

(2022) 01 GUJ CK 0087
In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 613, 914 Of 2021 In R/Special Civil Application No. 17055 Of 2015, Special Civil Application No. 12518 Of 2008, Civil Application (For Stay) No. 1 Of 2019

State Of Gujarat		APPELLANT
	Vs	
PWD And Forest Employees Union		RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 85, 95, 226

Citation : (2022) 01 GUJ CK 0087

Hon'ble Judges : N.V.Anjaria, J;Dr A. P. Thaker, J

Bench : Division Bench

Advocate : Manisha Lavkumar, Manan Mehta, Shalin Mehta, Aditi S Raol, Gautam Joshi

Final Decision : Allowed/Disposed Of

Judgement

N.V.Anjaria, J

1. Heard learned Government Pleader Ms.Manisha Lavkumar assisted by learned Assistant Government Pleader Mr.Manan Mehta for State of

Gujarat, learned senior advocate Mr.Shalin Mehta assisted by learned advocate Ms.Aditi Raol for original petitioners and learned senior advocate

Mr.Gautam Joshi with learned advocate Mr.D.M. Devnani for Gujarat Forest Development Corporation, at length, in both the appeals and connected

civil applications, for the respective parties they appeared in the Letters Patent Appeals concerned.

2. In both the Appeals, it is common judgment and order dated 12th April, 2019 of learned Single Judge in Special Civil Application No.12518 of 2008

and Special Civil Application No.17055 of 2015 are brought under challenge. Letters Patent Appeal No.613 of 2021 is relatable to aforesaid common

judgment and order insofar as it concerns the decision in Special Civil Application No.17055 of 2015. The other corresponds to the another.

2.1 As per the impugned judgment and order, learned Single Judge disposed of the petitions passing certain observations and issuing directions.

2.2 In Special Civil Application No.17055 of 2015 filed by PWD & Forest Employeesâ?? Union and others, the first principal prayer was for setting

aside order dated 03rd July, 2015 passed by respondent No.2-Gujarat State Forest Development Corporation Limited (respondent No.92 in this

Appeal) whereas the request of the petitioners for extending the benefits contained in State Government Resolution dated 17th October, 1988 was

refused. It was next prayed to grant permanent status to the petitioner at par with the scheme of daily wagers in the other government departments as

per the aforementioned Resolution. Another prayer was made seeking direction against respondent authorities to adopt and extend the benefits of the

said Resolution in favour of the petitioners.

2.3 In the last principal prayer, it was prayed to command the respondent authorities to consider framing of a scheme for giving permanent status to

the petitioners on the same pedestal with the daily wagers in other government departments as contained in the aforesaid Resolution dated 17th

October, 1988.

2.4 In Special Civil Application No.12518 of 2008 filed by 33 employees, what was prayed to set aside was the similar decision dated 30th March,

2007 was prayed to set aside seeking further direction to give to the petitioners minimum pay-scale and grant the benefits flowing from Resolution

dated 17th October, 1988. Also prayed was to set aside Government Resolution dated 15th September, 2014 on the ground that it has the effect of

changing the service conditions of the petitioners unilaterally. The said Resolution dated 15th September, 2014 of the State Government was in line of

Resolution dated 17th October, 1988.

3. Adopting the facts, in order to gather the controversy from first mentioned Letters Patent Appeal relatable to Special Civil Application No.17055 of

2015, the petitioners have been working on daily wage basis under the respondent No.2-Gujarat State Forest Development Corporation (GSFDC).

According to their case, they put in more than 30 years of service, but kept on daily wage basis only and are denied the benefits such as leave, paid

holidays etc. which are available to the regular employees. According to the petitioners, they have been doing same kind of work as the regular employees do. By referring to Resolution dated 17th October, 1988 of the Public Works Department of the Government of Gujarat, whereby scheme was launched for the daily wagers working in the departments of the Government and under which the daily wagers came to be granted the benefits depending upon the completion of their service, the benefits under the said Resolution were demanded by the petitioners.

3.1 Representation was made in vain. Special Civil Application No.9455 of 2015 was preferred, which came to be disposed of by the Court directing the authorities to consider the case of the petitioners whether they could be extended the benefits flowing from Resolution dated 17th October, 1988.

