
(2000) 01 GUJ CK 0024
In the Gujarat High Court
Case No : L.P.A. No. 1196 of 1999

Shankerji Cheljaji Thakor

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F

Citation : (2000) 2 LLJ 239

Hon'ble Judges : B.C. Patel, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : I.S. Supehia, for the Appellant;

Judgement

1. This Letters Patent Appeal arises out of the order passed by the learned single Judge in Special Civil Application No. 3965 of 1999. The petitioners contended that their services are pensionable and their services cannot be terminated without following the procedure.

2. 14 persons, by filing a joint petition approached this Court by making a statement that they were working as Rojamdars (daily wagers) since 1970. In the petition, the period of service is not clearly set out so as to say that they have completed particular period as mentioned in the Resolution/Notification published by the Government of Gujarat through its Roads and Building Department being resolution No. WCE 1588/5/I-G. 2 dated October 17, 1988. The period of service or the days for which they worked in a particular year is not mentioned anywhere in the petition. So far as the nature of the work is concerned, they have come out with a case that they were engaged in the cleaning of canals by taking out mud which used to accumulate occasionally in the canal. They also used to clean the opening and closing the water outlets to the smaller canals, repair of the canals, trimming of the three branches, etc. Relying on the aforesaid notification, the petitioners have averred that those who have completed the period of service between 5 and 10 years are entitled to get monthly fixed salary and those who have completed more than the aforesaid

period are entitled to get pay scale and other benefits like pension, gratuity, etc. The petitioners have stated that all the petitioners were appointed before October 1, 1988 and hence their services cannot be terminated but are required to be regularised in terms of the aforesaid resolution. They prayed for pension. Reliance has been placed by the petitioners on the decision of the learned single Judge delivered in Spl. C.A. No. 2836/1998 on August 27, 1998 wherein according to the petitioners, the learned single Judge while deciding the petition has held that the services as a daily wager is pensionable. The petitioners have also pointed out that the learned single Judge has relied on the judgment of the Division Bench delivered in L.P.A. No. 1495 of 1997 on August 6, 1998. The petition is sworn by petitioner No. 3 alone.

3. When a grievance is raised by a citizen by filing a petition under Article 226 of the Constitution of India, he is required to file a petition giving all necessary details and all the relevant facts in separate paragraphs and he has to narrate the facts on oath prescribed in the rules framed by the High Court. Different petitioners have started working in different years and whether they have put in more than 5 years but less than 10 years of service as on October 1, 1988 or more than 10 years of service in accordance with the provisions of Section 25-B of the Industrial Disputes Act (hereinafter referred to as the ID Act) can be averred by each petitioner by placing necessary material before the Court. In the instant case, a vague statement is made that the petitioners were working as daily wagers since 1970. In the petition, it is not even pointed out as to since which date a particular petitioner rendered his services as a daily wager. It is also not stated as to for how many days services were rendered. It is also not stated whether petitioners worked continuously for more than 10 years and in each such year for 240 days or more. Thus a vague petition is filed which has rightly been not entertained by the learned single Judge.

4. Before the learned single Judge, two contentions were raised, viz. (1) their services were wrongly terminated, and, (ii) the respondent did not permit the petitioners to complete 240 days in a year for five years with a view to see that they do not get the benefit of the resolution; therefore it was the duty of the State Government to regularise their services.

5. Vague statements are made in the petition. The State acts through its executives. Petitioners are the only persons who can say that which officer, despite the work available, did not employ them and employed others. For the benefit of pension, one was required to have worked for more than 10 years continuously and in each year at least 240 days. It was for the petitioners to place on record necessary material as to who did not offer the work despite the availability of work. After October 1, 1988, if one has worked, that is not required to be considered for availing the benefit of the resolution.

6. Learned single Judge examined the arguments and pointed out that the facts are disputed for which evidence is required to be recorded for arriving at a just conclusion. Learned single Judge, considering the material placed on the record,

arrived at a conclusion that the petitioners have not completed 240 days in a year for five years. Learned single Judge also considered the submissions made by the State Government that if no work is available in the project concerned, their services can be terminated, and in fact work being not available, services were terminated after giving the benefit u/s 25-F of the ID Act. Not only that, but the learned Additional Advocate General appearing for the State made a statement before the learned single Judge that as and when work is available in the order of the seniority, work will be offered to the petitioners. It was also stated before the Court by the respondents that the list of the daily wagers who were not given work shall be prepared and in the project, in the order of seniority, which will be notified on the Notice Board under a copy to the persons concerned, and as and when work is available work will be offered in the order of seniority. Learned single Judge rejected the petition also on the ground that efficacious and alternative remedy is available to the petitioner.

