

HIGH COURT OF GUJARAT**Bench: Honourable Mr. Justice Hemant M. Prachchhak****Date of Decision: 9th May 2024**

Case No.:

R/SPECIAL CIVIL APPLICATION NO. 17607 of 2011

With

CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2019

APPELLANT(S): DILIPBHAI GOPALBHAI BAVALIYAPetitioner**VERSUS****RESPONDENT(S): STATE OF GUJARAT THRO THE SECRETARY & ORS.
.....Respondents****Legislation:**

Articles 14, 16, and 226 of the Constitution of India

Subject: Service Law – Petition challenging the impugned order and recovery notice for alleged excess salary paid, seeking quashing of said orders, revision of pay, and payment of arrears. The case addresses procedural issues in pay revision for a daily wager turned permanent employee.

Headnotes:

Service Law – Pay Revision and Recovery Notice – Petitioner, initially appointed as a daily wager and later receiving a fixed salary, challenged the recovery of alleged excess salary based on audit objections. High Court quashed the impugned order and recovery notice, directing proper pay revision and payment of arrears [Paras 1-12].

Procedure under Articles 14, 16, and 226 – Petitioner’s rights under constitutional provisions were examined, focusing on the due process for salary recovery and pay revision – Court emphasized the importance of following established procedures and providing fair opportunity for representation [Paras 3-10].

Decision – Petition allowed – Held – Impugned order and recovery notice set aside – Respondents directed to revise the petitioner’s pay and disburse arrears in accordance with established procedures [Paras 11-12].

Referred Cases:

- State of Gujarat and Ors. v. PWD Employees Union and Ors., 2013 (8) SCALE 579
- Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel, (2012) 9 SCC 310

Representing Advocates:

Mr. U.T. Mishra for the Petitioner

Ms. Megha Chitalia, Assistant Government Pleader for the Respondent No. 1

Ms. R.V. Acharya for the Respondent Nos. 2, 3, and 4

JUDGMENT

1. The petitioner has preferred present petition under Articles 14, 16 and 226 of the Constitution of India challenging the impugned order dated 17.11.2011 as well as recovery notice dated 17.11.2011 of the respondents with below mentioned relief/s:-

"(a) YOUR LORDSHIPS be pleased to issue the writ of mandamus or any other appropriate writ, order or direction and be pleased to quash and set aside the impugned order dt.17.11.2011 and also the consequent recovery notice dt. 17.11.2011 as ex-facie illegal, arbitrary, erroneous, unjust and in violation of article 14 and 16 of Constitution of India.

(b) YOUR LORDSHIPS be pleased to stay implementation and execution of the impugned order dt.17.11.2011 and also the consequent recovery notice dt. 17.11.2011 pending admission, hearing and final disposal of this petition.

(c) YOUR LORDSHIPS be pleased to issue the writ of mandamus or any other appropriate writ, order or direction and be pleased to appropriately revise the pay of the petitioner by revising the Dearness Allowance admissible from time to time to the petitioner and be further pleased to direct

the respondents to pay the arrears to the petitioner after revision of the pay as aforesaid.

(d) YOUR LORDSHIPS be pleased to direct the respondents to appropriately revise the pay of the petitioner for the last 26 years by revising the Dearness Allowance admissible from time to time and also to pay the arrears to the petitioner, pending admission, hearing and final disposal of this petition.

(e) YOUR LORDSHIPS be pleased to grant such other and further reliefs as may be deemed fit in the interest of justice."

2. The short facts giving rise to present petition are that the petitioner was appointed as a daily wager on the post of Peon from 11.10.1985 and thereafter rendered continuous service as daily wager under the respondents. On 26.09.1990, since the petitioner had completed more than 2 years, the respondents had passed the order to give the benefit of relevant Government Resolution whereby the minimum wages were granted to the petitioner. These benefits were granted by issuing a letter dt.26.06.1990. The respondents had passed the order dt.08.04.1991 to give fix salary of Rs.750/- alongwith other benefits apart from the fix salary of Rs.750/-.

2.1 By order dt.11.10.1995, the respondent no.4 informed the petitioner that as per the audit department, the petitioner is entitled to old salary and the petitioner is paid excess salary of Rs.15,962/- and the relevant Government Resolution is not applicable to the petitioner. The petitioner had therefore preferred Special Civil Application No.9712/1995. The said petition was dismissed by order dt.28.05.2005. Even the application to pray for the recall of the said order being Miscellaneous Civil Application No.888/2006 was also dismissed. The petitioner had thereafter preferred Letters Patent Appeal No.47/2007 and the said appeal was allowed and the impugned order dt. 11.10.1995 was set aside as the same was passed without affording an opportunity to the petitioner. In view of the fact that the order dt. 11.10.1995 was set aside by this Court, the position of the petitioner prior to 11.10.1995 was required to be restored and accordingly the petitioner was entitled to revision of pay by revising the Dearness Allowance admissible from time to time.

