

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15908 of 2018
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 15908 of 2018

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NARAN DEVASHI MEHESHWARI & ANR.

Versus
STATE OF GUJARAT & ORS.

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Appearance:

DECEASED LITIGANT for the Petitioner(s) No. 1
MR PH PATHAK(665) for the Petitioner(s) No. 1.1
MR SAHIL TRIVEDI, ASST.GOVERNMENT PLEADER for the Respondent(s)
No. 1,2,3
MR HS MUNSHAW(495) for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 08/04/2024

ORAL ORDER

1. Heard learned advocate Ms.Reena Kamani for learned advocate Mr.P.H.Pathak on behalf of the petitioners, learned Assistant Government Pleader Mr.Sahil Trivedi on behalf of the respondent - State and learned advocate Mr.H.S.Munshaw on behalf of the respondent no.3.

2. By way of this petition, the petitioner has sought for the following reliefs:-

“(A) The Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, declaring the inaction on the part of the respondents in releasing the amount of pension and



other retirement benefits to the petitioner as illegal, unjust, arbitrary and violative of Art.14 of the Constitution of India and hence, be pleased to deprecate the same by directing the respondents to pay the amount of pension and other retirement benefits to the petitioner from retrospective date with 12% interest.

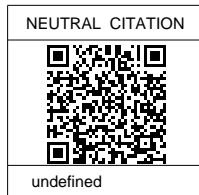
(B) The Hon'ble Court be pleased to hold that the respondents have illegally withheld the amount of pension and other retirement benefits payable to the petitioner and hence, be pleased to direct the respondents to pay all the amounts to the petitioner with 12% interest.

(C) Pending admission and final disposal of the present petition, the Hon'ble Court be pleased to direct the respondents to start paying pension to the petitioner forthwith.

(D) The Hon'ble Court be pleased to award cost of the present litigation to the petitioner which may be recovered from the personal salary of the erring officer.

(E) Any other and further reliefs as this Hon'ble Court may deem fit and proper in the interest of justice be granted."

3. It is the case of the petitioner that the period of service put in by the husband of the petitioner prior to his regularization under the policy of the Government Resolution dated 17.10.1988 having not been considered for the purpose of pension and other retiral benefits, the petitioner has filed the present petition.

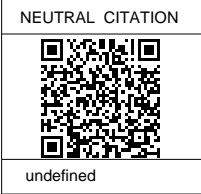


4. Considering the submissions made by learned advocate Ms.Kamani and learned advocate Mr.Munshaw and also perusing the affidavit-in-reply, it would appear that even the respondents do not dispute the fact of the husband of the petitioner having put-in the requisite number of years of service.

4.1. It would appear that the husband of the petitioner was appointed as a daily wager with the respondent no.3 on 18.04.1993 and whereas, from the said date, he had worked up to 28.02.2014 and in the interregnum, the husband of the petitioner has put-in 15 years where he has completed 240 days. It also appears that while the period from 01.04.2009 to 28.02.2014 was counted for the purpose of pension, but, since the husband of the petitioner has not put in the minimum qualifying service, therefore, he was not paid any pension as such.

4.2. As a matter of fact, paragraph no.6 of the affidavit-in-reply reads thus:-

“6. The respondent no.3 submits that as such the petitioner herein had served as daily wager between 18.04.1993 to 28.02.2014 and has put in service of 240 days per year for in all 15 years. It is submitted that as per the provisions of the Government



Resolution dated 17.10.1988, initial 10 years of service prior to grant of benefits flowing from Government Resolution dated 17.10.1988 are not to be counted and a copy of Government Resolution dated 17.10.1988 issued by Roads and Building Dept is annexed herewith and marked as Annexure-E. Resultantly, service of 5 years i.e. 01.04.2009 to 28.02.2014 is to be counted for the purpose of pension but as he has not put in minimum qualifying service of 10 years as per the provisions of Gujarat Civil Service (Pension) Rules, 2002, he is not entitled to pensionary benefits as per the decision of Director of Pension and Provident Fund, Gujarat State, Gandhinagar.”

