

(2022) 10 GUJ CK 0111

In the Gujarat High Court

Case No : R/Special Civil Application No. 21459 Of 2022

Sukkarbhai Ranchhodbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Contempt Of Courts Act, 1971 — Section 2(b)

Citation : (2022) 10 GUJ CK 0111

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Murali N Devnani, Soaham Joshi

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Mr. Soaham Joshi, learned Assistant Government Pleader waives service of notice of rule on behalf of respondents.

2. With consent of the learned advocates appearing for the respective parties, this matter is taken up for final hearing today.

3. The prayer in this petition is to direct the respondent authorities to extend the service benefits of leave encashment.

4. This Court on 30.09.2022 in Special Civil Application No.19395 of 2022 and allied matters in an identical circumstance, after considering various decisions of the Hon'ble Supreme Court held as under:

"1. RULE returnable forthwith. Mr. Soaham Joshi, learned Assistant Government Pleader for the respondent – State.

2. With the consent of the learned counsels for the respective parties, all these petitions are taken up for final hearing today.

3. The issue involved in these petitions with regard to extending the benefits of Leave Encashment from the due date is now settled in light of the State's SLP No.7229 of 2022 being dismissed by the order of the Hon'ble Supreme Court dated 1.9.2022 which reads as under:

"Delay condoned.

In view of the Resolution No.W.C.E.-1588-(5)/(2)/G.2 dated 17-10-1988, the respondent employees are entitled to retirement benefits, gratuity, provident fund etc. In addition, they are entitled to two yearly optional leaves in total of 14 casual leaves, 30 days of earned leave and 20 days half pay leaves, as well as holiday on Sunday and during the national holidays/occasions.

In view of the aforesaid position, we do not find any good ground and reason to interfere with the directions given by the High Court to pay leave encashments on the retirement of the employees, as the same would pertain to encashment of the unused earned leaves. The payment is also in the nature of retirement 5 benefits.

However, it is clarified that the aforesaid directions would not be treated as granting the respondents a status of permanent or regular employees.

Recording the aforesaid, the special leave petitions are dismissed.

Pending application(s), if any, stand disposed of."

4. In light of above, these petitions are allowed. The respondents are directed to extend the benefits of Leave Encashment to the petitioners as reiterated by this Court in several decisions first in point of time being that of in the case of State of Gujarat and another v. Mahendrakumar Bhagvandas and others vide order dated 18.3.2011 in Letters Patent Appeal No.958 of 2001. Relevant portion of the said decision reads as under:

"12 The sequence of events therefore suggests that more than once the issue which was before the learned Single Judge in the impugned judgment was set at rest, and therefore, in our opinion, the learned Single Judge did not commit any error of law in directing the present appellants to follow the judgments in letter and spirit and confer upon the petitioners all the benefits as indicated in the judgment in the case of Mahendrakumar Bhagvandas (supra)., and also the judgments in the table above.

13 We are at pains to observe that even the learned Single Judge while allowing these petitions, observed as under:

"In such a scenario, it would be a sheer waste of time, money and energy for this Court to reinvest the said resources to address the issue identical to the one decided by the Division Bench of this Court. In such a context, this Court in V.A. Parekh Vs. State of Gujarat [2009 (5) GLR 3922] made following observations:

"(1) It is immaterial that in a previous litigation the particular petitioner before

the Court was or was not a party, but if law on a particular point has been laid down by the High Court, it must be followed by all authorities and Tribunals in the State.

(2) The law laid down by the High Court must be followed by all authorities and subordinate Tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceeding or deciding on the rights involved in such a proceeding.

(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position in utter disregard of that position proceedings are initiated, it must be held to be a willful disregard of the law laid down by the High Court and would amount to civil contempt as defined in Section 2 (b) of the Contempt of Courts Act, 1971.” Further, this Court in SCA No.28470 of 2007 & allied matters, has made following observations in paragraph Nos.6, 8 and 9:

“6. In the opinion of this Court, once this Court settles the law, unless subsequently unsettled by the Higher Forum, it binds the State and it is the constitutional duty of the State to confer similar benefits to similarly situated persons without asking, in view of the equality clause contained in Articles 14 and 16 of the Constitution of India. It appears that ignoring the above referred constitutional position, each individual department of the State sticks to its individual view rather than abiding by law declared by this Court. Such an approach, in the opinion of this Court, is contrary to public interest.

8. It is noticed that this Court is flooded with number of identical matters, as noticed in Paragraph7. Number of decisions are rendered, reiterating the same issue over and over again. Once the High Court concludes a question of law, it has to be acted upon to the benefit of all similarly situated beneficiaries, irrespective of their filing the petition or other legal proceedings for claiming such benefits. If the judgment of the High Court settling the legal position is not implemented in the aforementioned manner, identical cases will go on multiplying, resulting into flooding of the litigation in already overburdened Courts. Not only that, considerable public time, money and energy gets involved in the avoidable litigation.

9. At times, it is noticed that different departments of the State would take their individual stand, contrary to the stand taken by the other department on the same or similar matter, perhaps because of lack of coordination between the two or more departments. It would be, thus, appropriate if the State evolves a policy to avoid the avoidable litigation as aforesaid. In fact, the State has already declared its litigation policy and it is desirable that under the said policy, the issue discussed in Paragraphs8 and 9 is addressed by the State to save public time, money and energy in avoidable litigation.”

14 We are in complete agreement with the learned Single Judge and observe that there was no reason for the State to indulge into such litigious perseverance

in spite of the issue having been settled as above. The present group of Letters Patent Appeals is accordingly dismissed.”

5. In view of the aforesaid decision, the respondents are directed to extend the benefit of GR dated 17.10.1988 in accordance with the decision rendered by the Division Bench of this Court in LPA No.958 of 2011 dated 18.3.2011, inasmuch as, the the petitioners shall be entitled to leave encashment.

6. The compliance of the direction be carried out by respondents within a period of eight weeks from the date of receipt of copy of this order. Rule is made absolute. No costs. Direct Service is permitted.”

5. In view of the aforesaid decision, the respondents are directed to extend the benefit of GR dated 17.10.1988 in accordance with the decision rendered by the Division Bench of this Court in LPA No.958 of 2011 dated 18.3.2011, inasmuch as, the the petitioner shall be entitled to leave encashment.

6. The compliance of the direction be carried out by respondents within a period of eight weeks from the date of receipt of copy of this order.

7. Rule is made absolute to the aforesaid extent. Direct Service is permitted. No order as to costs.