

(2020) 08 GUJ CK 0099

In the Gujarat High Court

Case No : R/Special Civil Application No. 16979 Of 2019

Piyushbhai Shivprasad Dave

APPELLANT

Vs

Secretary, Narmada, Water Resources And Kalpsar Dept

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 08 GUJ CK 0099

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Swapneshwar Goutam, KM Antani

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Mr. Antani, learned Assistant Government Pleader waives service of rule on behalf of respondent State. Heard learned

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

final hearing today as the issue involved in the present petition is already covered by the decisions of this court.

2. The present petition is filed challenging the impugned communication dated 17.09.2018 passed by the respondent authority. The petitioner prays for

a direction to the respondent authority to grant the petitioner the benefit of continuity of service from 1984 as directed by the Labour Court, Rajkot and

consequential pay revision.

3. The case of the petitioner is that he was initially appointed as a daily wager in the year 1984. On termination of his services in the year 1998, the

petitioner approached the Labour Court by filing a reference which was allowed by the Labour Court vide award dated 29.11.2006. Vide the award, the Labour Court granted reinstatement with continuity of service without backwages. The respondents challenged the award by way of filing petition before this court but the same was dismissed vide order dated 25.09.2011. The petitioner was reinstated on the same date. An SLP filed before the Apex Court was also dismissed. The impugned order of the State Government which is under challenge denies benefit of continuity of service to the petitioner from the date of initial appointment and the claim of the petitioner is for benefits pursuant to resolution dated 17.10.1988 on the ground that the petitioner was appointed post the resolution.

4. Mr. Swapneshwar Goutam, learned advocate for the petitioner has drawn the attention of this court to the decisions passed by this court on various occasions and submitted that the issue involved in the present petition is squarely covered by the said decisions. He places reliance on the decisions of this court rendered in SCA No. 6601 of 2016 dated 31.08.2018, SCA No. 7531 of 2018 dated 20.08.2019 and SCA No. 2811 of 2020 dated 31.01.2020.

5. This court in SCA 2811 of 2020 has considered the issue on hand and has passed the following order:

1. In the facts and circumstances of the case and with consent and request of the parties appearing through their respective learned advocates, the petition was taken up for final consideration today.

2. Rule returnable forthwith. Learned Assistant Government Pleader Mr. Ishan Joshi waives service of notice of Rule on behalf of the respondents.

3. The case of the petitioner is that the petitioner has been working with the respondent since 1991. His services were terminated with effect from

01.08.1999. Aggrieved by his order of termination, the petitioner approached the Labour Court and the Labour Court directed that the petitioner be

reinstated with continuity of service and 40% back-wages. The award of the Labour Court was passed on 05.05.2008. The challenge to the Labour

Court's award failed as the petition was dismissed confirming the award of reinstatement with continuity of service and disturbing the award only qua

back-wages. The petitioner was reinstated on 01.01.2013. The impugned orders rejecting the request of the petitioner for the benefit of the resolution

dated 17.10.1988 is only on the ground that the petitioner's appointment was post 1988 i.e. in the year 1992. In case of a similarly situated petitioner of

the same department, this Court by order dated 15.07.2019 passed in case of Chandulal Mohanbhai v. State of Gujarat passed in Special Civil

Application No.12120 of 2019 considered the question of granting the benefits of the resolution of 17.10.1988 in context of the stand of the department

denying the same to such petitioner on the ground that he was appointed post 1988. The Court held as under:

“4.1 Thereafter followed the impugned order dated 11.10.2017, whereby the petitioner was denied the benefits under Resolution dated 17.10.1988.

The only ground mentioned for denial is that the petitioner's appointment was after 17.10.1988 and therefore the benefits cannot be liable to be

extended.

5. The identical issue arose in case of Kalubhai Nathubhai Sonagara v. State of Gujarat being Special Civil Application No.2700 of 2016 decided on 30

th November, 2017 by this Court. What is discussed, observed and held in paragraphs 5.1 to paragraph 6 in decision in Kalubhai Nathubhai Sonagara

(supra) directly applies to the present case. They are as under.

“5.1 In Patel Tarunkumar Shankarlal v. State of Gujarat being Special Civil Application No.12527 of 2013 with cognate petition, the petitioners

were the employees of Gujarat Maritime Board who were workcharge employees appointed after 31 st March, 1989. Their grievance was similar to

one involved in the present petition and that they were not given benefits of 6th Pay Commission, although all the workcharge employees appointed

prior to 31st March, 1989 were granted the benefits. While contesting the said petition, respondents relied on Circular dated 31st March, 1989 of the

Road & Building Department adopted by it, which was in connection with the State Government Resolution dated 17th October, 1988 and according

to the said Circular, conversion from dailywagers to workcharge was restricted after 31st March, 1989 and appointment of dailywagers was

prohibited. Raising the said cutoff date, those petitioners were denied the benefits of 6th Pay Commission that they were appointed after the said date.

The direction was prayed before the Court for grant of 6th Pay Commission benefits. The said petition came to be allowed by judgment dated 06th

August, 2015. Learned Single Judge observed that it was incomprehensible that

after having extending the benefits of 5th Pay Commission recommendations with effect from 1998 for the petitioners, 6 th Pay Commission benefits were denied and it was further observed that there was no rationale or basis for placing reliance on Circular dated 31st March, 1989. the decision in Patel Tarunkumar Shankarlal (supra) came to be confirmed in Letters Patent Appeal No.1230 of 2015, decided on 23rd September, 2015 wherein the Court emphasise the equal treatment to be accorded to the homogeneous class of persons and disapproved the prescription of cutoff date. Special Leave Petition Nos.34352, 34353 of 2015 came to be dismissed by the Apex Court on 04 th January, 2016. The principle in the aforesaid decision directly applies to the case of the present petitioner.

