

(2011) 07 GUJ CK 0061

In the Gujarat High Court

Case No : Letters Patent Appeal No. 2978 of 2010 in Special Civil Application No. 4381 of 2010 and Civil Application No. 15789 of 2010 in Letters Patent Appeal No. 2978 of 2010

State of Gujarat and Others

APPELLANT

Vs

Keshubhai B. Raval and Others

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32
Industrial Disputes Act, 1947 — Section 25B

Citation : (2011) 07 GUJ CK 0061

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : N.J. Shah, Asstt. Government Pleaders 1-3, for the Appellant; T.H. Sompura, for Respondents 1-11, for the Respondent

Final Decision : Allowed

Judgement

G.B. Shah, J.—This intra court Letters Patent Appeal has been preferred by the Appellant, State of Gujarat challenging the order dated 11.5.2010 passed by the learned Single Judge in Special Civil Application No. 4381 of 2010.

2. Heard Mr N.J. Shah, learned AGP for the Appellant and Mr T H Sompura, learned Counsel for the Respondents. The facts of the case in brief are as under:

The Respondents - original Petitioners have joined the services as daily wagers with the Respondent No. 2. They have passed SSC Examination. Different Associations and Unions of Daily Wager workmen raised several demands before the Government pursuant to which a one man Committee under the Chairmanship of Shri Dolatbhai Parmar, the then Minister of Roads and Buildings Department came to be appointed by the State Government. In the year 1988, pursuant to the report submitted by the aforesaid Committee a bi-partite agreement came to be entered into between the Government and the various associations. By Resolution dated 17.10.1988 of the Government, a scheme for

regularization of the daily wagers according to their service came to be framed by the Government and the daily wagers were granted benefit of the said and were placed in the minimum pay scale of Rs. 750-940. Moreover, one of the demands of the daily wagers and their Associations was to give pay scale of Class III posts to those daily wagers who have passed SSC examination and were working for a considerable long time. By another Resolution dated 1.5.1991, the Government reiterated that on completion of seven years of service by the daily wagers who have passed SSC Examination, they should be given clerical work on class III posts in the pay scale of Rs. 950-1500. By communications dated 7.1.1994 and 27.6.1994 it was made clear that those who have completed seven years of service after 1.5.1991 and have passed SSC Examination should be paid pay scale of Rs. 950-1500. On 5.2.2001 representations were made by the Respondents with regard to fixations of their salary. Thereafter the Respondents filed Special Civil Application No. 8302 of 2007 with 8303 of 2007 to 8314 of 2007 before the learned Single Judge. The learned Single Judge, by order dated 29.3.2007 directed the Appellant to consider the case of the Respondents as per Government Resolutions dated 1.5.1991, 7.1.1994 and 27.6.1994. It was also made clear by the learned Single Judge that if the Respondents were entitled to the benefit as per the Government Resolutions, pay scale of Rs. 950-1500 may be extended to them. It was also made clear in the order that case of the similarly situated 5000 permanent daily wagers where benefits were extended as they had completed more than 7 years and had passed SSC also should be considered. The Appellants accepted and complied with the order of the learned Single Judge and fixed the pay scale of the Respondents in the pay scale of Rs. 950-1500 which is of class III employees as per Government Order No. AHS/1107/SCA-8/p2 dated 24.8.2009 and calculated the same from the date of the order i.e. 29.3.2007 without paying arrears. The Respondents being dissatisfied with the action of the Government, approached this Court with a prayer to fix the Respondents in the pay scale of Rs. 950-1500 corresponding pay scale of Rs. 3050-4590 as per 5th Pay Commission and Rs. 5200-20200 as per 6th Pay Commission Recommendation to the Respondents from the date of completion of seven years of their service as daily wagers and to pay all consequential benefits including arrears. The learned Single Judge again directed the Appellants to fix the pay scale of the Respondents-original Petitioners in pay scale of Rs. 950-1500 corresponding to pay scale of the 5th and 6th Pay Commission from the date of completion of seven years of their service as per the letters/instructions dated 7.1.1994 and 27.6.1994 and to pay all consequential benefits including arrears within a period of two months. The said order of the learned Single Judge is challenged in this Letters Patent Appeal.

