

(2022) 09 GUJ CK 0047
In the Gujarat High Court

Case No : R/Special Civil Application No. 14870, 14946 Of 2019, 14959 Of 2020

Nanubhai Patabhai Mevada

APPELLANT

Vs

DY. Secretary?

RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 17
Industrial Disputes Act, 1947 — Section 25B

Citation : (2022) 09 GUJ CK 0047

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Dipesh D Chhaya, Khushbu D Chhaya, Sejal K Mandavia

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 Heard Ms.Khushbu Chhaya, learned counsel for the petitioners and Ms.Sejal Mandavia, learned counsel for the respondents.

2 The prayer in the petition is that the petitioner be paid the benefits in accordance with the order passed in Letters Patent Appeal No. 1900 of 2017. As is evident that the petitioner has approached this Court by filing Special Civil Application No. 11324 of 2008 which was allowed by this Court vide order dated 21.02.2017. The Court held as under:

"1. Petitioner has approached this Court seeking following reliefs:

"(A) that Your Lordships be pleased to issue an order, direction or writ in the nature of mandamus and/or any other appropriate writ, order or direction, directing the respondents to grant all fringe benefits like Leave Travel Concession, various type of allowances and other benefits available to the permanent employees working with the respondents and be further pleased to issue direction to the respondents to issue similar orders as issued to other

employees dated 29.12.1999 and 01.09.1997;

(B) any other and such further relief as the Hon'ble Court deems fit and proper in the interest of justice"

2. Learned counsel for the petitioner has drawn attention of this Court to a judgment passed by the Division Bench in SCA No.1945 of 2014, which has been further upheld by the Apex Court. The relevant paragraph of this judgment is reproduced:

"As noted earlier, subsequent G.R. dated 18.7.1994 is expressly superseding the instructions contained in government resolution dated 3.11.1990 but does not supersede original G.R. dated 17.10.1988.

It is also an admitted position that most of substantive benefits of permanent service are already accorded to the employees concerned in terms of G.R. Dated 17.10.1988. Under such circumstances, it was argued that nomenclature for treating the employees concerned as permanent was clarified by the government, and hence, denial of few benefits was justified and in order.

However, no ground or rational basis could be made out for grant of most of the benefits to most of the employees in terms of G.R. dated 17.10.1988 and for denial of the remaining few benefits.

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 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."

3. The petitioner in this petition has also claimed the same reliefs which are reproduced in the earlier part of this judgment. However, it would be necessary to point out that at the time of issuance of Rule, the relief claimed by the petitioner was restricted with effect from 12th August 2005 and not from the

date of appointment.

4. Resultantly, in view of the aforementioned judgment of the Division Bench, this petition is allowed in the same terms as in SCA No.1945 of 2014. However, the petitioner will be entitled to benefit from 12th August, 2005.

5. The petition stands disposed of accordingly.”

3 On an appeal being filed by the Board, namely, Letters Patent Appeal No. 1900 of 2017, the Division Bench of this Court dismissed the appeals of the Board in light of the decision of this Court in the case of State of Gujarat & Anr vs. Mahendrakumar Bhagwandas & Anr., passed in Letters Patent Appeal No. 958 of 2001. The Division Bench held as under:

“1. Letters Patent Appeal No.958 of 2001 is preferred by the State from common oral judgment dated 2.5.2000 of learned Single Judge of this Court in Special Civil Application No.5699 of 1987, 517 of 1988 and 6783 of 1988. In all the original petitions of the respondents herein, main prayer was in respect of treating all the original petitioners as regular employees from their initial date of appointment and for grant of consequential benefits available to regular government servants. Original petitioners had relied upon Government Resolution dated 17.10.1988.

1.1 There is no controversy about the fact that all the petitioners, who entered service as daily rated employees, have by now been regularized in their service under the aforesaid Government resolution dated 17.10.1988 and most of the benefits under the Government resolution, available to regular government servants, were extended to the original petitioners. The petitions were, however, resisted on the ground that original petitioners were daily rated employees and the benefits accorded to the permanent employees of the government could not be extended to them. Learned Single Judge, after adverting to the background of resolution dated 1.10.1988 and 17.10.1988, has opined that the workman concerned enlisted in AnnexureA to each petition were regular permanent employees of the respondent and were entitled to all the benefits as permanent employees of the appellants herein.

Therefore, allowing the petitions, it is directed that all the workmen concerned be treated as permanent employees at par with other regular employees and that they shall be granted all the benefits as such.

2. Learned AGP reiterated the argument that even as workmen concerned were entitled to, and were in fact granted most of the benefits at par with regular employees of the State, in terms of Government Resolution dated 17.10.1988, some of the benefits such as encashment of leave, leave travel assistance, travelling allowance, uniform allowance etc. were denied to them on the basis that they were not fullfledged duly recruited government servants. Learned AGP relied upon subsequent government resolution dated 18.7.1994, whereby it was sought to be clarified that the word 'permanent' in G.R. dated 17.10.1988 was

meant to convey job security but it was not meant to be understood to make daily rated employees regular employees on the set up and establishment of respective departments. It was fairly conceded that entitlement of the employees concerned was wholly dependent upon reading and interpretation of G.R. dated 17.10.1988.

3. According to G.R. dated 17.10.1988, a committee under the Chairmanship of Honourable Minister, Shri Daulatbhai Parmar, was constituted to consider conditions of service of daily rated labourers and artisans employed in several departments of the State Government. That committee had submitted its report and it was resolved to accept recommendations of the committee and provide several benefits to the workmen concerned with effect from 1.10.1988. Those benefits included payment of minimum wages, paid weekly holidays, medical facility and national holidays.

