IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3341 of 2018

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VAIBHAV CHANDRAKANT BARGE

Versus

PRINCIPAL CHIEF CONSERVATOR OF FORESTS & ORS.

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Appearance:
MR RASHESH A RINDANI(5380) for the Petitioner(s) No. 1
MR SHIRISH H GOHIL(3253) for the Petitioner(s) No. 1
MS NIDHI VYAS ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3
NOTICE SERVED BY DS for the Respondent(s) No. 4

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 26/03/2024

ORAL ORDER

1. Heard learned Advocate Mr. Rashesh Rindani on behalf of the petitioner and learned Assistant Government Pleader Ms. Nidhi Vyas on behalf of respondent – State.

2. By way of this petition, the petitioner has sought for following relief/s:

> 9 (A) Your Lordships may be pleased to issue a writ in the nature of mandamus or any other appropriate writ, order or direction and be pleased to quash and set aside the action of the respondents of not regularizing and confirming the services of the petitioner by counting complete period of service of about more than 10 years and unlawfully terminating his services effective from 1/5/2017 without following any procedure laid down in law.

(B) Your Lordships may be pleased to direct the respondents to reinstate the petitioner with all consequential benefits of back wages with continuity of services, etc. and and be pleased to direct the respondents to give the petitioner regularization and confirmation in the services of the respondents department based on his more than 10 years of services, as per the departmental circular dated 15/09/2014.

C. Your Lordships may be pleased to direct the respondent to give proper pay fixation to the petitioner based on full-fledged regularization and direct the respondents to pay him the difference and arrears of pay and also the full backwages for the periods during which he was suffering unlawful termination from the services.

D. Pending admission, hearing and till final disposal, Your Lordships be pleased to direct the respondents to give job to the petitioner without prejudice to rights and contentions of both the parties with a view to ensure that he may not have to starve.

D1. Your Lordships may be pleased to direct the Respondents to be refrained from terminating the petitioner's services during the pendency of this petition.

E. Pending admission and final disposal of the petition, Your Lordships be pleased to direct the respondents not to employ any new hands in his place or on his job without first offering the petitioner to work on the original post.

F. Your Lordships may be pleased to grant any other and further relief as may be deemed fit and proper, in the interest of justice.

G. Your Lordships may be pleased to grant costs of this petition.

3. At the outset, it requires to be mentioned that while the petition had been preferred inter alia challenging an order of termination dated 01.05.2017, it would appear that the said order of termination was also relating to co-employee who had preferred writ petition before this Court being Special Civil Application No. 17602 of 2017 and whereas in the said petition, an interim relief had been granted by this Court and whereas it is averred in the petition that on account of such interim relief, the said co-employee had been taken back in service and whereas likewise, the petitioner who was also similarly situated, had also been taken back in service.

4. Learned Advocate Mr. Rindani would submit that the petitioner being in service as of now, the only issue which would remain is considering the case of the petitioner for grant of benefit under Government Resolution dated 15.09.2014.

5. Learned Advocate Mr. Rindani would draw the attention of this Court to decision dated 04.12.2023 in Special Civil Application No. 17602 of 2017 preferred by the co-employee as referred to hereinabove and would submit that the present petitioner and the said co-employee, are identically situated and whereas it is submitted that while the petitioner is stated to be working since the year 2006, the co-employee, stared a year later in the year 2007. Learned Advocate would submit that beyond the difference in date of

entry in service there is no difference whatsoever between the case of the petitioner and the case of the co-employee. It is submitted by learned Advocate that in the above mentioned writ petition preferred by the co-employee while order of termination was challenged, additional prayer for considering the case of the petitioner for regularization as per Government Resolutions dated 17.10.1988 read with Government Resolution dated 15.09.2014 had been prayed and whereas it is submitted that learned a Co-ordinate Bench of this Court, vide the judgement referred to hereinabove, had inter alia directed the respondents to extend the benefit of Government Resolutions dated 17.10.1988 and 15.09.2014 to the petitioner therein. Learned Advocate would emphasize that such an order inspite of the fact that respondents had contended that services of the petitioner were being availed on piece rate basis and whereas learned Co-ordinate Bench referring to an earlier decision of this Court in case or **Aarti Vajubhai Thummar vs. State of Gujarat in Special Civil Application No. 9633 of 2017** had inter alia concluded that even employees appointed on piece rate basis were entitled to grant of the benefits.

6. Learned Advocate would submit that the case of the petitioner being identical the case of the petitioner in the writ petition referred to hereinabove, the petitioner may be treated as being entitled to the same treatment as the co-employee.