3. Learned A.G.P, Mr N J Shah has submitted that the Government Resolution dated 1.5.1991 has been issued by the Roads and Buildings department for their employees and it is not clear from the said Government Resolution dated 1.5.1991 that whether it is applicable or not applicable to the Agriculture and

Cooperative Department. In fact, no scheme has been framed by the department in connection with the said Government Resolution. Likewise, the letters dated 7.1.1994 and 27.6.1994 are not instructions but it was written by the Roads and Building department which are internal correspondence and it is nothing but an opinion only. He has then submitted that after the order dated 29.3.2007 passed by the learned Single Judge in Special Civil Application No. 8302 of 2007 with 8303 to 8314 of 2007 and in compliance of the same, a Government Order No. AHS/1107/SCA-8/P2 dated 24.8.2009 was passed and the department had followed the same and passed an order No. Prasa/Rojamdar/2007/1(21)/14859-88/2009 dated 19.9.2009. On perusal of Government Resolution dated 1.5.1991, it is clear that the daily wagers are entitled to the pay scale from the date of allotment of the work of Class III cadre and as the work has been allotted to the Respondents from the date of the order of payment thereof, prior to the appointment is contrary to the Resolution dated 1.5.1991 itself and as such the Respondents are not entitled to the pay scale for which they have not worked at all. He has finally submitted that the Appellants have complied with the earlier directions given by the learned Single Judge and fixed the Respondents in the pay scale of Rs. 950-1500 and calculated the same with effect from 29.3.2007 which is the date of order and hence the question of paying the arrears for the period the Respondents have not worked does not arise and accordingly this appeal deserves to be allowed.

3.1. The relevant portion of order dated 29.3.2007 passed by the learned Single Judge in Special Civil Applications No. 8302 of 2007 with 8303 of 2007 to 8314 of 2007 reads as under:

In view of the aforesaid facts, it is directed to the Respondent to consider the case of the Petitioners whether they are entitled for the benefit of Government Resolution dated 1/5/1991 as clarified on 7/1/1994 and 27/6/1994 or not, and whether similar situated other employees those who are working as Daily wager completed more than 7 years and SCC pass where extend the benefit of pay scale of Rs. 950 - 1500 or not and then to examine the grievance of the Petitioners accordingly and pass appropriate reasoned order in accordance with law within a period of three months from the date of receiving the copy of this order and communicate the decision immediately to the Petitioners.

However, it is made cleared that if the grievance of the Petitioners found to be genuine and according to the Respondent, Petitioners are entitled for the benefit of pay scale of Rs. 950 - 1500, then same may be extended in their favor.

However, it is also made cleared that in case if Respondent State Government has found on record that similarly situated other 5000 Daily wager, where benefits were extended by the Respondent, those who are working as Daily wager and completed more than 7 years and SCC pass then the case of the Petitioners to be considered and found to be genuine then State Government may extended the benefit accordingly in their favor.

In view of the above observations and directions, present petitions are disposed of without expressing any opinion on merits.

However, in case if ultimate decision is adverse to the Petitioners, it is open for the Petitioners to challenge the same before appropriate forum in accordance with law.

4. Learned Counsel Mr T H Sompura appearing for the Respondents submitted that as per Government Resolution dated 17.10.1988 the scheme for regularization of the daily wagers according to their period of service came to be framed and the Respondents were placed in the pay scale of Rs. 750-940. As per the Government Resolution dated 1.5.1991 and the subsequent communications dated 7.1.1994 and 27.6.1994, on completion of seven years the daily wagers who have passed SSC examination were entitled to clerical work on post of class III and should be given pay scale of Rs. 950-1500. He has submitted that it is amply clear from the said Government Resolutions that the Government has categorically decided to grant the pay scale of Rs. 950-1500 to those permanent daily wagers who have passed SSC examination irrespective of whether they are given appointment on Class III posts or not and accordingly more than 5000 daily wagers of the above category are entitled to the said pay scale. The learned Counsel has further submitted that the Government accepted the order of the learned Single Judge by fixing pay scales of the Respondents with effect from 29.3.2007 which is the date of the order without paying arrears. As arrears have not been paid by the department from the date on which the daily wagers have completed seven years of their service, they have again approached the learned Single Judge and the learned Single Judge has specifically given direction that the Respondents have to be paid all consequential and incidental benefits including arrears within a period of two months from the date of receiving copy of the order. He has vehemently argued that the order passed by the learned Single Judge has not been complied with by the Appellants in its true spirit and that the Respondents are entitled to arrears from the date they completed seven years of service as daily wagers.

