

(2014) 04 GUJ CK 0036

In the Gujarat High Court

Case No : Spl. C.A. No. 4166 of 2014 and Spl. C.A. No. 4956 of 2014 to Spl. C.A. No. 4961 of 2014

Yusubkhan Mahmadkhan Pathan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 LLJ 405

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Nirav R. Mishra, Advocate for the Appellant; Hardik Soni, Learned Assistant Government Pleader and D.M. Devnani, Learned Assistant Government Pleader, Advocate for the Respondent

Judgement

@

Abhilasha Kumari, J.—Issue Rule, in each petition. Mr. Hardik Soni, learned Assistant Government Pleader waives service of notice of Rule for respondent No. 1 in Special Civil Application No. 4166 of 2014 and Special Civil Application No. 4956 of 2014 to Special Civil Application No. 4959 of 2014 and Mr. D.M. Devnani, learned Assistant Government Pleader waives service of notice of Rule for respondent No. 1 in Special Civil Application No. 4960 of 2014 to Special Civil Application No. 4961 of 2014. On the facts and in the circumstances of the case and with the consent of learned counsel for the respective parties, the petitions are being heard and decided finally. By preferring these petitions under Article 226 of the Constitution of India, the petitioners have, inter-alia, prayed for the issuance of a writ of mandamus, directing the respondents to extend the benefits of Government Resolution dated 17.10.1988 upon them.

2. The brief factual background in which the petitions have been filed is that the petitioners are working as daily wagers in the Forest Department of the State Government. The petitioner of Special Civil Application No. 4166 of 2014 was

appointed in the year 1977 and he is working in the range of Taluka: Matar on daily wages, till date. The petitioner of Special Civil Application No. 4956 of 2014 was appointed in the year 1983 as daily wager in the Forest Department and at present, he is working at Sokhda Nursery, Taluka: Matar, District: Kheda. The petitioner of Special Civil Application No. 4957 of 2014 was appointed in the year 1982 as daily wager in the Forest Department and at present, he is working at Traj Nursery, Taluka: Matar, District: Kheda. The petitioner of Special Civil Application No. 4958 of 2014 was appointed in the year 1983 as daily wager in the Forest Department and at present, he is working at Sokhda Nursery, Taluka: Matar, District: Kheda. The petitioner of Special Civil Application No. 4959 of 2014 was appointed in the year 1975 as daily wager in the Forest Department and at present, he is working at Sokhda Nursery, Taluka: Matar, District: Kheda. The petitioner of Special Civil Application No. 4960 of 2014 was appointed in the year 1982 as daily wager in the Forest Department and at present, he is working at Traj Nursery, Taluka: Matar, District: Kheda. The petitioner of Special Civil Application No. 4961 of 2014 was appointed in the year 1981 as daily wager in the Forest Department and at present, he is working at Traj Nursery, Taluka: Matar, District: Kheda.

3. According to the petitioners, their case is covered in their favour, by the judgment of the Supreme Court in State of Gujarat and Others Vs. PWD Employees Union and Others etc., , therefore, they are entitled for the benefits of regularisation as per the Government Resolution dated 17.10.1988.

4. Heard Mr. Nirav R. Mishra, learned advocate for the petitioners, Mr. Hardik Soni and Mr. D.M. Devnani, learned Assistant Government Pleaders for the State of Gujarat.

5. Having heard learned counsel for the respective parties, it is clear that the prayers made by the petitioners would be covered by the judgment of the Supreme Court in State of Gujarat and Others v. PWD Employees" Union (supra). The relevant paragraphs of the judgment are quoted hereinbelow:

"25. As per scheme contained in Resolution dated 17th October, 1988 all the daily wage workers were not entitled for regularization or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

"(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(iii) Daily wagers and semi skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/she will be eligible for getting medical allowance and deduction of provident fund.

(iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly."

26. Considering, the facts and circumstances of the case, the finding of Gujarat High Court dated 29th October, 2010 in SCA No. 8647/2008 and connected matters and the fact that the said judgment is binding between the parties, we are of the view that the appellants should be directed to grant the benefit of the scheme as contained in the Resolution dated 17th October, 1988 to all the daily wage workers of the Forest and Environment Department working for more than five years, providing them the benefits as per our finding at Paragraph 25 above. The appellants are directed accordingly. The judgment and order passed by the learned Single Judge dated 29th October, 2010 as affirmed by the Division Bench by its order dated 28th February, 2012 stands modified to the extent above. The benefit should be granted to the eligible daily wage workers of the Forest and Environment Department working for more than five years including those who are performing work other than building maintenance and repairing but they will be entitled for the consequential benefit w.e.f. 29th October, 2010 or subsequent date from which they are so eligible within four months from the date of receipt/production of the copy of this order. The appeals stand disposed of with the aforesaid observation and directions to the appellant-State and its authorities. There shall be no separate orders as to costs."

6. The Review Petitions filed by the State Government against this judgment have now been dismissed by the Supreme Court, vide order dated 29.01.2014, passed in Review Petition (C) Nos. 2826 and 2827 of 2013 in Civil Appeal Nos. 5321-5322 of 2013.

7. In view of the above, there remains no impediment at all, on the part of the State Government, in extending the benefits of the Government Resolution dated 17.10.1988 to the petitioners, subject to their fulfilling the requisite conditions.

8. In view of the above, the following order is passed:

The respondents shall examine the cases of the petitioners individually, and, if found eligible, shall extend the benefits of the Government Resolution dated 17.10.1988, to them, as per the directions of the Supreme Court. The needful be done within a period of four months from the date of the receipt of a copy of this order.

The petitions are allowed to the above extent. Rule is made absolute, in each petition, accordingly.

Direct Service of this order is permitted.