IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11894 of 2020

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PUNABHAI SONABHAI VADI

Versus

STATE OF GUJARAT

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Appearance:
MR KRISHNAN GHAVARIYA FOR MR MURALI N DEVNANI(1863) for the Petitioner(s) No. 1
.... for the Respondent(s) No. 1
MR TRUPESH KATHIRIYA, ASST. GOVERNMENT PLEADER(1) for the Respondent(s) No. 1,2,3,4

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CORAM: **HONOURABLE MR. JUSTICE A.C. RAO**

Date : 17/12/2020

ORAL ORDER

1. ***Rule*** returnable forthwith. Mr.Trupesh Kathiriya, the learned AGP waives service of notice of Rule for and on behalf of the respondent- State.

2. The petitioner was appointed as a Daily-wager and was granted the benefit of the Government Resolution dated 17.10.1988 on completion of five years of service. He retired from the service. The petitioner is drawing pension as on today. His grievance redressed in this writ application is limited to the extent that he has not been granted the benefit of the Unavailed Privilege Leave of 300 days to his credit.

3. It is contended by the learned advocate for the petitioner that other employees who had approached this Court and obtained order in their favour, they are getting benefits of encashment but, the present petitioner is not given any benefits of leave encashment and the benefit is withheld arbitrarily.

4. I need not adjudicate this petition on merits since the issue raised in this writ application is squarely covered by a decision of this Court dated 20.08.2014 in Special Civil Application No.5530 of 2003 and a Division Bench decision of this court in the case of **State of Gujarat & Anr. v. Mahendrakumar Bhagvandas & Anr. reported in 2011 (2) GLR 1290.** It appears that the learned single judge relied on the Division Bench decision of this Court referred to above. I may quote the relevant observations of the Division Bench as under:-

> "3. According to G.R. dated 17.10.1988, a committee under the Chairmanship of Honourable Minister, Shri Daulatbhai Parmar, was constituted to consider conditions of service of daily rated labourers and artisans employed in several departments of the State Government. That committee had submitted its report and it was resolved to accept recommendations of the committee and provide several benefits to the workmen concerned with effect from 1.10.1988. Those benefits included payment of minimum wages, paid weekly holidays, medical facility and national holidays. After completion of five years of continuous service in terms of provisions of Section 25B of the Industrial Disputes Act, 1947 such daily rated employees were to be entitled to fixed monthly salary of Rs.750/with dearness

allowance prevalent from time to time and few more benefits of paid holidays and leave wages as well as membership of provident fund. It is stipulated in Clause 3 of the G.R. dated 17.10.1988 that daily rated employees, who had completed, as on 1.10.1988, continuous service of ten years in terms of the provisions of Section 25B of the Industrial Disputes Act, 1947, would be treated as permanent and such permanent employees shall be entitled to the pay scale of Rs.750940/ and shall also be paid dearness allowance and house rent allowance accordingly. They would also be entitled to pension, gratuity and benefits of provident fund in accordance with prevalent rules. The age of superannuation for such permanent labourer is fixed at 60 years and the period of permanent service is to be counted as pensionable service. It is further stipulated that the employees, who had completed 15 years of service as on 1.10.1988, shall be placed in the pay scale as aforesaid and their age for retirement shall be 60 years. Such workers, who would have completed 15 years of service on 1.10.1988, were to be entitled to one increment, and the employees, who had completed 25 years of service were to be granted three increments, before fixing their wages in the pay scale on 1.10.1988.

4. Bare reading of above stipulations contained in the G.R. Dated 17.10.1988 makes it crystal clear that upon completion of ten years of service, in terms of the provisions of Section 25B of the Industrial Disputes Act, 1947, on or before 1.10.1988, daily rated employees to whom the G.R. applied were to be treated as permanent employees with concomitant benefits. It is further clarified and resolved in clause (10) of subsequent resolution dated 18.7.1994 that the employees, who were completing 5/10/15 years of continuous service due to which whose categories would change should be immediately accorded benefits of the category in which such employees would fall. Government Resolution dated 18.7.1994 is, according to its own preamble, meant to supersede earlier instructions issued vide government resolution dated 3.11.1990. The

instructions are primarily meant to regulate treatment of daily rated employees, who had completed one or more years of service on 1.10.1988, with the stipulation that such employees shall continue to be treated as daily rated employees. Detailed instructions have been issued in said government resolution for categorizing such daily rated employees and maintaining their seniority lists, as also for regulating their pension and termination of their service by way of retrenchment. At the end, in Clause 15 of the government resolution, it is stipulated that the word 'permanent' as used in G.R. dated 17.10.1988 is intended to provide protection of service but not for treating such employees on regular establishment of the government.

