

(2020) 08 GUJ CK 0163

In the Gujarat High Court

Case No : R/Special Civil Application No. 7886 Of 2020

Ramesh Dalasukhbhai Mewasi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Bombay Civil Service Rules, 1959 — Rule 248
Industrial Disputes Act, 1947 — Section 25B

Citation : (2020) 08 GUJ CK 0163

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Shalin Mehta, Shikha D Panchal, K.M.Antani, Nirzar S Desai

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Heard Mr.Shalin Mehta learned Senior Advocate with Ms.Shikha Panchal learned advocate for the petitioner, Mr.K.M.Antani learned AGP

appearing for respondent Nos.1 and 2 and Mr.Nirzar Desai learned advocate for respondent nos.3 and 4.

2. Rule returnable forthwith. With the consent of the learned advocates for the respective parties, the present petition is taken up for final hearing.

3. The prayer in the petition is that the petitioner be extended the benefits of leave encashment at the time of retirement and counting of service from the date of joining for the purposes of pension and gratuity.

4. The issue no longer requires extensive consideration. It is undisputed that the petitioner joined the services as a daily wager on 12.03.1985 and

retired on 30.06.2016 rendering 31 years of service. It is also undisputed that the petitioner was also extended the benefits of Government Resolution

dated 17.10.1988 except those for which the petition is filed i.e. leave encashment and counting of service from the date of joining for the purposes of pension.

5. The issue has been reiterated and reconsidered by several decisions of this Court. The Division Bench of this Court in Letters Patent Appeal

No.1567 of 2018 and allied matters, by a judgment and order dated 28.12.2018, where the Division Bench confirmed the order of the learned Single

Judge which considered the relevant decisions in context of the prayers in this petition.

A. Leave Encashment at the time of retirement and death. -State of Gujarat and Anr. v. Mahendrakumar Bhagvandas and Anr. [2011 (2) GLR 1290]

[PARAS 2, 5 8]

B. Counting of service from the date of joining for the purposes of pension: Tribhovanbhai Jerambhai vs. Dy. Executive Engineer, Sub-Division, R&B

Deptt & Anr., reported in 1998 (2) GLH 1.,

6. The Division Bench has quoted that judgment in para 6 which reads as under:

“6. Next in line was the judgment in the case of Tribhovanbhai Jerambhai vs. Dy. Executive Engineer, Sub-Division, R&B Deptt & Anr., reported

in 1998 (2) GLH 1., wherein this Honâble Court in paras 9 and 10 observed as under:

“9. In the resolution dated 17.10.1988, it has been envisaged that those workman who as on 01.10.1988 or thereafter completes ten years of

continuous service to be counted in accordance with provisions of Section 25B of the Industrial Disputes Act shall be deemed to be permanent and

amongst other benefits conferred on being treated as permanent their age of superannuation was fixed at 60 years and they were made entitled for

pensionary benefit. By yet another resolution dated 30.05.1989 (Annexure-E) in which a specific query was raised at item No.(6) with reference to

resolution dated 17.10.1988 about the calculation of period of qualifying service for the purpose of entitlement to pension in connection with the

pensionary benefits made available to those daily wagers who are deemed to be permanent on completion of ten years of service and it was

specifically made clear that within the meaning of resolution dated 17.10.1988, the service which is to be counted is that which can be said as

continuous within the meaning of Section 25B with effect from the date of entry

in the service is duty counted for the purpose of pension and pension has to be accordingly determined. This does not say that qualifying service is to be counted with effect from date of becoming permanent. This leaves no room of doubt that the resolution dated 17.10.1988 along with clarification issued on the various aspects of it vide resolution dated 30.5.1989 is in consonance with the provisions of Rule 248 of the Bombay Civil Services Rules, 1959 which provide that Government has not only power by general or special order to permit service other than pensionable service, for performing which a Government servant is paid from State revenues or from a local fund, to be treated as duty counting for pension and in issuing such an order Government is to specify the method by which the amount of duty shall be calculated for the purpose of pension. Once the Government has made it clear that those who have completed ten years of service as daily rated workman are to be deemed permanent with effect from and after 17.10.1988 and are entitled to various benefits on that basis including pension and thereafter has provided by the resolution dated 30.5.1989 that the continuous service for the purposes of pension, made available to employees under resolution dated 17.10.1988, is to be counted with effect from the date of entry in the service provided it can be continuous within the meaning of Section 25B of the Industrial Act, thus making it clear that once a daily rated workman is treated to be permanent under the resolution dated 17.10.1988 his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularisation is taken into consideration for the purpose of computing pension or making pension available to such retired employee.

10. There is yet another aspect of the matter. Assuming that Bombay Civil Services Rules do not provide for grant of pension to those, who are not holding a permanent post in the service, then it must be held that daily rated workman working on daily wages, are ex cadre employees and not governed by particular service rules, but are governed by terms of employment under which they have been engaged. This further leads to conclusion that area of employment on daily wages is not covered by statutory rules either promulgated under Act 309 or by other legislature enactment. That is the area left uncovered by specific law, and such employment is in exercise of general executive powers of the State and terms and conditions of such

employment is governed by terms of order under which such employment is made and shall be further governed by orders made by State in exercise

of its executive power from time to time. The resolution dated 17.10.88 and 30.5.89 shall thus govern the terms of employment of such employees. If

considered from this view, the conclusion will be the same.â??

7. Mr.Nirzar Desai learned advocate for respondent nos.3 and 4 has taken this Court through the affidavit in reply filed to point out that the decision

has been taken in accordance with the order passed by this Court and the representation is rejected by the order dated 06.08.2020.

8. Registry to take on record the affidavit in reply.

9. The Division Bench has considered several decisions of this Court and the issue for which the petition is filed is covered by a decision in the case of

Mahendrakumar Bhagvandas (supra).

10. Accordingly, having considered the arguments of learned Senior Advocate Mr.Shalin Mehta, learned AGP Mr.Antani for the State and Mr.Nirzar

Desai for respondent nos.3 and 4, the order dated 06.08.2020 is quashed and set aside. The petition is allowed.

11. The respondents are directed to give benefits of leave encashment and recompute the pension and the pensionary benefits by counting service of

the petitioner from the initial date of his appointment i.e. 12.03.1985 and revise all the terminal benefits of the petitioner and pay such amounts within a

period of 8 (eight) weeks from the date of receipt of copy of this order. Rule is made absolute. Registry to communicate the order through E-mail.