

(2023) 10 GUJ CK 0079

In the Gujarat High Court

Case No : R/Special Civil Application No. 18736 Of 2023

Manilal Kanjibhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-10-2023

Acts Referred:

Citation : (2023) 10 GUJ CK 0079

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Archita M Prajapati, Sahil Trivedi

Final Decision : Disposed Of

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Ms. Archita M. Prajapati for the petitioners and learned AGP Mr.Sahil Trivedi for the respondent-State.

2. Rule returnable forthwith. Learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondent – State.

3. By way of this petition, the petitioners have sought for the following prayers: -

"9(A)That this Hon'ble Court be pleased to hold and declare that the Petitioners are entitled for leave encashment of 300 Days at par with other Employees of the Respondents and accordingly be pleased to direct the Respondents to pay the amount towards leave encashment to the Petitioners considering the initial date of appointment of the Petitioners as mentioned in the Pension Payment order;

(B) That this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order direction, directing to calculate and re-fix the Pension and Gratuity and further be pleased to direct to pay the Arrears of Pension and Gratuity by considering the total length of service of the Petitioners;

(C) Pending hearing and final disposal of the present petition, Your Lordships

may be pleased to direct the Respondent Authorities to forthwith consider the case of the Petitioners for extending the benefit of payment of 300 days leave encashment and for the payment of arrears of Pension and Gratuity by considering the total length of service rendered by the Petitioners and pay the same in light of the law laid down by this Hon'ble Court and confirmed by the Hon'ble Apex Court.

(D) Any other relief which may deem fit and proper in the facts and circumstances of the case may please be granted."

4. Learned Advocate for the petitioners would submit that the issue in the present petition pertains to grant of benefit of 300 days unavailed earned leave and not calculating the retirement benefits of the petitioners from the date of appointment. The prayer in relation to other benefits, if any, referred in this petition, is not pressed by the learned Advocate for the petitioners at this stage.

4.1 Learned Advocate would further submit that the issue involved in the present petition which is in relation to payment of leave encashment for 300 days leave as also counting the retirement benefits available to the petitioners from the date of their appointment, is no more res-integra in view of decision of Hon'ble Supreme Court dated 01.09.2022, in Special Leave Petition (C) No. 7229 of 2022. Learned Advocate for the petitioners would also submit that present petitioners were working with the concerned respondent department for approximately for 23-42 years and they all had retired upon attaining the age of superannuation and therefore, considering their continuous service they are entitled for the benefits of leave encashment as well as pension and gratuity.

4.2 Learned Advocate would also rely upon the Government Resolution dated 24.01.2023, of Road and Building Department, Sachivalaya, Gandhingar, wherein the State Government has resolved as under:

"At the end of active deliberations, subject to the following conditions, it is hereby prescribed to pay gratuity to the daily wagers working in offices under various departments of the State within the maximum limit of 33 (thirty-three) years as per the Resolution dated 21.10.2020 of this Department:

(1) The concerned Department will have to check the eligibility of the daily wagers as per the Payment of Gratuity Act, 1972, of the Government of India.

(2) The order of this Department will also apply to the cases of retired/deceased daily wagers/work-charge employees after issuance of the resolution dated 24.03.2006 of this Department.

(3) The concerned Department will have to pay gratuity to the daily wagers/work-charge employees, for the services rendered before becoming permanent, upon verifying their eligibility as per the resolution dated 21.10.2020 of this Department. Whereas, the payment of gratuity for the pensionable services after becoming permanent will be made by the Director, Pension & Provident Fund Office. The Department will ensure that the gratuity is paid within the maximum

limit of 33 years by counting both the services together and in any case no double payment is made.

(4) The payments made to the daily wagers/work-charge employees under the Resolution dated 21.10.2020 of this Department before issuance of this order will not be reopened.”

5. Insofar as the aspect of leave encashment is concerned, learned AGP has brought to the notice of this Court to a circular dated 07.10.2022, wherein the Government has also taken a policy decision which reads as under: -

“According to the decision of the Supreme Court, since the retiral benefits given to the daily wagers under the resolution dated 17.10.1988 also includes the benefit of leave encashment, therefore the daily wagers are entitled to the benefit of leave encashment as per Clause (5) of the State Litigation Policy of the Government. The instructions in this regard are circulated after consultation and as per the approval received through the informal note dated 3.10.2022 of the Finance Department.

With regard to the various claims filed before the Hon’ble Court, after verifying the service record of the petitioners – daily wagers and after calculating as per rules and the policy of the Government applicable to the regular services, the benefit of encashment of earned leaves (within the maximum limit of 300 earned leaves) shall be paid in the following terms :

(1) The petitioners - daily wagers who have retired and completed 70 years as on 1.10.2022 shall be paid latest by 31.10.2022.

(2) Rest of the petitioners – daily wagers shall be paid within a period of three months, i.e. on or before 31.12.2022.”

6. It is also not in dispute that for counting entire length of service for payment of retiral benefits, the decision of this Court in the case of Executive Engineer, Panchayat (Maa & M) Department Vs. Samudabhai Jyotibhai Bhedi, reported in 2017 (4) GLR 2952 would be applicable.

7. The above factual position could not be controverted by learned Assistant Government Pleader for the respondent – State.

8. Considering the above position, in the considered opinion of this Court, the present petition could be disposed of with the following directions, which would meet the ends of justice.

(A) The respondent No.2 shall undertake scrutiny of case of the petitioners herein, within a period of 04 weeks from the date of receipt of this order, and whereas upon such scrutiny, if they are found eligible, then a proposal shall be forwarded by the respondent No.2 to the State Authorities in this regard within such time.

(B) Upon such proposal being received by the concerned Department, the same

shall be considered and a final decision including payment benefits shall be taken by the State within a period of 08 weeks from the date of receipt of such proposal.

9. With the above observations and directions, the petition stands disposed of. Rule made absolute to the aforesaid extent. Direct service is permitted.