5. The Government had issued Government Resolution dated 17.10.1988 wherein the claim for regularization of the daily wagers according to their period of service came to be framed. As per the say of the Respondents, they were granted benefit of Government Resolution dated 17.10.1988 and were placed in the minimum pay scale of Rs. 750-990. At that point of time it was also the demand of the daily wagers and their Associations to give pay scale of Class III posts to those daily wagers who have passed SSC Examination and were working for considerably a long time. The said demand was also accepted by the Government. The learned Counsel for the Respondents has submitted that merely by placing reliance on the Government Resolution dated 17.10.1988 and the scheme for regularization of the daily wagers according to their period of service referred to above this Appeal can be straightaway dismissed as nothing further is required to be considered.

6. Learned AGP has drawn our attention to para 19 (A) and (B) of Special Civil Application No. 4381 of 2010 and submitted that no prayer has been made by the Respondents/original Petitioners to the said effect. The said prayer made in para 19 (A) and (B) reads as under:

19. ...(A) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondents to fix the pay scale of Rs. 950-1500 (corresponding pay scale of Rs. 3050-4590 in 5th Pay Commission and Rs. 5200-20200 in 6th Pay Commission) to the Petitioners from the date of completion of seven years of their service and to pay all the consequential and incidental benefits flowing there from including the arrears, forthwith.

(B) Pending hearing, admission and final disposal of this petition, be pleased to direct the Respondents to fix the pay scale of Rs. 950-1500 (corresponding pay scale of Rs. 3050-4590 in 5th Pay Commission and Rs. 5200-20200 in the 6th Pay Commission) to the Petitioners from the date of completion of seven years of their service.

7. On the above issue, learned Counsel for the Respondents has drawn our attention to a decision of the Full Bench in Roshanara Begum Vs. Union of India, in which the Full Bench had followed the ratio laid down in Ram Chand v. Union of India 1993 AIR SCW 3479 which reads as under:

... The Supreme Court itself has in the case of Ram Chand (1993 AIR SCW 3479) laid down that instead of quashing the acquisition proceedings which have been pending since long on the ground of inordinate delay which has not been explained, the relief could be moulded by taking resort to Article 32 of the Constitution and the Supreme Court also laid down that High Court has the power under Article 226 of the Constitution also to mould the relief in the similar manner. Thus, there is no legal bar in this Court also molding the relief in the similar manner by taking resort to Article 226 of the Constitution as has been done by the Supreme Court by taking resort to Article 32 of the Constitution.

Learned Counsel for the Respondents has also relied upon a decision in U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, wherein it is held that molding of relief is a discretionary jurisdiction and it need not be conferred always by a statute.

8. We have gone through the above referred decisions and we find ourselves in complete agreement with the ratio laid down in it as referred above. We find that the same is not applicable to the case on hand because in the Special Civil Application, though averments relating to the scheme has been made, no submission has been made by the learned Counsel for the Respondents/original Petitioners on that issue before the learned Single Judge who had passed order dated 11.5.2010 in Special Civil Application No. 4381 of 2010 as well as Special Civil Application No. 8302 of 2007 with 8303 of 2007 to 8314 of 2007 and accordingly the learned Single has not touched that aspect. Moreover, it is

submitted by the learned AGP that no relief to that effect has been sought for. Thus since the learned Single Judge has not touched that issue, the question of molding relief in this appeal, at this stage, does not arise at all. He also submitted that the learned Counsel for the Respondents has relied on Government Resolution dated 1.5.1991 and two communications dated 7.1.1994 and 27.6.1994 before the learned Single Judge and accordingly the learned Single Judge has considered the same. Hence we find no substance in the submissions made by the learned Counsel for the Respondents that on placing reliance only on the Government Resolution dated 17.10.1988 and the scheme for regularization of the daily wagers according to their service, straightaway this appeal should be dismissed.