2.2 Thereafter, the petitioner was called for personal hearing on 11.05.2010 by the respondents for making representation. The petitioner had made oral representation and thereafter the District Ayurved Officer had passed the order to maintain status quo regarding the position of the petitioner by order dt.03.06.2010. However, the petitioner was deprived of the revised pay scale by revising Dearness Allowance admissible from time to time and the petitioner was not given the arrears by revising the pay scale from 1995 till today. Therefore the petitioner constrained to give a legal notice through Advocate on 18.06.2010 to give him the arrears of pay and also the revision of pay. It was clearly stated in the notice that since the order dt. 11.10.1995 was set aside by this Court, the position of the petitioner prior to 11.10.1995 is required to be restored and the benefits accruing to the petitioner from time to time were required to be paid and thereafter to maintain the status quo of his service. The status quo was required to be maintained after appropriately revising the pay scale as the order dt. 11.10.1995 was set aside. However the respondents had not taken any step to revise the pay scale of the petitioner and also to pay the arrears due and payable to the petitioner as per the revision of the pay scale from time to time from 1995 till today.

2.3 The petitioner had therefore preferred SCA No.1973/2011 before this Court. This Court has disposed of the petition with the direction that the petitioner may make a representation to respondent No.2 within a period of one week from the date of order. In the event that a representation is made within the stipulated period of time, the respondent No.2 should consider and decide the same after granting an opportunity of hearing to the petitioner, within a period of three months from the date of receipt of the representation. It was further directed that the date of hearing shall be communicated to the petitioner.

2.4 Thereafter petitioner had made a detailed representation dt.23.02.2011 which was received on the same day in the office of the respondent No.2. Accordingly the representation was made within the stipulated time. This Court had directed to pass the order after giving opportunity of hearing to the petitioner. The respondent No.2 had communicated the petitioner on 09.03.2011 inter alia stating that the petitioner was personally heard on 13.05.2010 and therefore he was heard as per the order passed by this Hon'ble Court and his application was not entertained. It is pertinent to note that although this Court had passed the order dt.

17.02.2011 to take the decision after giving the Opportunity of hearing to the petitioner. The petitioner had thereafter given a legal notice through Advocate on 09.05.2011 calling upon the respondent to consider and decide the representation after giving hearing to the petitioner as per the order passed by this Court dt.17.02.2011. Thereafter in pursuance of the aforesaid legal notice the petitioner was called for personal hearing by letter dt.06.06.2011 to remain present personally on 13.06.2011. In pursuance of the aforesaid letter, the petitioner had remained present before the respondent No.2 and made personal representation as well as had submitted the written submission. However, even after 3 months thereafter the decision was not taken and therefore the petitioner had made further representation dt. 13.09.2011 interalia stating that after hearing him on 13.06.2011, 3 months have been passed, but no decision was taken to revise his pay scale. The petitioner had also stated that at present he is getting Rs.1687.00/month the petitioner had requested to revise the pay scale. The respondent No.3 has now passed the order dt. 17.11.2011 holding that the petitioner is not entitled to the benefit of the Government Resolution dt.17.10.1988 and also directing to initiate recovery for the alleged excess wages paid to the petitioner.

2.5 In view of the above facts and against the inaction of the respondents authorities, the petitioner has approached this Court by way of preferring present petition.

3. Heard Mr. U.T. Mishra, learned Counsel appearing for the petitioner, Ms. Megha Chitlia, learned Assistant Government Pleader appearing for respondent No.1 and Ms. R.V. Acharya, learned Counsel appearing for the respondent Nos. 2 to 4.

3.1 Mr. Mishra learned Counsel for the petitioner has submitted that the issue involved in this petition has already decided by this Court vide order dated 18.4.2024 passed in Special Civil Application No.16055 of 2015 and therefore, present petitioner may be given equal treatment as per the petitioner of Special Civil Application No.16055 of 2015.

3.2 Mr. Mishra, learned Counsel for the petitioner has further submitted that the petitioner has been ignored by the respondents in granting the benefits of Government Circular and therefore, he is entitled to get the benefit of Government Circular. He has further submitted that the petitioner is eligible for such benefits.

3.3 In support of his submission, Mr. Mishra, learned Counsel for the petitioner has relied upon the decision of this Court dated 25.4.2023 passed in Special Civil Application No.14440 of 2016, decision dated 3.10.2016 passed in Letters Patent Appeal No.901 of 2016, judgment dated 8.4.2019 passed in Special Civil Application No.1942 of 2019.

4. Over and above decision of this Court mentioned above, Mr. Mishra, learned Counsel for the petitioner has referred to and relied upon the following decisions of Hon'ble Apex Court and this Court:-

(1) In the decision of Hon'ble Apex Court in the case of ***Nandkishore Shravan Ahirrao vs. Kosan Industries(P) Ltd reported in 2020(1) CLR 801***, the Hon'ble Court has observed as under:-

"2. The appellant was employed in the Assembly department of the respondent. He was served with a charge-sheet on 26 June 1992. The charge against the appellant was of causing disruption of work between 1050 am and 12 noon on 17 June 1992. Following a departmental enquiry, the appellant was dismissed from service on 26 November 1997. In pursuance of a reference made under the [Industrial Disputes Act 1947](#), the Labour Court by its award dated 27 February 2008 came to the conclusion that the findings in the enquiry were perverse; that the order of dismissal was harsh and granted reinstatement in service with 25% back wages for the surplus days.

