IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12316 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12317 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12318 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12320 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12321 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12323 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12324 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12325 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12326 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12327 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12328 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12330 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12331 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12333 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12334 of 2020

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PANCHABHAI BACHUBHAI SEVARA
Versus
EXECUTIVE ENGINEER SHRI

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Appearance:
MS ASHLESHA M PATEL(6127) for the Petitioner(s) No. 1
MR RITURAJ M MEENA(3224) for the Respondent(s) No. 1
NOTICE NOT RECD BACK(3) for the Respondent(s) No. 2
NOTICE SERVED(4) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

Date : 22/12/2020

ORAL ORDER
COMMON ORAL ORDER

1. This group of petitions is arising out of similar controversy and

the grievance and as such, learned advocates appearing on behalf of the respective side have requested to take up together for final disposal. Accordingly, the Court has taken up the hearing conjointly.

2. These petitions basically are filed under Articles 226 and 227 of the Constitution of India for the grievance that learned Industrial Tribunal, Rajkot was pleased to pass an award in the month of March, 2019 whereby the respondent is directed to give the benefit of Government Resolution dated 17.10.1988 to the concerned petitioners from the date of filing of reference instead of date of appointment of the petitioners and also denied to pay the arrears for the period between the date of reference to the date of award and the said period is treated as notional. Since similar grievance is raised in all these petitions, the court has treated Special Civil Application No. 12316 of 2020 as a lead matter and facts are taken from the said petition and conclusion would govern rest of the matters of this group.

3. The case of the petitioner of the lead petition is that the petitioner was serving as lineman with the respondent with effect from 01.12.2001 initially on daily rated basis with a daily wage of Rs.92.30 per day and was terminated on 30.04.2006. Since the termination took place, illegally the petitioner lodged a reference being L. C. G. No. 84 of 2006, which after adjudication came to be allowed on 30.05.2011 and while allowing the reference, the petitioner was ordered to be reinstated with continuity of service but without back wages.

3.1 This award passed by the learned Presiding Officer came to be challenged by the respondent authorities by way of filing Special Civil Application No. 10786 of 2011 which after hearing came to be rejected on 27.12.2011. Being aggrieved by the said decision, the authority has filed Appeal being Letters Patent Appeal No. 625 of 2012 which also came to be dismissed by the Division Bench of this Court vide judgment

and order dated 29.03.2012 and it is only after disposal of Letters Patent Appeal, the present petitioner was reinstated on 04.05.2012 with continuity from the date of his appointment.

3.2 It is the case of the petitioner that despite the aforesaid order of continuity of service as confirmed right up to the Division Bench of this Court, the respondent authorities have deprived the legitimate benefit to the petitioner of Government Resolution dated 17.10.1988 and as such again, the petitioner was dragged to a court of law by raising industrial dispute and then reference was registered as I. T. No. 89 of 2013. This reference was filed for the purpose seeking benefit of Government Resolution dated 17.10.1988 with effect from the date of the appointment since the continuity of service is granted and confirmed right up to the High Court. Despite the aforesaid circumstance, unfortunately, the learned Presiding Officer of the Labour Court in the present reference has passed an award on 07.03.2019 whereby the benefits have been extended not from the date of appointment but from the date of reference and the period of pendency of reference is treated as notional and it is this award which has deprived the petitioner all due legitimate benefits, which has given rise to filing of present petition.

3.3 Since this grievance is also similar to all the petitioners of cognate petitions, the details about their service tenure is reproduced in tabular form as supplied by one of the learned advocates of this group of petitions. The same reads as under:-

Sr. No.	SCA No. and name of petitioner	Date of Appointment	Date of termination	Reference Case No.	Date of reinstatement	Reference Case (IT)
1.	12324 of 2020 Bipinbhai Rathod	01.12.2001 Lineman	30.04.2006	83/2006	04.05.2012	83/2013
2.	12325 of 2020 Devayantbhai Vala	01.07.2001 Lineman	30.04.2006	90/2006	04.05.2012	84/2013
3.	12326 of 2020 Kanjibhai Vala	01.08.2001 Lineman	30.04.2006	89/2006	04.05.2012	85/2013
4.	12328 of 2020	01.07.2001	30.04.2006	83/2006	04.05.2012	81/2013