7. It would be relevant to refer to the resolution placed on record by the State Government, being Resolution No. WCE/1588/5/I-G2 dated October 17, 1988, which read as under :-

"The Gujarat State Employees Federation, Gujarat, P.W.D. Labour Court and other different Unions have often made representations before the Government on the issues pending from long time and demands of daily wager labourers working under different departments of the State Govt. Therefore, the Govt. constituted a Committee under the Chairmanship of Shri. Dolatbhai Parmar, Hon. Minister of R & B Department vide Resolution No. WCE/1588(5)/G.2 dated March 24, 1988 to study the Policy level demands and to examine the problems raised by the labour unions and to make suitable recommendations. The Committee submitted its report after scrupulously and carefully examining and considering the issues about wages, service matters and other facilities if the daily wager labourers and workmen working in different departments mainly, viz. Road & Building Department, Water Resources Dept., Forest Deptt., Agriculture Deptt., Narmada Development Deptt., Water Supplies Deptt., Panchayat & Rural Housing Dev. Deptt., and other departments engaged for the purpose of repairing and maintenance of the constructions."

Resolution

8. The report submitted by the Committee have been taken into consideration by the Govt. and accordingly it has been decided that all recommendations of the Committee are to be accepted. In pursuance of the same, it is hereby resolved to grant the following wages and service related other facilities to the daily wage labourers working under different Departments in the State.

(1) The daily wage labourers who have put in less than 5 years service as on October 1, 1988 will be paid the daily wage as per the prevailing Minimum Wages Rules. On completion of 240 days presence in the first year of service, the benefits of holidays on Sundays, medical facilities and National holidays will be

admissible.

(2) The daily wage labourers who have put in more than 5 years, but less than 10 years service as on October 1, 1988 in accordance with provisions of Section 25-B of the Industrial Disputes Act, will be entitled to the daily wage for their working days and Sundays calculated on the basis of monthly fixed pay of Rs. 750/- plus existing dearness allowance. In addition, the benefit of total 14 days Casual Leave including two optional leaves, Holidays on Sunday and other National holidays with pay, medical facilities and deduction towards general provident fund will also be admissible.

(3) The daily wage labourers who have put in more than 10 years service as on October 1, 1988 in accordance with provisions of Section 25-B of the Industrial Disputes Act, will be treated as permanent Daily Wage Labourers and such permanent labourers shall get the pay scale of Rs. 750-940 and shall be paid pay, dearness allowance and CLA. It is hereby resolved also to grant them the benefits of pension, gratuity, general provident fund etc. as per the existing rules. Moreover, they will be eligible to get in a year 14 days Casual leave including 2 days half pay leave, holidays on Sundays and other National holidays. The retirement age of such labourers will be 60 years. The period of their regular service shall be pensionable.

(4) xxx xxx xxx xxx xxx

2. The recruitment of new daily wagers is completely banned from now onwards. If any officer recruits any new daily wagers, he will be held responsible and payments made to such daily wager will be liable to be recovered from the salary of the concerned responsible officer.

3. Since the Government has decided to implement the recommendations of the Committee with effect from October 1, 1988, these orders are to be implemented with effect from October 1, 1988.

4. xxx xxx xxx xxx xxx

9. From the statement at Annexure II to the affidavit filed by Mr. P. K. Parmar, Executive Engineer, in the Special Civil Application on behalf of the respondents, it becomes clear that :

(i) The Petitioner No. 1 has not completed 240 days in any year till October 17, 1988. However, subsequently, he was offered work in the years 1990, 1991, 1992 and 1995, and in these years, he worked for 240 days in each year.

(ii) Petitioner No. 2 has worked for 240 days only in the year 1984, i.e. before the commencement of the resolution. However, after the commencement of the resolution, he worked only once in the year of 1992 for more than 240 days.

(iii) Petitioner No. 3 started working from 1979 and in the year of 1983 only he worked for more than 240 days till the date of the resolution. Thereafter, he has worked only once for 240 days in the year 1995.

(iv) Petitioner No. 4 started working as a daily wager in the year 1985. He did not work for a single day in 1986. In the year 1987 and 1988, on account of scarcity, work was offered and he worked for 277 and 322 days in each year. However, thereafter he has not worked in any year for 240 days.

(v) Petitioner No. 5 did work for more than 240 days in the years 1984 and 1985. Even in 1991 he worked for 335.5 days.