After completion of five years of continuous service in terms of provisions of Section 25B of the Industrial Disputes Act, 1947 such daily rated employees were to be entitled to fixed monthly salary of Rs.750/ with dearness allowance prevalent from time to time and few more benefits of paid holidays and leave wages as well as membership of provident fund. It is stipulated in Clause 3 of the G.R. dated 17.10.1988 that daily rated employees, who had completed, as on 1.10.1988, continuous service of ten years in terms of the provisions of Section 25B of the Industrial Disputes Act, 1947, would be treated as permanent and such permanent employees shall be entitled to the pay scale of Rs.750- 940/ and shall also be paid dearness allowance and house rent allowance accordingly. They would also be entitled to pension, gratuity and benefits of provident fund in accordance with prevalent rules. The age of superannuation for such permanent labourer is fixed at 60 years and the period of permanent service is to be counted as pensionable service. It is further stipulated that the employees, who had completed 15 years of service as on 1.10.1988, shall be placed in the pay scale as aforesaid and their age for retirement shall be 60 years. Such workers, who would have completed 15 years of service on 1.10.1988, were to be entitled to one increment, and the employees, who had completed 25 years of service were to be granted three increments, before fixing their wages in the pay scale on 1.10.1988.

4. Bare reading of above stipulations contained in the G.R. dated 17.10.1988 makes it crystal clear that upon completion of ten years of service, in terms of the provisions of Section 25B of the Industrial Disputes Act, 1947, on or before 1.10.1988, daily rated employees to whom the G.R. applied were to be treated as permanent employees with concomitant benefits.

It is further clarified and resolved in clause (10) of subsequent resolution dated 18.7.1994 that the employees, who were completing 5/10/15 years of continuous service due to which whose categories would change should be immediately accorded benefits of the category in which such employees would fall. Government Resolution dated 18.7.1994 is, according to its own preamble,

meant to supersede earlier instructions issued vide government resolution dated 3.11.1990. The instructions are primarily meant to regulate treatment of daily rated employees, who had completed one or more years of service on 1.10.1988, with the stipulation that such employees shall continue to be treated as daily rated employees. Detailed instructions have been issued in said government resolution for categorizing such daily rated employees and maintaining their seniority lists, as also for regulating their pension and termination of their service by way of retrenchment. At the end, in Clause 15 of the government resolution, it is stipulated that the word 'permanent' as used in G.R. dated 17.10.1988 is intended to provide protection of service but not for treating such employees on regular establishment of the government.

5. As noted earlier, subsequent G.R. dated 18.7.1994 is expressly superseding the instructions contained in government resolution dated 3.11.1990 but does not supersede original G.R. dated 17.10.1988. It is also an admitted position that most of substantive benefits of permanent service are already accorded to the employees concerned in terms of G.R. dated 17.10.1988. Under such circumstances, it was argued that nomenclature for treating the employees concerned as permanent was clarified by the government, and hence, denial of few benefits was justified and in order.

However, no ground or rational basis could be made out for grant of most of the benefits to most of the employees in terms of G.R. dated 17.10.1988 and for denial of the remaining few benefits. 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 re-branded 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. Letters Patent Appeal Nos.960, 961, 964 and 965 of 2001 are preferred from common oral judgment dated 6.4.2000 of learned Single Judge of this Court,

inter alia, in Special Civil Application Nos.28, 64, 67 and 68 of 1988 whereby original petitioners, working under the appellants herein, were directed to be given benefits in following terms:

".....In terms of the order passed in earlier case on 23/10/1999, the respondents are directed to extend all the benefits of regular employees to the petitioner, who have been made permanent employees in regular scale of pay for more than 10 years of service.

They should not be discriminated with other employees. With the aforesaid observations and direction all the petitions are allowed and accordingly disposed of....."

7. Apparently the aforesaid resolution dated 18.7.1994 was not pressed into service when the impugned judgment dated 6.4.2000 was delivered. It is observed by learned Single Judge as under:

".....It appears that the Government Resolution is very clear that these petitioners who have completed more than 10 years as daily workers will be treated as permanent employees and they will get regular scale of pay. When these employees are treated as permanent employees with regular scale of pay, I do not find any reasons that they will be deprived of the benefits given to other government employees of same category. There cannot be any confusion about the Government Resolution and it is obligatory on the part of the government to extend all the benefits to these petitioners, who have been regularized on regular posts with regular scale of pay....."

8. Letters Patent Appeal No.962 of 2001 is preferred from oral judgment date 23.10.1999 of learned Single Judge in Special Civil Application No.5757 of 1988.

In that impugned judgment also, the petition was allowed with the direction to treat all the workmen concerned as permanent employees and to treat them at par with other employees and to grant all the benefits as such. Thus, common issue of interpretation and application of relevant clause of government resolution dated 17.10.1988 is involved in all the appeals and it is decided as aforesaid against the appellant, in the facts and circumstances of each case.

9. The appeals are accordingly dismissed."

4 In light of these directions, the petitioners are entitled to be paid all the benefits that the Resolution dated 17.10.1988 entitles them to. If such amounts and other benefits are not paid pursuant to the Resolution dated 17.10.1988, it shall be paid within a period of 12 weeks from the date of receipt of copy of this order. The petitions are allowed, accordingly.