

**(2022) 03 GUJ CK 0028**

**In the Gujarat High Court**

**Case No : R/Special Civil Application No. 18719 Of 2021**

Salambhai Mangalbhai Khant

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision : 09-03-2022**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25B

**Citation : (2022) 03 GUJ CK 0028**

**Hon'ble Judges : Biren Vaishnav, J**

**Bench : Single Bench**

**Advocate : Paresh J Brahmbhatt, Surbhi Bhati**

**Final Decision : Allowed**

## Judgement

Biren Vaishnav, J

1 Heard Mr.Paresh Brahmbhatt, learned advocate for the petitioner and Ms.Surbhi Bhati, learned Assistant Government Pleader for the respondents – State.

2 Rule returnable forthwith. Ms. Bhati, learned AGP, waives service of rule on behalf of the State-respondents.

3 The prayer in this petition is to direct the respondents to make payment of pension by counting his entire service from the date of joining. Facts in brief would indicate that the petitioner has retired from service on 31.05.2015 after serving the respondent No.2 for 37 years. It is his case that he has not been paid retirement benefits and leave encashment.

4 At the outset, as far as the benefits of leave encashment is concerned, since the issue is pending at large before the Hon'ble Supreme Court, for the present, reserving the liberty for the petitioner to claim such benefits subject to the outcome of the special leave to petition, the same is not decided.

4.1 Facts otherwise would indicate that the petitioner was serving as a rojamar

with effect from 21.01.1978. He had served continuously and uninterruptedly and was extended the benefits of the Resolution dated 17.10.1988. It is his case that initial service of 11 years has been not taken into consideration for the purposes of granting the benefits of pension. Reliance is placed on the decision in the case of Tribhovanbhai Jerambhai vs. Deputy Executive Engineer., reported in 1998 (2) GLH 1.

5 Ms. Surbhi Bhati, learned Assistant Government Pleader, relying on the reply filed on behalf of the respondents submitted that as per the communication dated 12.08.1991, the daily wagger employee is only entitled to the benefits as mentioned in the government resolution and not the benefits of leave encashment.

6 Considering the issue which was decided by this Court in a group of petitions, namely, Special Civil Application No.5988 of 2021 and allied matters vide order dated 04.02.2022, by which, the Court had followed the earlier orders, the petition is required to be allowed and the respondents be directed to consider the case of the petitioner and grant pensionary benefits from the initial date of appointment in accordance with the decisions of this Court in the case of Executive Engineer Panchayat (Maa and M) Department vs. Samudabhai Jyotibhai Bhedi., reported in 2017 (4) GLR 2952, which has been considered by the aforesaid order dated 04.02.2022. Paras 13 and 14 of the order reads as under:

"13. Additionally, when this Court has taken a note of that circumstance and as has been pointed out by learned counsel appearing for the respective parties, the Court has relied upon the decision delivered by the coordinate bench on 05.09.2018 passed in Special Civil Application No. 14504 of 2016 which is also based upon several other decisions and therefore, the Court deems it appropriate to reproduce relevant portion from the said decision as it is not disputed by either side. Paragraph Nos.4.1 to 8 deserve to be quoted hereunder: -

"4.1 Learned advocate for the petitioner could also successfully rely on decision of this Court in Balvantbhai Sardarbhai Pagi v. Deputy Engineer being Special Civil Application No.12350 of 2016 and allied petitions decided on 22nd May, 2016 taking the similar view.

5. In Executive Engineer, Panchayat v. Samudabhai Jyotibhai Phedi [2017 (4) GLR 2952], the Division Bench has laid down, upholding the decision of the learned Single Judge, that the past services of the dailywagers where they have completed 240days of continuous service as per Section 25B of the Industrial Disputes Act, would qualify for pension.

5.1 The Division Bench in Samudabhai JyotibhaiPhedi (supra) noticed the provisions of the Resolution dated 17th October, 1988 with reference to the nature of benefits flowing therefrom, in paragraph No.6 of the judgment stating as under:

"6.As is well known, under Government Resolution dated 17.10.1988, the Government decided to grant benefits of regularization and permanency to daily rated workers who had completed more than 10 years of actual service prior to such date, of course subject to certain conditions. One of the clauses in the said Government Resolution was that the benefit of regularization would be available to those workmen who had completed more than 10 years of service considering the provisions of section 25B of the Industrial Disputes Act. They would get benefits of regular pay scale and other allowances, pension gratuity, regular leaves etc. They would retire on crossing age of 60 years. That the period of regular service shall be pensionable."

5.1.1 It was stated that the Government verified and cleared the ambiguity in the Resolution,observing as under:

"7. This Government Resolution led to several doubts. The Government itself therefore came up with a clarificatory circular dated 30.05.1989, in which, several queries which were likely to arise were clarified and answered. Clause6 of this circular is crucial for our purpose. The question raised was that an employee who had put in more than 10 years of service as on 01.10.1988, would be granted the benefit of Government Resolution dated 17.10.1988. In that context, the doubt was whether for the purpose of pension, the past service of completed years prior to regularization would be considered or whether the pensionable service would be confined to the service put in by the employee after he is actually regularized. The answer to this query was that those employees who had put in more than 10 years of service as per Government Resolution dated 17.10.1988 would get the benefit of pension. For such purpose, those years during which the employee had fulfilled the provisions of section 25B of Industrial Disputes Act,such years would qualify for pensionary benefit."