(vi) Petitioner No. 6 started working in 1978 and worked for 307 days in 1979, and 272 days in 1985. He did not work for a single day in 1982. After the date of the resolution, he worked in the year 1990 and 1992 for more than 240 days in each year.

(vii) Petitioner No. 7 though started working as a daily wager in the year 1975, he did not work for a single day in 1982 and 1986. He worked only once in 1981 for 240 days. After the resolution, he worked in 1990, 1991 and 1995 for more than 240 days.

(viii) Petitioner No. 8 commenced working in 1978 and did not work for a single day in 1980, 1981 and 1982. He worked for more than 240 days in the year 1984. However, he did not work for a single day in the year 1987. After the resolution he worked only in the years 1990 and 1992 for more than 240 days.

(ix) Petitioner No. 9 started working as a daily wager in the year 1979. He did not work in the year 1981 till the date of the resolution. In the years 1984 and 1985, he worked for more than 240 days. After the resolution, he worked twice for more than 240 days in the year 1990 and 1991.

(x) Petitioner No. 10 started working in the year 1984. He did not work for any day in 1987 and 1988. Before 1988 even he did not work in a single year for more than 240 days. Even thereafter, he worked only in the years 1991 and 1995 for 240 days or more.

(xi) Petitioner No. 11 started working in the year 1984. Thereafter he stopped working and again worked for few days in the year 1988. Thus, till the date of resolution, he did not work in any year for 240 days. After the resolution he worked in the year 1991, 1992 for more than 240 days.

(xii) Petitioner No. 12 though started working in the year 1976, he worked only for few days till 1980. Thereafter he stopped working and worked for few days in 1983 and 1984. Again he stopped working. He has worked for more than 240 days only in the years 1991 and 1995.

(xiii) Petitioner No. 13 started working in 1976 and stopped working in 1978. He worked for few days in 1971 and then again stopped working. In 1981, he worked for 12 days and again stopped working in 1982. He has worked for more than 240 days only in 1984 and 1991.

(xiv) Petitioner No. 14 started working in the year 1979 and in 1982 and 1983, he did not work for a single day. Except in 1991 and 1992 for 310 and 247 days,

he has not worked for 240 days in any year.

10. Looking to the chart, it is clear that the petitioners did not work in the manner laid down in the resolution so as to entitled them to get the benefit. It is also clear that considering the first five years and the period of five years to ten years, none has worked for more than 240 days in a year for five years in all. If on October 1, 1988 one has not worked for more than 10 years continuously and 240 days in each such year, one would not get benefit of the resolution.

11. Looking to the aforesaid chart, it becomes clear that there is no consistent figure so far as the working is concerned. Thus, it becomes clear that as and when there was work, work was offered. It may equally be possible that the persons residing in the villages may not be available in a particular season as they might have worked as an agriculturist or as agricultural labourers. That apart, looking to the chart, it is clear that not a single petitioner has completed the period as mentioned in the resolution. Keeping the aforesaid dates in mind, if the daily wager who has put in less than 5 years service as on October 1, 1988 was entitled to get minimum wages as per the rules prescribed under the Minimum Wages Rule, and only on completion of 240 days presence in the first year of service, the benefits of holidays on Sundays, medical facilities and national holidays will be admissible. What is important is that the daily wage labourer who has put in more than 5 years but less than 10 years service as on October 1, 1988 in accordance with the provisions of Section 25-B of the ID Act, then he was entitled to get certain benefits.

12. Section 25-B of the ID Act gives the definition of continuous service. The relevant portion reads as under :-

25-B(1) A workman shall be said to in continuous service for a period if he is, for that period, in uninterupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case.

13. Learned single Judge while rejecting the petition, keeping in mind the aforesaid provisions rightly arrived at a conclusion and it would be for the

appropriate Court to decide the disputed question such as whether the petitioners completed 240 days in a year as contemplated under the Act or not.

14. Relying on the decision dated August 6, 1998 of the Division Bench in the case of Chhagganbhai Ranchhodbhai Rathod v. Dy. Executive Engineer (Coram : K. G. BALAKRISHNAN, C.J. and J. M. PANCHAL, J.) it was submitted that this Court should also allow the petition. In that case, the sole petitioner commenced working in the year 1968-69 and till the date of the resolution worked for atleast in 14 years for more than 240 days. Clause (3) of the aforesaid Resolution requires that a daily wage labourer who has put in more than 10 years continuous service as on October 1, 1988 in accordance with provisions of Section 25-B of the ID Act will be treated as permanent Daily Wage Labourer and benefits available to permanent labourers shall be available to such person. The Division Bench in the aforesaid case pointed out that for 14 years, the daily wager had worked for more than 240 days in a year. The Division Bench also considered the fact that the appellant served as a daily wager for about 21 years and retired from service on October 13, 1989. As regards the break in service, the Division Bench observed that :

"Having regard to the facts of the case, even there were some small breaks in service of the appellant which had taken place in the years 1980-81 and 1981-82, they have been condoned by the respondents for the purpose of retiral benefits."

