

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/SPECIAL CIVIL APPLICATION NO. 7638 of 2016
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 7638 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

PWD AND FOREST EMPLOYEES UNION & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR SHALIN MEHTA SENIOR ADVOCATE WITH MR. NINAD P SHAH WITH ADITI S RAOL(8128) for the Petitioner(s) No. 1

MS VIDHI J BHATT(6155) for the Petitioner(s) No.

10,11,12,13,14,15,2,3,4,5,6,7,8,9

MR JAY TRIVEDI AGP for the Respondent(s) No. 1,2,3,4,5

RULE SERVED BY DS for the Respondent(s) No. 1,2,3,4,5

CORAM:HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 18/04/2024

ORAL JUDGMENT



1. The petitioners have preferred present petition under Articles 14, 16, 21 and 226 of the Constitution of India challenging the inaction on the part of respondents with below mentioned relief/s:-

"23(A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, declaring the oral order dated 01.11.2015 passed by the respondent no. 5 terminating the services of the petitioners no. 2 to 15, as bad in law, illegal, arbitrary, capricious and violative of their fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India and quashing and setting aside the same;

B. Your Lordships be pleased to issue a writ of certiorari or any other appropriate writ, order or direction declaring the impugned letter dated 04.06.2015 issued by the respondent no. 4 rejecting the case of the petitioners no. 2 to 15 for grant of the benefits as contained in Government Resolution dated 17.10.1988 as per the decision of the Hon'ble Supreme Court of India dated 9.7.2013 as arbitrary, unreasonable, irrational, bad in law and, thus, violative of Articles 14, 16, 21 and 23 of the Constitution of India and quashing and setting aside the same;

C. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, commanding or directing the respondent authorities to reinstate the petitioners no. 2 to 15 in service with all the consequential benefits, including continuity of service and other benefits that flow from such continuity of service;

D. Your Lordships may be pleased to issue a writ of mandamus commanding the respondent authorities to extend the benefits as contained in Government Resolution dated 17.10.1988, as per the decision of the

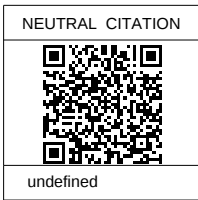


Hon'ble Supreme Court dated 9.7.2013 (reported in 2013 (8) Scale 579) to the petitioners no. 2 to 15 from the date they became eligible for such benefits with all the consequential benefits, including arrears of pay and allowances;

E. Pending admission and final hearing of the present petition, Your Lordships may be pleased to direct the present respondents to reinstate the petitioners no. 2 to 15 in service immediately; and

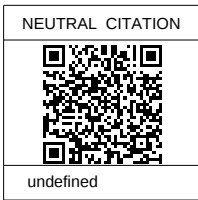
F. Your Lordships be pleased to pass any other appropriate order, as deemed fit, in the interest of justice."

2. The short facts giving rise to present petition are that petitioner Nos. 2 to 15 were working in Nursery on daily-wage basis in the Forests and Environment Department. They were appointed between 1.1.2006 and 1.8.2007. The petitioner Nos. 2 to 15 had put more than 7 years of service as daily wagers and despite of this service, they were getting only the minimum wages as per the Minimum Wages Act, 1948. No other benefits were extended to them. Even regular pay scale was also not given to them. They were also not entitled to any kind of leave i.e. casual leave, earned leave or medical leave. On reaching the age of superannuation, they were not entitled to any retirement benefits.



2.1 The Hon'ble Supreme Court vide its judgment dated 9.7.2013 reported in 2013(8) SCALE 579 directed the State of Gujarat to grant the benefits of the scheme as contained in Government Resolution dated 17.10.1988 to all the daily-wage workers of the Forests and Environment Department working for more than five years.

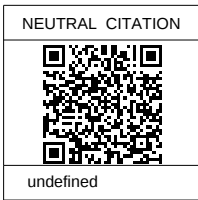
2.2 In light of the said decision the petitioners along with other similarly situated employees approached this Court by filing Special Civil Application No.1698 of 2015 and this Court disposed of the said petition vide order dated 11.2.2015 and directed the respondent authorities to consider the cases of each of the petitioners individually, and if found eligible, the benefits of the Government Resolution dated 17.10.1988 be extended to them. Thus, the petitioner Nos. 2 to 15 along with other petitioners, became entitled to get the benefits of the scheme contained in Government Resolution dated 17.10.1988. The said order was not complied with by the



respondent authorities and therefore, the petitioners filed Misc. Civil Application (For Contempt) No. 2828 of 2015 in Special Civil Application No.1698 of 2015 and in view of the communication dated 4.6.2015 the petitioners did not press the said contempt application and this Court disposed of the said Misc. Civil Application (For Contempt) No. 2828 of 2015 vide order dated 26.10.2015 as not pressed. Thereafter, respondent No.5 orally terminated the services of the petitioner Nos. 2 to 15 on 1.10.2015.