5.1.2 The Court thereafter held,

"Two things immediately emerge from this clarification. First is that the query raised was precisely what is the dispute before us and second is that the clarification of the Government was unambiguous and provided that every year during which the employee even prior to his regularization had put in continuous service by fulfilling the requirement of having worked for not less than 240 days as provided under section 25B of the Industrial Disputes Act,would count towards qualifying service for pension. In view of the clarification by the government itself,there is no scope for any further debate. The petitioner was correct in contending that having put in more than 10 years of continuous service as a labourer in the past, he had a right to receive pension upon superannuation. This is precisely what the learned Single Judge has directed, further enabling the employer to verify as to in how many years he had put in such service and then to compute his pension."

5.2 Thus it is a clear position of law emerging from decision in Samudabhai Jyotibhai Phedi (supra) that entire past services of daily-wager which was

continuous is liable to be reckoned for the purpose of pensionary benefits and for the purpose of granting pension. In the facts of the case of the petitioner, the factum is not controverted and it is undisputed that the petitioner has throughout worked since his joining, to make his services continuous.

6. The only reason put-forth by the authorities to deny the petitioner the pension is that after he was made permanent, he has not completed 10 years of qualifying service, however if the date of joining of the petitioner which is 12th December, 1986 is considered, the petitioner has evidently completed the qualifying period to be entitled to pension as per the law laid down in Samudabhai (supra).

6.1 The decision on part of the authorities reflected in communication dated 18th July, 2016 that the petitioner had not completed 10 years of service since the date of becoming regular from 01st December, 1999 cannot stand in eye of law to deny the pensionary benefits to the petitioner. The entire service period right from the date of joining till the petitioner retired on 30th September, 2012, is liable to be counted and the pension is required to be paid accordingly. The present petition has to succeed.

7. For the foregoing reasons and discussion, it is hereby declared that the action on part of the respondents in not making payment of pensionary benefits to the petitioner and in not counting the entire length of services of the petitioner from 12th December, 1986 till 30th April, 2012 is arbitrary and illegal. The respondents are directed to fix the pension of the petitioner counting his entire service period from 12th December, 1986 till the date of retirement. The petitioner is also held entitled to all other retirement benefits including leave encashment and difference of gratuity, as may be payable. The total amount payable towards pension to be calculated as above, the arrears arising there by and the other retirement benefits including those mentioned hereinabove, shall be paid to the petitioner within a period of six weeks from the date of receipt of this order.

8. It is provided and directed that if the amount is not paid within stipulated period of six weeks, it shall carry interest at the rate of 6.5% from the date of filing of this petition. The respondents are further directed to continue to pay the pension to the petitioner duly calculated as above."

14. From the aforesaid observations which are made by the Coordinate Bench relying upon the various decisions, there is no reason for this Court to deviate from the aforesaid preposition of law. The past services rendered by the petitioners where they have completed 240 days of service as per Section 25B of the ID Act would qualify for pension as laid down by the Division bench in case of Executive Engineer, Panchayat V. Samudabhai Jyotibhai phedi (2017 (4) GLR 2952). Hence, keeping that in mind, a case is made out by the petitioners. Even, recently, this Court relying upon the same, has also dealt with yet another petition being Special Civil Application No.19374 of 2018 and other allied matters decided on 17.12.2020. The said decision has been confirmed by the Division

bench in LPA No.470 of 2021 and other allied group appeals by order dated 22.06.2021. In a recent decision passed in SCA No.15110 of 2020 and other allied matters decided on 03.09.2021, the similar preposition has been laid down. The said decision has been confirmed with modification in group of appeals being LPA No.884 of 2021 and allied appeals by order dated 12.10.2021. Paragraph No.6 of the said common oral order reads thus:

“6 In the above view, all the present Letters Patent Appeals are disposed of by modifying the directions of learned single Judge in the impugned judgment and order, in particular contained in para 10, by clarifying that the benefits accorded and directed to be paid to the petitioners of retirement dues and others allowances such as Transport Allowance, Traveling Allowance, Transfer Traveling Allowance, Leave Encashment and Leave Travel Concession shall be counted and paid in respect of those years only in which the petitioners – the employees concerned have completed 240 days of service. The directions of learned single Judge in all cases shall operate accordingly and with such qualification”

7 In view of the foregoing discussion, it is declared that the action on the part of the respondent authority in not making payment of pensionary benefits to the petitioner and in not counting the entire length of service from his initial date of employment is illegal and not sustainable. The respondents are directed to fix the pension of the petitioner by counting his entire service from the date of initial appointment and pensionary benefits be paid accordingly. The petition is allowed to the aforesaid extent. Rule is made absolute to the above extent.