation to the heirs of deceased workman of Class III and IV, who were working on the Work Charge establishment. Though, such benefit has been specifically denied to heirs of the Daily Wagers, casual workers, apprentice, ad hoc and employees working on contractual basis, the same cannot be applied to the daily wagers or employees, who have been subsequently regularized and are made permanent and have also been conferred the benefits of regular revision of pay under the statutory pay rules. Thus, such employees, who are working on Work Charge establishment, cannot be compared with the Daily wager or casual etc. Once the State Government grants the benefits of Resolution dated 17.10.1988 and as per the settled proposition of law, such Daily Wagers, after completion of certain number of years, are made permanent and regular and their pay, retirement benefits, etc are also paid as a regular employee, their status of being "permanent and regular" employees cannot be reverted to a "daily wager" after they expire resulting in the denial of the benefit of compensation to their legal heirs. In the considered opinion of this Court, once they have acquired status of regular employees working in Work Charge establishment, their heirs cannot be barred from the ambit of Resolution dated 05.07.2011 envisaging compensation, as provided therein."

5.5 The position of law emerges from the aforesaid decision is that even where the employee is granted benefit of Resolution dated 17th October, 1988 and therein he is made permanent and the permanency status is accorded to him by extending various benefits, the employee will become full-fledged permanent employee for the purpose of receiving all the benefits which a permanently employed employee may receive. Once the permanent status is accorded to the daily- wager employee in the scheme of Resolution dated 17th October, 1988, he cannot be discriminated against by denying certain benefits which are otherwise available to the permanent employee on the ground of permanency acquired by the employee was not by way of regular appointment, but under the scheme of the said Resolution. The permanency benefits which stand vested in the employee in the Resolution dated 17th October, 1988 shall be deemed to pervade for all the benefits available to the permanent or regular employee. It cannot be that for certain benefits father of the petitioner is to be treated as temporary or daily-wager and for certain benefits, he would be treated as regular employee."

6.3 In Special Civil Application No. 14126 of 2017, the author of the judgement (Hon'ble Mr.Justice N.V.Anjaria, J.) took the view pursuant to the decision in the case of State of Gujarat & Anr vs. Mahendrakumar Bhagvandas (supra) and that of the Division Bench rendered in Letters Patent Appeal No. 1951 of 2017 in the case of Manjuben (supra). Therefore, the reliance placed by Shri Meet Thakkar, learned AGP for the State, on a decision of Special Civil Application No. 14834 of 2010 (Coram : Hon'ble Mr.Justice R.M.Chhaya, J.) and that in Special Civil Application No. 12270 of 2013 (Coram: Hon'ble Mr.N.V.Anjaria, J.) dated 30.08.2016, cannot be said to be binding, inasmuch as, both these decisions were rendered without considering the decision in the case of Mahendrakumar Bhagvandas (supra). Moreover, in the case of S.C.A No.14834 of 2010 Suresh Maganbhai Chavda (supra), there is nothing on record to show that the deceased employee was granted the benefit of the Resolution dated 17.10.1988.

6.4 As far as the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh & Ors., vs. Amit Shrivastava, reported in (2020) 10 SCC 496, is concerned two glaring distinct facts stare at the face of the Court and make it completely distinguishable from the facts on hand and the policy. Before the Hon'ble Supreme Court, Amit Shrivastava, claimed entitlement to compassionate appointment on account of demise of his father Shri Ranglal Shrivastava. The nature of employment of his late father was that of Workcharge Employee, though he was made permanent and was even given promotion from time to time and also pension was paid to him, the request for compassionate appointment was rejected by the State relying on the policy dated 18.08.2008. The Policy provided that when a government servant dies while in service, if such an employee is earning salary from the workcharge contingency fund at the time of his / her demise, then there was no provision for grant of appointment. Clause 12.1 of the Policy provided for compassionate grant of Rs.1 lakh to the nominated dependant of such an employee, which was sanctioned to the wife of the deceased.

7 Therefore, on facts, firstly what the request of the respondent before the Hon'ble Supreme Court was to grant him compassionate appointment despite there being a clear clause providing for compassionate grant of Rs.1 lakh. In the facts of the present case, the Policy of 05.07.2011 clearly denies even the lump-sum compensation which is under challenge before this Court. Admittedly, in the case before the Hon'ble Supreme Court, the employee's successor was granted that compensation, however, he claimed appointment on compassionate grounds. The Court, drew distinction between the workcharge employee and permanent employee and considering the case on hand opined as under:

"17 In our view, the aforesaid plea misses the point of distinction between a workcharge employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work-charged employee and it is nobody's case that he has not been paid out of work-charged / contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and

krammonati. This will, however, not ipso facto give him the status of a regular employee.

18 In the aforesaid behalf, an analogy can be drawn with the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963, under which employees can be classified as permanent, permanent seasonal, probationers, badlis, apprentices, temporary and fixed term employment employees. A work-charged contingency employee can also be classified under any of the aforementioned categories and under the said Standing Orders, the classification as permanent can be granted even on the completion of 6 months' service in a clear vacancy."

7.1 In para 20 of the decision, the conclusion of the Hon'ble Supreme Court was that on attaining the status of a permanent employee, the employee was then entitled to a minimum of the pay-scale without any increments. That is not the case on hand. If the Policy of the Resolution dated 17.10.1988 is perused in light of the decision in the case of Mahendrakumar Bhagvandas (supra), it is very clear that what is granted is not the minimum of the pay-scale but the pay-scale itself that of Rs.750-940/-, and therefore, as opined by the Court in the case of Mahendrakumar (supra), there can be no distinction between permanent daily wager and a daily wager. Even on this count, the judgement of the Hon'ble Supreme Court on facts is clearly distinguishable.

8 Accordingly, based on the submissions made by the learned counsels for the respective parties, both these petitions are allowed. The petitioners are entitled to be extended the benefits of the Government Resolution dated 05.07.2011 and 07.04.2016 and the respondents are directed to consider the case of the petitioners for grant of lump-sum compensation on the basis of the pro rata services rendered by the deceased employees whom the petitioners represent under the Government Resolution dated 05.07.2011 and 07.04.2016. The benefits shall be extended to the petitioners within a period of two months from the date of receipt of a copy of this judgement. Rule is made absolute to the above extent with no orders as to costs."

5 Accordingly, the petition is allowed. The petitioners are entitled to be extended the benefits of the Government Resolutions dated 05.07.2011 and 07.04.2016 and the respondents are directed to consider the case of the petitioners for grant of lump -sum compensation on the basis of the pro rata services rendered by the deceased employee whom the petitioners represent under the Government Resolution dated 05.07.2011 and 07.04.2016. The benefits shall be extended to the petitioners within a period of two months from the date of receipt of a copy of this order. Rule is made absolute to the above extent with no orders as to costs.