Respondent No.2 rejected the request of the petitioners to grant benefits of Resolution dated 17th October, 1988. The ground stated for refusal was that petitioners have been working as daily wagers in Vanil Udyog of respondent No.2 Corporation at Village Navtad, Navsari and Resolution dated 15th September, 2014 was made for the daily wager employees in the Forest and Environment Department based on Resolution dated 17th October, 1988, and that the benefits thereunder would not be available to the petitioners-employees who were under GSFDC.

3.2 The petitioners also filed further affidavit in support of their case in the main petition stating that the benefits under Resolution dated 17th October, 1988 were extended to the daily wagers working under the Gujarat Saw Mill also assured part and parcel of the Forest and Environment Department.

The case of the petitioners in support of seeking relief has been inter alia of treating them with parity with daily wagers of the Government stating that

the petitioners have also put in long decades of service. It was contended that Resolution dated 17th October, 1988 resulted from agreement dated

01st October, 1988 to which Forest Department was a party and that the said agreement ipso facto becomes applicable to the respondent Corporation

also. It was then submitted that Resolution dated 17th October, 1988 has been adopted by various Departments and Nigams including Sardar Sarovar

Narmada Nigam Limited, Gujarat Water Resources Development Corporation, Water Supply & Sewerage Board, Maritime Board, GEER Foundation

etc. and for the temples like Bahucharaji and Somnath also the benefits are applied.

3.3 It was the submission before the learned Single Judge on behalf of the petitioners that the State Government could be directed to frame an appropriate scheme for the petitioners on the same lines of Resolution dated 17th October, 1988 if that Resolution is not to be readily applied to the petitioners. For this proposition, reliance was placed on decision of the Supreme Court in case of Union of India v. All India Trade Union Congress [2019 (5) SCALE 130].

3.4 The stand of the respondents in the affidavit-in-reply filed by them contesting the petition was inter alia that respondent No.2 was a company registered under the provisions of the Companies Act, 1956, and engaged in the business of collecting, processing and marketing forest produces. It was stated that respondent No.2 Corporation does not get any grant or budgetary support from the State Government and that it is an independent public sector undertaking. It was then stated that Resolution dated 17th October, 1988 of which the benefit is sought is of the Road & Building Department of the State Government and that the language of the said Resolution is clear as regards its applicability.

3.5 It was stated that Department accepted the recommendations of Dolatbhai Parmar Committee to resolve that all the daily wagers working with different departments of the State Government such as Road & Building Department, Forest & Environment Department, Agriculture Department etc. may be regularised by granting them benefits in terms of the providence of said Resolution. It was then contended that Resolution dated 17th October, 1988 is made applicable only to the employees of the Forest & Environment Department who were engaged in the work of maintenance and repairing of the constructions in that departments. It was contended that Resolution dated 17th October, 1988 was not intended to be extended to other departments of the State Government, let apart a company such as respondent No.2.

3.6 Respondent No.2 Corporation took a clear stand that provisions of the Government Resolution dated 17th October, 1988 are not applicable to the petitioners. It was submitted that the respondent Corporation was a distinct entity from the Forest Department, therefore Resolution dated 17th October, 1988 or connected Resolutions which may have been applied to the employees of the Forest Department would not automatically adoptable.

It was contended that merely on the basis of the length of service, petitioners did not have any right to be regularised. It was further stated that

respondent No.2 had sent a proposal to the State Government for conferring the benefits of Resolution dated 17th October, 1988 and had requested to

release the grant accordingly, but such proposal was not acceded to by the State Government. It was highlighted that respondent No.2-GSFDC was

registered as a company.

4. Learned Single Judge referred to the decision of the Supreme Court in State of Gujarat v. PWD Employeesâ?? Union [2013 (8) SCALE 579] to

observe that thereby Resolution dated 17th October, 1988 was made applicable to all the daily wagers performing any nature of work and engaged in

any department of the State including the Forest & Environment Department and that the Supreme Court had clarified the manner and method of

fixation of pay and pension to such daily wagers. Learned Single Judge mentioned that the petitioners had been working since long as daily wagers in

the respondent No.2 and they are governed under the Employees Provident Fund Scheme and that they are denied the benefits of Resolution dated

17th October, 1988 only on the basis that they are the employees of a statutory body. As observed in paragraph No.9 of the impugned judgment,

according to learned Single Judge, petitioners have been claiming their right to be treated equally with other daily wagers. Thereafter learned Single

Judge proceeded to mention different Boards and Departments which have extended the benefits of Resolution to the daily wagers under them.

