

(2014) 09 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No. 12393 of 2014

PWD Employees Union

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 GUJ CK 0045

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Shimolee Jhaveri for Vidhi J. Bhatt, Advocate for the Appellant; D.M. Devnani, Asst. Government Pleader, Advocate for the Respondent

Judgement

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Abhilasha Kumari, J.—Rule. Mr. D.M. Devnani, learned Assistant Government Pleader, waives service of notice of Rule on behalf of the respondents. On the facts and in the circumstances of the case and with the consent of learned counsel for the respective parties, the petition is being heard and decided finally.

2. By preferring this petition under Article- 226 of the Constitution of India, the petitioners have, inter alia, prayed that the benefits flowing from the Government Resolution dated 17.10.1988 be granted to them.

3. Petitioner No. 1 is a registered Trade Union, bearing Registration No. 2382. Petitioner No. 2 is a member of petitioner No. 1-Union. Petitioner No. 2 is daily-wage worker working in the Forest Department of the State of Gujarat since the past several years. The individual details of the services rendered by petitioner No. 2 are given in the document at Annexure-A, at running page-32, to the petition. He has put in more than fifteen years of service in the Forest Department as daily-wager and has rendered continuous and uninterrupted service.

4. The petitioners assert that similarly situated daily-wagers have been granted

the benefits of the Government Resolution dated 17.10.1988. In State of Gujarat and Others Vs. PWD Employees Union and Others etc., , the Supreme Court has directed that the benefits of Government Resolution dated 17.10.1988 be conferred upon the daily-wagers working in the Forest and Environment Department, who have been working as such for more than five years. It is the case of the petitioners that petitioner No. 2 is squarely covered by the above-mentioned judgment of the Supreme Court, therefore, the prayers made in the petition be granted.

5. Ms. Shimolee Jhaveri, learned advocate for Ms. Vidhi J. Bhatt, learned advocate for the petitioners, has submitted that even though the Supreme Court has now ruled in favour of similarly situated persons, the State Government has not extended the benefits of the Government Resolution dated 17.10.1988, to the petitioners, so far. The review petition filed by the State Government in the Supreme Court against the above-mentioned judgment has now been dismissed by an order dated 29.01.2014 passed in Review Petition (C) Nos. 2826 and 2827 of 2013 in Civil Appeal Nos. 5321-5322 of 2013.

6. Mr. D.M. Devnani, learned Assistant Government Pleader submits that in view of the judgment of the Supreme Court, the respondents may be directed to examine the case of petitioner No. 2, so as to ascertain his entitlement to the benefits flowing from the Government Resolution dated 17.10.1988.

7. This Court has heard learned counsel for the respective parties and considered the material on record. The petition is squarely covered by the judgment of the Supreme Court in State of Gujarat and others Vs. PWD Employees Union (supra). The relevant paragraphs of the judgment are quoted hereinbelow:

"25. As per scheme contained in Resolution dated 17th October, 1988 all the daily wage workers were not entitled for regularization or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(iii) Daily wagers and semi skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition

to 14 misc. leave, Sunday leave and national festival holidays. He/she will be eligible for getting medical allowance and deduction of provident fund.

(iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly.

26. Considering, the facts and circumstances of the case, the finding of Gujarat High Court dated 29th October, 2010 in SCA No. 8647/2008 and connected matters and the fact that the said judgment is binding between the parties, we are of the view that the appellants should be directed to grant the benefit of the scheme as contained in the Resolution dated 17th October, 1988 to all the daily wage workers of the Forest and Environment Department working for more than five years, providing them the benefits as per our finding at Paragraph 25 above. The appellants are directed accordingly. The judgment and order passed by the learned Single Judge dated 29th October, 2010 as affirmed by the Division Bench by its order dated 28th February, 2012 stands modified to the extent above. The benefit should be granted to the eligible daily wage workers of the Forest and Environment Department working for more than five years including those who are performing work other than building maintenance and repairing but they will be entitled for the consequential benefit w.e.f. 29th October, 2010 or subsequent date from which they are so eligible within four months from the date of receipt/production of the copy of this order. The appeals stand disposed of with the aforesaid observation and directions to the appellant-State and its authorities. There shall be no separate orders as to costs."

8. The Review Petitions filed by the State Government against this judgment have now been dismissed by the Supreme Court vide order dated 29.01.2014, passed in Review Petition (C) Nos. 2826 and 2827 of 2013 in Civil Appeal Nos. 5321-5322 of 2013. In the view of this Court, there remains no impediment at all, on the part of the State Government in extending the benefits of the Government Resolution dated 17.10.1988 to the petitioner No. 2, subject to his fulfilling the requisite conditions.

9. In view of the above, the following order is passed:

The respondents shall examine the case of petitioner No. 2 and, if found eligible, shall extend the benefits of the Government Resolution dated 17.10.1988 to him, as per the directions of the Supreme Court. The needful be done within a period

of four months from the date of the receipt of a copy of this order.

10. The petition is allowed, to the above extent. Rule is made absolute, accordingly.