

(2022) 01 GUJ CK 0101

In the Gujarat High Court

Case No : R/Special Civil Application No. 66 Of 2019

Vishnuji Sursingji Thakore

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

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

Citation : (2022) 01 GUJ CK 0101

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : UT Mishra, Kurven Desai

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Heard Mr.M.T.Mishra learned advocate for the petitioner and Mr.Kurven Desai learned AGP for the State.

2. Draft amendment is granted. To be carried out forthwith.

3. RULE returnable forthwith. Mr.Kurven Desai learned AGP waives service of notice of Rule on behalf of the respondent State.

4. With the consent of learned advocates for the respective parties, the petition is taken up for final hearing.

5. In this petition under Article 226 of the Constitution of India, the prayer of the petitioner is to set aside the orders dated 18.03.2013 and 28.09.2018

respectively. The challenge to these petitions arises in the background of following facts.

6. The case of the petitioner is that he was initially appointed in the year 1987 as Auto-Cleaner in the pay scale of Rs.750/-. The services of the

petitioner came to be illegally terminated and therefore the petitioner raised an industrial dispute which was registered as Reference (LCA) No.2086

of 1995. By an award dated 29.12.2004, the Labour Court directed that the petitioner be reinstated with 50% of back-wages. Upon a challenge before

this Court in Special Civil Application No.16329 of 2005, the petition was partly allowed on 07.08.2012 and the award was only modified to the extent

of back-wages. By an order dated 28.09.2018, the benefits of Government Resolution dated 17.10.1988 was extended to the petitioner on completion

of five years from 04.03.2013, the date on which, the petitioner was reinstated pursuant to the award in question. The order of reinstatement recorded

that the period from 14.03.1995 to 03.03.2013 shall be treated as absence.

7. Mr.M.T.Mishra learned counsel for the petitioner would submit that having been allowed to be reinstated in service and the order of termination

being set aside, continuity of service ought to have been read into the order of Labour Court and the benefits of the resolution dated 17.10.1988 ought

to have been granted to the petitioner from the date of his initial appointment. In support of his submissions that even when the award of the Labour

Court is silent from the aspect of reinstatement, that has to be read into the award is based on several decisions of this Court.

8. Mr.Mishra would rely on a decision of the Division Bench dated 23.11.2012 rendered in case of Heirs of Decd. Dhirubhai Lavabhai Suvagiya and

others v. Range Forest Officer rendered in Letters Patent Appeal No.1132 of 2018. Mr.Mishra would submit that in the aforesaid judgment, the

Division Bench of this Court has relied upon decisions of the Supreme Court. Paras 4 to 7 of the said judgment read as under:

â??4. In course of hearing, learned advocate for the appellants submitted that he would not press challenge in respect of reduction of back

wages. Even otherwise, learned Single Judge reduced the back wages to modify the award applying the facts and exercising his discretion

in that respect. The grant of back wages is discretionary which exercise has undertaken by learned Single Judge and we, in Letters Patent

Appeal, would not, in any case, substitute our view. Therefore, when part of the direction of learned Single Judge modifying the award of

the Labour Court in respect of grant of back wages is not interfered with.

4.1 The third aspect which was really interjected by learned Single Judge was

about grant of continuity. The Labour Court in its judgment and award granted continuity of service to all the workmen. The direction to grant continuity of service came to be set aside by learned Single Judge. He reasoned in paragraph No.18 that, "In view of the persons who were engaged without following procedure prescribed by law and who had not completed service of more than 4 to 5 years before they were relieved and that the persons who were engaged on adhoc and daily wage basis, the order directing the employer to treat their service continues for entire duration cannot be sustained."

5. The direction of reinstatement of the workmen issued by the Labour Court and confirmed by the learned Single Judge was confined on the finding that there was a breach of Sections 25F, 25G and 25H of the Industrial Disputes Act. It is trite principle that reinstatement when granted, in all ordinary circumstances, would accompany with grant of continuity of service. The reasoning that services of the workmen were only of four to five years or that they were the persons engaged in the ad hoc capacity, were not the valid or germane reasons in eye of law to set aside the benefit of continuity of service granted to them by the Labour Court.

