

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3404 of 2019****RAGHUVERSINH CHANDRASINH SARVAIYA****Versus****STATE OF GUJARAT****Appearance:****MR DG SHUKLA(1998) for the Petitioner(s) No. 1****MR HARSHEEL D SHUKLA(6158) for the Petitioner(s) No. 1****MR MEET THAKKAR, ASST GOVERNMENT PLEADER for the
Respondent(s) No. 1,2,3,4****CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV****Date : 03/03/2022****ORAL ORDER**

1. In this petition, under Article 226 of the Constitution of India, the petitioner has prayed to direct the respondent authorities to consider the petitioner as permanent workman and pay monthly salary at par with other similarly situated workmen doing the same and similar type of work as well as to pay the arrears of monthly wages and revision of 6th and 7th Pay Commission pay-scale benefits along with 12% simple interest per annum. The petitioner has further prayed to direct the respondent authorities to pay pension, gratuity and other legal dues to the petitioner considering him in permanent service on the basis of his date of employment as 14.12.1979 as per the Government Resolution dated 17.10.1988 and the judgement and order dated 08.12.2011 passed by this court in Special Civil Application No. 7725 of 2002 and the Office Order dated 08.08.2013 on his attaining the age of superannuation in June 2019.

2. Facts in brief would indicate that the petitioner was employed as a daily wager on 14.12.1979. He along with 20 other employees raised an

industrial dispute which was subject matter of reference before the Industrial Tribunal being Reference (IT) No. 26 of 1996. By the award passed by the Industrial Tribunal, Bhavnagar on 08.11.2021 which directed that the petitioner and the 20 other workmen be treated as permanent and be paid all benefits of permanency from the date of the award was a subject matter of challenge before this court by way of Special Civil Application No. 7725 of 2002.

3. Mr. D.G. Shukla, learned advocate for the petitioner would submit that the award of the Tribunal was modified and the benefits of the resolution dated 17.10.1988 were directed to be extended taking into consideration the date of initial appointment. He would draw the attention of the court to the statement of 21 workers who by the order dated 08.08.2013 were granted the benefits. The petitioner's name figured at Sr. No. 12. His initial date of appointment was shown as 14.12.1979. Having rendered 40 years of service and not being paid pensionary benefits and not finding his name included in the benefits for GPF and considering the fact that the co-worker – colleague of the petitioner who was at Sr. No. 1 of the list was beneficiary of the order dated 27.12.2018 in Special Civil Application No. 16904 of 2015, the petitioner has approached this court for the reliefs as prayed for hereinabove.

4. Mr. Meet Thakkar, learned AGP would submit on the basis of an affidavit filed that the petitioner was granted the benefit of 6th and 7th Pay Commission and also other benefits like Medical Allowance, House Rent Allowance, increments and Dearness Allowance as is evident from the last pay certificated annexed to the reply. He joined his service as a daily wager in 1979. On the basis of he having completed 240 days in a year

he completed five years of service in 2005 and ten years of service in 2010. Having retired on superannuation on 30.06.2019, computing the years of service being 9 years the petitioner would not be entitled to pensionary benefits. He would also rely on the table annexed to the petition and submit that there are several days in the years preceding the year 2001 where the petitioner admittedly has not worked for 240 days. For the purposes of terminal benefits taking into consideration the resolution dated 24.03.2006 only the number of years post regularization of ten years has been considered and since the petitioner falls short of the minimum requisite number of years for the purposes of pension, the benefit cannot be given to the petitioner. He would further submit that for a period of nine years gratuity amount of Rs.2,44608/- has been paid to the petitioner.