3 The order of the Labour Court was questioned before the High Court of Gujarat by the employer. A learned Single Judge of the High Court, by a judgment dated 5 February 2013, partly allowed the Special Civil Application. While affirming the order of reinstatement, the Single Judge set aside the order for payment of 25% back wages. The appellant then filed a Letters Patent Appeal. The Division Bench of the High Court dismissed the appeal on the ground that it was not maintainable. 4 Notice was issued in these proceedings on 16 October 2015. The office report indicates that the respondent has been served. Since the respondent has failed to appear, we have proceeded to deal with the appeal on merits.

5 The learned Single Judge held that the Labour Court rightly observed that the punishment which was imposed on the appellant was harsh. It appears that even the salary of the appellant was deducted for the period in question during which work was disrupted. However, the learned Single Judge held

that the payment of back wages would not follow as a matter of course upon an award of reinstatement. Hence, the direction for the payment of 25% back wages was interfered with and set aside. The Single Judge also observed that the Labour Court has “rightly passed the judgment and award reinstating the respondent without continuity of service”.

6. *The first grievance of the learned counsel appearing on behalf of the appellant is that the High Court was in error in misconstruing the award of the Labour Court as having denied continuity of service. We find merit in the submission. The award of the Labour Court is in the following terms:*

“The reference of second party Nandkishor Shravan Ahirrao, 94, Shriram Kutir, near Chikuvadi, Post Office – Fatehnagar, Udhna, Surat – 304220 – C/o. Bombay foods Ltd. and Kosan Industries Ltd., Worker/Employee Union, Surat is hereby partly allowed.

And the first party of this case is hereby ordered that, they have to reinstate the second party in service with 25% back-wages for his surplus days within 30 days from the publication of this order.”

7. *Ex facie, the Labour Court having awarded reinstatement to the appellant, continuity of service would follow as a matter of law. The award of the Labour Court dated 27 February 2008 does not specifically deny continuity of service. Hence the observation of the High Court to the effect that the Labour Court had denied continuity of service is erroneous and would accordingly stand corrected in terms of what has been observed herein-above. The appellant would be entitled to continuity of service.*

8 *On the question of back wages, the Labour Court had confined the award of back wages to 25%. Having come to the conclusion that the findings in the disciplinary enquiry was perverse, the Labour Court observed that it was a - matter of record that the workman has been gainfully employed over a part of the period after dismissal, between 3 March 1990 to 9 September 1992 with another employer. It was in the above circumstances, that the entire component of back wages was not awarded to the appellant and only 25% was awarded. The High Court has no justification to set aside the award of 25% back wages awarded by the Labour Court which was eminently fair and proper. The direction of the High Court for deletion of back wages is therefore unsustainable and is set aside. 9 We accordingly allow the appeals by*

directing that while maintaining the award of reinstatement, the appellant would be entitled to notional continuity of service as well as the payment of 25% back wages. Since the appellant has retired from service during the pendency of the proceedings, his retiral dues together with payment of 25% back wages for the relevant period shall be computed and paid over to the appellant within a period of three months from the date of receipt of a certified copy of this order."

(2) In the decision of Hon'ble Apex Court in the case of **Gurpreet Singh vs. State of Punjab and others reported in (2002) 9 SCC 492**, the Hon'ble Court has observed as under:-

"1. Leave granted.

2. The Plaintiff is in appeal against the impugned judgment of the High Court of Punjab & Haryana in a second appeal.

The plaintiff's services stood terminated and he filed the suit for declaring the order of termination null and void. The suit was dismissed. The lower appellate Court, however, on re-appreciation of the materials on record, came to the conclusion that the order passed by the D.I.G. must be held to be illegal and consequently directed that the plaintiff should be reinstated in service. Having directed so, the first appellate court categorically held that the plaintiff will not be entitled to any arrears of salary for the period for which he has not served. The plaintiff assailed the appellate decree by filing a second appeal claiming that he would be entitled to the arrears of salary. The High Court by the impugned order not only confirmed the decree of the lower appellate court that the plaintiff will not be entitled to any arrears salary, but also further added that the plaintiff will not get his continuity of service. The plaintiff, therefore, is in appeal before this Court.

3. Having heard the learned counsel for the parties and on examining the materials 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 the 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 stands allowed in part to the extent indicated above."

(3) This Court in the order dated 23.11.2021 passed in Letters Patent Appeal No.1132 of 2018 has observed as under:-

"4. In course of hearing, learned advocate for the appellants submitted that he would not press challenge in respect of reduction of back wages. Even otherwise, learned Single Judge reduced the back wages to modify the award applying the facts and exercising his discretion in that respect. The grant of back wages is discretionary which exercise has undertaken by learned Single Judge and we, in Letters Patent Appeal, would not, in any case, substitute our view. Therefore, when part of the direction of learned Single Judge modifying the award of the Labour Court in respect of grant of back wages is not interfered with.

