

(2023) 07 GUJ CK 0029

In the Gujarat High Court

Case No : R/Special Civil Application No. 14057 Of 2022

Sida Rasidaben Osmanbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2023) 07 GUJ CK 0029

Hon'ble Judges : Mauna M. Bhatt, J

Bench : Single Bench

Advocate : Ashlesha M Patel, Sahil Trivedi

Final Decision : Disposed Of

Judgement

Mauna M. Bhatt, J

1. Rule returnable forthwith. Learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondent – State.

2. This petition under Article 226 of the Constitution of India is filed with the following prayers: -

“(A) Your Lordships be pleased to issue an order, writ in the nature of mandamus and or Certiorari or any other appropriate writ /order or direction declaring the impugned action of respondents in not computing the pension as well as gratuity and other retiral benefits from date of initial appointment of the husband of petitioner which is discriminatory, illegal, unjust, arbitrary and violation of Article – 14 & 16 of Constitution of India.

(B) Your Lordship be pleased to direct respondent department to revise the pension as well as gratuity and other retiral benefits calculating the period from the date of initial appointment of petitioner i.e. 21.10.1980 till death of petitioner’s husband i.e. 20.01.2021 as per settled law and further direct to pay arrears with 12% interest.

(C) Your Lordship be pleased to pass any other further order as may be deemed fit, just and proper in facts and circumstances of the case and in the interest of justice.”

3. Heard learned advocate Ms. Ashlesha Patel for the petitioner and learned Assistant Government Pleader Mr. Sahil Trivedi, for the respondent – State.

4. Learned advocate for the petitioner submitted that the issue in the present petition pertains to grant of benefit of 300 days unavailed earned leave and not calculating the retirement benefits of the petitioner from the date of appointment. The prayers in relation to other benefits, if any, referred in this petition, is not pressed at this stage.

4.1 She further pointed out that the issue involved in the present petition which is in relation to payment of leave encashment for 300 days leave as also counting the retirement benefits available to the deceased husband of the petitioner from the date of appointment, is no more res-integra in view of decision of Hon’ble Supreme Court dated 01.09.2022, in Special Leave Petition (C) No. 7229 of 2022. Learned advocate for the petitioner submitted that deceased husband of the petitioner was working with the respondent No. 3 department for more than 3 decades and had retired upon attaining the age of superannuation and therefore considering his continuous service, deceased husband of the petitioner is entitled for the benefits of leave encashment as well as pension and gratuity.

4.2 She pointed out that in the Government Resolution dated 24.01.2023, of Road and Building Department, Sachivalaya, Gandhingar the State Government has resolved as under:

“At the end of active deliberations, subject to the following conditions, it is hereby prescribed to pay gratuity to the daily wagers working in offices under various departments of the State within the maximum limit of 33 (thirty-three) years as per the Resolution dated 21.10.2020 of this Department:

(1) The concerned Department will have to check the eligibility of the daily wagers as per the Payment of Gratuity Act, 1972, of the Government of India.

(2) The order of this Department will also apply to the cases of retired/deceased daily wagers/work-charge employees after issuance of the resolution dated 24.03.2006 of this Department.

(3) The concerned Department will have to pay gratuity to the daily wagers/work-charge employees, for the services rendered before becoming permanent, upon verifying their eligibility as per the resolution dated 21.10.2020 of this Department. Whereas, the payment of gratuity for the pensionable services after becoming permanent will be made by the Director, Pension & Provident Fund Office. The Department will ensure that the gratuity is paid within the maximum limit of 33 years by counting both the services together and in any case no double payment is made.

(4) The payments made to the daily wagers/work-charge employees under the Resolution dated 21.10.2020 of this Department before issuance of this order will not be reopened.”

5. The above factual position could not be controverted by learned Assistant Government Pleader for the respondent – State.

6. In view of the abovesaid position, this Court deems it appropriate to direct the respondents to undertake scrutiny of cases of deceased husband of the petitioner herein, and upon such scrutiny, if deceased-employee found eligible then a proposal shall be forwarded to the State Authorities in this regard and thereafter, the State Authority shall consider proposal of of the petitioner herein expeditiously and in consonance with the State policy.

7. It is reported that in many of such matters, the concerned department has already moved a proposal to the State Government in this regard. However, wherever such proposal is not moved, the same shall be moved by the concerned department within a period of eight weeks from the date of receipt of copy of writ of this order.

8. The aforesaid exercise shall be completed within a period of twelve weeks from today.

9. With the aforesaid, the petition stands disposed of. Rule made absolute to the aforesaid extent. Direct service is permitted.