		Bodabhai Hasanbhai	Security Guard				
5.	12330 of 2020	Chetankumar Maheta	01.08.2001 Operator	30.04.2006	84/2006	04.05.2012	87/2013
6.	12331 of 2020	Kiritkumar Mevada	01.12.2001 Security Guard	30.04.2006	82/2006	04.05.2012	98/2013
7.	12333 of 2020	Govindbhai Chudasama	01.07.2001 Lineman	30.04.2006	87/2006	04.05.2012	96/2013
8.	12316 of 2020	Panchabhai Sevara	01.12.2001 Lineman	30.04.2006	84/2006	04.05.2012	89/2013
9.	12317 of 2020	Rajibhai Rathod	01.07.2001 Security Guard	30.04.2006	85/2006	04.05.2012	97/2013
10.	12318 of 2020	Khiabhai Vala	01.12.2001 Operator	30.04.2006	80/2006	04.05.2012	83/2013
11.	12320 of 2020	Laxmanbhai Vala	01.08.2001 Lineman	30.04.2006	88/2006	04.05.2012	86/2013
12.	12321 of 2020	Dineshkumar Vadher	01.12.2001 Lineman	30.04.2006	87/2006	04.05.2012	94/2013
13.	12323 of 2020	Nurmamadbhai Alarakhabhai	01.07.2001 Lineman	30.04.2006	91/2006	04.05.2012	80/2013
14.	12334 of 2020	Devayatbhai Vala	01.10.2001 Security Guard	30.04.2006	81/2006	04.05.2012	82/2013
15.	12327 of 2020	Jamankumar Makwana	01.12.2001	30.04.2006	92/2006	04.05.2012	95/2013

3.4 In view of aforesaid situation which is prevailing on record, originally when the petition came up for consideration, the coordinate bench of this Court was pleased to pass the order on 12.10.2018 by recording certain circumstance while issuing notice. Since this order being relevant, the Court would like to reproduce the same hereunder :-

> *"Heard learned advocate Ms. Asmita Patel for the petitioners and learned Assistant Government Pleader Ms. Asmita Patel, in all the captioned petitions.*
>
> *2. What is prayed by the petitioners is to declare that the judgment and award dated7.3.2019 passed by the Industrial*

Tribunal in Reference (IT) No. 89 of 2013, which is referable to Special Civil Application No. 12316 of 2020and the corresponding petitions whereby the Industrial Tribunal has granted the benefits of government Resolution dated 17.10.1988 to the petitioners, is from the date of filling of Reference and not from the date of initial appointment.

3. It was submitted that earlier the petitioners had to their benefit judgment and award dated30.5.2011 of the Labour Court, Junagadh, whereby the labour court had granted continuity of service to the petitioners from 30.4.2006. The said judgment and award dated 30.5.2011 delivered in Reference (LCJ) No. 84 of 2006 is referable to Special Civil Application No. 12316 of 2020,which came to be confirmed by this court in Special Civil Application No. 10786 of 2011,which was dismissed on 27.12.2011. It was submitted that all cases have similar background.

4. It was submitted that once the continuity was granted by the labour court and came to be confirmed by this court, the benefit of resolution dated 17.10.1988 could not have been denied in respect of the period for which the continuity has been granted. Learned advocate for the petitioners relied on decision of this court dated 24.7.2018 in Nanjibhai Madhabhai vs. state of Gujarat & Ors. in Special Civil Application No. 2192 of 2017.

5. Notice returnable on 27.11.2020.

Learned advocate for the petitioners is permitted to serve the respondents by E-mail. Service through registered A. D. Post is also permitted at the cost of the petitioners.

3.5 Subsequent to this, the matters got adjourned from time to time and later on, learned advocate Mr. Rituraj Meena appeared on behalf of contesting respondent No.1 – Gujarat Water Supply and Sewerage Board and filed formal affidavit in some of the petitions.

