

(2022) 09 GUJ CK 0096
In the Gujarat High Court

Case No : R/Special Civil Application No. 17409 Of 2021

??Mahendrasinh N Rehvar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Citation : (2022) 09 GUJ CK 0096

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Apurva A Dave, Kurven Desai

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. RULE returnable forthwith. Mr.Kurven Desai learned AGP waives service of notice of Rule on behalf of the respondent State.

2. With the consent of learned advocates for the respective parties, the petition is taken up for final hearing.

3. This Court while issuing notice in this matter has passed the following order:

" Heard learned Advocate Shri Apurva Dave on behalf of the petitioners and learned Assistant Government Pleader Ms. Dharitri Pancholi on behalf of respondent no.1- State.

By way of this petition the petitioners challenge the inaction on the part of the respondents of not converting the service of the petitioners from work charge establishment to temporary establishment upon completion of 5 years as per the Government Resolution dated 17.01.2000.

Learned Advocate Shri Dave would submit that as such issue raised in the present petition is covered by decision of this Court in Special Civil Application No 7464 of 1996 dated 21.01.2011 which was confirmed by decision of Hon'ble

Division Bench vide judgement dated 17.01.2011 in Letters Patent Appeal No. 1360 of 2011 and which decision has been confirmed by the Hon'ble Apex Court.

Having regard to the submission made by learned Advocate Shri Dave, issue Notice to the respondents returnable on 17.01.2022. Learned AGP waives service of notice on behalf of respondent no.1- State. Direct service for rest of the respondents is permitted."

4. The prayer in the petition is that the respondents be directed to absorb the petitioners in temporary establishment from work-charge establishment and grant the consequential benefits.

5. Mr.Apurva Dave learned counsel for the petitioners would submit that the petitioners were initially appointed as daily wagers. Their status were then converted into work-charge establishment on completion of more than 20 years. Service details have been placed at page 28 which indicates that the petitioner nos.1 to 4 were appointed in the year 1991 on work-charge basis and in the year 2011, they have completed the requisite number of 20 years of service. The petitioner no.5 was appointed in 1985 and accordingly completed 20 years in the year 2005.

6. Reliance is placed on a decision of this Court rendered in Special Civil Application No.7464 of 1996, by which, this Court considering the issue of extending the benefits of the resolution dated 16.08.1994, held as under:

"3. The short grievance made in the present petition is that the Government has issued G.R. dated 7th July, 1993 (Annexure-B) and accordingly the persons who have completed five years of service in Work-Charge Establishment are required to be converted into employees on Temporary Establishment. But, in the present case, as could be seen from Annexure- E, the persons who were recruited on Work-Charge Establishment in 1973, 1975 and 1977 respectively, were converted into Temporary Establishment in 1990, though the benefit ought to have been granted on completion of five years of service on Work-Charge Establishment. To quote an example, petitioner No.1 Shri T.P.Patel was appointed on 15th March, 1973 and he was taken on Temporary Establishment on 4th August, 1990. According to the G.R. which has been placed on record, the petitioners ought to have been taken from Work-Charge Establishment to Temporary Establishment on completion of five years of service. This benefit was not granted, as a result of which the benefit of higher pay-scales on completion of 9-18-27 years of service have also been inordinately delayed. The petitioners have placed on record the G.R. dated 17.01.2000 which states that employees who have completed five years of service on Work-Charge Establishment are required to be converted into employees on Temporary Establishment.

4. The petitioners have also relied upon the order dated 22.9.1998 of this Court (Coram: K.R.Vyas, J.) in another Special Civil Application No.2549 of 1998. Learned A.G.P. fairly conceded that the issue in the present petition is covered by that earlier order. Reliance is also placed on G.R.No.WCE-1272/(2)/G dated 16

thAugust, 1973 of which relevant para 2 reads as under:

"The head of the department under PWD are therefore requested to please ensure that work charge posts in respect of maintenance and repairs of any works or irrigation management which are proposed for conversion to Temporary Establishment should have been continuously in existence for a minimum period of five years and are required either permanently or on very long term basis; say 10 to 15 years."