2.3 Hence, by way of present petition the petitioners have challenged the action of the respondent No.5 of orally terminating the services of the petitioner Nos. 2 to 15 on 1.11.2015 and the action of the respondent No.4 rejecting the case of the petitioner Nos. 2 to 15 for extending the benefits of the Government Resolution dated 17.10.1988.

3. Heard Mr. Shalin Mehta, learned Senior Counsel assisted by Ms. Aditi Raol and Ms. Vidhi J. Bhatt learned



advocates for the petitioners and Mr. Jay Trivedi, learned Assistant Government Pleader for the respondents.

3.1 Mr. Mehta, learned Senior Counsel for the petitioner has relied upon the judgment of this Court in Special Civil Application No. 17721 of 2015 with Civil Application No.9035 of 2016. Learned Senior Counsel has more particularly emphasized on paragraph Nos. 21, 22 and 23 which read as under:-

"21 Let me look into the decision of this Court rendered by a learned Single Judge in the case of Jayanti Chaudhary v. State of Gujarat [Special Civil Application No.8298 of 2000 decided on 15th January, 2016]. In the said case, the challenge was to the termination of the petitioner orally and also seeking benefits of the Government Resolution dated 17th October, 1988. The learned Single Judge, after an exhaustive review of the case law, allowed the writ application and ordered reinstatement of the petitioner with continuity in service and all consequential benefits. The learned Single Judge also overruled the preliminary objection as regards the alternative remedy before the Labour Court. I may quote the observations made by the learned Single Judge as under:

"10 The Court has heard learned counsels appearing for the parties and perused the documents on record. The few indisputable aspects emerging therefrom needs to be set out as under in light of the submissions of the learned counsels.

(i) The petitioner no.1 has claimed that he was appointed on 01.10.1989 i.e. not disputed by the respondents. Petitioner no.2 was appointed on 01.10.1988, which has been disputed by the respondents, as according to the respondents the petitioner no.2 was appointed on 01.11.1988.

(ii) The Government Resolution dated 17.10.1988 was



promulgated and implemented in respect of the dailywagers appointed prior thereto.

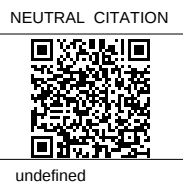
(iii) The documentary evidence coming forward on record in form of the documents on page nos.20, 23, 61 would indicate that the process of according benefits of Government Resolution dated 17.10.1988 had in fact been started at the end of the respondents.

In the aforesaid factual backdrop, question arises as to whether this Court should relegate the petitioners to seek redressal of the grievances in the alternative forum, as provided under the Industrial Disputes Act, 1947.

11 The Court has in fact noticed that the petitioners were appointed on the date mentioned by both the parties, which in any case, would not militate against the petitioners' contention of they being continuously performing their duties so as to attract the provisions of Industrial Disputes Act, 1947.

12 It is also not disputed that the petitioners had not completed 240 days, when the oral termination was being brought about, nor it is a case of the Staterespondent hereinabove, that the petitioners were required to be non-suited only on the ground that they had worked for more than 240 days when their services came to be terminated. On the contrary, the respondents' affidavits are conspicuously silent on this aspect and the documentary evidence, which have been brought on record including the correspondents under which the process is established, have been initiated for according the benefit of Government Resolution dated 17.10.1988 to the petitioners. The petitioners have unequivocally established that they had been continuously working for more than 240 days prior to the oral termination so as to be entitled to receive the protection under the provision of Industrial Disputes Act, 1947, namely; the retrenchment process, the notice prior to the termination and the compensation in the form of retrenchment compensation before effecting the termination by way of retrenchment.

