

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 11624 of 2020

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HARKISHANBHAI DAHYABHAI LAD
Versus
STATE OF GUJARAT

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Appearance:

MR KRISHNAN GHAVARIYA, ADVOCATE FOR MR MURALI N
DEVNANI(1863) for the Petitioner(s) No. 1,2,3,4,5,6,7
MR KRUTIK PARIKH, ASST GOVERNMENT PLEADER for the
Respondent(s) No. 1
MR HS MUNSHAW(495) for the Respondent(s) No. 4
NOTICE SERVED for the Respondent(s) No. 1,2,3,5,6

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 01/04/2022

ORAL ORDER

1. Heard learned advocates for the parties.
2. The prayer of the petitioners is to direct the respondents to revise the pension as well as gratuity calculating the same from the date of initial appointment of the petitioners along with arrears. The second prayer of the petitioners is to direct the respondents to release the benefits of 300 days unavailed privilege leave in favour of the petitioners as envisaged in the Government Resolution dated 17.10.1988 with interest.
3. The facts in brief would indicate that the petitioners were working with the respondents herein for more than three decades. Pension payment orders have been annexed to the petition which would indicate that for the purposes of counting pension from the date of completion of ten years, the date of regularization has been taken into consideration for

the purpose of pension.

4. Mr. Krishnan Ghavariya, learned advocate appearing for the petitioners would submit that the issue has now been decided by a Division Bench of this Court in the case of **Executive Engineer, Panchayat (Maa & M) Department vs. Samudabhai Jyotibhai Bhedi., reported in 2014(4) GLR 2952**. Mr. Ghavariya would also rely on a decision of the co-ordinate bench of this court dated 19.12.2018 rendered in Special Civil Application No. 9702 of 2018 and allied matters. Learned advocate would also draw the attention of the Court to an order dated 21.08.2019 rendered in Special Civil Application No. 11086 of 2019, wherein, the said decision has been considered.

5. Mr. H.S. Munshaw, learned advocate appearing for respondents no. 2 to 4 would submit that there is nothing on record to suggest that the petitioner has completed 240 days in each year of service from the initial date of appointment till they completed ten years of service and so as to get the benefits of the resolution dated 17.10.1988.

6. Para 5 of the order dated 21.08.2019 passed in Special Civil Application No. 11086 of 2019 reads as under:

“5. In Executive Engineer, Panchayat v. Samudabhai Jyotibhai Phedi [2017 (4) GLR 2952], the Division Bench has laid down, upholding the decision of the learned Single Judge, that the past services of the daily-wagers where they have completed 240 days of continuous service as per Section 25B of the Industrial Disputes Act, would qualify for pension.

5.1 The Division Bench in Samudabhai Jyotibhai Phedi (supra) noticed the provisions of the Resolution dated 17th October, 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 daily-wager 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 petitioner, the factum is not controverted and it is undisputed that the petitioner has throughout worked since his joining, to make his services continuous. 5.3 The only reason put forth by the authorities to deny the petitioner the pension is that after he was made permanent, he has not completed 10 years of qualifying service, however if the date of joining of the petitioner which is 12th December, 1986 is considered, the petitioner has evidently completed the qualifying period to be entitled to pension as per the law laid down in Samudabhai (supra).”

7. Similar view has been taken by this court in Special Civil Application No. 9702 of 2018 wherein it is observed as under:

“5.1 The decision in Samudabhai Jyotibhai Bhedi (supra) was further followed by another Division Bench in State of Gujarat v. Govindbhai Ukabhai Parmar being Letters Patent Appeal No.174 of 2017. Still another Division Bench in State of Gujarat v. Ranabhai Ajmalbhai Harijan, since deced. through legal heirs being Letters Patent Appeal NO.1518 of 2017 decided on 10th April, 2018 re-inforced the position of law.

5.2 The Division Bench in Ranabhai Ajmalbhai Harijan (supra) finally held as under.

“9. it leaves no manner of doubt that after repeated reiteration of position of law as rendered by this Court in the judgment referred to herein above, the directions are given by learned Single Judge that entire period of service rendered by him, including those years of service as 'Rojmadar' where he has rendered continuous service of 240 days a year has to be considered for the purpose of extending pensionary benefits. The stand of the Government, therefore that the respondent herein had not completed the stipulated period of qualifying service is, undisputedly a stand, which is contrary to the settled position of law, in view of the judgments referred to.”

5.3 In view of the above clear position of law emerging, the petitioners are entitled to the reliefs prayed for in the petition.

6. Now reverting to the facts of the present case, it appears that the pension proposal of the petitioners was already sent. The office of the Director of Pension and Provident Fund, asked the competent authority to fulfill the certain requirements. However, the authorities did not accept the pension case of the petitioners on the ground that the petitioners were not entitled to pension for the period of initial 10 years. They did not reckon the date of initial appointments of the petitioners to calculate the pension, but viewed that their period of service until they become regular, could be liable to be deducted from the total period for the

purpose of pension.

6.1 The stand of the respondents is manifestly erroneous in law in light of what has been held in the aforesaid decisions. The authorities not accepting the position of law could not be countenanced. Therefore, the petitioners are entitled to succeed.

7. Resultantly, all the three petitions are allowed by directing the respondent to act through their competent authority to process and finalise the pension of the petitioners by calculating the pension of each of the petitioners from the date of their initial appointments. The benefits including the arrears payable to the petitioners shall be paid within a period of 10 weeks from the date of receipt of writ of this order. It is further directed that if the aforesaid stipulated time period of 10 weeks is not observed by the authorities, the payment of arrears shall carry interest @ 7% from 1.7.2018 till the actual date of payment.

8. As far as the prayer made in Special Civil Application No. 10052 of 2018 and Special Civil Application No.10027 of 2018 regarding release of amount of unavailed privileged leave, it is directed in this regard that the petitioner concerned shall made representation before the competent authority of the respondents, who shall decide about the said request of the petitioners in accordance with law within a period of 10 weeks from the date of filling of such representation, and if the petitioners are found entitled, the amount shall be released within a further period of six weeks.

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8. The Division Bench of this court in Letters Patent Appeal No. 531 of 2019 vide order dated 08.03.2019 has also taken the same view. Accordingly, in view of the decision in the case of Samudabhai Bhedi (supra) for counting the period for purposes of pension, the date of initial appointment needs to be taken into consideration and for the purposes of taking initial date of appointment those years in which the petitioners

have completed 240 days have to be counted for the purposes of pension.

9. Accordingly, it is held that the petitioners are entitled to the pensionary benefits by reckoning the entire length of service from the date of initial joining for the purposes of pension and other terminal benefits. The respondents are therefore directed to fix the pension of the petitioners by counting their services from the date of their initial joining until the date of their retirement and in doing so each year of service preceding the date of regularization in which years the petitioners have completed 240 days shall only be considered for recalculating pension. The retirement benefits, except leave encashment benefit shall be paid to the petitioners within a period of eight weeks from the date of receipt of certified copy of this order.

10. As far as entitlement of the petitioners for leave encashment is concerned, the issue is pending and is at large before the Apex Court and learned advocate for the petitioner would concede that the issue regarding leave encashment can be dealt with at a later point of time depending on the outcome of the SLP, if occasion arises. Liberty to file fresh petition with regard to leave encashment if need arises pursuant to the final decision of the Apex Court in the pending SLP.

11. Petition is accordingly allowed. Direct service is permitted.

DIVYA

(BIREN VAISHNAV, J)