

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17566 of 2019**

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DOLAJI HIRAJI KHANT

Versus

STATE OF GUJARAT

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Appearance:

MR HB SINGH(2073) for the Petitioner(s) No. 1,2,3,4

NOTICE SERVED BY DS(5) for the Respondent(s) No. 1,2

MR ROHAN SHAH AGP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 26/11/2019**ORAL ORDER**

In the facts and circumstances of the case and having regard to the request and consent of the parties appearing through their respective learned advocates, the petition was taken up for final consideration today. Rule returnable forthwith. Learned Assistant Government Pleader Mr. Rohan Shah waives service of Rule for the respondent state and its authorities.

1.1 Heard learned advocate Mr. H. B. Singh for the petitioners and learned Assistant Government Pleader for the respondent state and its authorities.

2. The following prayer is made in this petition,

"to declare and hold that the petitioners are entitled for encashment of leave to the extent of 300 days at par with

other permanent employee of the respondent as recorded in the service book of the petitioners; and direct the respondents to forthwith pay the same to the petitioners, preferably with a stipulated period as may be deemed fit by this Hon'ble Court;"

3. The petitioners had been working under the respondent in the Irrigation Department. They were appointed during the period from 1980 to 1983. All of them have put in service period of more than 25 years. They have retired during the period between the years 2016 to 2018. It was stated that all the petitioners have been confirmed in their services after they have put in 10 years period of service from the date of their initial appointment. All the petitioners have been getting pension after their retirement.

4. Learned advocates appearing for the parties are ad idem that the controversy involved in this petition is squarely covered by the decision of this court in **Babarbhahi Ambalalbhahi Patel vs. State of Gujarat being Special Civil Application No. 6396 of 2018** decided on 17.1.2019.

5. In **Babarbhahi Ambalalbhahi Patel (supra)**, this court relied on **Chimansingh Nathusingh Solanki vs. State of Gujarat being Special Civil Application No. 21473 of 2016** decided on 27.12.2017. In **Chimansingh Nathusingh Solanki (supra)**, the following was observed which forms the reasoning of this order,

"5. As far as the first prayer is concerned, learned advocate could successfully rely on decision of this Court in **Special Civil Application No.9484 of 2013** dated 21st August, 2015 in **Jorubhai Jijibhai Dabhi v. State of Gujarat** wherein the petitioner was retired employee whose grievance was about non-payment of leave encashment upon his retirement. This Court relied on decision in **State of Gujarat v. Mahendrakumar Bhagvandas [2011 (2) GLR 190]** which was confirmed upto the Apex Court, and held in favour of the petitioner that the petitioner was entitled to leave encashment which benefit would be flowing from the State Government Resolution dated 17th October, 1988.

5.1 In **Jorubhai Jijibhai Dabhi (supra)** it was held as under,

9. Learned advocate Mr. Munshaw for respondent No.1 does not dispute that the case of **State of Gujarat and another vs. Mahendrakumar Bhagvandas** and another(supra) has reached to the conclusion at the hands of the Apex Court, whereas the decision of the Letters Patent Appeal NO.325 of 2013 is bagging attention, as the same has been challenged before the Apex Court. He has urged, therefore, not to decide the matter on merits.

10. On thus having heard learned advocates for both the sides and having also considered the list of events so also the Government Resolution dated 17.10.1988 and the decisions of the Apex Court and that of Letters Patent Appeal Bench, this Court is of the opinion that the petitioners are entitled to the leave encashment benefit for being the permanent employees of the respondent authorities. This Court has interpreted the entitlement of permanent employees, who have become permanent by virtue of the said Government Resolution dated 17.10.1988. Leave encashment benefits in the decision sought to be relied upon by the petitioner is granted in the following manner:-

5. As noted earlier, subsequent G.R. dated 18.7.1994 is expressly superseding the instructions contained in government resolution dated 3.11.1990 but does not supersede original G.R. dated 17.10.1988. It is also an admitted position that most of substantive benefits of permanent service are already accorded to the employees concerned in terms of G.R. Dated 17.10.1988. Under such circumstances, it was argued that nomenclature for treating the employees concerned as permanent was clarified by the government, and hence, denial of few benefits was justified and in order. However, no ground or rational basis could be made out for grant of most of the benefits to most of the employees in terms of G.R. dated 17.10.1988 and for denial of the remaining few benefits. Once the employees concerned were, in fact, treated for all purposes as permanent employees in terms of G.R. dated