5. In the considered opinion of this Court, the stand taken by the respondents prior to the date of regularization is not to be counted, is no more an issue which is res integra. A learned Coordinate Bench of this Court in case of **Samudabhai Jyotibhai Bhedi vs. Executive Engineer**, reported in **2017 (4) GLR 2952** has inter alia held that period prior to the date of regularization where the employee has put-in 240 days for a period of 10 years is required to be counted for the purpose of pension and other retiral benefits. Paragraph nos.11, 12 and 13 of the said decision being relevant for the present purpose, are quoted hereinbelow for benefit:-

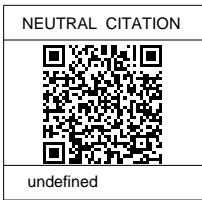
*“11. In the past, same or similar issues have traveled to the Division Benches in Letters Patent Appeals. Learned Single Judge in case of **Tribhovanbhai***



Jerambhai v. Dy. Executive Engineer, SubDivision, R & B Deptt. & Anr. reported in **1998 (2) GLH 1**, held that once a daily rated workman is treated to be permanent in terms of resolution dated 17.10.1988, his entire continuous service from the date of entry till retirement including his services rendered prior to the date of his regularization has to be taken into consideration for the purpose of computing pension or for making pension available to the employee. This decision was carried in appeal by the employer before the Division Bench. The Division Bench by order dated 04.04.2003 noted that the appeal had become time barred. Even on merits, the Division Bench was not inclined to take a different view.

12. In case of **Surendranagar Dist. Panchayat and Anr. v. Umarchan Alikhan Malek and ors.**, Division Bench of this Court in its judgment dated 29.03.2016 rendered in Letters Patent Appeal No.2047 of 2004, considered the issue where the employee had sought pensionary benefits having worked from the years 1978 to 1991. The learned Single Judge applying the formula of section 25B of the Industrial Disputes Act held that the employee had put in continuous service for more than 10 years as a daily wager. He was entitled to benefit of Government Resolution dated 17.10.1988 including the benefits of pension. The administration had merely contended that the workman had not put in actual 10 years of service after regularization before he can seek pensionary benefits.

13. Yet again, the Division Bench of this Court in case of **Chhaganbhai Ranchhodbhai Rathod v. Dy Executive Engineer**, vide judgment dated 06.08.1998 rendered in Letters Patent Appeal No.1495 of 1997, took up the issue of pensionary benefits of a daily wager in terms of Government Resolution dated 17.10.1988. The controversy was whether the employee had put in 10 years of service during which he had worked for not less than 240 days in every year. Learned Single Judge having

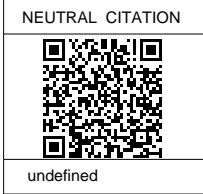


rejected the petition, the employee had filed the said Letters Patent Appeal. The Division Bench applying the provisions of Section 25B of the Industrial Disputes Act, held that the workman had put in such service of a minimum 10 years and consequently granted the benefits of pension in terms of Government Resolution dated 17.10.1988. Here also the authorities had not raised a contention which is sought to be raised before us.”

6. Considering the issue from the perspective of the law laid down by this Court, it would appear that the stand taken by the respondents is completely erroneous and de hors the settled principle. Under such circumstances, while the husband of the petitioner is deemed entitled for the benefits, while this Court ought to have taken some actions against the respondents for filing such affidavits which are contrary to the provisions of law, but, taking a lenient view more particularly in view of the submissions made by learned advocate Mr.Munshaw that proposal would be sent in a short period for grant of benefits, therefore, this Court refrains itself.

7. In this view of the matter, more particularly since the issue not requiring any further elaboration, the following directions are passed:-

(i) The period put-in by the husband of the petitioner prior



to 01.04.2009 where he has put-in 240 days in each year shall be counted alongwith the total length of service put-in by the husband of the petitioner and whereas all dues including pensionary dues and other terminal dues shall be paid to the petitioner, if the petitioner is so entitled.

(ii) Appropriate computation and consequent grant of benefits shall be carried out by the respondents within a period of eight weeks from the date of receipt of this order.

(iii) In case the above directions are not complied with within a period of eight weeks, then the petitioner shall be entitled to claim interest on arrears from the date of entitlement at the rate of 6%.

8. With the above observations and directions, the present petition stands disposed of as allowed. Consequently, civil application stands disposed of.

(NIKHIL S. KARIEL,J)

Bhoomi