6. In *Gurpreet Singh v. State of Punjab and Haryana* [(2002) 9 SCC 492], while the appellate court had directed reinstatement of the employee, the claim for arrears of salary was denied and it was further provided that the plaintiff would not be entitled to get the benefit of continuity of his service. The Supreme Court stated that once the plaintiff was directed to be reinstated in service upon setting aside the order of termination, continuity of service could not have been denied. The Supreme Court proceeded to observe,

"It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside the part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity with the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of

salary stands affirmed and this appeal stands allowed in part to the extent indicated above.â?? (Para 3)

6.1 Also in *Nandkishore Shravan Ahirrao v. Kosan Industries (P) Ltd.* [AIR 2020 SC 1776], the proposition of law was reiterated. In that

case, the Labour Court had not specifically denied the continuity of service. The Supreme Court observed that the appellant would be

entitled to continuity of service. It was stated in paragraph No.7 â??Ex facie, the Labour Court having awarded reinstatement to the

appellant, continuity of service would follow as a matter of law.â??.

7. In view of above, the direction of the learned Single Judge in impugned order setting aside the benefit of continuity granted to the

appellants workmen is not sustained. The benefit of continuity accorded by the Labour Court would hold to the benefit of the appellants and

all the consequential benefits to the appellants which may become payable by virtue of the judgment and award of the Labour Court would

be together with continuity of service.â??

9. Emphasis is made by Mr.Mishra on the observations of the Division Bench that when there is an award of reinstatement, continuity of service

would follow as a matter of law. Decision in case of *Nandkishore Shravan Ahirrao v. Kosan Industries (P) Ltd.* [AIR 2020 SC 1776] is also relied

upon and paragraphs 6 to 8 are referred to. Reliance is also placed on the decision in case of *Gurpreet Singh v. State of Punjab and Haryana* [(2002)

9 SCC 492].

10. Mr.Mishra would also rely upon the Division Bench decision of this Court in Letters Patent Appeal No.485 of 2017 dated 20.07.2021. It was relied

upon by the coordinate bench of this Court while dealing with an order in case of *Hamirbhai Meghabhai Gohil v. State of Gujarat* passed in Special

Civil Application No.21123 of 2018 on 03.01.2022. Paragraphs 11 to 20 of this order read as under:

â??11. The facts, as narrated hereinabove, are not in dispute. The Labour Court vide award dated 29.03.2007 while examining the case of

the present petitioner and the co-employee namely *Danabhai Kalabhai* in Reference (LCS) No.184 of 2000 has directed the respondent

authorities to reinstate him on his original post. However, it appears that no directions were issued with regard to continuity of service. Shri

Danabhai Kalabhai had approached this Court by filing Special Civil Application No.18154 of 2015 claiming the same relief as claimed by

the present petitioner since he was denied the benefit flowing from the Government Resolution dated 17.10.1988. A similar contention was

raised, which is raised in the present petition that since the Labour Court did not observe with regard to continuity of service, the benefit of

the Government Resolution dated 17.10.1988 cannot be extended to the petitioner. The Coordinate Bench of this Court after survey of

judgments of the Apex Court has held that once the Labour Court has directed reinstatement, the same would include continuity of service.

12. Finally, the Coordinate Bench of this Court in the case of Shri Dananbhai Kalabhai vide order dated 22.12.2016 has observed thus:-

15. Resultantly, the petitioner is ENTITLED to the benefits claimed for by him, more particularly, the benefits flowing from the Government

Resolution dated 17.10.1988, treating his service to be CONTINUOUS. He shall be given all other benefits including consequential benefits

from 01.10.1988 to 29.03.2007. DISPOSED OF, accordingly.

13. The judgment dated 22.12.2016 was subject matter of challenge before the Division Bench in Letters Patent Appeal No.485 of 2017.

