

(2011) 12 GUJ CK 0049
In the Gujarat High Court

Case No : Special Civil Application No. 7725 of 2002 with Civil Application No. 5821 of 2006

State of Gujarat

APPELLANT

Vs

Nirubha Vajubha Sarvaiya and Others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Citation : (2011) 12 GUJ CK 0049

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : R.A. Rindani, AGP, for the Appellant; D.G. Shukla for Respondents 1 - 6, 6.2.2 - 10, 10.2.1, 10.2.2, 10.2.3 - 15, 15.2.1, 15.2.2 - 22. and Rule Served for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Ravi R. Tripathi

1.0 Present petition is filed by the State of Gujarat through the Dy. Executive Engineer, Shetrunji Canal Irrigation, Panwadi, District: Bhavnagar challenging award and order dated 8th November 2001, passed by the Industrial Tribunal, Bhavnagar in Reference (I.T.) No. 26 of 1996. By the impugned award, the learned Member of the Tribunal was pleased to direct that, "from the date of publication of the award, the workmen, whose names appear in the Schedule to the award, be treated as permanent and they should be paid all benefits of permanency".

2.0 The matter was heard at length. Learned Assistant Government Pleader Mr. Rindani submitted that the learned Judge has committed an error in directing that, "the workmen, whose names appear in the Schedule annexed to the award, be treated as permanent from the date of publication of the award". The learned Assistant Government Pleader submitted that the workmen can, at the most, claim the benefits flowing from Government Resolution dated 17th October 1988

and for giving them permanency benefit from the date of publication of award, will be contrary to the policy decision taken by the Government by aforesaid Government Resolution dated 17th October 1988.

2.1 At the time of admission hearing, this Court (Coram: Honourable Mr. Justice M.S. Shah, as his Lordship then was) by order dated 23rd August 2002, after issuing Rule, granted ad-interim stay against the operation, execution and implementation of the award dated 8th November 2001 of the Industrial Tribunal, Bhavnagar in Reference (I.T.) No. 26 of 1996 insofar as the Tribunal has granted to the respondents the benefits in excess of the benefits under the Government Resolution dated 17th October 1988. In other words, the petitioner shall give the respondents the benefits of the Government Resolution dated 17th October 1988 by 31st January 2003. This order was challenged by way of Letters Patent Appeal and the same was dismissed. The Division Bench directed that the Special Civil Application be listed for final adjudication in the 2nd week of October 2003.

2.2 Now that the matter is notified for final hearing, it is taken up at the request of learned advocate Mr. DG Shukla for respondents -workmen. The learned advocate for the respondents -workmen made available the orders passed by the petitioner dated 30th July 2009 and 11th November 2011, whereby, the petitioner has treated the date of award (8th November 2001), as "the date of entry". The learned advocate for the respondents ? workmen submitted that this causes grave injustice to the workmen because quite a few of them had put in long service at the time of raising the dispute, which culminated into award. The dates of entry in service of the respondents -workmen are available in Statement, which is annexed with the affidavit filed today. The same are from 1973 to 1986.

3.0 Taking into consideration the totality of the facts of the case, this Court deems it proper that the award and order dated 8th November 2001 be modified by substituting the direction issued by the learned Member of the Industrial Tribunal for treating them permanent from the date of publication of the award and giving them the benefits of permanency from that day, by a direction that, "the authorities shall take into consideration the date of entry as set out by the authority itself in a tabular Statement marked as "II", Page 136 in Column No. 3 of that Statement and give them the benefits flowing from Government Resolution dated 17th October 1988 on the basis of the said dates". Along with the date of entry, the authorities shall take into consideration the number of days worked by the workmen, which are placed on record by way of "Attendance Sheet", which is produced at Page 137 as mark "III", which is verified by the authorities after this Court directed them to do so.

3.1 By this direction, the interest of justice will stand served, so far as respondent Nos. 1 to 5 and 7 to 22 are concerned. But, so far as respondent No. 6 is concerned, he having expired on 6th November 2001, just a day prior to the date of award, it is directed that, in his case, the authorities shall consider the

number of days worked by him from date of entry till the date he expired.

3.2 The communication dated 11th November 2011 is to be complied with by changing the Schedule annexed to it in light of the direction issued herein above.

3.3 The learned advocate for the respondents submitted that some of the respondents have already retired and they are entitled to receive "Gratuity", the details of which, are available from the Schedule marked as "I" at Page 135. The authorities are directed to make necessary proposal to the Government for payment of the said Gratuity amount, so that the same can be paid to the workmen at the earliest. Order accordingly.

4.0 Thus, the award and order dated 8th November 2001 stands modified. The petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

4.1 In view the aforesaid directions, no separate orders are required to be passed in Civil Application. The authorities will redress the grievance of the applicants, ventilated in the Civil Application, in line with the aforesaid directions.