4.1 Learned Single Judge however did observe that, â??stricto sensu the benefits of Government Resolution dated 17th October, 1988 cannot be

made applicable to the petitionersâ??. However, thereafter, was held as under.

â??9. â?| â?| â?| The Supreme Court in the afore-noted judgment in the case of PWD Employees (supra) has enunciated that the scheme envisaged

under the Government Resolution dated 17.10.1988 will apply to all the daily-wagers working under the Government departments. It is not in dispute

that such daily-wagers are governed under the GPF scheme, whereas, the petitioners are governed under the EPF scheme. The Government

Resolution dated 17.10.1988 cannot be made applicable to the petitioners, who are working under a statutory body raising its own funds without the aid

of the Government. However, the petitioners who are engaged as daily-wagers

cannot be treated as such throughout their lifetime. The expression "once a daily wager, always a daily wager", is an anathema to the welfare state. Since, the scheme promulgated vide Government Resolution dated 17.10.1988 is made applicable to all the departments of the State Government, the daily-wagers, who are working in the statutory bodies within the meaning of Article 12 of the Constitution of India, cannot be left unaided."

4.2 According to learned Single Judge there was a deceptive discrimination against the petitioners and that principle of equal pay and equal work would apply. Learned Single Judge relied on the proposition from the decision in All India Trade Union Congress (supra) that in exercise of its extra-ordinary powers under Article 226 of the Constitution, the Court can direct the Government for framing an appropriate scheme. It was the view taken by learned Single Judge that since the petitioners have been working since more than two-and-half decades as daily rated employees, cannot be treated with discrimination as against daily rated employees of the State Government.

4.3 In the penultimate line of paragraph No.12, following direction was issued.

"12. Thus, the respondents are hereby directed to undertake the necessary exercise and frame a Scheme or in the alternate adopt Government Resolution dated 17.10.1988 in order to void the discrimination."

4.4 Observations and directions in paragraph No.13 passed by the learned Single Judge in the impugned judgment reads as under, whereby it was directed that at least benefits of fixation of regular pay-scale may be conferred on the petitioners.

"13. The State Government, while examining the issue raised in the present petition, shall keep in mind the observations made by this Court and also shall be alive to the fact that the petitioners are working since 20 to 30 years as daily-wagers and they cannot be left in helpless condition after they have retired. The State Government after consultation with the respondent Corporation shall carry out the necessary exercise of framing the scheme so that the petitioners, who are/were working since long, can at least be conferred the benefit of fixation of regular pay scale as conferred to the daily-wagers working in the Government Departments of the State Government, Boards / Corporations. The respondents shall ignore the communication dated 18.03.2019 while re-examining the issue."

5. Having noted the factual conspectus and legal controversy as above, there cannot be overlooking of the factum that respondent Corporation is a company registered under the provisions of the Companies Act. It functions as an independent entity distinct from the Department of the State Government. The distinguishing features of the Corporation on this count came to be noted by the learned Single Judge in paragraph No.6.2. Those features are about its incorporation under the Companies Act, 1956 and the extent of share holding by the State Government and the Central Government and that the GSFDC is an independent autonomous body. It is rightly stated the learned Single Judge and it is controlled by the Board of Directors appointed by the Governor as per Article 85 of the Articles of Association. It was further noted that as per Article 95 of the Articles of Association, it is the Managing Director who is in charge of the affairs of the management who exercises his powers to have the overall superintendence, control and management of the company. The Memorandum of Association of respondent Corporation also specifies the objectives of the Corporation which is inter alia to undertake proper and scientific exploration of the forest produce. It was also noted that as per the Resolution dated 14th March, 2008 of the Finance Department of the State Government, monitoring and working of the public sector enterprises which are independent bodies being other than the government departments, is differently provided for.

5.1 Therefore, there is no gainsaying that respondent Corporation is a separate legal entity. The respondent Corporation has its own staff set up. The affairs and functioning is under separate regulations including the service regulations. There is no budgetary assistance from the State Government to the respondent Corporation and that it has its own financial resources and the budget. It exists and functions with its own objective and mechanism.