The Division Bench by the order dated 20.07.2021 rejected the appeal by observing thus:-

â??6. We do not find substance in both the aforesaid submissions of the learned counsel appearing for the appellants. So far as the aspect

of delay is concerned, a Coordinate Bench of this Court in an order passed in a Review Application being Misc. Civil Application No.1 of

2017 in Letters Patent Appeal No.906 of 2016 decided on 01.05.2018 has observed in paragraphs 19 and 20 as under:

â??19. Keeping in view the aforesaid decisions, if the facts of the present case are examined, it transpires that the applicant workman had

worked with the respondent authorities during the period between November, 1987 to November, 1999. On 30.11.1999, his services came to

be terminated. Thereafter, demand notice was issued by the applicant â?" workman on 26.02.2013. When the reply was not given, applicant

filed a complaint before the Assistant Labour Commissioner, Bhavnagar and thereafter dispute was referred to the Labour Court,

Bhavnagar. It is not in dispute that the present respondents did not challenge the order of making reference to the Labour Court by filing

appropriate proceedings before the appropriate Court. It is true that there was a delay of 14 years in raising the dispute. However, from the

record, it is revealed that dispute was existed as after terminating the services of the applicant, his juniors were continued and even

thereafter new workers were employed by the respondents. Thus, the dispute was alive.

20. Learned advocate Mr. Trivedi is right in submitting that if the respondents were aggrieved by the factum of delay in making reference, it

was for them to challenge the order of making reference by the competent authority when the same was made to the Labour Court. Thus,

when the order of making reference was not challenged by the respondents, said aspect is also required to be considered while deciding the

issue involved in the matter.â??

7. So far as the second submission as regards continuity of service is concerned, we referred to an order passed by a Coordinate Bench of

this Court in Letters Patent Appeal No.1527 of 2019 decided on 23.06.2021 wherein the Court has observed as under:

â??5. On the other hand, Mr.Chaudhari, learned advocate for the respondent has taken us through different orders passed by this Court

in similar facts and circumstances, and has heavily relied upon decision of Honourable Supreme Court in the case of Nandkishore Shravan

Ahirrao v. Kosan Industries Private Limited [2020 LLR 813]. He would submit that the Honourable Supreme Court has held therein that

once a person is reinstated, continuity of service would follow as a matter of law and, therefore, the learned Single Judge has committed no

error in allowing the petition. He would, therefore, submit that the appeal be dismissed.

6. We have heard learned advocates appearing for the parties. We have also gone through the judgment and award dated 8.11.2016

passed by the Labour Court, Surendranagar, whereby the workman is reinstated but continuity of service is not granted to him and we find

that it is erroneous. In case of Gurpreet Singh (supra), which has been relied upon by learned Single Judge, it has been specifically held by

Honourable Supreme Court that reinstatement in service would follow continuity of service. In the case of Nandkishore Shravan Ahirrao

(Supra), it is held as under:-

7. Ex facie, the Labour Court having awarded reinstatement to the appellant, continuity of service would follow as a matter of law. The

award of the Labour Court dated 27 February 2008 does not specifically deny continuity of service. Hence the observation of the High

Court to the effect that the Labour Court had denied continuity of service is erroneous and would accordingly stand corrected in terms of

what has been observed herein-above. The appellant would be entitled to continuity of service.

7. Similar is the ratio laid down by Honourable Supreme Court in the case of Gurpreet Singh (supra). Hence, the case is squarely covered

under the above decisions of the Apex court. Hence, the appeal is meritless and accordingly, appeal is dismissed. Interim relief, if any,

stands vacated. In view of above order, Civil Application would not survive and the same is disposed of.

14. Thus, the directions issued by this Court in the case of coemployee Shri Danabhai Kalabhai, who was the party to the Reference (LCS)

No.184 of 2000 have become final and accordingly, the petitioner, whose reference is decided with the common award along with Shri

Danabhai Kalabhai, cannot be denied the benefits, which are conferred to Shri Danabhai Kalabhai.