17.10.1988, any discrimination or denial of benefits for a segment of such employees, who were subsequently re-branded as daily wager (rojamdar) by G.R. dated 18.7.1994, could not be rationally explained and could not be countenanced in the face of Articles 14 and 16 of the Constitution. Nor can the State Government legally take away the rights conferred and benefits, already accorded to the employees concerned by or under a subsequent government resolution, which expressly supersedes earlier instructions and not earlier G.R. dated 17.10.1988 by which the benefits were accorded to the employees. It also sounds absurd and baseless that employee employed on daily wage basis for 15 years would be made permanent under G.R. dated 17.10.1988 but subsequently re-branded and treated as a daily wager. The submission of learned AGP that such employees had to continue as daily wage employee, with limited benefits in terms of subsequent G.R. dated 18.7.1994 and that they were at best permanent daily wage employees, is contradictory and has no backing of any legal provision or precedent. Therefore, there is no reason to interfere with the impugned common judgment except for the clarification made hereunder.

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

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

11. Resultantly, the petition is allowed. Leave encashment benefits shall be paid to the petitioners within six weeks from the date of receipt of copy of this judgment. If not paid, interest at the rate of 6% shall be calculated on the amount granted. Petition is allowed to the above extent. Rule is made absolute accordingly.

5.2 The aforesaid decision was confirmed in Letters Patent Appeal No.457 of 2016 decided on 26th July, 2016. The Division Bench also referred to observations in paragraphs 5, 6 and 8 of Mahendrakumar Bhagvandas (supra) and observed as under.

7. The issue before the Division Bench of this Court in the case of Mahendrakumar Bhagvandas(supra) was similar. There also there was no controversy about the

fact that the concerned petitioners who entered services as daily rated employees have been regularized in their service under the Government Resolution dated 17.10.1988 and most of the benefits under the said Government Resolution available to the regular government servants were extended to the concerned petitioners. However, the said petitions were resisted on the ground that the said petitioners were daily rated employees and the benefits accorded to the permanent employee of the government could not be extended to them. In the said case, learned Single Judge, after considering the Government Resolutions, opined that the said petitioners were regular permanent employees of the respondent and were entitled to all the benefits of permanent employees of the concerned respondents. The petitions were allowed by the learned Single Judge with a direction that all the workmen concerned be treated as permanent employees at par with other regular employees and they were to be granted all the benefits as such.

5.3 The Division Bench in the said Letters Patent Appeal No.457 of 2016 also referred to another Division Bench judgment dated 30th October, 2015 delivered in Letters Patent Appeal No.1310 of 2015 and held to confirm the Jorubhai Jijibhai Dabhi (supra) and finally stated as under.

10. Thus, we are of the opinion that the present case is also squarely covered by the aforesaid two decisions rendered by this Court. Learned Single Judge has, therefore, not committed any error while placing reliance upon the Division Bench decision rendered in the case of Mahendrakumar Bhagvandas(supra). We are also in agreement with the reasons recorded by learned Single Judge."

5.1 The decision in **Babarbhahi Ambalalbhahi Patel** (supra) was relied on by the Court in **Ganpatji Nenaji Thakor v. State of Gujarat** being Special Civil Application No.8498 of 2019 which was decided on 3.5.2019. Against the decision in **Ganpatji Nenaji Thakor** (supra), **Letters Patent Appeal No.1614 of 2019** was filed.

5.2 The Division Bench did not disturb the entitlement for 300 days leave adjudged for the petitioner. However, liberty was given to the

appellant authorities to verify about the admissibility of 300 days by observing and modifying the order as under:-

"6. Thus without disturbing the entitlement allowed by the learned Single Judge, we dispose of this appeal with the limited modification that before making the payment, the appellants would verify about the admissibility of 300 days for conversion into leave encashment as per the direction given by the learned Single Judge considering the total length of the service of the writ petitioners (respondents 1 and 2)."

6. In view of above position of law emerging, the present petition deserves to be allowed. The respondents are directed to extend the benefit of leave encashment of 300 days to the petitioners on their retirement. However, it will be open for the authorities to verify about the admissibility of 300 days for conversion into leave encashment as clarified by the Division Bench as per paragraph-6 reproduced hereinabove. Upon the petitioners having been found entitled to 300 days leave, after undertaking above exercise, the benefit shall be paid to the petitioners within period of 8 weeks from the date of receipt of the writ of this order.

7. The petition is allowed accordingly to the aforesaid extent. Rule is made absolute in the said terms.

KAUSHIK D. CHAUHAN

(N.V.ANJARIA, J)