

(2019) 06 GUJ CK 0010

In the Gujarat High Court

Case No : R/Special Civil Application No. 14613 Of 2018

Nilesh Vrajlal Makwana

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 19-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2019) 06 GUJ CK 0010

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Mukesh T Mishra, Krina Calla

Final Decision : Allowed

Judgement

N.V.Anjaria, J

1. In the facts and circumstances of the case and having regard to the request and consent of the parties appearing through their respective learned

advocates, the petition was taken up for final consideration today.

1.1 Rule returnable forthwith. Learned Assistant Government Pleader Ms. Krina Calla waives service of Rule for the respondent No.1 whereas

learned advocate Mr. H. S. Munshaw waives service of Rule on behalf of respondent Nos. 2 and 3.

1.2 Heard learned advocate Mr. Mukesh Mishra for the petitioner, learned Assistant Government Pleader and learned advocate Mr. H. S. Munshaw.

2. The petitioner who is daily rated employee of the respondent Gujarat Water Supply and Sewerage Board working in its office at Nakatrana, Kutch,

has prayed by filling present petition under Article 226 of the Constitution to direct the respondent to extend the benefits of 6th Pay Commission and to

pay other consequential with effect from 1.1.2006.

3. The petitioner has been working under Deputy Executive Engineer, Public Health Sub-Division at Dayapar from 1.11.1988. By order dated

30.10.1993, he was placed in fixed pay upon completion of 5 years of continuous service. The petitioner was given regular time scale when he

completed 10 years of service. He was also given the benefits of 5th Pay Commission. The petitioner also gets benefit of 50% merger of Dearness

Allowance.

3.1 The grievance of the petitioner in this petition is that despite the petitioner has made several representations and request, he is denied the benefits

of 6th Pay Commission.

4. Learned advocate for the petitioner relied on the decision of this court in Anand Bhausaheb Pawar and others vs. Gujarat Water Supply and

Sewerage Board and others, being Special Civil Application No. 11239 of 2016 and group of petitions, wherein the petitioners were the employees of

the same respondent Board who prayed for identical relief of getting 6th Pay Commission benefits. The said petition came to be allowed by this court

as per judgment dated 18.10.2016.

4.1 Learned advocate for the respondents could not dispute the position of law and the relief granted in Anand Bhausaheb Pawar (supra).

5. In Anand Bhausaheb Pawar (supra), the court considered the similar controversy and traced various decisions of this court to observe and record

as under, which reasoning would apply to the facts of the present case to form part of the present order. Therefore, extracted, hereinbelow,

5. Having considered the controversy and the contentions, it was at the outset noticed that this Court decided Special Civil Application No.1563 of

1992 and cognate petitions holding inter alia that benefit of Government Resolution dated 17th October, 1988 is required to be extended to even those

who came to be appointed after the date of Resolution. The said group of petitions were by the similarly situated employees of the same respondent

Board, which came to be decided by common judgment dated 31st January, 2013 and in which it was held by the Court in the concluding paragraph

10,

Considering the totality of the facts and law as discussed above, I find that the grouping of daily wagers sought to be made by the respondent

Board on the basis of the cut off date of 30.11.1994, to deny benefits of Government Resolution dated 17.10.1988, is illegal and arbitrary and the same is rejected. It is held that even those daily wagers who are appointed after 30.11.1994 shall also be extended the benefits of Government Resolution dated 17.10.1988 and thus, they will stand at par with the petitioners of Special Civil Application No.1563 of 1992 and shall also be entitled to the benefits, which are claimed by and are directed to be paid to the petitioners of Special Civil Application No.1563 of 1992.â??

5.1 Against the said judgment, Letters Patent Appeal No.325 of 2013 in Special Civil Application No.11280 of 2013 (part of the above group), was preferred and the judgment came to be confirmed. It is useful to reproduce the following paragraphs from the Division Bench judgment.

â??11. As regards daily wagers appointed upto the year 1988, it is the case of the appellants that the benefits accorded to the permanent employees

could not be extended to them as they do not hold any post. It has come to our notice that similar issues were raised in Special Civil Application

Nos.5699 of 1987; 517 of 1988 and 6783 of 1988, decided on 02.05.2000. The petitions were allowed with a direction 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. Being aggrieved with

the said order, Letters Patent Appeal No.958 of 2001 and cognate matters were filed which were decided on 18.03.2011. Notwithstanding the fact

that earlier in Special Civil Application No.26790 of 2007 and cognate matters, the learned Single Judge had vide Order dated 01.07.2009 rejected

similar contention of the petitioner and the said Order was upheld in Letters Patent Appeal No.2117 of 2010 decided on 11.10.2010; the Division