15. In the order dated 18.06.2018 passed in Letters Patent Appeal No.1268 of 2017, while dealing with the same issue, the Division Bench

has held thus:-

5. Thus, the upshot of the aforesaid facts and discussion is that the present respondent - workman is denied the benefits flowing from the

Government Resolution dated 17.10.1988 only on the ground that he had not completed 240 days in a year and his continuity of

service, as granted, by the Labour Court vide award dated 23.07.2007 and confirmed by this court, cannot be considered. The stand

taken by the present appellants that the respondent "workman is not entitled to the benefits of the Government Resolution dated

17.10.1988 deserves to be deprecated. Once it has been established by this

court that the respondent " workman is reinstated in service with continuity of service, the workman would be entitled to get the benefits flowing from the Government Resolution dated 17.10.1988, and such benefits cannot be denied to the respondent-workman only on the ground that he has not worked for 240 days. He was forced to live without work because of his illegal termination. The appellants. cannot take benefit of their illegal action. The termination of the respondent " workman was found to be illegal and contrary to the provisions of the Industrial Disputes Act, 1947. The effect of continuity of service is to be conferred from the year 1996, when he was appointed as a daily wager. The impugned order dated 15.04.2016 is blissfully silent about denying the benefits of the Government Resolution dated 17.10.1988 to the workmen who have been reinstated with continuity of service. The Government Resolutions dated 17.10.1988 and 01.05.1991 envisage grant of benefits of pay fixation, pension, etc. to the daily wagers, who have completed certain number of years of service.

16. In the order dated 27.03.2018, the Division Bench, while examining the similar issue in Letters Patent Appeal No.553 of 2017 and allied appeals, has held thus:-

3. However, according to learned advocate for the employer who argued the case before learned Single Judge, workman Govindbhai

Haribhai Solanki had not actually worked between 1989 and 2006 and attained the age of superannuation on completion of 60 years in the year 2009 and thus, he had hardly worked for 3 years and not entitled to get the benefit of Government Resolution dated 17.10.1988.

Another workman Javalben Palaben Kantaria, she was reinstated in the year 2006 pursuant to the order of this Court and retired on 17.

1.2016 on attaining the age of superannuation and had put only 9 years and therefore she also would not be entitled to the benefit of above

Government Resolution. Various other contentions were raised based on the scheme of Government Resolution dated 17. 10.1988 that it was

a policy decision and a self-contained mechanism worked out to grant certain benefits to daily rated/causal workers and cannot have any

nexus with provisions of Industrial Dispute Act. However, learned Single Judge based on decision of the Apex Court to which reference was

made in para 7 of the judgement and material on record as emerged in the writ petition and interpretation put forth of Government

Resolution dated 17.10.1988 in all such cases, the significance of expression 'continuity of service' was considered and ultimately held

that if the contention of learned advocate for the employer about actual length of service rendered by the workman is considered provisions

contained in Government Resolution as well as Section 25B of I.D.Act, 1947 referred to therein will be nugatory. At the same time benefits

awarded by the Labour Court of Government Resolution dated 17.10.1988 to the workman was modified and held that the workman would

be entitled to the benefits under Government Resolution dated 17.10.1988 by treating them in continuous service from the initial date of

their appointment till the date of superannuation with a rider that for the period for which backwages were denied to them, workmen would

be entitled to receive only notional benefits under G.R. Dated 17.10.1988.

4. The above conclusion of learned Single Judge based on various orders passed by this Court and interpretation put forth in such decision

it cannot be said that period of service namely length of service of each of the workman is to be considered from the date of the award for

conferring benefits under G.R.dated 17.10.1988.

17. Thus, there is a constant view taken by the Division Benches, which are subsequent to the judgment dated 12.07.2016 passed in Letters

Patent Appeal No.492 of 2016, on which the reliance is placed by the respondents that once the Labour Court orders reinstatement,

continuity to such employee cannot be denied merely because the Labour Court has failed to record the expression 'continuity of

service'.

