

(2022) 10 GUJ CK 0087

In the Gujarat High Court

Case No : R/Special Civil Application No. 2590 Of 2021

Panchmahal District Panchayat Through Its District
Development Officer

APPELLANT

Vs

Bharatbhai Hathibhai Bariya

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes, Act, 1947 — Section 25B, 33(C)

Citation : (2022) 10 GUJ CK 0087

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : HS Munshaw, Anantanand J Singh, Prabhatsinh J Parmar

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1 Heard Mr.H.S.Munshaw, learned counsel for the petitioners and Mr.Anantanand Singh, learned counsel for the respondent.

2 Challenge in this petition under Article 226 of the Constitution of India is to the order dated 01.01.2020 passed by the Labour Court at Godhra in Recovery Application (C2) No. 92 of 2008.

3 Perusal of the award of the Labour Court would indicate that the respondent was working as a daily wager since 21.07.1979. By virtue of the Government Resolution dated 17.10.1988, on completion of ten years of service, he was granted the benefit of the resolution with effect from 01.12.1989. His date of increment accordingly was 01.12.1999. The respondent was to superannuate with effect from 30.09.2020, however, as a result of pressing circumstances he tendered his voluntary retirement which was accepted with effect from 30.09.2003.

3.1 In the perception of the Panchayat, since the petitioner from the year 1989

had completed 17 years of service, his services were not treated pensionary. The petitioner, therefore, approached the Labour Court filing an application for recovery on the ground that having earned the benefits of the Resolution dated 17.10.1988, pension has to be calculated from his initial date of appointment of 1979.

3.2 The Labour Court, after a detailed discussion of the relevant dates and a decision of this Court in the case of State of Gujarat vs. Solanki Abhesinh Narsinh., rendered in Letters Patent Appeal No. 36 of 2018, held that the respondent was not entitled to the benefits of pension.

4 Mr.Munshaw, learned counsel for the petitioner, would submit that the recovery application was not maintainable, inasmuch as, there was no accrued right in favour of the respondent. Having given the benefit of the Government Resolution dated 17.10.1988, unless and until it was established that in each year of service the respondent had completed 240 days, the benefit could not have been extended. In a similar case, considering similar facts, this Court, on 29.04.2022 in Special Civil Application No. 2676 of 2021, held as under:

"1 Heard Mr.H.S.Munshaw, learned advocate for the petitioner, Mr.Dipak Dave, learned advocate for the respondent No.1 and Mr.Kurven Desai, learned AGP, for respondent No.2.

2 Panchmahal District Panchayat has challenged the order dated 24.01.2020 passed by the Labour Court at Godhra in Recovery Application No. C-2. 102 of 2008 directing the petitioners to release the benefit of pension in favour of the respondent No.1.

2.1 Assailing the order of the Labour Court in the Recovery Application, Mr.Munshaw, learned advocate, would submit that the respondent who was born on 10.04.1948 was offered work as a daily wager on 21.11.1976 without following the due procedure of recruitment. He was offered work based on the availability of the work and funds. He was also extended the benefit of the Resolution dated 17.10.1988 on completion of service of five years as well as 10 years as a daily wager with effect from 01.11.2002 and 01.04.2007 respectively, as for such benefit, the pre condition of having worked for 240 days is required to be set aside.

2.2 Mr.Munshaw, learned advocate, would further submit that as the date of birth of the respondent No. 1 was 10.04.1948, he superannuated on 30.04.2008. In other words, on receiving the benefits of the Resolution dated 17.10.1988 on completion of five years and ten years with effect from 01.04.2007, he had completed just one year in service in the running pay-scale. He was, therefore, not entitled to the benefit of pension.

2.3 Reliance was placed on the Resolution dated 24.03.2006 in support of his submission that by virtue of this resolution, the Panchayat had rightly not extended the benefits of the said resolution.