Bench of this Court dismissed Letters Patent Appeal No.958 of 2001 and cognate matters, reported in (2011) 2 GLR 1290. The said judgment and

order was challenged before the Supreme Court which was rejected vide Order dated 09.11.2012 recorded in Special Leave to Petition (Civil)

Nos.35043-35048 of 2012. Thus, the decision of this Court in Letters Patent Appeal No.958 of 2001 and cognate matters, decided on 18.03.2011 has

attained finality and all issues are properly addressed. The learned Single Judge has rightly observed that the grievance raised by the respondents, i.e

original petitioners in Special Civil Application No.1563 of 1992 is already answered by the Division Bench of this Court. We are in full agreement

with the above decision rendered by the learned Single Judge. Independent of this, we are of the considered opinion that these benefits in nature of

allowances and concessions are incidental to services and they should be normally granted to such employees when they are treated at par with other

regular employees. In view of the above, Letter Patel Appeal No.789 of 2013 fails and is accordingly, dismissed.

12. Now, we may proceed to examine the case of the daily wagers appointed after 30.11.1994. It is the contention of the appellants that the Board

had taken a policy decision on 30.11.1994 that no new daily wagers be appointed. Still, they were appointed without prior permission or even intimation

to the higher authorities, for which penalties are imposed on number of officers for breach of administrative instructions issued on 30.11.1994. The

appointment as daily wagers at the grass root level are without following any regular procedure laid down for regular recruitment and therefore they

do not have any right of regularization or the benefits flowing from the Government Resolution dated 17.10.1988.

13. It is an admitted position that the appellant Board adopted the Government Resolution dated 17.10.1988 as a policy vide its circular dated

08.06.1989. The said Resolution, inter-alia, provides that no appointment as daily wagers shall be made by any office thereafter. Still, daily wagers

continued to be appointed by the Board and they were given benefits flowing from the aforesaid Government Resolution. Thereafter the appellant

Board reiterated its policy vide another Circular dated 30.11.1994 that no daily wagers shall be appointed but still hundreds of daily wagers came to be

appointed after 30.11.1994 and now the Board denies to extend the benefits flowing from the Government Resolution dated 17.10.1988 to such daily

wagers appointed after 30.11.1994 terming their appointment as illegal, which cannot be accepted as it is arbitrary and bad in law. On one hand, the

Board issues circular that no daily wagers shall be appointed from 30.11.1994 and still the very Board appoint hundreds of daily wagers in gross

violation of their own policy and after passage of more than 15 years terming the action of appointing these daily wagers as illegal cannot be accepted

and needs to be rejected. The Board cannot punish others for their own wrongdoings. It is a settled legal proposition that a person alleging his own

infamy cannot be heard at any forum. If a person has committed a wrong, he cannot be permitted to take the benefit of his own wrong,

14. In view of the above discussion, we see no infirmity in the judgment and order passed by the learned Single Judge and we are in complete agreement with the reasons recorded by the learned Single Judge.â??

5.2 Against the aforesaid judgment, Special Leave Petition (C) No.29108- 29114 of 2014 was preferred, in which the Apex Court on 14th November, 2014 passed the order thus, â??Issue notice returnable within six weeks.

We direct that while payment of arrears in terms of the impugned judgment shall remain stayed, benefits held admissible in terms of the said judgment may be released in favour of the respondents for the future.

Mr. Abhishek Vinod Deshmukh, Adv. has entered appearance on behalf of the respondent in SLP (C) No.29108 of 2014. Notice shall now issue to the remaining respondents only.â??

5.3 Therefore, as per the unequivocal order of the Apex Court, it is in terms directed that though the judgment will remain stayed, the benefits held admissible in terms of the judgment shall be given to the employees for the future. It is therefore clear that the petitioners of the said petitions are allowed prospectively the benefits of the 6th Pay Commission. There is no gainsaying that the present group of employees consisting of the petitioners in the captioned petitions, are identically placed.

5.4 It is further not disputable, as it stems from the record of the petition that pursuant to the order of the Supreme Court as above, availment of the benefits have been acted upon. The petitioners have produced on record copy of office order No.59/2016 dated 02nd September, 2016. The said order provides to grant the 6th Pay Commission benefits to all those employees who filed petitions. On perusal of the said order (Page 119 to 143 in Special Civil Application No.11239 of 2016) accompanies the details of all such persons who had filed respective petitions and given benefits. The respondent Board has issued Circulars dated 10th September, 2016 and 30th August, 2016. It is further born out from the record that the Narmada and Water Supply Department of the State Government addressed communication to the respondent Board, with reference to the orders passed in the aforementioned petitions, Letters Patent Appeals and the order of the Apex Court, forwarded proposal dated 10th August, 2016 for initiating the

procedure to pay the 6th Pay Commission pay-scales to the said class of persons who were the petitioners. The State Government accorded sanction

and approved to pay the benefits subject to final outcome of the Leave Petitions before the Supreme Court.