18. Even otherwise, the case of the petitioner is similarly situated to the co-employee, Shri Danabhai Kalabhai, in whose case the orders

passed by this Court have become final where the identical prayers made seeking the benefit of the Government Resolution 17.10.1988 from

01.10.1988 to 29. 03.2007 have been granted by this Court the only difference is that Shri Danabhai Kalabhai is still in service, whereas

the present petitioner has retired after rendering 39 years of service on 30.06.2017.

19. The Supreme Court in the case of Gurpreet Singh vs. State of Punjab & Ors., (2002) 9 SCC 492 has also held that once the termination

is set aside, the employee cannot be denied continuity of service once reinstatement is directed. The Apex Court has held thus:-

“3. Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity

of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case

of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get

continuity of service cannot be sustained and we set aside the part of the impugned order. So far as the arrears of salary is concerned, we

see no infirmity with the direction which was given by the lower appellate court taking into account the facts and circumstances including

the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and

this appeal stands allowed in part to the extent indicated above.”

20. Accordingly, the present petition is allowed. The respondents are directed to confer the benefits flowing from the Government Resolution

dated 17. 10.1988 with effect from the petitioner will be entitled to such from 01.10.1988 notionally up to 29. 03.2007 and thereafter, the

respondents are directed to give difference of salary from 30.03.2007 to 30.06.2017 and pay arrears accordingly. The respondents are

also directed to grant retirement benefits like pension, gratuity and leave encashment to the petitioner as per the law enunciated by the

Supreme Court in the case of P.W.D, Employees Union and Others (supra).”

11. Reliance is also placed on a decision in case of Shivuben Ambabhai Vasani v. State of Gujarat passed in Special Civil Application No.14297 of

2019. The relevant paragraphs read as under:

“8. I have heard the learned advocates appearing for the respective parties.

9. As noted hereinabove, the award of the Labour Court dated 30. 10.2012 in Reference (LCR) No.219 of 2001 has become final. By the

said award, the respondents were directed to reinstate the petitioner without any back wages, however, the Labour Court has failed to

observe anything with regard to continuity of service. At this stage, it would be

apposite to refer to the decision of the Division Bench. The

Division Bench in a similar set of facts while examining the provisions of the Government Resolution dated 17.10.1988 has held thus:-

8. The undisputed fact in the present appeal is that the respondent- workman was terminated from the service in the Year-1998 and his

termination was quashed and set aside by the award dated 12.01.2007. The Labour Court had directed the present appellants to reinstate

the present respondent-workman without backwages on his original post however, no specific reference was made regarding continuity of

service. The Apex Court in the case of Gurpreet Singh (Supra) has specifically observed that once the termination is set- aside, the workman

will be entitled for continuity of service since the same is not fresh appointment, but it is a case of reinstatement.

Accordingly, the workman was reinstated by the order dated 06.10.2008 on his original post, and thereafter, also, it is undisputed fact he

was conferred the benefit of regular pay-scale till he retired on 13.11.2013 after rendering 5 years] of service.

9. It is no more res-integra that, as per Resolution dated 17.10.1988, the workman would be entitled to pension and other retirement

benefits after completion of 10 years of service.

In present case, the termination of the workman is found to be illegal and he was reinstated in service and was also paid regular pay scale.

Thus, he was forced to remain unemployed for the interregnum period. The Labour Court, after examining the documents on record, has

given a specific finding that the workman had worked for 12 years before his termination and he had also completed 240 days service.

Thereafter, he was reinstatement on 06.10.2008 and till his retirement on 30.11.2013, he had completed 5 years. The learned Single Judge

has allowed the writ petition and has only directed the Pension Fixation Authority to pass appropriate orders of fixation in accordance with

law and it is further directed to forward the papers in that regard to the Pension Sanctioning Authority, who after receipt of the same, shall

pass appropriate orders. The learned single judge has only given a direction to the appellants to pass appropriate orders to fix the pension

in accordance with law. This Court does not find any illegality or infirmity in such

directions of passing appropriate orders for fixing the pension.â??