5. Considering the submissions made by learned counsel for the respective parties, it is clear that the issue involved in this petition need not detain the court further in view of a similarly situated employee who joined post the petitioner in 1986 and was figuring at Sr. No. 1 on the list of employees of the order dated 08.08.2013 passed pursuant to the decision of this Court in Special Civil Application No. 7725 of 2002 being given such benefits. This Court in Special Civil Application No. 16904 of 2015 has considered the case of the co-worker of the petitioner and after considering the decision in the cases of **Tribhovanbhai Jerambhai vs. Dy. Executive Engineer, Sub-Division, R&B Deptt & Anr., reported in 1998 (2) GLH 1; Karshanbhai Vastabhai Bhasker vs. State of Gujarat reported in 1999(1) GCD 638; Executive Engineer Panchayat (MAA & M.) Department & Another vs. Samudabhai Jyotibhai Bhedi [2017(4) GLR 2952]** has observed as under:

“4. Several decisions were pressed into service by learned advocate for the petitioner. By referring to decision in Tribhovanbhai Jerambhai v. Dy. Executive Engineer, Sub Division, R&B Department [1998(2) GLH 1] and confirmed in Letters Patent Appeal No.696 of 1999, the principle was highlighted that once a daily-rated workman is treated as permanent under Resolution dated 17th October, 1988, his entire continuous service from the date of entry until he retires, including his services rendered prior to the date of his regularisation is taken into consideration. Decision in Karshanbhai Vastabhai Bhasker v. State of Gujarat [1999(1) GCD 638] in which Tribhovanbhai Jerambhai (supra) was relied on, was pressed into service. Another decision in Balvantbhai Sardarbhai Pagi v. Deputy Engineer [2017 (3) GLH 102] was relied on for similar submission.

4.1 Next pressed into service was decision of Division Bench of this Court in Executive Engineer, Panchayat v. Samudabhai Jyotibhai Bhedi [2017 (4) GLR 2952]. Yet another judgment of Division Bench relied on was in State of Gujarat v. Govindbhai Ukabhai Parmar being Letters Patent Appeal No.174 of 2017 decided on 11th July, 2018 wherein Samudabhai Jyotibhai Bhedi (supra) was relied on. On the basis of all the abovesaid judgment, petitioner contended that for the purpose of pension, his services ought to have been counted from the date of initial appointment whereas the respondents committed error and illegality in not counting accordingly but reckoning from the date of reinstatement.

4.2 Learned Assistant Government Pleader on the other hand submitted that even though the benefits under Resolution dated 17th October, 1988 may flow for the petitioner, as far as pensionable period of service is concerned, it could be reckoned only from the date since the petitioner was treated as permanent under the said Resolution. Thus it is not the date of initial appointment but the date of absorption as permanent as per policy under Resolution dated 17th October, 1988, which would hold good for pensionability and would count for pensionable service. Learned Assistant

Government Pleader relied on decision of this Court in Govindbhai Madhabhai Vaghela v. Director, Pension & Provident Fund decided on 24th September, 2003.

5. The issue and the controversy of the kind and nature involved here was considered by the Division Bench of this Court 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. The learned Single Judge while deciding the Special Civil Application No.18036 of 2013 held that pension to the original petitioner – respondent was liable to be granted taking into consideration the entire service the petitioner rendered including those years of service when he worked as a Rojambar from the date of his initial appointment as Rojambar. The contention on behalf of the State was that since the original petitioner – respondent was granted benefit of regular pay-scale with effect from 01st April, 1998, and he had retired with effect from 30th September, 2007, he did not complete the requisite qualifying service of 10 years to be eligible for pension. It was the contention that since regular pay-scale was granted with effect from 01st April, 1998, the pensionable period will have to be counted from the said date.

5.1 The Division Bench considered the decision in Tribhovanbhai Jerambhai (supra) and after quoting paragraphs 9 and 10 from the said judgment, it was observed in paragraph 6 as under.

“6. Reading of the judgment categorically suggests that there is no room for doubt that Government Resolution dated 17.10.1988 when read in the context of meaning of continuous service as defined under Section 25B of the Industrial Disputes Act suggests that while conferring benefits, viz. Pensionary benefits, calculation of the entire service rendered even prior to the benefit of the regular pay scale being conferred needs to be considered for the purpose of awarding pensionary benefits. (from the date of initial appointment as a daily wager).”