9. The Respondents/original Petitioners have approached this Court by way of Special Civil Applications No. 8302 of 2007 with Special Civil Application No. 8303 to 8314 of 2007. The learned Single Judge, after hearing the petitions, passed judgment dated 29.3.2007 and directed the Appellant/original Respondents to consider the Respondents' case as per Government Resolutions dated 1.5.1991 as clarified vide communications dated 07.1.1994 and 27.6.1994 within three months from the date of the said order. As such, the Government Resolution dated 1.5.1991 had been issued by the Roads and Building Department for their employees and on referring the same, it is clear that the same is not applicable to any other department as well as the Agriculture and Cooperative Department. In compliance of the order dated 29.3.2007 passed by the learned Single Judge in the above referred Special Civil Applications Nos. 8302 of 2007 with 8303 of 2007 to 8314 of 2007, the Appellants had issued a Government Order No. AHS/1107/SCA-8/P2 dated 24.8.2009 and the department had followed the same and had passed an order No. Prasa/Rojamdar/2007/1(21)/14859-88/09 dated 19.9.2009. The English translation of para 2 of the above referred order dated 24.8.2009 which is in vernacular is as under:

(2) As the above mentioned orders are required to be passed pursuant to the judgment dated 29.3.2007 of the Hon'ble High Court, its benefit shall be admissible from the date of the judgment meaning thereby, orders shall be issued to assign the duty to these 13 daily wagers from the said date. No amount of arrears shall be required to be paid to them towards this.

9.1. The above referred Government Order had been followed by the Department vide order dated 19.9.2009. The relevant portion of the said order which is also in Vernacular, the English translation of the same reads as under:

Pursuant to the order of the Hon'ble Gujarat High Court, Ahmedabad of Preamble-I and in connection with the letters as referred at sr. Nos. 3 and 5 of the Preamble of the Agriculture and Cooperation Department, Sachivalaya, Gandhinagar, it has been stated that orders are required to be issued to take the work of Clerks by granting pay scale of Rs. 950-1500 to total 13 permanent daily wagers who approached the Hon'ble Gujarat High Court and who have passed

SSC Examination and completed seven years of service as per the Government Resolution No. DRE-2191/12491/(43)/G (2) dated 1.5.1991 of the Roads and Building Department, Sachivalaya, Gandhinagar. Therefore, the following total 12 permanent daily wagers of this department who have passed SSC Examination and completed seven years of service, may be given the pay scale of Rs. 950-1500 with the effect from the judgment dated 29.3.2007 of the Hon'ble Gujarat High Court and they are assigned the administrative work of clerical cadre of Class III. They shall also have to perform the work as may be assigned by the Head of Office. No amount of arrears shall be paid to them towards this.

10. Thus it is clear that while passing order, the Appellants had mainly considered the order dated 29.3.2007 passed by the learned Single Judge in Special Civil Applications No. 8302 of 2007 with 8303 of 2007 to 8314 of 2007 and as per the said directions, the Appellants had considered the Government Resolution dated 1.5.1991. As per the Government Resolution dated 1.5.1991, benefit of the pay scale of Rs. 950-1500 was to be granted to the daily wagers who have completed seven years of service u/s 25-B of the Industrial Disputes Act and who have passed SSC examination. Moreover, out of the said two criteria referred above, the third criterion was entitlement of pay scale from the date on which the daily wagers fulfilling the said two criteria are assigned administrative work of Class III post. The type of administrative work is narrated in the first para of the said Resolution dated 1.5.1991.