13 The Court is of the view that the documentary evidence in form of the communications, which the respondents are annexed namely communications dated 01.07.2000, 21.07.2000 and 11.09.2000, indicating that the petitioners were called upon to collect the wages and the compensation itself would indicate that the Industrial Disputes Act provisions were not strictly complied with, as the date of



termination has been clearly mentioned and the communication is subsequently dated. Meaning thereby, the conditions precedent for bringing about valid termination by way of retrenchment had remained to be fulfilled. In other words, it can well be said that the documentary evidences coming forward from the respondents' side well establishes that the respondents have by way of afterthought sent a communication to the petitioners so as to infuse some semblance of legality in their action of termination of services, which in fact was brought about without following any procedure of law, much less, procedure of Section 25F of the Industrial Disputes Act and other provisions.

14 Against the factual backdrop of these findings, question arises as to whether any purpose would be served relegating the petitioners to the alternative remedy. The answer would be emphatic 'No', as the relegating of the petitioners to alternative remedy is a self imposed restriction or modality, which in a given case may not warrant its adoption. On the contrary, the facts of the case speaks for themselves, so far as present case is concerned, which would persuade this Court not to adopt the path of relegating the petitioners to the alternative forum. Besides, the long time elapsed from the date of the termination and filing of the petition till the date when the matter is heard, is also being a relevant factor, in case, if the submission canvassed on behalf of the State is accepted, then it would add number of years to the realm of uncertainty, which has been fasten upon the petitioners, which would rather amounting to deny them the opportunity of seeking appropriate relief at appropriate stage and time. Thus, this also being a relevant factor in not relegating the petitioners to the alternative remedy under the Industrial Disputes Act. Therefore, the Court is not inclined to accept the submission canvassed on behalf of the respondents for nonsuiting the petitioners on the ground of alternative remedy and proposes to embark upon the adjudication so far as all the aspects are concerned, at this stage, in this petition.

15 The Court has already recorded hereinabove that the breach of Section 25F is established beyond doubt, as the documents indicate that the subsequent action of proposing to pay the compensation and the notice pay would be of no avail in light of the judgment cited at the bar namely; in case of Devinder Singh Vs. Municipal Council, Sanaur, (supra) and in case of Anoop Sharma Vs. Executive Engineer, Public



Health Division No.1, Panipat (Haryana) (supra). From the case of Devinder Singh Vs. Municipal Council, Sanaur, (supra), paragraph nos.17 and 18 are reproduced as under;

Para17: Section 25F is couched in a negative form. It imposes a restriction on the employer's right to retrench a workman and lays down that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

Para18: This Court has repeatedly held that the provisions contained in Sections 25F(a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative.

Thus, the condition precedent for bringing about valid retrenchment being not fulfilled the termination by way of retrenchment would be of no consequence and the same is void ab initio. This brings the Court to consider the case of the petitioners so far as the other relief of 17.10.1988 resolution recommendations are concerned. The reliance is placed upon the decision of this Court passed in S.C.A. No.15670 of 2005 on 08.10.2014 as well as that of Division Bench passed in L.P.A. No.1381 of 2015 on 04.01.2016 and Supreme Court, to indicate that the petitioner even if presume to have been appointed a month or year after the date of the resolution, the same would be of no consequence as their case much more better than number of employees who have in fact been appointed after the year 1988 and who have granted benefits. This Court's observations as well as Division Bench's observations are set out hereinbelow;



S.C.A. No.15670 of 2005

Para11: The Court is of the considered view that the GR dated 17/10/1988 was no doubt containing reference to the future employment but the subsequent course of action and developments as it indicate that the Government continued employing daily wagers, temporary hands irrespective of those conditions which gave rise to a situation where litigations came up and hence as Shri Pathak has pointed out clarificatory GR came to be issued and over all facts & circumstances of the case indicate that the benefits of GR dated 17/10/1988 were to be extended to all, else it would have meant to Government employing unfair labour practice which would have been highly depreciable.

Para12: The Court is also of the view that the decision cited at the bar in case of State of Gujarat And Others Vs. PWD Employees Union And Others will have applicability to the facts & circumstances of the case and counsel of the petitioners submission qua some of the workmen were employed after GR dated 17/10/1988 would be of no avail as the judgment itself has answered that contention squarely.

L.P.A. No.1381 of 2015

Para6: The Labour Court has directed for conferment of benefits by the impugned award as per the Govt. Resolution dated 17.10.1988. We do not find that the learned single Judge has committed any error in not interfering with the said award. Under the circumstances, no case is made out for interference. Hence, the appeal is dismissed.