4.1 The third aspect which was really interjected by learned Single Judge was about grant of continuity. The Labour Court in its judgment and award granted continuity of service to all the workmen. The direction to grant continuity of service came to be set aside by learned Single Judge. He reasoned in paragraph No.18 that, "In view of the persons who were engaged without following procedure prescribed by law and who had not completed service of more than 4 to 5 years before they were relieved and that the persons who were engaged on adhoc and daily wage basis, the order directing the employer to treat their service continues for entire duration cannot be sustained."

5. The direction of reinstatement of the workmen issued by the Labour Court and confirmed by the learned Single Judge was confined on the finding that there was a breach of Sections 25F, 25G and 25H of the Industrial Disputes Act. It is trite principle that reinstatement when granted, in all ordinary circumstances, would accompany with grant of continuity of service. The reasoning that services of the workmen were only of four to five years or that they were the persons engaged in the ad hoc capacity, were not the valid or germane reasons in eye of law to set aside the benefit of continuity of service granted to them by the Labour Court."

(4) This Court in the judgment and order dated 8.4.2019 passed in Special Civil Application No.1942 of 2019 has observed as under:-

"4. The reason for denial of benefit of the Resolution dated 17.10.1988 is discernible from the communication dated 10.03.2014 from the office of Archaeological Department addressed to the President, Gujarat Labour Federation. The said communication was in respect of the two workmen named Baria Rameshbhai Udabhai as well as the present petitioner, Damor Bhagvanbhai Amrabhai. In the earlier petitions, being Special Civil Application No.5321 of 2013 and 5322 of 2013, the case had gone in Special Leave Petition and pursuant to the same, the order was passed. The denial was on the ground that the benefits under the Resolution dated 17.10.1988 would be available provided the Rojamdhar had been working prior to 01.10.1988. It was stated that the present petitioner was working since 04.10.1991, therefore, the date being subsequent to 01.10.1988, the petitioner would not be entitled to the benefits of the Resolution dated 17.10.1988.

5. In Kutch District Panchayat v. Mangalbai K. Rabari, being Special Civil Application No.15670 of 2005, decided as per judgment dated 08.10.2014, in turn confirmed in Letters Patent Appeal No.1381 of 2015, decided on 04.01.2016, it was observed and held in judgment dated 08.10.2014 as under,

"7. Shri Pathak, learned counsel for the respondent workmen contended that the decision of the Supreme Court as cited herein above in case of State of Gujarat Vs. PWD Employees Union & Ors (supra) would have straightway applicability to the present case. The so called inapplicability of GR has been answered squarely by the Court as there are subsequent Government Resolutions clarifying such things. Besides this, in the affidavit in reply at page 47 Courts attention was drawn to indicate that G.respondent. Dated 17/10/1988 is clarified and given effect to all those who are subsequently appointed also and that has been accepted as policy governing such employment thereafter.

8. Shri Pathak pointed out that learned counsel for the petitioner is not correct in contending that all were employed after GR dated 17/10/1988. In fact four were employed before that. Shri Munshaw at this stage submitted that he never meant all employees were employed after

the GR and statement annexed to the employees list would clarify the situation.

11. The Court is of the considered view that the GR dated 17/10/1988 was no doubt containing reference to the future employment but the subsequent course of action and developments as it indicate that the Government continued employing daily wagers, temporary hands irrespective of those conditions which gave rise to a situation where litigations came up and hence as Shri Pathak has pointed out clarificatory GR came to be issued and over all facts & circumstances of the case indicate that the benefits of GR dated 17/10/1988 were to be extended to all, else it would have meant to Government employing unfair labour practice which would have been highly depreciable. 12. The Court is also of the view that the decision cited at the bar in case of State of Gujarat And

Others Vs. PWD Employees Union And

Others will have applicability to the facts & circumstances of the case and counsel of the petitioners submission qua some of the workmen were employed after GR dated 17/10/1988 would be of no avail as the judgment itself has answered that contention squarely.”

5.1 In PWD Employees Union through President v. State of Gujarat, being Special Civil Application No.4662 of 2015, this Court relied on the aforesaid decision in Kutch District Panchayat (supra). PWD Employees Union (supra) had a similar set of facts wherein also the petitioners were denied the benefits of Resolution dated 17.10.1988 on the ground that their appointments were subsequent to the date of Resolution dated 17.10.1988.

5.2 The decision in Kutch District Panchayat (supra), was relied on in Jayantibhai Venabhai Patel vs. State of Gujarat, being Special Civil Application No.6601 of 2016, decided on 31.08.2018, in which what was under challenge was the order passed by the Commissioner, Geology and Mines Department, who had refused the benefits of Resolution dated 17.10.1988 to the petitioner of the said petition on the ground that as per the said resolution, the benefits were available only in the case where the employee was engaged prior to 01.10.1988. In other words, in that case also the benefits under Resolution dated

17.10.1988 came to be denied on the ground that the petitioner had started the service as daily rated Peon after 01.10.1988, which was on 19.10.1988. The said petition was allowed.

