IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15004 of 2020

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STATE OF GUJARAT

Versus

KESHAVJIBHAI KANJIBHAI PARGHI

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Appearance:
MS ASMITA PATEL AGP (1) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2

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

Date : 23/12/2020

ORAL ORDER

The present petition is preferred by the petitioner – State challenging the legality, validity and propriety of the judgment and award dated 10.10.2019 passed in Recovery Application No.36 of 2018 by the Labour Court No.2, Rajkot.

2. It is contended by the learned AGP appearing for the petitioner – State that the respondent workman has retired in the year 2012 and received all the retiremental benefits. Thereafter, he had filed the Recovery Application No.36 of 2018 before the Labour Court No.2, Rajkot and the Labour Court has wrongly allowed the petition filed by the respondent workman. It is contended that the respondent was not a regular

employee of the petitioner department. It is contended that the Labour Court does not have any jurisdiction to pass such order in a recovery case.

3. It is contended that the Labour Court has not insisted for the necessary supporting evidence for the claim made by the respondent. It is contended that the Labour Court has wrongly concluded that the respondent's service was regularized and he was entitled for all benefits as per regular permanent employee. It is contended that the Government Resolution dated 17.10.1988 would not be applicable to the present respondent and he was merely a regular wager.

4. After considering the above submissions and on perusal of the order passed by the Labour Court, in the order passed by the Labour Court it is clearly stated that the respondent was initially a daily-wager but on 17.10.1988 his service was converted into a regular employee. This fact was never questioned before the Labour Court.

5. Under the circumstances, this objection cannot be entertained in this writ petition. Further, the question of entitlement of 300 days' leave encashment is no more *res integra*, in case of **State of Gujarat & Anr. v. Mahendrakumar Bhagvandas & Anr. reported in 2011 (2) GLR 1290,** wherein, it is held that the Government cannot deny pick and choose any employee and they should treat all at par and give the benefit of G.R. Dated 17.10.1988.

6. The said order was challenged by way of the Letters Patent Appeal No.1310 of 2015, wherein in paragraphs 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."

7. In view of the above, I am of the opinion that the Labour Court No.2, Rajkot has not committed any error of law or failed to appreciate the facts on record and under the circumstances, this petition does not require any interference by this Court and deserves to be dismissed and is hereby dismissed accordingly.

(A. C. RAO, J)

MAYA S. CHAUHAN/dolly