5. The petitioners have placed on record G.R. dated 5th July, 1991, wherein it is mentioned that "the benefit shall be available even to the employees of Panchayat and Primary Teachers with necessary modification". That resolution is directly applicable to the petitioners who are working under the Executive Engineer, Roads and Buildings Department in its workshop at Ahmedabad.

6. The prayer in para 14 (B) of the petition is not pressed by learned advocate for the petitioners as the Government Resolutions directing conversion of work-charge employees as temporary employees on completion of five years of service are not disputed by learned A.G.P.

7. In view of undisputed facts about due conversion of the petitioners from Work-Charge Establishment to Temporary Establishment on the date they completed five years of service, the natural consequences would be that on completion of nine years of service from the date they are deemed to have been converted from Work-Charge Establishment to Temporary Establishment, the benefit of higher pay-scale under the scheme of 9-18-27 years of service would be available to the petitioners.

8. Therefore, the respondents are directed to grant the benefit of conversion of the petitioners from Work-Charge Establishment to Temporary Establishment on completion of five years as work-charge employees from the date of their initial appointment which is indicated in column-4 of the statement (Annexure-E to the petition) and accordingly further directed to grant higher pay-scales from the date the petitioners have completed nine, eighteen and twenty seven years of service on Temporary Establishment.

9. During the course of hearing of the petition, it was submitted by learned advocate for the petitioners that out of 54 petitioners, few of them have retired and few of them have expired. It is, therefore, directed that those petitioners who have retired and/or expired will also be entitled to the benefit of higher pay-scale and they or their legal heirs, as the case may be, shall be paid the amounts falling due by virtue of this order, within two months from the date of receipt of a copy of this order.

Rule is made absolute accordingly to the aforesaid extent, with no order as to costs."

7. The State went in appeal by filing Letters Patent Appeal No.1360 of 2011. The order passed in the said appeal reads as under:

"By way of this Intra-Court Letters Patent Appeal, the appellants – original respondents have challenged the judgment and order dated 21.01.2011 passed by the Learned Single Judge in Special Civil Application No.7464 of 1996.

2. We have heard Mr. N. J. Shah, learned Assistant Government Pleader appearing for the appellants and Mr. T. R. Mishra, learned counsel appearing for the respondents.

3. Learned Assistant Government Pleader on the basis of instructions received has submitted that after the judgment passed by the Learned Single Judge, the issue is pending with the State Government and no decision is taken.

3. In our view, while considering the case of the respondents herein, the Learned Single Judge has observed in impugned judgment and order in paragraphs 7 to 9 as under :-

"7. In view of undisputed facts about due conversion of the petitioners from Work-Charge Establishment to Temporary Establishment on the date they completed five years of service, the natural consequences would be that on completion of nine years of service from the date they are deemed to have been converted from Work-Charge Establishment to Temporary Establishment, the benefit of higher pay-scale under the scheme of 9-18-27 years of service would be available to the petitioners.

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4. In the above view of the matter, in our view, no error is committed by the Learned Single Judge. No interference is called for. The appeal is devoid of any merits and deserves to be dismissed. It is accordingly dismissed. It is made clear that this order may not be treated as precedent.

5. In view of dismissal of appeal, the Civil Application for stay also stands dismissed.

8. Even the Special Leave Petition filed before the Supreme Court was rejected.

9. It is the case of the petitioners that the persons who had approached this Court were granted the benefits that were prayed for.

10. In light of this, the respondents are directed to consider the case of the petitioners for the benefits as given to the petitioners of Special Civil Application No.7464 of 1996 and Special Civil Application No.6323 of 2016 and consider the case of the petitioners in accordance with law within a period of eight weeks from the date of receipt of copy of this order and extend the benefits to the petitioners accordingly.

11. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.