

(2022) 08 GUJ CK 0038

In the Gujarat High Court

Case No : R/Special Civil Application No. 11055 Of 2022

Naranbhai Ramjibhai Vaghela

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25B

Citation : (2022) 08 GUJ CK 0038

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Krishnan M Ghavariya, Kurven Desai

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 Rule returnable forthwith. Mr.Kurven Desai, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondents – State.

2 It is the case of the petitioner that the petitioner joined as a daily wager on 21.05.1980 and retired on superannuation on 30.11.2019 after working with the respondent for more than four decades.

3 Mr.Krishnan Ghavariya, learned counsel for the petitioner, would submit that while computing the amount of pension, they are not taking the initial date of appointment of 21.05.1980. Though the actual number of years of service that he has rendered is 39 years, six months and 11 days, pension is being computed on the basis of counting 28 years 7 months and 29 days. Ten years, ten months and 29 days is being excluded which is contrary to the decision of this Court rendered in the case of Executive Engineer Panchayat (Maa & M) Department vs. Samudabhai Jyotibhai Bhedi., reported in 2017 (4) GLR 2952.

3.1 Mr.Ghavariya, learned counsel, would rely on a decision of this Court

rendered in Special Civil Application No. 9819 of 2019 dated 04.11.2020, which reads as under:

"1. Rule. Mr. Akash Chhaya, learned Assistant Government Pleader waives service of notice of rule.

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

3. By this petition under Article 226 of the Constitution of India, the petitioners have prayed for direction to the respondents to revise the pension as well as gratuity by calculating the same from the date of their initial appointments.

4. The brief facts of the case are to the effect that the petitioners have worked with the respondents since the years 1982 and 1985 respectively. Having served for more than three decades, the petitioner Nos.1, 2 and 3 have retired on 31.10.2018, while the petitioner No.4 retired on 31.10.2016. Similarly, petitioner No.5, who has been represented through legal heir, had retired on 21.9.2015.

5. It is the case of the petitioners that the respondent authorities did not consider the initial years of service rendered by the petitioners, i.e. service rendered prior to their regularisation; for the purpose of calculating pension and other retiral benefits. Hence, the present petition with the aforementioned prayer.

6. Mr. Murali N. Devnani, learned advocate for the petitioners submitted that all the petitioners have rendered service with the respondent authorities for more than three decades and have retired upon crossing the age of superannuation. It is submitted that the respondent authorities, while sanctioning the pension and other retiral benefits, did not take into account the initial service rendered by the petitioners for the purpose of pension and gratuity. It is submitted that it is not in dispute that the petitioners have worked for more than 240 days in each year and it is only after completion of far more than 10 years, the service of the petitioners came to be regularised by the State Government extending the benefit of the government resolution dated 17.10.1988. However, the said benefits have been counted only from the date when the services of the petitioners were regularised as per the government resolution dated 17.10.1988.

7. It is next submitted that the issue involved in the present writ petition is no longer res integra. In support of the aforesaid contention, reliance is placed on the judgments in the cases of :

(i) Executive Engineer, Panchayat (Roads & Buildings) Department vs. Samudabhai Jyotibhai Bhedi, reported in 2017 (4) GLR 2952;

(ii) Bhanubhai Vanmalidas Agarvat vs. State of Gujarat, rendered in Special Civil Application No.9702 of 2018;

(iii) State of Gujarat vs. Suketu Amratlal Desai, reported in 2019 (0) AIJEL-HC 240755; and

(iv) Yogeshbhai Ravjibhai Patel vs. State of Gujarat, rendered in Special Civil Application No.9815 of 2019.

8. Hence, it is prayed that following the principles laid down by coordinate benches of this Court, the petition deserves to be allowed.

9. On the other hand, Mr. Akash Chhaya, learned Assistant Government Pleader for the respondent State submitted that as per clause (3) of the Government Resolutions dated 17.10.1988 and 24.3.2006, the petitioners are entitled for grant of pension and gratuity from the date of their regular appointments and not from their initial date of appointment as a daily wager. It is urged that petition does not deserve interference.

10. Heard Mr. Murali N. Devnani, learned advocate for the petitioners and Mr. Akash Chhaya, learned Assistant Government Pleader for the respondent State, through video conferencing.

11. The Division Bench of this Court in the case of Samudabhai Jyotibhai Bhedi (supra), while dismissing the appeal, has observed in paras 4, 5, 7 and 11 as under:

"4. Before the learned Single Judge, the petitioner relied on the Government Resolution dated 17.10.1988 and a subsequent clarificatory circular dated 30.05.1989 to contend that even service prior to the regularization as long as the years during which the employee had completed continuous one year of service, would qualify for pensionary benefits. Learned Single Judge accepted the contention and by the impugned judgment, directed the respondents to consider the past service of the petitioner rendered as daily wager for the purpose of pensionable service provided in a particular year he had completed 240 days of service. The pension was to be released within specified time with interest at the rate of 9% per annum. It is this judgment that the panchayat administration has challenged before us in this Letters Patent Appeal.