5.5 The conspectus of the aforesaid undisputed facts go to show that the petitioners herein hold the same capacity and entitlement to the employees

who had filed the aforementioned petition, the order in which travels to the Letters Patent Bench and finally before the Apex Court to culminate into

order mentioned in paragraph 5.2 hereinabove. Those petition s and the present petitioners constitute a single homogeneous class. The very benefits of

6th Pay Commission Recommendations accorded and approved by the Supreme Court by virtue of the aforesaid order, are required to be given to the

same extent, to the present petitioners. The petitioners belonging to the same class of persons and similarly situated, denial of 6th Pay Commission

benefit to them would offend Articles 14 and 16 of the Constitution. The respondents would act only in violation of Articles 14 and 16 of the

Constitution, if they do not accord the benefit to the petitioners herein.â??

5.1 The court did not accept the contention about financial constraints in releasing the payment of 6th Pay Commission as a valid defence, as under,

â??The defence that there is a financial constraints in releasing the payment of 6th Pay Commission benefits, sought to be raised by the respondents,

stand on a weak footing, more particularly in the facts and circumstances of the case where the petitioners are identically placed to the other batch of

employees who upon the orders of the Courts as above, have been extended the benefit. Financial pressure on the exchequer of the Government may

be a ground which could be generally pleaded as defence in a general fact situation, but in the specifics of the present case, it would be a clear

discrimination and unfair treatment against the constitutional guarantee of equality and equal treatment in the public employment, to refuse the benefits

of the present similarly situated petitioners. In State of Rajasthan Vs Mahendra Nath Sharma [(2015) 9 SCC 540], though in the context of payment of

pension, the Supreme Court in clear terms observed that when the respondent Lecturers were entitled to selection grade and effect thereof in their

pension, the fact that it could impose heavy financial burden on the State was inconsequential, since legitimate dues of the employees cannot be

denied.â?? (para 6)

5.2 It was highlighted that similarly situated employees could not have been denied the benefits irrespective of they have approached the court or not.

â??6.1 Nor a differential statement is permissible in law only on the ground that the other group of petitioners had approached to the court and upon

courtâ??s order they were given the benefit. If an order is passed by the Constitutional Court extending some benefit to the particular class of

persons, the similarly situated class of persons, though may not have approached the Court has to be held entitled for the benefit conferred. In *Inderpal*

Yadav Vs Union of India [(1985) 2 SCC 648], the Supreme Court emphasized in clear terms that discrimination in extension of benefit on the ground

of certain employees not approached the court was not permissible. In that case, the question was whether the termination of services of casual

labourers employed on railway project continuously on the ground of winding-up of the project, was justified or not. During the pendency of the

petition of the labourers, the railway administration framed a scheme for their absorption which was made applicable to those employees in service on

a particular date.

6.1.1 After holding that the choice of the date was arbitrary, the Supreme Court proceeded to observe and to hold,

â??There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They

can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in

case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because

these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a

litigation with uncertain outcome and hunger from day to day. It is Hobsonâ??s choice.â??

6.1.2 After the above piercing observations, the Court finally stated,

â??Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise

similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.â??

5.3 Finally, the following direction was issued,

â??In view of foregoing discussion and reasons, all the petitioners in the present group of petitions are held entitled to be granted benefit of 6th Pay

Commission by paying salary in the 6th Pay Commission scales from the month of October, 2016 onwards when the present order is passed. They are

entitled to be treated in similar way as the employees who had approached the Court by filing aforesaid Special Civil Application No.1563 of 1992 and

Special Civil Application No.11280 of 2010 and other cognate matters. The present petitioners shall be entitled to benefits of 6th Pay Commission

prospectively. They shall receive the benefits subject to the order which may be passed by the Apex Court in Special Leave Petition (C) No.29108-

29114 of 2014.â?? (para 7)

6. In Anand Bhausahab Pawar (supra), similarly situated petitioners were held entitled to receive the benefit of 6th Pay Commission scale from month

October, 2016 onwards. After the said decision, the petitioners filed Misc. Civil Application No. 375 of 2017 in which the operative direction in Anand

Bhausahab Pawar (supra) were reviewed and modified and it was provided that the benefits 6th Pay Commission would be available to the petitioners

with effect from 14th November, 2014.

7. In view of the above, the present petition deserves to be allowed by directing the respondent Board to grant the benefit of 6th Pay Commission pay

scale to the petitioner from 14th November, 2014. The relief granted herein is in the same term as is granted in Special Civil Application No. 11239 of

2016 and allied petitions read with modification in Misc. Civil Application No. 375 of 2017 and allied applications. The arrears which may be required

to be paid by virtue of this order, shall be paid to the petitioners within a period of three months from the date of receipt of of this order.

Rule is made absolute in the aforesaid terms. Direct service is permitted.