7. As against the said submission, the present petition is vehemently objected to by learned Assistant Government Pleader Ms. Vyas who relying upon affidavit-in-reply would submit that the petitioner being appointed on piece rate basis may not have any right to claim for regularization. Learned AGP would also submit that as such, the petitioner ought to have

approached the alternative forum first before approaching this Court etc.

8. To a pointed query by this Court, learned AGP could not in any manner deny the fact that the present petitioner and the co-employee whose case is referred to hereinabove are identical. Considering such a position, observations of this Court in case of the co-employee in Special Civil Application No. 17602 of 2017 at paras 4, 4.1, 5, 5.1 to 5.5 and 6 being relevant for the present purpose, are reproduced herein below for benefit:

> "4. The prayer was contested by respondent no.3 authority by filing affidavit-in-reply. Relying on the contents of the reply, it was submitted by learned Assistant Government Pleader that the petitioner worked as Rojamdar from 2007 to 2017 and thereafter, she was taken on contractual basis.
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> 4.1 Learned Assistant Government Pleader submitted that as per the order dated 12.12.2017, appointment was given to the petitioner as GIS Analyst for limited period. It was the contention on behalf of the respondent State advanced by learned Assistant Government Pleader, that the petitioner since worked as contractual employee, starting from the year 2017, she would not be entitled to the benefit of the aforesaid two Resolutions and could not be granted the benefit of Regularisation thereunder.
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> 5. When the factum was put to learned Assistant Government Pleader that the petitioner worked as daily-rated workman from 2007 to 2017 continuously, he was entirely at his receiving end. Once the petitioner had put in such a long service, the length of her services would render her entitled to get the benefit of Resolution dated 17.10.1988 and Resolution dated 15.09.2014 of the Forest Department. All the benefits available thereunder for the length of 10 years' service would become available to the petitioner.
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> 5.1 The petitioner has been continued in service throughout till date. Not only that, the petitioner has been retained in the service since 2018 without passing any kind of order. Continuation of the petitioner in the aforesaid manner signifies that the respondents themselves did not retained the status of the petitioner to be of contractual. She was continued in employment Secondly, it fortifies that the services of the petitioner were needed in light of the availability of work.
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> 5.2 Furthermore, when the petitioner had already become entitled to receive

the benefits of permanency upon completion of 10 years of service in the year 2017, on the basis of the aforesaid Resolutions, it would be only rational to link the subsequent period of service of the petitioner for the purpose of extension of benefit of the Resolutions dated 17.10.1988 and 15.09.2014.

5.3 An attempt was made in vain to contend on behalf of the respondents that the work from the petitioner was taken on piece-rate basis. The nature of the tenure of the petitioner as indeed bear out from the record to be firstly of 10 years and then continued throughout having initially given appointment for two months on contractual basis but thereafter, continuing her services.

5.4 The entire period reckoned from the initial date of joining, that is, from 2007 would deserve to be counted for granting benefit to the petitioner of the aforesaid Resolutions.

5.5 The view taken by this Court as above, stands supported by decision of this Court in **Aarti Vajubhai Thummar vs. State of Gujarat,** which was **Special Civil Application No. 9633 of 2017,** decided on 18.02.2023, in which also, the defence of the State Government was that the petitioner who was claiming the benefit of the very Resolution was a piece-rated workman. The Court directed the authorities to consider the case of the petitioner for granting benefits under the said Resolutions dated 17.10.1988 and 15.09.2014. The decision rendered by the learned Single Judge was confirmed in Letters Patent Appeal No. 188 of 2021, which was dismissed with reasoned order dated 23.03.2022.

6. In view of the above discussion and reasons, it is held and provided that the petitioner's case is required to be considered on the basis of the above facts attendant to the facts of the case of the petitioner for extension of benefits under Resolutions dated 17.10.1988 and 15.09.2014 to grant the permanency benefits on the basis of the total length of services of the petitioner."

9. Considering the law laid down by the learned Co-ordinate Bench, and since it clearly appears that the petitioner is entitled for benefit as was made available to the co-employee. Hence for the reasons noted hereinabove by the learned Co-ordinate Bench following directions are passed:

[1] The respondents shall examine the case of the petitioner for grant of

benefit under Government Resolutions dated 17.10.1988 and 15.09.2014. Such examination and an appropriate decision thereupon shall be taken by respondent no. 3 in consultation with respondent no. 2 within a period of six weeks from date of receipt of this order.

[2] Upon the petitioner being found entitled to be granted benefits under Government Resolutions dated 17.10.1988 and 15.09.2014, the same shall be appropriately paid to the petitioner within a further period of 8 weeks.

10. With the aforesaid observations and direction, the present petition stands disposed of as allowed. Direct service is permitted.

(NIKHIL S. KARIEL,J)

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