3 Mr.Dipak Dave, learned counsel for the respondent No.1, would submit that orders akin to the orders passed in the recovery application in the present petition was a subject matter of challenge by the Panchayat, where the applications were rejected and the petitioners / workmen had to approach this Court by filing Special Civil Application Nos. 12350 of 2016 and allied matters. The Court, having examined the Scheme of the Resolution dated 17.10.1988 together with the judgement of this Court in Tribhovan Jerambhai vs. Deputy Executive Engineer ., reported in [1998 (2) GLH 1]., had set aside the orders passed rejecting the recovery applications and also considered resolution dated 24.03.2006 which is pressed into service by the learned counsel for the petitioners. The Co-ordinate Bench of this Court in paras 11 to 15 of the decision held as under:

"11. Only question which ought to have been asked by the Labour Court was: whether the G.R. dated 17.10.1988 has been interpreted by this High Court, and if yes, whether the High Court has held that the past continuous service of the workman are required to be taken into consideration for extending the benefits under G.R. dated 17.10.1988. If the answer to the said question was in affirmative, there remained nothing to be adjudicated and thus recovery applications were maintainable.

12. Even otherwise, in the opinion of this Court, a writ petition under Article 226 of the Constitution of India for enforcing the G.R. dated 17.10.1988 would lie in absence of the serious dispute of the facts of the case. Concededly, G.R. dated 17.10.1988 has been applied to the petitioners and, therefore, its applicability is not in dispute. The only dispute raised by the State in its affidavit is with regard to the interpretation of the said G.R. which has already been interpreted in Tribhovanbhai (supra), and thus, applying the ratio laid down therein, in the opinion of this Court, the respondents are not right when they say that for the purpose of pensionary benefits, the services post regularisation only must be reckoned.

13. Reliance placed on G.R. dated 24.3.2006 in support of the above contention is also misconceived since the said issue has been set at rest in Nirubha Vajubhai Sarvaiya v. State of Gujarat and three others [2016 Lawsuit (Guj) 155]. The said case has been followed by this Court in Ranabhai Ajmalbhai Harijan, since deceased through legal heirs – petitioners v. Secretary, Road and Building, Sachivalaya, Gandhinagar and two others [Special Civil Application No. 18036 of 2013 decided on 19.10.2016. It is, however, stated by the learned AGP that the decision in Nirubha (supra) is pending consideration in Letters Patent Appeal. In the opinion of this Court, mere pendency of the appeal would not be sufficient to deter this Court from following the said case.

14. One of the prayer made by the petitioner is with regard to the interest on overdue amount. However, in absence of the justification for interest, it cannot be awarded. It is noticed that the parties were so far rightly or wrongly, litigating for the rights under G.R. dated 17.10.1988 and, therefore, there does not appear

to be a deliberate delay in paying the pensionary and other related benefits to the petitioners. The prayer for interest is therefore declined.

15. In above view of the matter, the petitions partly succeed. Accordingly the impugned orders passed in each of the recovery applications made by the petitioners under Section 33C(2) of the Act are quashed and set aside. The respondents will recompute the pension and other retiral benefits of the petitioners from the date of their rendition of specified service within the meaning of Section 25B of the Act till the date of retirement and pay the same to the petitioners within 12 weeks from the date of receipt of the writ of this Court, failing which, the same would carry simple interest at the rate of 8% p.a. Rule is made absolute to the aforesaid extent with no order as to costs."

4 Setting aside the orders in the recovery applications which denied to those petitioners the benefit of the resolution, the Court held that the petitioners were entitled to the benefits of the same. When the order of the Co-ordinate Bench was challenged in appeal, the Division Bench of this Court in Letters Patent Appeal No. 36 of 2018 dismissed the appeal. Challenge before the Hon'ble Supreme Court in Special Leave Petition also failed and the order of 04.01.2018 of the Hon'ble Supreme Court is also on record.

5 Considering the order passed in the recovery application, which in the opinion of this Court rightly interprets the resolution of consequential benefits that need to be extended to the beneficiaries of such resolution, the order passed by the Labour Court on 24.01.2020 by which the petitioner has been directed to compute and pay pensionary benefits to the respondent on his superannuation with effect from 30.04.2008 cannot be faulted with.

For the aforesaid reasons, the petition is dismissed."

5 For the aforesaid reasons, the petition is dismissed. Notice stands discharged.