5. As noted earlier, subsequent G.R. dated 18.7.1994 is expressly superseding the instructions contained in government resolution dated 3.11.1990 but does not supersede original G.R. dated 17.10.1988. It is also an admitted position that most of substantive benefits of permanent service are already accorded to the employees concerned in terms of G.R. dated 17.10.1988. Under such circumstances, it was argued that nomenclature for treating the employees concerned as permanent was clarified by the government, and hence, denial of few benefits was justified and in order. However, no ground or rational basis could be made out for grant of most of the benefits to most of the employees in terms of G.R. dated 17.10.1988 and for denial of the remaining few benefits. Once the employees concerned were, in fact, treated for all purposes as permanent employees in terms of G.R. Dated 17.10.1988, any discrimination or denial of benefits for a segment of such employees, who were subsequently rebranded as “daily wager” (rojamdar) by G.R. dated 18.7.1994, could not be rationally explained and could not be countenanced in the face of Articles 14 and 16 of the Constitution. Nor can the State Government legally take away the rights conferred and benefits, already accorded to the employees concerned by or under a subsequent government

resolution, which expressly supersedes earlier instructions and not earlier G.R. dated 17.10.1988 by which the benefits were accorded to the employees. It also sounds absurd and baseless that employee employed on daily wage basis for 15 years would be made permanent under G.R. dated 17.10.1988 but subsequently rebranded and treated as a daily wager. The submission of learned AGP that such employees had to continue as daily wage employee, with limited benefits in terms of subsequent G.R. dated 18.7.1994 and that they were at best "permanent daily wage employees", is contradictory and has no backing of any legal provision or precedent. Therefore, there is no reason to interfere with the impugned common judgment except for the clarification made hereunder.

6. Letters Patent Appeal Nos.960, 961, 964 and 965 of 2001 are preferred from common oral judgment dated 6.4.2000 of learned Single Judge of this Court, inter alia, in Special Civil Application Nos.28, 64, 67 and 68 of 1988 whereby original petitioners, working under the appellants herein, were directed to be given benefits in following terms:

".....In terms of the order passed in earlier case on 23/10/1999, the respondents are directed to extend all the benefits of regular employees to the petitioner, who have been made permanent employees in regular scale of pay for more than 10 years of service. They should not be discriminated with other employees. With the aforesaid observations and direction all the petitions are allowed and accordingly disposed of....."

7. Apparently the aforesaid resolution dated 18.7.1994 was not pressed into service when the impugned judgment dated 6.4.2000 was delivered. It is observed by learned Single Judge as under:

".....It appears that the Government Resolution is very clear that these petitioners who have completed more than 10 years as daily workers will be treated as permanent employees and they

> will get regular scale of pay. When these employees are treated as permanent employees with regular scale of pay, I do not find any reasons that they will be deprived of the benefits given to other government employees of same category. There cannot be any confusion about the Government Resolution and it is obligatory on the part of the government to extend all the benefits to these petitioners, who have been regularized on regular posts with regular scale of pay.....”

> 8. Letters Patent Appeal No.962 of 2001 is preferred from oral judgment dated 23.10.1999 of learned Single Judge in Special Civil Application No.5757 of 1988. In that impugned judgment also, the petition was allowed with the direction to treat all the workmen concerned as permanent employees and to treat them at par with other employees and to grant all the benefits as such. Thus, common issue of interpretation and application of relevant clause of government resolution dated 17.10.1988 is involved in all the appeals and it is decided as aforesaid against the appellant, in the facts and circumstances of each case.”

5. The above order was challenged by way of the Letters Patent Appeal No.1310 of 2015, wherein in paras 4 and 6, it is observed as under :

> "4. Whereas, Mr.Mishra, learned Counsel appearing for the respondent submitted that the aforesaid decision of the Division Bench of this Court in the case of State of Gujarat (supra) was carried by the State before the Apex Court in SLP (C) Nos.19970-19975 of 2012 and the same has been dismissed vide order dated 9.11.2012. Not only that, but thereafter the review application was filed by the State being No.35043- 5048 of 2012 and the said review application has also been dismissed vide order dated 14.5.2015. Under these circumstances, it cannot be said that the learned Single Judge has committed error in relying upon

the decision of the Division Bench of this Court in the case of State of Gujarat (supra). He submitted that merely because subsequent decision of another learned Single Judge in Special Civil Application No.5536 of 2003 is carried before the Apex Court and the stay is granted may not be a valid ground to admit the present appeal. It was in his submission that it is possible that the attention of the Apex Court might not have been drawn to the fact that the SLP against the decision of the Division Bench of this Court in the case of State of Gujarat (supra) was dismissed and the review is also dismissed. He, therefore, submitted that the appeal may not be entertained.

6. When the decision of the Division Bench of this Court, which has been relied upon by the learned Single Judge is not interfered with by the Apex Court in the afore referred proceedings of SLP and the review is also dismissed, in our view, it cannot be said that the learned Single Judge had committed any error in exercise of the power, which may call for interference in the present appeal. Further, when against the above the SLP is also dismissed referred decision of the Division Bench of this Court in the case of State of Gujarat (supra) and the review application is also subsequently dismissed, such would be a further more ground not to interfere with the order of the learned Single Judge."

6. In view of the above, it is declared that the petitioner is entitled for the encashment of the Unavailed Privilege Leave to the extent of 300 days.

7. Mr.Kathiriya, the learned AGP submitted that in view of the Government Resolution dated 17.10.1988, the petitioner is not entitled to the encashment of Unavailed Privilege Leave. This very G.R. Dated 17.10.1988 was considered by the Division Bench and

after considering the same it was held that the petitioner of that case identically situated like the petitioner herein was entitled to the encashment of the Unavailed Privilege Leave.

8. In the result, this petition is allowed. The respondent is directed to calculate the amount towards the encashment of the Unavailed Privilege Leave to the extent of 300 days within a period of four weeks from the date of receipt of the writ of the order and make the necessary payment to the petitioner.

9. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A. C. RAO, J)

MAYA S. CHAUHAN//KDC//BEENA//DOLLY