5.2 The Division Bench in Ranabhai Ajmalbhai Harijan

(supra) followed the decision of Division Bench of this Court in Samudabhai Jyotibhai Bhedi (supra). The observation of the learned Single Judge that “Even otherwise while considering Sub-rule (3) of Rule 80 of the Pension Rules, learned Single Judge in the context of Government Resolution dated 24.3.2006, has observed that the benefit of the Rule for the purpose of bridging the gap for computation of ten years of service needs to be granted.” In Samudabhai Jyotibhai Bhedi (supra) the Court observed as under, which observations were quoted by the Division Bench in Ranabhai Ajmalbhai Harijan (supra) to read 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.

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.

8. 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.

9. Learned counsel Shri Munshaw for the Panchayat however drew our attention to some other clauses of the said clarificatory circular dated 30.05.1989. None of these clauses have a direct bearing on the controversy at hand. These clauses merely refer to from which point of time such benefits may be available. It may be that benefits of regular services such as regular pay scale, leave, gratuity and pensionary benefits may be available only after regularization of an employee. However, this does not mean that his past continuous service would be wiped out for the purpose of pensionary benefits. The stand of the authorities that only that service which the employee had put in after actual order of regularization would count for pension is thus in conflict with the Government circulars itself.

10. The issue can be looked from slightly different angle. As it likely to happen in many cases and appears to have happened in the present case, actual order of regularization may not be passed immediately upon an employee having put in 10 years of continuous service for variety of reasons such as inaction on the part of the employee to press for such benefits, verification needed at the hands of the administration and sometimes, sheer inertia may delay actual regularization. Would that mean, the benefit of pension would be denied to an employee because after the belated regularization he did not have sufficient time to render 10 years of qualifying service? The answer has to be in the negative.

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, Sub Division, 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. Umarkhan 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.”

5.3 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.”

6. In light of the above legal position, reverting now to the facts of the present case, the Industrial Tribunal, Bhavnagar allowed Reference and passed award, which award was modified by virtue of directions passed by this Court in Special Civil Application No.7725 of 2002, which are quoted in paragraph 3.1 above. It can be noticed that pursuant to the said developments, office order was passed whereby decision of this Court in the aforementioned Special Civil Application was resolved to be accepted and all the workmen including the petitioner, who are shown in the Schedule at Serial Nos.1 to 20 wherein the petitioner figured at Serial No.1, were treated permanent from the date of their first appointment and it was further resolved to extend the benefits of Resolution dated 17th October, 1988 and Circular dated 15th September, 2011. Thus, the respondent themselves treated as per the award of the Industrial Tribunal as well as directions of this Court in the petition, services of the petitioner to be reckonable from the

initiate date of appointment granting the benefits from the said date.

7. In view of above position emerging in light and on facts, the petitioner deserves to succeed. The respondents are directed to determine the pension, gratuity and other monetary benefit of the petitioner and pay the same to the petitioner on the basis of his date of employment as 20th September, 1986 and counting the length of service accordingly for the purpose of conferment of benefits flowing from Resolution dated 17th October, 1988. The arrears which may arise to be paid to the petitioner by virtue of this order shall be paid within a period of eight weeks from the date of service of judgment/ order upon the respondents. It is provided that if the order of payment of arrears is not complied with within the aforesaid stipulated time, it shall carry interest at the rate of 7% from the date of filing of the petition, that is 29th October, 2015, till the date of payment.”

6. Considering the aforesaid decision, since the petitioner is similarly placed as the petitioner of the above petition, his case deserves consideration and the petition deserves to be allowed.

7. Petition is accordingly allowed. The respondents are directed to determine the pension, gratuity and other monetary benefit of the petitioner and pay the same to the petitioner on the basis of his date of employment as 14.12.1989 and counting the length of service accordingly for the purpose of conferment of benefits flowing from Resolution dated 17th October, 1988. The arrears which may arise to be paid to the petitioner by virtue of this order shall be paid within a period of ten weeks from the date of service of the order upon the respondents. Direct service is permitted.

(BIREN VAISHNAV, J)

DIVYA