In view thereof, the Court is of the view that the respondents have to grant benefits of 17.10.1988 resolution to the petitioners after taking into consideration their services.

16 The Court is, therefore, of the considered view that the termination being void ab initio, is required to be quashed and set aside and as a result thereof the order of reinstatement is required to be made. However, at this stage, the question arises as to whether the petitioners' claim of backwages would be just and proper, as the learned counsel for the petitioners Ms. Bhatt submitted that the back wages are required to be granted as a matter of course, as could be seen from the decision in case of Deepali Gundu Surwase Vs.



Kranti Junior Adhyapak Mahavidyalaya (D.ED.) And Others, reported in (2013) 10 Supreme Court Cases 324; and in case of Mackinnon Mackenzie & Company Ltd. Vs. Mackinnon Employees Union, reported in AIR 2015 Supreme Court 1373; the backwages in such a situation is a matter of course.

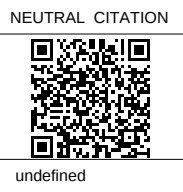
Learned AGP has contended that the back wages cannot be granted for asking in absence of any particular pleadings. There was no opportunity to the employerrespondents to produce evidence to show that the employees were gainfully employed besides the passage of time, would indicate that the employeespetitioners cannot be presumed to have been without any earnings for sustaining themselves and the family members.

The Court is of the considered view that the affidavits have been on the record to cover the contentions, so far as, the merits of the case are concerned. One of the petitioner had filed affidavit in the year 2014 to bring on record the clarificatory circular or resolution, which was submitted today itself by Ms. Bhatt, which was permitted to be taken, as nothing really turned upon it so as to delay the hearing of the matter. But even on that affidavit also and the memo of the petition there exists no, even plain averments on oath, stating that they have not been gainfully employed. Though, at this stage, Ms. Bhatt, did inquire of one of the petitioner, who is present in the Court, who indicate that he was not gainfully employed. But that in itself was not found to be sufficient, as the bare statement if not coming forward on record when the final hearing started, would not be accepted to be taken on record, as it would deny opportunity to the otherside for bringing their evidence on record. At the same time, it is required to be noted that the pendency of the matter for 15 years, would indicate that the petitioners could not have remained idle without their efforts to earn their wages and their sustenance.

17. Therefore, the Court is inclined to accept the submission of learned AGP, so far as, back wages are concerned. In absence of any pleadings on affidavit or proper submission qua the petitioners remaining unemployed, the Court would not be in a position to order back wages. Hence, the back wages are not ordered.

18 In view of the aforesaid facts and circumstances, the petition is partly allowed. Rule is made absolute to the aforesaid extent.

19 The termination is declared to be null and void, which will have effect of reinstating the petitioners and continuing them with all consequential benefits, but back



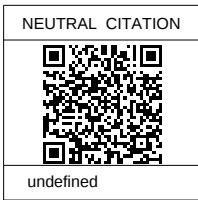
wages shall not be granted. The petitioners are to be reinstated forthwith and the continuity of service to be granted based thereupon. The benefits flowing from 17.10.1988 are to be worked out and accorded to the petitioners. The reinstatement be made within a week from the date of receipt of this order and the benefits be granted within two weeks therefrom. Direct service is permitted."

22 Thus, having regard to the facts of this case and also the position of law, I hold that the oral termination of the petitioner No.2 is absolutely illegal.

23 For the foregoing reasons, this petition succeeds and is hereby allowed. The oral termination is declared to be null and void which will have the effect of reinstating the petitioner No.2 and continuing him with all the consequential benefits without any back wages. The petitioner shall be reinstated forthwith with continuity in service. The benefits flowing from the Government Resolution dated 17th October, 1988 are to be worked out and accorded to the petitioner No.2. The reinstatement shall be made within a period of one week from the date of receipt of the writ of this order and the benefits of the Government Resolution dated 17th October, 1988 within a period of two weeks therefrom. Direct service is permitted."

3.2 In view of the above decision, Mr. Shalin Mehta, learned Senior Counsel for the petitioners has submitted that the oral termination is declared as null and void and therefore, the same principle requires to be applicable in present case also. Learned Senior Counsel for the petitioners has further submitted that in light of the said decision, the oral termination order dated 1.11.2015 may be quashed and set aside.