3.6 With the aforesaid background, the matters have been taken up for hearing upon request of learned advocates.

4. Learned advocate Ms. Ashlesha Patel appearing for the petitioner has vehemently contended that the action on part of the respondent authority in not extending the benefit in light of provision of Government Resolution dated 17.10.1988 in true spirit is not only unjust, arbitrary but contemptuous in nature. Learned advocate has

contended that before depriving the due benefit in actual premise, the learned Presiding Officer ought to have appreciated the earlier round of litigation wherein it was specifically directed to reinstate the petitioner with continuity of service and this continuity of service is confirmed right up to the Division Bench of this Court in Letters Patent Appeal and that being so, it was not open for the learned Presiding Officer to deprive the petitioner and curtail the same by extending the same only from the date of reference when the continuity of service issue is confirmed in long drawn litigation. According to her, there was hardly any reason for the learned Presiding Officer to deprive the petitioner the said benefit from the date of appointment. Learned advocate for the petitioner has drawn the attention of this Court to various decisions relevant to the issue and has specifically drawn the attention to a decision dated 27.12.2011 passed in Special Civil Application No. 10786 of 2011 as well as the decision delivered by the coordinate bench dated 17.02.2017 in Special Civil Application No. 9168 of 2015 with Special Civil Application No. 11622 of 2015 and additionally, has also drawn the attention to the decision delivered by the Division Bench of this Court on 27.03.2018 in Letters Patent Appeal No. 553 of 2017 and after referring to all these decisions, a contention is raised that absolute unjust order is passed by the learned Presiding Officer to curtail the benefit, which has been observed in the operative part is also practically perverse and suffers from vice of non-application of mind and as such, requested that the impugned award be modified to the extent that the benefit must be paid with effect from the date of appointment.

4.1 Additionally, learned advocate has candidly submitted that the petitioners are agreeable that the period commencing from the date of termination till the date of earlier award be treated as notional. Learned advocate while submitting this, has also drawn the attention on one of the decisions delivered by the coordinate bench on the issue and by referring to this decision, paragraph 13 is relied upon reflecting on

page 63 and as such, said that with this rider as stated above, the petitioners are ready to forgo the arrears for the aforesaid period i. e. from the date of termination till date of earlier award and hence, has requested that the award passed by the learned Presiding Officer deserves to be corrected to the aforesaid extent.

[From the date of termination till the date of earlier award of May 2011]

5. To this submission, learned advocate Mr. Rituraj Meena appearing on behalf of the contesting respondent has resisted on the ground that while passing the impugned award, the learned Presiding Officer has not committed any error and on the contrary, usual benefit has been extended from the date of reference and there is nothing wrong in it and as such, this being a petition under Article 226, the normal proposition is not to interfere with the decision taken by the court below. However, when the learned advocate was confronted with some of the decisions which are attached to the petition's compilation including the decision delivered by the Division Bench of this Court, has not been able to resist much and has left it to the discretion of this Court, more particularly when the petitioners on their own have submitted and conceded to the effect that the period commencing from their termination i. .e 2006 till the date of earlier award dated 13.05.2011 be treated as notional.

6. Having heard learned advocates appearing for the respective parties and having gone through the chronology of events which has been presented before the court which are not possible to be unnoticed by this Court and deserve consideration.

7. First of all, the original award passed by the learned Presiding Officer of the Labour Court i. e. L. C. G. No. 84 of 2006 which came to be allowed on 30.05.2011 reinstating the workmen with

continuity of service of course without back wages, but what is important is that the continuity of service is already accorded to the employees. This award came to be challenged before the High Court by way of Special Civil Application No.10786 of 2011 in which the Court was pleased to dismiss the petition and found that there is no material or evidence satisfying the Court that the impugned direction issued by the Labour Court was not justified and accordingly, the petition filed by the authority came to be dismissed and the direction with regard to continuity as such came to be affirmed. Now, this very order was made subject matter of Letters Patent Appeal No. 625 of 2012 which also came to be dismissed on 29.03.2012 and it is only thereafter, the employees came to be reinstated of course with continuity from the respective dates as ordered by the learned Presiding Officer of the Labour Court.

8. In addition to this, in almost similar set of circumstance in which an issue was related to grant of benefits pursuant to Government Resolution dated 17.10.1988, the Coordinate Bench on 17.02.2017 in the petition headed by Special Civil Application No. 9168 of 2015 with connected petitions, examined the stand of the authority. It was contended in the said case by learned counsel for the employer that since the back wages having been denied to the workmen, for that period, the length of service must be ignored for pension as well as for regularization because denial of back wages was presumably for gainful employment. Now, this stand was examined by the Coordinate Bench of this Court at great length and the Coordinate Bench has clearly observed in favour of the employee and held that the Labour Court was not justified in awarding the benefit of Government Resolution dated 17.10.1988 only from the date of reference and the Court held that the workmen would be entitled to such benefits in view of continuity from the date of initial appointment till the date of superannuation of-course with a rider that for the period for which the back wages were denied to them, they would be entitled to only notional benefit under the

government resolution. Certain relevant observations of the said decision since are significant, the Court would like to reproduce the same hereunder as those observations are also based upon previous decision delivered by the Court. Paragraphs 7 to 13 are such observations which the Court would like to reproduce hereunder:-