The employees of the Corporation are not a class homogeneous to the employees of the State Government. It in no way could be viewed as a department of the government. There are no overriding aspect that may dilute the otherwise independent functional character of the Corporation.

5.2 The benefits available under Resolution dated 17th October, 1988 claimed by the petitioners are resolved and meant to be given to the daily rated employees of the State Government departments. The question of ready equation of the daily rated employees of the respondent Corporation with the

daily rated employees working under different government departments to extend the benefits under the Resolution directly or indirectly, does not arise. The two classes of employees, although daily rated, have different umbrella of the employer bearing different characters. Merely because the respondent Corporation is to be viewed as a "State", it would be no sole guide for holding the two sets of employees to be a single class for the purpose of extension of the said benefits.

5.3 In *T.M. Sampath v. Secretary, Ministry of Water Resources* [(2015) 5 SCC 333], it was a National Water Development Agency (NWDA)

established as a society and an autonomous body, the employees of which claimed pensionary benefits at par with the Central Government employees.

The claim of parity was disapproved by the Supreme Court. It was observed that even if it is presumed that NWDA is a "State" within the

meaning of Article 12 of the Constitution, the appellant before the Supreme Court had failed to prove that they were at par with their counterpart in

the Central Government, with whom they claimed parity.

5.4 It is well settled that plea of discrimination cannot hold good when the sets of persons are not similarly situated. The Supreme Court in *Union*

Territory, Chandigarh v. Krishan Bhandari [(1996) 11 SCC 348] reiterated this principle that the claim to equality can be put forth when there is

discrimination by the State between two persons who could be said to be belonging to same class. Therefore, the grievance of discrimination in not

applying the State Government Resolution dated 17th October, 1988 which is meant for the daily rated employees of the government departments,

cannot sustain when raised by the daily rated employees of respondent-GSFDC which is a different statutory entity registered under the Companies

Act. Some functional or financial nexus with the State Government will not make the GSFDC at par with the State Government departments, nor its

employees will be able to seek place among the class of employees who are the daily rated employees under the government departments.

5.5 In light of above settled principles, learned Single Judge misdirected in passing the observations and giving directions by reasoning that the decision

of the Supreme Court in *PWD Employees Union (supra)* would come to rescue of the petitioners. Mere length of service would also not be a

consideration for seeking benefits under the Resolution which is operated for

different class of the employees. There is no deception discrimination to the petitioners as sought to be viewed by learned Single Judge. Discrimination arises between two homogeneous persons or class of persons.

Apparent similarity in a given case is not equality in law. The concept of equality as contained in Article 14 of the Constitution is not merely a process of comparison. The equality is matter of details.

5.6 In other words, benefits flowing from the Resolution applicable to the State Government employees cannot be automatically claimed by the employees of the autonomous body. It is not a matter of right that employees of the class belonging to the statutory bodies other than the government departments may claim the benefits as of right when the Resolution in question is specifically made applicable to the government departments employees, the concept of ready parity does not hold good. The realm of Resolution dated 17th October, 1988 is a realm of policy and it is a policy decision. Extending the same to the Corporation's employees or not would also be a policy consideration.

5.7 It is a different aspect that the State Government may take its own decision for applying particular benefit to particular class of persons. In that also, a host of factors would become germane.

The relevant considerations including factual data establishing a case of equality has to be gathered. All these aspects are in the domain of the State

Government to be looked into.

5.8 Without any material in above regard, we find that even the direction of learned Single Judge to the State Government to frame scheme cannot be given by the writ court. The observations and directions in this regard found in the impugned judgment of the learned Single Judge in paragraph No.12 and quoted above in paragraph No.4.3 in the present order could hardly be sustained.

6. In view of the above discussion, the direction of learned Single Judge to the respondents to undertake necessary exercise and to frame the scheme, or in the alternate, adopt Government Resolution dated 17th October, 1988 in order to void the discrimination, is hereby set aside. The reasons supplied in the judgment in support of the said directions are also set aside. There would be no such mandamus to the respondent-State Government on the said counts.

