

(2022) 10 GUJ CK 0099

In the Gujarat High Court

Case No : R/Special Civil Application No. 8786 Of 2022

Vechatbhai Manabhai Bariya

APPELLANT

Vs

State Of Gujarat & 3 Other(S)

RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F

Citation : (2022) 10 GUJ CK 0099

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Dipak R Dave, UM Shastri, Nirali Sarda

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 Rule returnable forthwith. Ms.Nirali Sarda, learned Assistant Government Pleader, waives service of notice of rule on behalf of respondents Nos. 1 and 4, Mr.Shastri, learned advocate, waives service of notice of rule on behalf of respondents Nos. 2 and 3. With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2 Mr.Dipak Dave, learned counsel for the petitioner, places reliance on an oral judgement passed by this Court in Special Civil Application No.8562 of 2022 dated 09.09.2022, which read as under:

"1. Rule returnable forthwith. Mr. Kurven Desai, 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, the matter is taken up for final hearing today.

3. The short issue in this petition is that the deceased father of the petitioner, who has otherwise earned the benefits of the Resolution dated 17. 10.1988 is not being paid pension ignoring the past services rendered by him from the initial

date of appointment. Looking to the service book of the deceased employee, the father of the petitioner has been shown to have been placed in fix pay in the year 1995 and was placed in the pay-scale with effect from 31.03.2000, in pursuance to the Government resolution dated 17.10.1988. The father of the petitioner retired from service with effect from 31.01.2008. The only reason put forth by the authorities to deny the petitioner the pension is that after his father was made permanent, he has not completed 10 years of qualifying service, however if the date of joining of the father of the petitioner is considered, the father of the petitioner has evidently completed the qualifying period to be entitled to pension as per law laid down in Samudabhai Jyotibhai Bhedi reported in 2017(4) GLR 2952.

4. Mr. Dave, learned counsel for the petitioner would rely on order dated 18.09.2019 rendered in Special Civil Application No.14137 of 2019 which reads as under:

"In the facts and circumstances of the case and having regard to the request and consent of the parties appearing through their respective learned advocates, the petition was taken up for final consideration today.

1.1 Rule returnable forthwith. Learned Assistant Government Pleader Dr. Venugopal Patel waives service of Rule for the respondent State and its authorities.

1.2 Heard learned advocate Ms. Nidhi Trivedi for learned advocate Mr. Dipak Dave for the petitioners and learned Assistant Government Pleader for the respondents.

2. By filing the present petition, the petitioners have prayed as under:

"(i) to hold and declare that action on part of the respondents in not making full payment of pensionary benefits to the petitioners by counting their entire length of service from date of joining till date of retirement as illegal, unjustified, arbitrary and further be pleased to direct the respondents to fix the pension of the petitioners by counting their service from date of joining until the date of retirement and fix the pension accordingly;

(ii) to hold and declare that petitioners are entitled to all other retiral benefits including benefit of leave encashment and be pleased to further direct the respondents to pay amount of leave encashment of leave standing in the account of the petitioners;

(iii) to direct the respondents to pay difference of pensionary benefits, gratuity amount and leave encashment with 18% interest from the date when it fell due;"

3. The two petitioners herein served under the office of Executive Engineer (Road and Building), respondent herein for long 20 years and 36 years, respectively. Petitioner No.1 joined the office of respondent No.2 with effect from 23.9.1989 whereas, petitioner No.2 started his service from

21. 3.1982. Petitioner No.1 retired on 31.5.2018. Petitioner No.2 retired on 30.4.2018. They put in long number of years as above. They served continuously as contemplated under Section 25B of the Industrial Disputes Act, 1947. When the petitioners completed 10 years of their service, benefits under resolution dated 17.10.1988 were extended to them.

3.1 The grievance in the present petition is that while counting the pensionary benefits, the respondents have not taken into account their services fully and the total pensionary services were reckoned deducting initial 10 years of services. The pension was calculated from the date when the two employees completed 10 years and were made permanent under Resolution dated 17.10.1988. The grievance is that the entire service starting from initial date of appointment was required to be counted for the purpose of pension and accordingly the pension ought to have been determined.

3.2 It was observed in order dated 17.7.2019 that the issue involved in the present petition is answered by the Division Bench of this Court in *Executive Engineer, Panchayat v. Samudabhai Jyotibhai Bhedi* [2017 (4) GLR 2952] followed in *Sardarabhai Panabhai Chauhan v. State of Gujarat* being Special Civil Application No.14504 of 2016 decided on 5.9.2018.

4. Learned advocate for the petitioners submitted that the respondent authorities committed an error of law in not reckoning the services of the petitioners from the date of their initial entry in service for the purpose of pension. In addition to the decision in *Samudabhai Jyotibhai Bhedi* (supra) and *Sardarabhai Panabhai Chauhan* (supra), learned advocate for the petitioner could successfully press into service yet another decision of this court in *Balvantbhai Sardarabhai Pagi & Ors. vs Deputy Engineer & Ors.* being Special Civil Application No. 12350 of 2016 and allied petitions decided on

22. 5.2016 taking a similar view. The ratio in *Samudabhai Jyotibhai Bhedi* (supra) was relied on in all the aforementioned decisions.

5. It was held in *Samudabhai Jyotibhai Bhedi* (supra) by the Division Bench, upholding the decision of the learned single Judge that the past services of the daily wagers where they have completed 240 days continuous service as per section 25F of the Industrial Disputes Act, would qualify for pension. In the present case, the respondents have not been able to dispute that both the petitioners have put in continuous service as contemplated under the law.