> *"7. Per contra learned counsel for the workmen while relying upon the decisions in The Director General, I.C.M.R.v. D.K. Jain & Anr. 2007 AIR SCW 2408; State of Gujarat &Anr. v. Mahendrakumar Bhagvandas & Anr. 2011 (2) GLR1290; Amreli District Panchayat v. Pravinkumar NanalalTrivedi inLetters Patent Appeal No. 901 of 2016 decided on3.10.2016; Pannalal Bhavanishanker Shukla v. District Panchayat Irrigation Survey Department in Special Civil Application No. 169 of 2011, decided on 19.9.2011;Bhagirathsinh Bharatsinh Rana v. State of Gujarat inSpecial Civil Application No. 19157 of 2015 and cognate matters, decided on 26.2.2016, would contend that once reinstatement with continuity of service was ordered, the workmen would be entitled to all the benefits ignoring the break in service. It was contended that backwages have also been denied to the workmen and if other benefits like pension and gratuity are also denied, the award awarding reinstatement and continuity of service would stand nullified.*
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> *8. On consideration of rival submissions and the material on record as also the cited cases, it is required to be noted that the fact that the workmen were awarded reinstatement with continuity of service but without backwages by judgement and award dated 17.1.2000 as modified by order dated 2.8.2006 in Special Civil Application No. 6017 of 2000, with effect from 7.1.1989, is required to be borne in mind. When reinstatement was awarded from the specified date i. e. 7.1.1989 with continuity of service, it must be given its due meaning. It is stated that in Special Civil Application No. 6017 of 2000 wherein said award was challenged, it was not stayed and thus, the award continuously operated obliging the employer to reinstate the workmen with continuity of service with effect from the date afore stated. Having failed to perform its obligation to reinstate the workmen, the employer cannot be permitted to now contend that the workmen had worked only for the period between1983 and 1989 and subsequently from the actual date of reinstatement in the*

year 2006. The termination of the services of the workmen was found to be illegal by judicial forum which was confirmed by this court and that what was declared as illegal would get obliterated on the date of such illegality as if such illegal order was never passed. Reinstatement and continuity of service must be understood in that context. The expression "continuity of service" would lose its significance if its operation is confined to the limited purpose for Industrial Disputes Act as contended by the learned counsel for the employer when the court which passed order of reinstatement with continuity of service does not confine its meaning to the provisions of the Industrial Disputes Act only, there can be no justifiable reason to restrict the meaning of `continuity of service' as contended by the learned counsel for the workmen. As indicated above, once the action was found to be illegal and reinstatement was ordered, the workman is required to be considered as if in service irrespective of the break given to him on account of termination of service. Further, it was no fault of the workmen that they were not reinstated immediately in the year 2000when the order of reinstatement was passed by the Labour Court. When the termination was found to be illegal and reinstatement and continuity of service is granted, it must be presumed that had the workmen been allowed to work continuously from the date of initial appointment, they would have complied with the conditions prescribed in the G. R. dated17.10.1988. It is the employer who prevented them from doing so and therefore, it cannot lie in its mouth to now contend that they have not actually worked. True that this court denied the backwages to the workmen but that was only because no cogent reasons were assigned by the Labour Court for grant of backwages and backwages were mechanically granted without considering the relevant factor. No specific finding was rendered by the Labour Court that the workmen were ever gainfully employed. The contention of the learned counsel for the employer that the back wages were denied to the workmen presumably on their being gainfully employed is not supported by the facts on record. Be that as it may, continuity of service and backwages are two distinct and different aspects. Continuity would necessarily imply absence of interruption. Denial of backwages may be for certain specified reasons. Denial of backwages would not amount to break in service for it has nothing to do with break in service.