6.1 At the same time, it is observed that setting aside of the directions of learned Single Judge as above would not operate as preclusion for the

respondent-State Government, if the State Government in its discretionary domain, after taking into consideration the relevant aspects and the data, is

inclined to frame any scheme or grant further service benefits of any kind and nature to the daily-rated employees of the respondent-Gujarat State

Forest Development Corporation on the lines of the Resolution dated 17th October, 1988 or any other manner. The decision about such exercise to be

undertaken or not is entirely left at the wisdom and discretion of the State Government.

7. While the above order will govern both the Letters Patent Appeals, as far as Letters Patent Appeal No.914 of 2021 relatable to order in Special

Civil Application No.12518 of 2008, is concerned and in particular, petitioner Nos.1, 9, 12, 13, 15, 20, 24, 25, 26, 28, 29 and 32 of the said petition in

particular are concerned, they belong to the class who were denied the benefit of award dated 11th May, 1992 of the Industrial Tribunal in Reference

(IT) No.386 of 1988. The denial of the benefit of the Tribunal to those petitioners was on the ground that they were not party to the proceedings

which resulted into order dated 22nd November, 2010 of the Division Bench in Letters Patent Appeal No.2136 of 2010. They were daily wagers of

one Panam Project and were employed by the State Government in the said Project. They were noted to be fulfilling the criteria of 240 days and four

years or more or 900 days of service preceding to 01st January, 1989 to be entitled to extension of benefits which were given to the other similarly

situated daily rated workmen. Learned Single Judge and thereafter the Letters Patent Bench in Letters Patent Appeal No.2136 of 2010 directed the

authorities to grant such benefits to the class of such daily rated employees.

8. The aforesaid petitioners were the left out lot. Panam Project was by the Forest & Environment Department of the State Government and

undisputedly the said petitioners were employed by the State Government. In that view, learned Single Judge was justified in relying on the decision of

the Supreme Court in PWD Employees Union (supra) to support his direction to sustain the direction to grant the benefits to the petitioners.

9. In paragraph No.18 of the judgment which was the part of the order in Special Civil Application No.12518 of 2008, following observations were

made by learned Single Judge.

18. The entire scheme of the Panam Project was invited by the Forest and Environment Department of the State of Gujarat. By the judgment of

the Apex Court, the benefit of Government Resolution dated 17.10.1988 is conferred to the daily-wagers of all departments. Thus, as the law

enunciated by the Apex Court in PWD Employees Union (supra), all the daily-wagers, who are working in the departments of the State Government,

are conferred by the benefits of Government Resolution dated 17.10.1988. Since the same is made applicable to all the daily-wagers, the benefits

flowing from the award dated 11.05.1992 passed in Reference (IT) No.386 of 1988 are required to be conferred to the afore-noted petitioners. Such

petitioners were engaged by the Forest and Environment Department and not by the GFDC. They are entitled to the benefit as per the award dated

11.05.1992 passed in Reference (IT) No. 386 of 1988. If the petitioners had remained under the Forest Department, they would have benefited from

the law enunciated by the Apex Court in the case of PWD Employees Union (supra). Thus, the petitioners cannot be denied either the benefits of the

award dated 11.05.1992 passed in Reference (IT) No.386 of 1988 to the afore-noted 12 petitioners or the benefit emanating from the judgment of the

Apex Court in the case of PWD Employees (Supra). The respondent State is hereby directed to pass appropriate orders granting the similar

benefit to the aforementioned petitioners which was granted to the daily-wagers, who were engaged in the Panam Project.

10. For the reasons recorded above, we are in agreement with the reasons recorded in aforesaid paragraph entitling the 12 petitioners of the said

petition to the benefit emanating from the judgment of the Apex Court in PWD Employees Union (supra). Therefore, the impugned common judgment

and order of learned Single Judge insofar as related to said petitioners of Special Civil Application No.12518 of 2008, is sustained to the above limited

extent.

11. Accordingly, Letters Patent Appeal No.613 of 2021 is allowed by setting aside the directions as above which would also apply mutatis mutandis to

the case in that regard in Special Civil Application No.12518 of 2008. For the rest of the controversy in Special Civil Application No.12518 of 2008,

Letters Patent Appeal No.914 of 2021 is partly allowed as above. Both the Letters

Patent Appeals are disposed of accordingly. Both the Civil Applications do not survive and disposed of.