10.1. It is submitted by the learned AGP that if the Respondents are expecting and claiming the benefits falling from the Government Resolution dated 1.5.1991, then it is applicable to the Respondents in its entirety. In the case on hand, as the work has been allotted to the Respondents/original Petitioners from the date of the order, payment thereof prior to that appointment is contrary to the Government Resolution itself and as such the Respondents are not entitled to the pay scale and any other benefits for which they have not worked at all. The learned AGP has further submitted that in fact as per the Government Resolution dated 1.5.1991, the Respondents are entitled to the benefit of pay scale from the date on which they are assigned the administrative work as narrated in the Resolution. As discussed above, it is clear that showing full respect to the order passed by the High Court, benefit of the pay scale has been extended to the Respondents/original Petitioners from 29.3.2007 which is the date of the order which is just and proper.

11. Learned Counsel for the Respondents has vehemently argued that there are more than 5000 daily wagers who have passed SSC examination who have been granted pay scale of Rs. 950-1500 by different departments of the Government and that aspect also should be considered as has been considered by the learned Single Judge. It is important to note that though the Respondents have stated that more than 5000 daily wagers who have passed SSC examination are there in the department, not a single comparable incident is cited. Even if we presume that the said averments are correct then also we are not inclined to consider the

same in light of the ratio laid down by the Apex Court in *Fuljit Kaur Vs. State of Punjab and Others*, in para 11 which reads as under:

11. The Respondent cannot claim parity with *D.S. Laungia* in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favor of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favor of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (*Vide Coromandel Fertilizers Ltd. v. Union of India*, *Panchi Dev v. State of Rajasthan* and *Shanti Sports Club v. Union of India*.)

In view of the ratio laid down by the Apex Court in the above decision, in our view, there is no substance in the above submissions made by the learned Counsel for the Respondents/original Petitioners.

12. Now the question to be dealt with is whether the two communications at Annexure "D" and "E" respectively dated 7.1.1994 at page No. 27 and communication dated 27.6.1994 at page 28 are Government Resolutions or instructions as described and considered by the learned Single Judge. Inviting our attention to the above mentioned two communications, learned AGP has submitted that those communications had been written by the officials of the Roads & Building department clarifying the Government Resolution dated 1.5.1991 and it is an internal correspondence which is nothing but an opinion and it cannot be construed as part of Resolution or instructions. We find force and substance in the submission of the learned AGP. It is well settled legal position that subsequent instructions or communications cannot override the effect of the Government Resolutions. Thus, in our view, the above referred two letters at Annexure "D" and "E" dated 1.7.1994 and 27.6.1994 are simply internal communications in the form of opinion only and it cannot be said to be a Government Resolution or instructions in general.

13. So far as the directions given by the learned Single Judge is concerned, except the direction with regard to payment of arrears, the remaining directions were already complied with and accordingly as per order dated 19.9.2009 at page Nos. 42 to 44 has been passed and in our view, the same is just and proper. Perusal of order dated 19.9.2009 issued by the Appellant department shows that they have complied with the directions of the court and the pay scale was given with effect from the date of order of the learned Single Judge i.e. 29.3.2007. In our view, the Appellant has acted strictly in accordance with the

Government Resolution dated 1.5.1991. The Government Resolution clearly states that the daily wagers who have completed seven years of service and who have passed SSC examination are entitled to pay scale of Rs. 950-1500. It further states that apart from the above two criteria, the entitlement of this pay scale will be from the date on which they are assigned the administrative work i.e. of Class III post. Once the directions given by the learned Single Judge is complied with by the Appellant department and the same is as per the Government Resolution dated 1.5.1991, the Respondents are not entitled to any arrears for the period they were not assigned with any work of Class III post. In our considered opinion, considering the peculiar facts of this case, the Appellant department is justified in taking the decision to implement the pay scale to the Respondents from the date on which they are given the class III post.

14. In the result, this Appeal is allowed. The order dated 11.5.2010 passed by the learned Single Judge in Special Civil Application No. 4381 of 2010 is set aside with no order as to costs.

CIVIL APPLICATION No. 15789 OF 2010

In view of the order passed in the Appeal, Civil Application No. 15789 of 2010 stands disposed of. Rule is discharged.