6. In view of the above position of law, the ground on which the petitioner is denied the benefits of Resolution dated 17.10.1988, cannot sustain in eye of law as the competent authority has refused the benefits on the footing that the petitioner was appointed subsequent to 01.10.1988. This cutoff date is illegal. The employees whether employed prior to the date of Resolution dated 17.10.1988 or subsequently employed, are entitled in uniform way to the benefits emanating from the said Resolution on the basis of completion of requisite length of their service. The petitioners could not be denied the benefits.

7. As a result of the above discussion, the petitioner shall be granted the benefits of State Government Resolution dated 17.10.1988. He shall be treated to be permanent upon completion of ten years of service and regular pay scales shall be extended to him. The petitioner shall further be extended all retirement benefits after 30.06.2016, being the date on which the petitioner reached the age of superannuation. The necessary benefits flowing by virtue of the present order shall be paid to the petitioner within a period of eight weeks from the date of receipt of the writ of this order.

The petition stands allowed accordingly. Rule is made absolute in the aforesaid terms."

(5) This Court in the judgment and order dated 11.10.2013 passed in Special Civil Application

No.8818 of 2009 has observed as under:-

"6. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that, the Labour Court has erred in recording reasoning that, since at the time of initial engagement of the petitioner, no procedure was followed, he was not entitled to the benefit as per the policy of the Government as contained in the Government Resolution dated 17.10.1988. It is not in dispute that, with a view to see that a daily wager appointed by the Authorities of the Government does not remain a daily wager even after years and decades, the Government in its wisdom had appointed a Committee

headed by a Minister to suggest measures in that regard and on the recommendations of such Committee, after careful consideration, it was resolved by the Government that, a daily wager, on completion of certain years of service, shall be paid wages at the minimum of the pay-scale which is otherwise given to a regular employees, and after certain years of service thereafter, he will start earning yearly increments, etc. It is also not in dispute that in all departments of the Government, more particularly in Public Works Department (now separately known as Roads & Building and Irrigation Department) and also in Forest Department, because of the field requirement, hundreds and thousands of such persons were engaged, for whom this policy was formulated by the Government, and further that, even now such appointments are being made. If the object and reason of this policy is kept in view, the reasons recorded by the Labour Court, that since procedure was not followed, the petitioner cannot be extended benefits of this Resolution, goes to the very root of the matter, to the extent of scrapping the policy itself, since there is no procedure which is followed at the time of engaging such daily wagers. Under these circumstances, the reason recorded by the Labour Court needs to be interfered with. It also needs to be recorded that, the benefit which is asked for by the petitioner, and which is denied by the Labour Court, is that benefit, which is extended to thousands of similarly situated workmen, including to the workmen under the administrative control of the present respondent Authorities. Under these circumstances, denial of the benefits of Government Resolution dated 17.10.1988 to the present petitioner would not only be against the policy of the Government, but would be discriminatory treatment to the petitioner. It also needs to be recorded that, the view of the Labour Court that, since at the time of engagement of the petitioner no procedure was followed, he is not entitled to claim benefits, can also not be sustained, in view of the settled position of law, as observed by Hon'ble the Supreme Court of India in the case of Bhartiya Seva Samaj Trust (supra), that no authority can take advantage of its own wrong, to content that since he (the employer) had not followed due procedure, the workman is not entitled to any benefits. Further, as observed by Hon'ble the Supreme Court of India in the case of Maharashtra State Road Transport Corporation (supra), a daily wager cannot be asked to be a daily wager for decades. Be it noted that in the preset case, the petitioner is working since 24.11.1988, and thus, by this time he has put in about 25 years of service. Further, so far applicability of the Government Resolution in question dated 17.10.1988 is concerned, Hon'ble the Supreme

Court of India has made it clear in the case of State of Gujarat and Ors. vs. PWD Employees Union & Ors. (supra), that no exception be made with regard to the extension of benefits of the Government Resolution dated 17.10.1988. Keeping all these aspects in view, this Court finds that the petitioner is entitled to get benefits of Government Resolution dated 17.10.1988 and the denial by the Labour Court is illegal, which needs to be set aside."

(6) This Court in the judgment and order dated 1.8.2014 passed in Letters Patent Appeal No.463 of 2014 and allied matters has observed as under:-

"1. We have heard Mr.Nirzar S.Desai, learned advocate appearing for the appellants and Mr.Dipak R.Dave, learned advocate appearing for the respondent.

2. This Letters Patent Appeal has been filed by the appellants-original respondents challenging the judgment dated 11.10.2013 passed by the learned Single Judge in Special Civil Application No.8818 of 2009, by which, the learned Single Judge has allowed the writ petition with the following directions as contained in paragraph-7 of the judgment which is extracted below:

"7. For the reasons recorded above, this petition is allowed and following order is passed and directions are given.

A. The impugned award of the Labour Court is quashed and set aside and the petitioner is held to be entitled to the benefits under the Government Resolution dated 17.10.1988.

B. The respondent Authorities are directed to extend all the benefits flowing from the Government Resolution dated 17.10.1988 to the petitioner, considering 24.11.1988 as his initial date of appointment, as a Wireman.