5. 1 The Division Bench in *Samudabhai Jyotibhai Phedi* (supra) noticed the provisions of the Resolution dated 17.10.1988 with reference to the nature of benefits flowing therefrom, in paragraph 6 of the judgment stating as under:

"6. As is well known, under Government Resolution dated 17.10.1988, the Government decided to grant benefits of regularization and permanency to daily rated workers who had completed more than 10 years of actual service prior to such date, of course subject to certain conditions. One of the clauses in the said

Government Resolution was that the benefit of regularization would be available to those workmen who had completed more than 10 years of service considering the provisions of section 25B of the Industrial Disputes Act. They would get benefits of regular pay scale and other allowances, pension, gratuity, regular leaves etc. They would retire on crossing age of 60 years. That the period of regular service shall be pensionable."

5.1.1 It was stated that the Government verified and cleared the ambiguity in the Resolution, observing as under:

"7. This Government Resolution led to several doubts. The Government itself therefore came up with a clarificatory circular dated 30.05.1989, in which, several queries which were likely to arise were clarified and answered. Clause 6 of this circular is crucial for our purpose. The question raised was that an employee who had put in more than 10 years of service as on 01.10.1988, would be granted the benefit of Government Resolution dated 17.10.1988. In that context, the doubt was whether for the purpose of pension, the past service of completed years prior to regularization would be considered or whether the pensionable service would be confined to the service put in by the employee after he is actually regularized. The answer to this query was that those employees who had put in more than 10 years of service as per Government Resolution dated 17.10.1988 would get the benefit of pension. For such purpose, those years during which the employee had fulfilled the provisions of section 25B of Industrial Disputes Act, such years would qualify for pensionary benefit."

5.1.2 The Court thereafter held:

"Two things immediately emerge from this clarification. First is that the query raised was precisely what is the dispute before us and second is that the clarification of the Government was unambiguous and provided that every year during which the employee even prior to his regularization had put in continuous service by fulfilling the requirement of having worked for not less than 240 days as provided under section 25B of the Industrial Disputes Act, would count towards qualifying service for pension. In view of the clarification by the government itself, there is no scope for any further debate. The petitioner was correct in contending that having put in more than 10 years of continuous service as a labourer in the past, he had a right to receive pension upon superannuation. This is precisely what the learned Single Judge has directed, further enabling the employer to verify as to in how many years he had put in such service and then to compute his pension."

5.2 Thus, it is a clear position of law emerging from decision in *Samudabhai Jyotibhai Phedi* (supra) that entire past services of dailywager which was continuous is liable to be reckoned for the purpose of pensionary benefits and for the purpose of granting pension. In the facts of the case of the petitioners, the factum is not controverted and it is undisputed that petitioner Nos.1 and 2 have throughout worked since their joining, to make their services continuous.

6. In view of the above, action on part of the respondents in not recognising the services of the petitioners herein from the date of their initial joining as daily rated workman cannot stand valid in eye of law. The respondents were not justified in counting the services for the purpose of pension from the date when the petitioners were made permanent at the completion of 10 years. The entire prior service ought to have been recognised and the pension should have been calculated and fixed accordingly.

7. Petitioner No.1 would be accordingly entitled to receive the pension by counting the pensionable service from the date of initial entry, that is 23.9.1989. Similarly, petitioner No.2 would be entitled to family pension by counting the pensionable service from the date of initial entry, that is 21.3.1982. The respondents are directed to fix the pension for the petitioners accordingly. The petitioners are also entitled to other benefits such as leave encashment, gratuity etc. as may be payable.

7.1 The total amount of pension and other benefits as above, becoming payable and the arrears thereof, shall be paid to the petitioners within a period of six weeks from the date of receipt of this order.

8. It is provided and directed that if the amount is not paid within stipulated period of six weeks, it shall carry interest at the rate of 6.5% from the date of filing of this petition. The respondents are further directed to continue to pay the pension to the petitioners duly calculated as above.

9. The petition stands allowed as above."

5. Mr. Kurven Desai, learned AGP for the respondent – State would object the petition on the ground of delay of 8 years as the petitioner had retired in the year 2008.

6. It is pointed out by Mr. Dave, learned counsel for the petitioner that even the S.L.P. with regard to the benefits of leave encashment, has now been dismissed.

7. In light of this, the petition is allowed. The petitioner is entitled to other benefits such as Public Holidays, Transport Allowance, Medical Allowance and Group Insurance. The respondents are directed to fix and pay the pension to the father of the petitioner by counting the pensionable service of his deceased father from the date of his initial entry until the date of his death i.e. 12.07.2019. Petitioner is accordingly entitled to receive the pension on his father's entire length of service until the death of his father i.e. till 12.07.2019. The total amount of pension as above, becoming payable including the terminal and other ancillary benefits as mentioned above and the arrears thereof, shall be paid to the petitioner within a period of ten weeks from the date of receipt of this order.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted. No costs."

3 In light of this, the petition is allowed. The petitioner is entitled to other benefits such as Public Holidays, Transport Allowance, Medical Allowance and Group Insurance. The respondents are directed to fix and pay the pension to the petitioner by counting the pensionable service from the date of his initial entry until the date of his retirement i.e. 31.03.2010. Petitioner is accordingly entitled to receive the pension from his date of retirement i.e. 31.03.2010. The total amount of pension as above, becoming payable including the terminal and other ancillary benefits as mentioned above and the arrears thereof, shall be paid to the petitioner within a period of ten weeks from the date of receipt of this order. Rule is made absolute to the aforesaid extent. Direct service is permitted.