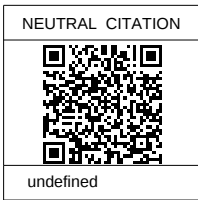
3.3 Mr. Shalin Mehta, learned Senior Counsel for the



petitioners also relied upon the decision of the Hon'ble Apex Court in case of State of Gujarat and ors. vs. P.W.D. Employees Union and Ors. reported in 2013(8) SCALE 579 submitted that in the said decision the Hon'ble Apex Court has extended the benefits of Government Resolution dated 17.10.1988 to the daily wagers working in the Forest and Environment Department. He has further submitted that in light of the said decision the petitioner Nos. 2 to 15 are entitled to get the benefits under Government Resolution dated 17.10.1988 as the petitioners have completed more than 5 years of service before they were illegally terminated from the service.

3.4 In view of the above facts, Mr. Shalin Mehta, learned Senior Counsel for the petitioners urges before the Court that present petition may be allowed and order dated 1.11.2015 passed by respondent No.5 and order dated 4.6.2015 passed by respondent No.4 may be quashed and set aside.

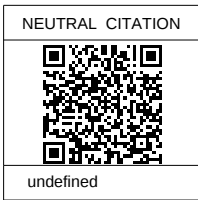
4. On the other hand, Mr. Jay Trivedi, learned Assistant



Government Pleader for the respondents has objected the petition mainly on the ground that decision of the respondent is in consonance with the settled principle of law and therefore, no interference is required to be called for in present petition. However, candidly he has submitted that the issue is now not remained as *res-integra*. So far as the oral termination is concerned, he has fairly submitted that in view of the order of this Court dated 23.11.2016 passed in Letters Patent Appeal No.899 of 2016 he cannot make any submission on the ground of maintainability of present petition.

5. I have perused the material available on record as well as the relevant papers along with other documents placed on record.

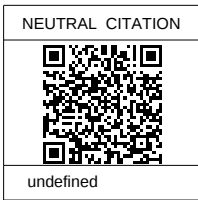
6. It appears from the record that the respondent authorities have not issued any notice to the petitioner Nos. 2 to 15 before terminating their services. It further appears that so as to deprive the benefits of Government Resolution dated 17.10.1988, the petitioners have thrown



out of service. The said act of the respondent authorities terminating service of the petitioner Nos. 2 to 15 is illegal and contrary to the principles of natural justice and thus, the said action of the respondent authorities requires to be quashed and set aside. Further, respondent No. 4 Conservator of Forest, in his letter dated 4.6.2015 has not disclosed the details on what basis it has come to the conclusion that the petitioner Nos. 2 to 15 have not completed 240 days in 5 years for getting the benefits of Government Resolution dated 17.10.1988.

7. In view of the above, the order 01.11.2015 passed by the respondent no. 5 and impugned letter dated 04.06.2015 issued by the respondent no. 4 require to be quashed and set aside.

8. For the foregoing reasons, so far as prayer 23(A) is concerned, the concerned respondent authority is hereby directed to reinstate the petitioner Nos. 2 to 15 in service with all consequential benefits and continuity of service but without backwages from the date of their oral

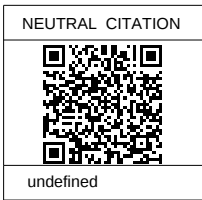


termination within period of 6 weeks from the date of receipt of copy of the order.

9. So far as prayer No. 23(B) regarding benefits of Government Resolution dated 17.10.1988 is concerned, the petitioner Nos. 2 to 15 may make appropriate representation to the respondent authorities with compete details showing their working days in the department as a daily wager, within period of two weeks.

10. The respondent authorities, after giving proper opportunity to the petitioner Nos. 2 to 15, may decide the said representation in light of the different judgments of the Court and in light of the facts of the present case, within period of six weeks from the date of receipt of copy of such representation.

11. In view of the above discussion and considering the facts and circumstances of the case, impugned order 01.11.2015 passed by respondent no. 5 and impugned letter dated 04.06.2015 issued by the respondent no. 4 are hereby quashed and set aside. Rule is made absolute



to the aforesaid extent. Direct service is permitted.

12. In view of the order passed in the main petition, Civil Application does not survive and the same stands disposed of accordingly.

SURESH SOLANKI

Sd/-
(HEMANT M. PRACHCHHAK,J)