

(2014) 09 GUJ CK 0002

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1583 of 2009 in Special Civil Application No. 12333 of 2003

State of Gujarat

APPELLANT

Vs

Savitaben Vitthalbhai Ravaliya

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

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

Citation : (2014) 09 GUJ CK 0002

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : P.P. Banaji, AGP, Advocate for the Appellant; A.S. Supehia, Advocate for the Respondent

Judgement

@

C.L. Soni, J.—This appeal under clause 15 of the Letters Patent is at the instance of the original respondents in the petition filed by the respondent herein under Article 226 of the Constitution of India seeking direction to pay family pension to her on the basis of total service put in by her husband from 21.6.1974 to 21.7.1989 with 12% interest.

2. Learned Single Judge has allowed the petition on the ground that the qualifying service of 13 years put in by the husband of the petitioner would make the petitioner entitled to family pension.

3. We have heard the learned advocates for the parties.

4. Learned Asstt. Government Pleader Mr. P.P. Banaji for the appellants submitted that the husband of the present respondent was daily wager who had left the service with effect from 22.6.1988 and, therefore, he was not entitled to any benefits under the Government Resolution dated 17.10.1988. Mr. Banaji submitted that the requirement under the said resolution is that the daily wager

should have completed more than 10 years" service as on 1.10.1988 to claim the benefit of permanency and other retiral benefits. Mr. Banaji submitted that since the husband of the original petitioner was not in service as on 1.10.1988, he could not be said to have acquired the status of permanent employee and therefore, he was not entitled to pension benefits and consequently the respondent would not be entitled to family pension. Mr. Banaji thus urged to allow the appeal.

5. As against the above arguments, learned advocate Mr. A.S. Supehia appearing for the respondent-original petitioner submitted that the husband of the petitioner had completed service of more than 13 years as daily wager and he having completed more than 10 years of qualifying service, he was entitled to pension benefits. Mr. Supehia submitted that the purpose of the resolution dated 17.10.1988 was to confer various benefits including the benefit of permanency and benefit of pension to the daily wagers who would complete requisite length of service as required by the resolution. Mr. Supehia submitted that under the resolution, it is not required that the daily wager should have been in service as on 1.10.1988 but what is required is that the daily wager should have put in more than 10 years of service to become permanent and to get various other benefits including the benefit of pension. Mr. Supehia submitted that if the daily wager is required to be in service as on 1.10.1988 for claiming retiral benefits, the purpose of the resolution would get frustrated in as much as the daily wager who has completed long service of even more than 20 years but either expired before 1.10.1988 or reached the age of superannuation before 1.10.1988, would be rendered disentitled for the benefits under the said resolution which could not have been the intention of the Government behind issuing the resolution. He, thus, urged to dismiss the appeal.

6. Having heard the learned advocates for the parties, it appears that there is no dispute about the fact that the husband of the respondent no. 1 had completed more than 10 years of service prior to 1.10.1988. The petitioner was held entitled to gratuity amount of Rs. 5011.50 under the order dated 21.2.1990 of the Controlling Authority under the Payment of Gratuity Act, 1972, Surat, copy whereof is annexed at Annexure D to the petition. It is recorded therein that the husband of the petitioner had served for more than 240 days in each of 13 years of continuous service. In the said order, the Deputy Executive Engineer, Surat (R & B) Sub Division was party respondent, who is appellant No. 2 herein, and was ordered to pay the above said amount of gratuity to the petitioner. In view of such order made by the statutory authority which has attained finality, no other proof is required to hold that the husband of the petitioner had completed more than 13 years of continuous service in the context of section 25B of the Industrial Disputes Act, 1947 ("the I.D. Act" for short)

7. In such view of the matter, husband of the petitioner was entitled to pension benefits and consequently, the petitioner would become entitled to family pension benefits.

8. Learned Judge has placed reliance on the order of the learned Single Judge of this Court passed in Special Civil Application No. 5623 of 1997. The observations made in para 10 and 11 are quoted in the impugned order whereby the learned single Judge has held that by reading the resolution dated 17.10.1988 with resolution dated 30.5.1989 with rule 248 of the Bombay Civil Service Rules, the petitioner therein, a daily wager completing qualifying service was entitled for pension benefits.

9. Hon"ble Division Bench of this Court has also taken the view in Chhaganbhai Ranchhodbhai Rathod versus Deputy Executive Engineer in Letters Patent Appeal No. 1495 of 1997 that as per the resolution dated 17.10.1988 daily wager who has put in continuous service for more than 10 years in the context of section 25B of the Act is entitled to retiral benefits.

10. However, learned A.G.P. Mr. Banaji submitted that the husband of the petitioner since was not in service as on 1.10.1988, he could not be made entitled to retiral benefits under the said resolution. Such contention cannot be accepted in view of the decision of the Hon"ble Division Bench of this Court in the case of State of Gujarat and Another Vs. Mahendrakumar Bhagvandas and Another, . In paragraph 4, Hon"ble Division Bench of this Court has observed that the bare reading of the stipulation contained in the Government Resolution dated 17.10.1988 makes it crystal clear that upon completion of 10 years of service in terms of the provisions of section 25B of the I.D. Act on or before 1.10.1988, daily rated employees to whom the Government Resolution dated 17.10.1988 applies are to be treated as permanent employees with concomitant benefits. Thus, it is not required that a daily wager should have been in service as on 1.10.1988. What is required is that the daily rated employee should have completed more than 10 years of service on or before 1.10.1988. Since the husband of the petitioner had already completed more than thirteen years of continuous service, the petitioner has been rightly held entitled to the benefit of family pension.

11. We therefore do not find any case for inference in the impugned order passed by the learned Single Judge. We accordingly dismiss the appeal. We, however, direct the appellants to pay the family pension benefits to the petitioner within a period of two months from the date of receipt of this order with interest at the rate of 6% p.a. from the date of filing of the petition i.e. 1st August, 2003 till the benefits of family pension are paid to the petitioner.