10. The Coordinate Bench in the judgment dated 24.07.2018 passed in Special Civil Application No.2192 of 2017 while examining

analogous facts has observed thus:-

â??3. The Labour Court in its judgment and award, though directed the reinstatement of the petitioner, did not expressly confer the benefit

of continuity of service, therefore, the moot question is whether the petitioner would be entitled to continuous service when the same was not

expressly granted by the Labour Court while ordering reinstatement.

4. In Vasantika R. Dalia Vs. Baroda Municipal Corporation [1998 (2) LLJ 172], this Court was posed to interpret the judgment and award

of the Labour Court which granted the relief of reinstatement to the workmen. The relief of back-wages was denied and the relief of

continuity of service was not denied specifically and that in the relief of reinstatement granted, the word â??continuityâ?? was not

mentioned.

4.1 The Court observed to lay down that â??It may be straightaway observed that once the relief of reinstatement is granted, the continuity

of service is a direct consequence rather inherent in the relief of this nature.â??

It was held that when the relief of reinstatement was granted and the continuity of service was not specifically denied, the workman has to

be relegated to the same position as was held by it at the time of termination. When the order of termination was found to be void, the

petitioner, it was held, would be entitled to hold the relief of reinstatement with continuity where there was no mention of specific denial to

such continuity.

4.2 The Supreme Court in Gurpreet Singh Vs. State of Punjab and others [2002 (92) FLR 838], held that once the plaintiff was directed to

be reinstated in service upon setting aside of the order of termination, continuity of service could not be denied. The Court observed that the

case was not of fresh appointment but it was one of reinstatement and that being the position, it was observed that the High Court was in

error in denying the continuity of service.

4.3 Thus and therefore, even though the judgment and award of the Labour Court had not expressly granted the continuity, at the same time

it did not deny the continuity in any expressed terms. The grant of continuity would have to be read with the order of reinstatement. The

petitioner would be entitled to be treated continuous in service upon reinstatement. Resultantly, the petitioner would be entitled to be

granted the benefits of resolution dated 17.10.1988 accordingly by reckoning his service as continuous from the date of his initial

appointment. 4.4 When the award of the Labour Court had not expressly denied the continuity is to be interpreted as per the principles of

law laid down by the Supreme Court in Gurpreet Singh (supra), the concept of continuity could not be distinguished for the purpose of

granting any other service benefits. Learned Assistant Government Pleader made a failed attempt to submit that the continuity for the

purpose of granting benefits under resolution dated 17.10.1988 may be treated differently. Any such distinction would be artificial

distinction.â??

11. Thus, the respondents are directed to grant the benefits of the Government Resolution dated 17. 10.1988 by treating his service as

continuous from the date of termination till reinstatement and accordingly, confer the benefits of the Government Resolution dated 17.

10.1988.â??

12. Taking into consideration all the decisions referred to herein above, the common thread has been decided by this Court is that when there is an

award of reinstatement by the Labour Court, the award has to be construed to be an award granting continuity of service unless otherwise expressly

denied. That is the position of law as held by the Supreme Court in case of Nandkishore Shravan Ahirrao (supra) referred to by the Division Bench in

case of Heirs of Decd. Dhirubhai Lavabhai Suvagiya (supra).

13. Even the decision of this Court in case of Hamirbhai Meghabhai Gohil (supra) it has been extensively reproduced above would indicate that based

on an award of the Labour Court unless there is an express denial of continuity of service once the termination is set aside, continuity of service has to

be read into the order of Labour Court.

14. Accordingly the petition is allowed. The respondents are directed to confer

the benefits flowing from the resolution dated 17.10.1988 to the petitioner with effect from 01.10.1988 to 31.01.2005 notionally and thereafter the respondents are directed to give salary from 01.02.2005 to the actual date of reinstatement treating the entire period of service from the initial date of appointment as continuous. Necessary orders shall be passed in terms of the directions issued by this Court within a period of three months from the date of receipt of copy of this order.

Rule is made absolute. Direct service is permitted.