5.2 Exactly similar was the case of Mansukh Arjanbhai Bhakhotara v. State of Gujarat being Special Civil Application No.2723 of 2016 decided on 23rd March, 2016. Those petitioners were identically placed with the present petitioners, who were dailywagers of the Irrigation Department as the present petitioner is, and claimed benefit of 6th Pay Commission as per the State Government Resolutions dated 27 th February, 2009 and 15th March, 2010. The said petition was allowed by negating same defence raised and the respondents were directed to calculate and pay the necessary benefits as per the 6th Pay Commission recommendations.

5.3 Decision in Mansukh Arjanbhai Bhakhotara (supra) was carried in Letters Patent Appeal No.768 of 2016 which was decided and dismissed as per order dated 07th July, 2017. While dismissing the Letters Patent Appeal, the Court relied on Patel Tarunkumar Shankarlal (supra).

6. In view of the above settled legal position, there is no gainsaying that the petitioner herein belongs to the similar class of person to be treated equally with Patel Tarunkumar Shankarlal (supra) and Mansukh Arjanbhai Bhakhotara (supra), to be extended the benefits of 6th Pay Commission recommendations. Denial of benefits to the petitioner is violation of fundamental rights of the petitioner under Articles 14 and 16 of the Constitution.â??

5.1 In view of above, the petition deserves to be allowed. Denying to the petitioner the benefits of Resolution dated 17.10.1988 on the ground of cutoff date as above cannot stand valid in eye of law. Such decision of the respondents is arbitrary and illegal. 6. Resultantly, the office order dated 11.10.2017 passed by the Executive Engineer, Irrigation Department, Morbi, is

set aside. The respondents are directed to accord benefits to the petitioner in accordance with the conditions of Resolution dated 17.10.1988.

6.1 Necessary benefits shall be paid to the petitioner within a period of eight weeks from the date of service of copy of the present order. Failure on the part of the respondents to pay the due amount and the benefits to the petitioner would entail interest at the rate of 6% per annum from the date of filing of the petition, that is from 12.07.2019 till actual payment.

7. The petition is allowed in the aforesaid terms. Rule is made absolute accordingly. Direct service is permitted.â??

4. Considering the fact that the present petitioner is similarly situated employee, the petition deserves to be allowed.

5. Mr.Ishan Joshi learned AGP would contend that the stand of the department is correct. Once the reinstatement only happened in the year 2013, the respondents cannot be faulted to take a decision i.e. impugned in the petition.

6. However, considering the fact that the issue is squarely covered by the decision in case of Chandulal Mohanbhai (supra) and particularly the paragraphs which are reproduced herein above, the petition is allowed. The order dated 25.11.2019 is quashed and set aside. The respondents are directed to extend the necessary benefits to the petitioner in accordance with the resolution dated 17.10.1988 within a period of eight weeks from the date of receipt of copy of this order. Failure on the part of the respondents to pay the amount and the benefits to the petitioner, would entail interest @ 6% per annum on the ending of the period so stipulated.

7. The petition is disposed of in the above terms.â??

6. Similarly, in SCA No. 7531 of 2018, this court has passed the following order:

â??5.1 In PWD Employees Union through President v. State of Gujarat being Special Civil Application No.4662 of 2015, this Court relied on the aforesaid decision in Kutch District Panchayat (supra). PWD Employees Union (supra) had a similar set of facts wherein also the petitioners were denied the benefits of Resolution dated 17th October, 1988 on the ground that their appointments were subsequent to the date of Resolution dated 17th October, 1988.

6. Therefore, the petitioner could not have been denied the benefits under the Resolution dated 17th October 1988. He stands covered under the said

Resolution for the purpose of benefits flowing therefrom and the petitioner is entitled to the same. It was not the ground to be valid in law to deny the petitioner the benefit of Resolution dated 17th October, 1988 and incidental benefits that the petitioner was appointed subsequent to the date of Resolution, that is after 17th October, 1988.

6.1 Resultantly, the impugned order passed by the Executive Engineer, Irrigation and Maintenance Department, Rajkot, is set aside. The respondents are directed to accord benefits to the petitioner in accordance with the conditions of Resolution dated 17.10.1988. Necessary benefits shall be paid together with the arrears to the petitioner within a period of eight weeks from the date of service of copy of the present order. Failure on the part of the respondents to pay the due amount and the benefits to the petitioner would entail interest at the rate of 6% per annum from the date of filing of the petition, that is from 07.05.2018 till actual payment.

7. The petition is allowed in the aforesaid terms. Rule is made absolute accordingly. Direct service is permitted.

7. In view of the above orders and considering the fact that the present petitioner is similarly situated employee, the petition deserves to be allowed and the impugned order needs to be set aside.

8. Accordingly, the impugned communication dated 17.09.2018 is quashed and set aside. The respondents are directed to consider the past service of the petitioner prior to the date of termination as continuous for all purposes including pay, pay revision and pensionary benefits and extend the necessary benefits to the petitioner in accordance with the resolution dated 17.10.1988 treating the initial date of engagement of the petitioner as 1984 for all purposes within a period of eight weeks from the date of receipt of copy of this order. The petition is allowed in the above terms. Rule is made absolute accordingly.