C. The petitioner shall be paid arrears and all consequential benefits, within a period of three months from today. While calculating and making payment of the arrears, the amount which is already paid to the petitioner for the relevant period, shall be adjusted.

D. The petitioner is also held to be entitled for the wages for the period during which he was illegally kept out of service. The said period is indicated to be from 28.12.2006 to 20.10.2008. Respondents are directed to make payment of wages to the petitioner for the said period as well."

4. The argument of the learned counsel for the appellants is that the respondent-original petitioner was engaged by the appellants-original

respondents Authority as a Wireman on 24.11.1988, whereas the benefit was to be conferred as per the Government Resolution dated 17.10.1988 to those workmen, who were employed prior to 01.10.1988.

5. *This was not accepted by the Apex Court in the case of Bhartiya Seva Samaj Trust and another v. Yogeshbhai Ambalal Patel and another reported in (2012) 9 SCC 310 and the same view has been taken by the learned Single Judge. We have also taken a similar view while deciding the Letters Patent Appeal No.325 of 2013 to Letters Patent Appeal No.330 of 2013 with Letters Patent Appeal No.789 of 2013 by judgment dated 16.07.2014.*

6. *The controversy involved in this appeal squarely covered by the decision of the Apex Court as well as the decision of the Division Bench mentioned above and we do not find any illegality or infirmity in the order passed by the learned Single Judge. This appeal is devoid of any merits and is, accordingly, dismissed.*

7. *The direction given by the learned Single Judge in para 7(C) is modified only to the extent that time to comply with the order dated 11.10.2013 of the learned Single Judge is extended for a period of three months from today subject to the directions mentioned above.*

8. *In view of disposal of the present Letters Patent Appeal, Civil Application No.3642 of 2014 is also disposed of."*

(7) This Court in the order dated 18.6.2018 passed in Letters Patent Appeal No.1268 of 2017 has observed as under:-

"(5) Thus, the upshot of the aforesaid facts and discussion is that the present respondent workman is denied the benefits flowing from the Government Resolution dated 17.10.1988 only on the ground that he had not completed 240 days in a year and his "continuity of service", as granted by the Labour Court vide award dated 23.07.2007 and confirmed by this court, cannot be considered. The stand taken by the present appellants that the respondent workman is not entitled to the benefits of the Government Resolution dated 17.10.1988 deserves to be deprecated. Once it has been established by this court that the respondent – workman is reinstated in service with continuity of service, the workman would be entitled to get the benefits flowing from the Government Resolution dated 17.10.1988, and such benefits cannot be denied to the

respondent workman only on the ground that he has not worked for 240 days. He was forced to live without work because of his illegal termination. The appellants cannot take benefit of their illegal action. The termination of the respondent workman was found to be illegal and contrary to the provisions of the Industrial Disputes Act, 1947. The effect of continuity of service is to be conferred from the year 1996, when he was appointed as a daily wager. The impugned order dated 15.04.2016 is blissfully silent about denying the benefits of the Government Resolution dated 17.10.1988 to the workmen who have been reinstated with continuity of service. The Government Resolutions dated 17.10.1988 and 01.05.1991 envisage grant of benefits of pay fixation, pension, etc. to the daily wagers, who have completed certain number of years of service.

(6) We are in complete agreement with the observations made by the learned Single Judge in order dated 05.05.2016 passed in Special Civil Application No.7713 of 2016.

(7) For the forgoing reasons, the Letters Patent Appeal fails and is accordingly dismissed. The order dated 05.05.2016 passed by the learned Single Judge in Special Civil Application No.7713 of 2016 shall be complied with by the appellants. Necessary orders granting the aforesaid benefits, as observed by the learned Single Judge, shall be paid to the respondent workman within a period of 03 (three) months from today."

(8) This Court in the order dated 23.6.2022 passed in Special Civil Application No.16 of 2019 has observed as under:-

"4 Accordingly, the petition is allowed. Taking into consideration the decisions as referred to hereinabove, it is held that based on the award of the Labour Court which has to be read as having granted continuity of service, the respondents are directed to confer the benefits of the Resolution dated 17.10.1988 from the initial date of appointment of the petitioner. The period from 30.06.1988 to 03.04.2006 shall be treated as notional. However, the benefits of the resolution shall be given to the petitioner counting his entire period of service from the initial date of appointment. All consequential benefits, including the benefits of the 6th Pay Commission which are granted to similarly situated employees shall be given to the petitioner. Compliance of the order shall be done within a period of three months from the date of

receipt of copy of this order. In view of disposal of the main matter, connected miscellaneous civil application and the civil application does not survive and stands disposed of, accordingly. Rule is made absolute to the above extent."

4.1 Mr. Mishra, learned Counsel for the petitioner has submitted that in view of the aforesaid decisions of Hon'ble Apex Court and this Court, the decision of the respondents authorities denying the benefits to the petitioner is unjust, unreasonable and arbitrary. Hence, he urges before the Court that present petition may be allowed and impugned action of the respondents authorities may be quashed and set aside and petitioner may be granted benefits as prayed for in present petition.