15. It thus appears that in the facts and circumstances of the case, the Division Bench held that the appellant had worked for 240 days in a year and worked as such continuously for 10 years and was entitled to pension. Thus, looking to the fact that out of the 21 years of service, the daily wager worked for more than 240 days in each year for such 10 years continuously and in all for 14 years, the Division Bench granted him the benefit. At the same time, the Division Bench was of the opinion that the appellant had completed 240 days of work continuously for 10 years in which he had worked for more than 240 days and small break was condoned. Thus Division Bench also, while considering the fact that benefit should be granted or not propounded that for the benefit of the scheme one must have continuously worked for 10 years and in each such year for 240 days.

16. In the case before us, not a single workman has satisfied the requirements of clauses (2) and (3) of the Resolution dated October 17, 1988. In this situation the judgment of the Division Bench referred to above, is of no avail to the petitioners. On the contrary, the case helps the other side.

17. Learned advocate has also placed reliance on the decision of the learned single Judge in Special Civil Application No. 2836 of 1998. In that case, from February 1979 till 1986 the person was working as daily wager. He worked only 1750 days. Learned counsel appearing in the petition restricted the claim of the petitioner from 1979 instead of November 1, 1960. There is nothing to show in

judgment that in any year he worked for 240 days. However, the question before the learned single Judge was whether this period should be taken into consideration or not while granting other benefits. In the absence of details in that case about the continuous service as contemplated in the resolution, it would be very difficult for us to say that the petitioner before the learned single Judge was entitled to get the benefit or not. In the absence of details, it will not be possible for us to say either way. Suffice it to say that the learned single Judge has followed the decision of a Division Bench in L.P.A. No. 1495/1997, and held "that the appellant in that case who completed 240 days and was continuously in service for a period of more than ten years as Rojamdar is entitled to get the benefit of pension". As none of the petitioners before us has continuously worked for more than 10 years for atleast 240 days in a year, petition is without any merit. In the opinion of the Division Bench, if the workman had completed 240 days in a year continuously for more than 10 years, would be entitled to benefit of pension. Thus, it is very clear that for the benefit of pension, one must have worked atleast for 240 days in each year for more than 10 years continuously as on October 1, 1988 as held by the Division Bench. We are in agreement with the views expressed by the Division Bench.

18. In view of what is stated hereinabove, the learned single Judge has rightly dismissed the petition.

19. It is required to be noted that the Irrigation Department cannot be said to be an "Industry" within the meaning of the definition of the Executive Engineer (State of Karnataka) Vs. K. Somasetty and others, , Union of India (UOI) Vs. Jai Narain Singh, and State of Himachal Pradesh Vs. Suresh Kumar Verma and another, which are referred in the aforesaid case of K. Somasetty. The Apex Court in the case of K. Somasetty (supra) pointed out that :

"The function of public welfare of the State is a sovereign function. It is the constitutional mandate under the Directive Principles that the Government should bring about welfare State by all executives and legislative actions. Under these circumstances, the State is not an "Industry" under the Industrial Disputes Act. Even otherwise, since the Project has been closed, the respondent has no right to the post since he had been appointed on daily wages."

20. It is required to be noted that the fact that the State is duty bound to carry out its sovereign function, with a view to streamline the work that can be given regularly to the persons, a resolution of the State has been placed on record. It is very clear from the averments in the petition itself that the petitioners were mainly looking after the repairs of the canal, etc. Thus, they were engaged for the purpose of repairing and maintenance and the construction of canals. With a view to see that the persons who have worked for a longer period and who have consistently worked for atleast more than 240 days in a year continuously for a period of more than 10 years, by passing a resolution, the State extended the benefit. For getting the benefit, it is necessary that the person must have, if in the service, worked as contemplated in the resolution. As observed by the

Division Bench, while deciding the L.P.A. held that daily worker who has continuously worked for more than 10 years, and in each year atleast for 240 days, is entitled to the benefit of pension. Such a situation being not present in the instant case, therefore, following the Division Bench's judgment, this L.P.A. must be dismissed, and is hereby dismissed.

21. In view of the dismissal of the L.P.A. Civil Application No. 10337/1999 therein does not survive, and stands disposed of accordingly.