9. In Gurpreet Singh v. State of Punjab & ors.(2003 SCC (L & S)) 20 the Apex Court held in paragraph No. 3

thus:

> *"Having heard the learned counsel for the parties and on examining the material on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside that part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity with the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stand allowed in part to the extent indicated above."*

10. This court in Kasambhai M. Ajmeri v. District Development Officer in Special Civil Application No. 7588 of2004 decided on 12.11.2014 was confronted with the case where the workman after being in service for the period between 8.7.1987 and 31.12.1988 i. e. about 16 months came to be terminated with effect from 19.12.1988 and on successful reference, he was ordered to be reinstated with full backwages and continuity of service, was reinstated on11.5.1994 and was again terminated on 13.12.1994 i. e. after working for about 7 months and again succeeded by judgement and award dated 6.6.2001 and was reinstated on 22.7.2002 with continuity of service and full backwages,observing in paragraph No. 5.10 thus:

> *"Considering the aforesaid and more particularly when the Labour Court granted reinstatement with continuity of service and backwages, the petitioner is required to have continued in service from the date of his initial appointment i.e. from 8.7.1987 for all purposes. When the Labour Court in two References i. e. in Reference (LCK) Nos. 189 of 1988 and 158 of1995 granted reinstatement with full back wages and continuity of service the period from the date of termination till reinstatement is required to be considered for all purposes and as if the services of the petitioner were not terminated. Any contrary view would*

> *nullify the aforesaid two judgement and awards passed by the Labour Court granting continuity of service."*

Benefits under G. R. dated 17.10.1988 were also granted to the workman in paragraph No. 5.12 thus:

> *"In view of the above, as such the petitioner would be entitled to the benefits conferred under Government Resolution dated 17.10.1988 on completion of 5years, 10 years and 15 years of service as a daily wager considering his service from the date of his initial appointment i. e. 8.7.1987 and on completion of5 years, 10 years and 15 years as a daily wager considering his service from 8.7.1987 i. e. from the date of his initial appointment as daily wager and on completion of 5 years, 10 years and 15 years from8.7.1987, the petitioner shall be entitled to the benefits conferred under Government Resolution dated 17.10.1988. If the contention on behalf of the respondents that the aforesaid period is to be counted from 22.7.2002, the same would nullify the aforesaid two judgement and awards passed by the Labour Court confirmed by this court by which the Labour Court has granted reinstatement with continuity of service. If the contention on behalf of the respondents is accepted, in that case it would amount to give premium to illegality committed by the respondents which has been quashed and set aside by the learned Labour Court. If the respondents would not have terminated the services of the petitioner illegally, which led to two References, the petitioner workman would have continued in service as daily wager from 8.7.1987."*

11. Thus, similar controversy has been set to rest by the Division Bench of this court in the above judgement and there can be no reason for this court to take a different view. In view of above, the argument that being a policy decision in the G.R. dated 17.10.1988, the employer would be entitled to consider the actual number of working days for the purpose of extending the benefits under the said G. R. to the workmen has no merits. There are no merits also in the arguments that actual service of 20 years as per the Pension Rules must betaken into consideration for extending the pensionary and other retiral benefits to the workmen since the policy contained in G.R. dated 17.10.1988 renders the workmen entitled to pensionary and other benefits on satisfying

the relevant criteria. In Tribhovanbhai Jerambhai v. Dy.Executive Engineer 1998(2) G.L.H. 1 the court held at paragraph No. 8 thus:"Rule 248 of the Bombay Civil Services Rules provide that Government may by general or special order permit service other than pensionable service for performing which a government servant is paid from State revenues or from local fund to be treated as a duty counting for pension. In issuing such order the Government is to specify the method at which the amount of duty shall be calculated and may impose any condition which it thinks fit. Thus Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension."

12. In the facts of the present case, the backwages have been denied to the workmen. Therefore, for the period for which the backwages have been denied, the workmen would be entitled to notional benefits under G. R. dated 17.10.1988while treating them as in continuous service from their initial date of appointment.

13. In above view of the matter, in the opinion of this court, the Labour Court was not justified in awarding benefits under G.R. dated 17.10.1988 to the workmen only from the date of reference. The judgement and award, therefore, is required to be modified and it is required to be ordered that the workmen would be entitled to the benefits under G. R. dated 17.10.1988 by treating them in continuous service from the initial date of their appointment till the date of their superannuation with a rider that for the period for which backwages were denied to them, they would be entitled to only notional benefits under G.R. dated 17.10.1988. Accordingly, ordered."