5. On the other hand, Ms. Megha Chitalia, learned Assistant Government Pleader and Ms. R.V. Acharya, learned Counsel for the respondents have opposed present petition.

5.1 Ms. Acharya, learned Counsel for the respondent has relied upon the *affidavit-in-reply* filed by respondent No.3. She has submitted that in earlier petition the petitioner was not succeeded therefore, now in present petition, the petitioner is not entitled to get any benefits as prayed for in the prayer. She has relied upon paragraph Nos. 3 to 9 which read as under:-

"3. I say and submit that the petitioner was appointed as a Daily Wager on the post of peon on 11/10/1985. It is a case of the petitioner that he was removed from services on 26.09.1990. When he was removed from services he had completed more than 2 years. That the respondent herein on 08/4/1991 had put the petitioner in the fix pay salary of Rs.750/-. It is further submitted that since the petitioner was not entitled to such benefits on 11/10/1995 an objection was raised from the Audit Department being the respondent No.4 herein. It was observed by the Audit Department that the petitioner had drawn excess salary of Rs.15,962/and that the benefits of the Government Resolution were not applicable to the petitioner.

4. *I say and submit that the petitioner thereafter preferred a Special Civil Application No.9712 fo 1995 before this Hon'ble Court challenging the said action of the respondent herein. The said matter came up for hearing on 15/10/2005 before the Hon'ble Court (Coram : Hon'ble Mr. Justice S.D.Dave) whereby the Hon'ble Court had dismissed the petition of the petitioner. It was*

categorically observed by the learned Judge that there was no substance in the petition and the same deserves to be dismissed and accordingly, it was dismissed. The petitioner had raised the same issue in the said petition.

5. *I say and submit that since the benefits granted to the petitioner vide letter dated 26/06/1990 were dehors the Government Resolution and therefore, the same were withdrawn when an objection was raised by the audit department. It is submitted that after withdrawal order, the petitioner had preferred Special Civil Application No.9712 of 1995 on the said issue, now the present petition on the same ground is not maintainable and is required to be dismissed in limine with cost.*
6. *I say and submit that the petitioner had also thereafter moved a Misc. Civil Application No. 888 of 2006 for recalling of the order passed in Special Civil Application No.9712 of 1995 dated 28.05.2005. The said application was also dismissed by the Hon'ble Court.*
7. *I say and submit that the petitioner thereafter had preferred Letters Patent Appeal No. 47 of 2007 which came to be decided on 28/1/2010. The Division bench on the principles of natural justice had directed the respondent herein to afford an opportunity of hearing to the petitioner and thereafter, pass an order. A liberty was also granted to the respondent herein to give notice and take legal steps accordingly. Pursuant to the said order passed by the Division Bench a notice and thereafter personal hearing was given to the petitioner on 11/5/2010. After the personal hearing the present respondent passed an order of recovery from the present petitioner.*
8. *I say and submit that the present respondent after affording an opportunity of hearing to the petitioner had passed an order wherein it is stated that the benefits of the Government Resolution dated 17/10/88 is not applicable to the petitioner and therefore, further recovery proceedings were initiated against the petitioner. The resolution dated 17/10/88 is applicable only to the daily wagers working in R & B Department whereas the petitioner was not working in R & B Department. Looking to the said resolution passed by the State Government the petitioner is not entitled to get the benefits arising out of resolution dated 17/10/88. Since the petitioner was paid an excess amount and an audit objection was raised by the audit department an amount of Rs.1,31,313/-m was sought to be recovered from the petitioner.*

9. *I say and submit that the order dated 17/11/2011 issued to the present respondent is only a show cause notice whereby the petitioner was directed to file his reply within 15 days of the notice. The petitioner without availing that that opportunity has directly come to this Hon'ble Court and on the said ground also the present petition requires to be dismissed as it is at a stage of show cause notice. The petitioner could have replied to the said notice cause notice instead of approaching this Hon'ble Court. The petitioner has got alternative efficacious remedy available to him and on this ground also the petition is required to be dismissed and the interim relief granted by this Hon'ble Court is required to be vacated at the earliest."*

6. Against that the petitioner has filed *affidavit-inrejoinder* and reiterated that the objection raised by respondent No.3 is not tenable in view of the fact that by order dated 24.9.2014 passed in Special Civil Application No. 11119 of 1994 this Court has already granted relief in favour of the petitioner by extending benefits of G.R. dated 17.10.1988. In paragraph No.3 it has been stated that the G.R. dated 17.10.1988 is not applicable to the respondents and the G.R. is only applicable to the R & B department is absolutely far from the truth. Further, it is mentioned that this Court in group of petitions being SCA No. 11119 of 1994 decided the same issue on 24.9.1994 and the respondent was directed to extend the benefit of G.R. dated 17.10.1988 to the employees who were working in the respondent department and thereafter, the department has considered the case of other similarly situated employees working as daily-wager and they have been extended the benefit of G.R. dated 17.10.1988.