5. Facts are not seriously in dispute. According to the petitioner, he had completed in all close to 22 years of service with the Panchayat, during which, he had worked for more than 240 days in each year. Even if this claim of having put in 240 days of actual service in each of the 22 years is subject to verification, even the original respondents do not dispute that the petitioner had completed far more than 10 years of such service. It was precisely because of this reason granting benefit of Government Resolution dated 17.10.1988, he was regularized in services on 31.03.2006. From such date onwards till he retired, the employee had concededly put in just over three years of service. The crucial question therefore is would the past service of completed years prior to regularization would count towards pensionary benefits.

7. This Government Resolution led to several doubts. The Government itself therefore came up with a clarificatory circular dated 30. 05.1989, in which, several queries which were likely to arise were clarified and answered. Clause 6

of this circular is crucial for our purpose. The question raised was that an employee who had put in more than 10 years of service as on 01.10.1988, would be granted the benefit of Government Resolution dated 17. 10.1988. In that context, the doubt was whether for the purpose of pension, the past service of completed years prior to regularization would be considered or whether the pensionable service would be confined to the service put in by the employee after he is actually regularized. The answer to this query was that those employees who had put in more than 10 years of service as per Government Resolution dated 17.10.1988 would get the benefit of pension. For such purpose, those years during which the employee had fulfilled the provisions of section 25B of Industrial Disputes Act, such years would qualify for pensionary benefit.

11. In the past, same or similar issues have traveled to the Division Benches in Letters Patent Appeals. Learned Single Judge in case of *Tribhovanbhai Jerambhai v. Dy. Executive Engineer, SubDivision, R & B Deptt. & Anr.* reported in 1998 (2) GLH 1, held that once a daily rated workman is treated to be permanent in terms of resolution dated 17.10.1988, his entire continuous service from the date of entry till retirement including his services rendered prior to the date of his regularization has to be taken into consideration for the purpose of computing pension or for making pension available to the employee. This decision was carried in appeal by the employer before the Division Bench. The Division Bench by order dated 04.04.2003 noted that the appeal had become time barred. Even on merits, the Division Bench was not inclined to take a different view."

12. Thereafter, the Division Bench in the case of *Suketu Amratlal Desai (supra)*, while dismissing the appeal, has held that the law is now well settled that once an employee has rendered service and have secured the benefit of regularisation, pursuant to the government resolution dated 17.10.1988, their past service rendered prior to the date of regularisation, has to be counted for the purposes of pension and gratuity. 13. The coordinate bench of this Court in the case of *Bhanubhai Vanmalidas Agarvat (supra)*, while following decision in the case of *Samudabhai Jyotibhai Bhedi (supra)* as well as other judgments rendered by the Division Bench, has allowed the writ petition and the petitioners therein were extended retiral benefits considering initial service rendered by them as a daily wager prior to the regularisation. The coordinate bench of this Court has issued following directions:

"6. Now reverting to the facts of the present case, it appears that the pension proposal of the petitioners was already sent. The office of the Director of Pension and Provident Fund, asked the competent authority to fulfill the certain requirements. However, the authorities did not accept the pension case of the petitioners on the ground that the petitioners were not entitled to pension for the period of initial 10 years. They did not reckon the date of initial appointments of the petitioners to calculate the pension, but viewed that their period of service until they become regular, could be liable to be deducted from the total period for the purpose of pension.

6.1 The stand of the respondents is manifestly erroneous in law in light of what has been held in the aforesaid decisions. The authorities not accepting the position of law could not be countenanced. Therefore, the petitioners are entitled to succeed.

7. Resultantly, all the three petitions are allowed by directing the respondent to act through their competent authority to process and finalise the pension of the petitioners by calculating the pension of each of the petitioners from the date of their initial appointments. The benefits including the arrears payable to the petitioners shall be paid within a period of 10 weeks from the date of receipt of writ of this order. It is further directed that if the aforesaid stipulated time period of 10 weeks is not observed by the authorities, the payment of arrears shall carry interest @ 7% from 1.7.2018 till the actual date of payment."

14. Nothing is made available in law or on facts, for this court to take a view different than the views taken by the coordinate benches of this court. The aforesaid principle on law and on facts, apply on all fours to the present case.

15. In view of the aforementioned well settled principles of law, the stand of the respondents in denying the benefits of pension and gratuity by considering initial period of service rendered by the petitioners, is illegal, bad and deserves to be quashed and set aside.

16. Resultantly, the petition is allowed by directing the respondents to process and finalise the pension of the petitioners by calculating the pension of each of the petitioners from the date of their initial appointments. The benefits including the arrears payable to the petitioners shall be paid within a period of four weeks from the date of receipt of the order. It is further directed that if the respondents fail to observe aforesaid stipulated time limit, the payment of arrears shall carry interest @ 7% from the date of filing of the petition till the actual date of payment.

17. The petition stands allowed in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent."

4 In view of this, the stand of the respondents in denying the benefit of pension and gratuity by considering the initial period of service rendered by the petitioner is illegal, bad and deserves to be quashed and set aside.

5 Resultantly, the petition is allowed by directing the respondents to process and finalize the pension case of the petitioner by calculating the pension from the date of his initial appointment. The benefits including the arrears payable to the petitioner shall be paid within a period of 12 weeks from the date of receipt of copy of this order. The petition stands allowed to the aforesaid extent. Rule is made absolute to the above extent.