9. In addition to the aforesaid decision delivered by the Coordinate Bench, even the Division Bench of this Court on 27.03.2018 was pleased to decide the Letters Patent Appeal No. 553 of 2017 in which also, it was held that interpretation put forth by the learned Single Judge is correct and in addition, it cannot be said that the period of service i. e. length of service of each workman is to be considered from the date of award for conferring the benefit under Government Resolution dated 17.10.1988 and by the said decision, the view taken by the learned Single Judge came to be confirmed as referred to above.

While issuing such order, the Division Bench has closely scrutinized the order passed by the learned Single Judge as referred to above, as a result of this, the observations which are made in the said decisions have bearing on the issue in question. Hence, the Court would like to reproduce the same hereunder:-

> *"3. However, according to learned advocate for the employer who argued the case before learned Single Judge,workman - Govindbhai Haribhai Solanki had not actually worked between 1989 and 2006 and attained the age of superannuation on completion of 60 years in the year 2009and thus, he had hardly worked for 3 years and not entitled to get the benefit of Government Resolution dated17.10.1988. Another workman - Javalben Palaben Kantaria,she was reinstated in the year 2006 pursuant to the order of this Court and retired on 17.1.2016 on attaining the age of superannuation and had put only 9 years and therefore she also would not be entitled to the benefit of above Government Resolution. Various other contentions were raised based on the scheme of Government Resolution dated17.10.1988 that it was a policy decision and a self – contained mechanism worked out to grant certain benefits to daily rated causal workers and cannot have any nexus with provisions of Industrial Dispute Act. However, learned Single Judge based on decision of the Apex Court to which reference was made in para 7 of the judgement and material on record as emerged in the writ petition and interpretation put forth of Government Resolution dated 17.10.1988 in all such cases, the significance of expression "continuity of service" was considered and ultimately held that if the contention of learned advocate for the employer about actual length of service rendered by the workman is considered provisions contained in Government Resolution as well as Section 25B of I.D.Act, 1947 referred to therein will be nugatory. At the same time benefits awarded by the Labour Court of Government Resolution dated 17.10.1988 to the workman was modified and held that the workman would be entitled to the benefits under Government Resolution dated 17.10.1988 by treating them in continuous service from the initial date of their appointment till the date of superannuation with a rider that for the period for which back-wages were denied to them, workmen would been titled to receive only notional benefits under G. R. Dated17.10.1988.*

> *4. The above conclusion of learned Single Judge based on various orders passed by this Court and interpretation put forth in such decision it cannot be said that period of service namely length of service of each of the workman is to be considered from the date of the award for conferring benefits under G. R. dated 17.10.1988."*

10. In view of aforesaid discussion and in view of proposition of law laid down by the aforesaid decisions, in considered opinion of this Court, the order passed by the learned Presiding officer on 07.03.2019 appears to be not sustainable.

11. In view of aforesaid observations made by the learned Single Judge as well as the Division Bench, the stand taken by the respondent authority in the affidavit-in-reply is not sustainable nor possible to be accepted by this Court. Hence, a case is made out by the petitioners.

12. The petitioners are entitled to the due benefit under Government Resolution dated 17.10.1988 by considering them in continuous service from the initial date of their appointment till the date of their superannuation of course with a rider that the period during which they have been denied the back wages be treated as notional and the petitioners are entitled for the said period as notional benefit under Government Resolution dated 17.10.1988 for that period meaning thereby the date of earlier termination and the date of award setting aside the termination, that is, May 2011 in respective awards which were passed in favour of the petitioners. Thus, the period as indicated above is treated as notional in view of further fact that the learned counsel appearing for the respective petitioners has submitted under instructions that all the petitioners are ready and willing to be entitled notional benefit under the resolution for that said period. As a result of this, the same award is modified to the aforesaid extent.

13. It is clarified that for rest of the period, the actual benefits are required to be paid to the respective petitioners. Such due benefits are ordered to be paid to each of the petitioners after proper calculation considering the aforesaid observations and the same shall be paid within a period of eight weeks from the date of receipt of writ of this Court.

14. The petitions are accordingly partly allowed. Rule is made absolute to the aforesaid extent.

(ASHUTOSH J. SHASTRI, J)

NAIR SMITA V./CMK