7. In view of the above facts, learned Assistant Government Pleader and learned Counsel for the respondents have submitted that the petitioner is not entitled to get any benefits as prayed for in the petition and present petition may not be interfered with and the same may be dismissed.

8. I have perused the material available on record as well as the relevant papers along with other documents placed on record.

9. On earlier occasion the petitioner has preferred the petition before this Court and the said petition came to be dismissed. Against the said order the petitioner has preferred Letters Patent Appeal No. 47 of 2007 and the Division Bench has allowed the said Letters Patent Appeal No. 47 of 2007 and

quashed the order of recovery dated 11.1.1995 and also directed the respondent that after giving proper opportunity to the petitioner, appropriate order can be passed.

10. Upon such direction the petitioner has moved before the authorities and respondent No.2 and 3 have rejected the request on the ground that circular issued only for Road and Building Department and except said

department no other department is entitled to extent the benefits flowing under G.R. dated 17.10.1988.

11. It appears from the record that the respondents authorities has failed to consider the Government Circular dated 17.10.1988. It is a settled legal position that a public utility services like hospital, public health center etc. whether run by State Government or a local authority or individual, is covered under the provisions of Industrial Disputes Act and also under the government circular, which is confirmed by this Hon'ble Court as held by Hon'ble the Apex Court in ***State of Gujarat and Ors. Vs. PWD Employees Union and Ors. reported in 2013(8) SCALE 579***, the Government Resolution dated 17.10.1988 is applicable to the daily wages working in all the departments in the State of Gujarat.

12. Further this Court by order dated 24.9.2014 passed in Special Civil Application No. 11119 of 1994 has already granted relief in favour of the petitioner by extending benefits of G.R. dated 17.10.1988. The said order reads as under:-

"1. Special Civil Applications No.4284/04, 4285/04, 4471/03, 8619/04 and Civil Application No.3409/12 in SCA No.4284/04 and Civil Application No.4114/12 in SCA No.4285/04 are segregated from the aforesaid group matters as the prayers are different and therefore these petitions shall be placed for final hearing in October 2014.

2. The petitioners claiming to be daily wagers in Class IV posts with the respondent panchayat have filed these petitions questioning the action of the respondent panchayat withdrawing the benefits conferred to them under Government Resolution dated 17.10.1988. Under the said resolution the daily wagers, on satisfaction of the criteria contemplated therein are entitled to receive various benefits.

3. From the affidavit in reply of respondent panchayat, it appears that the only ground for withdrawal of the said benefits was that the petitioners

are part timers and not the daily wagers to whom alone the resolution dated 17.10.1988 can be applied. Some of the petitioners, however, have produced their service book as also the seniority list belying the aforesaid contention of the respondent panchayat.

4. Having considered the rival contentions, it appears that the issue is no more *res integra* in view of various pronouncements placed on record by the petitioners including *Revabhai Pasabhai Prajapati Vs. State of Gujarat [2011(2) GCD 1242]* and *State of Gujarat and another Vs. Mahendrakumar Bhagvandas and another [2011(2) GLR 1290]*. It appears that, against the later judgment, the State was unsuccessful in the Special Leave Petition.

5. The contention of the respondents, however, is that the petitions disputed question of facts inasmuch as the petitioners contend while respondents dispute their status as daily wagers. As indicated above, relevant material forming the part of the record of panchayat showing the status of the petitioners as daily wagers and not part timers belies the contra contention raised by the respondents. Therefore, there is no question of disputed facts.

6. The respondent further contend that the resolution dated 17.10.1988 is confined to the daily wagers of Road & Building Department of the State Government, and therefore, no benefits therefrom can accrue to the petitioners who are not in the said department. The said issue is also no more *res integra* in view of the pronouncement of the Apex Court in *State of Gujarat and others Vs. PWD Employees Union and others [2013(8) Scale 579]* wherein it has been held that the resolution applies to all the departments of the State of Gujarat.

7. In above view of the matter, the petitions are required to be allowed. Accordingly the petitions succeed. The impugned order withdrawing the benefits conferred upon petitioners under Government Resolution dated 17.10.1988 are quashed and set aside and the respondents are directed to apply the Government Resolution dated 17.10.1988 to the petitioners. Rule is made absolute with no order as to costs.

8. Civil Application No.4115 of 2012 in SCANo.9359/97, Civil Application No.4116 of 2012 in SCA No.11119/94 are also disposed of with no order as to costs.

9. *No order is required to be passed on Civil Application No.8488 of 2012 in SCA No.618/99."*

13. In view of the above observations and in view of the above cited decisions by Hon'ble Apex Court and this Court, I am of the opinion that present petition requires to be allowed.

14. The concerned respondent authority is hereby directed to pay all the consequential benefits flowing from the Government Circular dated 17.10.1988 to the petitioner from the date on which the petitioner is entitled within period of four months i.e. on or before **30.9.2024**.

15. With aforesaid observations, present petition is hereby allowed. The impugned orders are hereby set aside. Rule is made absolute to the aforesaid extent.

16. In view of the disposal of the main petition, connected civil application stands disposed of accordingly.

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