

The State Of Gujarat vs Pwd And Forest Employees Union on 15 February, 2019

Equivalent citations: AIRONLINE 2019 SC 652

Author: A.K.Sikri

Bench: M.R. Shah, S. Abdul Nazeer, A.K. Sikri

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1684-1686 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 5028-5030 OF 2018)
ARISING OUT OF DIARY NO. 43592 OF 2018)

THE STATE OF GUJARAT

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VERSUS

PWD AND FOREST EMPLOYEES UNION
& ORS.

.....R

WITH

CIVIL APPEAL NOS. 1687-1689 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NOS. 5031-5033 OF 2019)
ARISING OUT OF DIARY NO. 36182 OF 2018)

JUDGMENT

A.K.SIKRI, J.

Leave granted.

2. In these appeals filed by the State of Gujarat, challenge is laid to the common judgment dated June 14, 2018 passed by the High Court of Gujarat in contempt proceedings which were initiated by the respondents herein. To mention here, in nutshell, the appellant Government had passed Resolution dated October 17, 1988 whereby certain benefits were given to its daily wage (arising out of SLP (C) No. 43592 of 2018) & Anr. workers, who have been working for number of years. The respondent Union, which represent those workers, had approached the High Court for direction to extend those benefits contained in Government Resolution (GR) dated October 17, 1988. Since this GR dated October 17, 1988 was not extended to the Forest Department of the appellant, to which

Department the respondents belong, the respondents had filed writ petition in the High Court seeking extension of GR dated October 17, 1988 in respect of Forest Department as well. This writ petition was allowed by the single Judge of the High Court vide order dated March 21, 1997. Letter Patents Appeal (LPA) was preferred against the said judgment which was dismissed by the Division Bench of the High Court on April 29, 2003. Special Leave Petition (SLP) thereagainst was also dismissed by this Court on November 29, 2004.

3. Thereafter, appellant passed another GR dated March 24, 2006 in respect of Road and Building Department for determining pensionable service in cases of daily wagers having attained permanency on account of application of GR dated October 17, 1988. However, this representation was dismissed by the appellant on May 3, 2008. Respondents again approached the (arising out of SLP (C) No. 43592 of 2018) & Anr. High Court against the dismissal of the said representation which was decided by the High Court on October 29, 2010. By means of said order, High Court directed the Forest and Environment Department of the appellant to consider the case of the daily wagers of the respondent union for regularisation/conferring permanent status, afresh and also to consider framing of a scheme for giving quasi permanent status to such workers at par with the scheme for daily wagers in other Departments. This was followed by another order dated August 25, 2011 passed in Miscellaneous Civil Application whereby High Court directed the appellant to frame a scheme for giving quasi permanent status to daily wagers in compliance with its earlier judgment dated October 29, 2010. LPA against this judgment was dismissed by the High Court on February 28, 2012. The appellant challenged the order in LPA by preferring SLP in this Court. Leave was granted and ultimately appeal was heard and decided on July 9, 2013 which is reported as State of Gujarat & Ors. v. PWD Employees Union & Ors.1. In this judgment, this Court inter alia gave the following directions:

"28. Thus, the principal question that falls to be considered in these appeals is: whether in the facts and circumstances it will be desirable for the Court to direct the appellants to straightaway regularise the services of all the daily-wage workers working for more than five years or the 1 (2013) 12 SCC 417 (arising out of SLP (C) No. 43592 of 2018) & Anr. daily-wage workers working for more than five years are entitled for some other relief?

29. As per the scheme contained in the Resolution dated 17-10-1988 all the daily-wage workers were not entitled for regularisation or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

“(i) They are entitled to daily wages as per the prevailing daily wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi-skilled workers who have service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get

two optional leaves in addition to 14 miscellaneous leaves, Sunday leave and national festival holidays.

Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(iii) Daily wagers and semi-skilled workers who have service of more than ten years but less than 15 years are entitled to get minimum pay scale on a par with skilled workers along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leaves in addition to 14 miscellaneous leaves, Sunday leave and national festival holidays. He/She will be eligible for getting medical allowance and deduction of provident fund.

(iv) Daily wagers and semi-skilled workers who have service of more than 15 years will be considered as permanent worker and such semi-skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get the benefit as per the prevailing rules of gratuity, retired (sic retiral) salary, general provident fund. Moreover, they will get two optional leaves in addition to 14 miscellaneous leaves, 30 days' earned leave, 20 days' half-pay leave, Sunday leave and national festival holidays. (arising out of SLP (C) No. 43592 of 2018) & Anr. The daily-wage workers and semi-skilled workers who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly.”

30. Considering the facts and circumstances of the case, the finding of the Gujarat High Court dated 29-10-2010 in PWD Employees Union v. State of Gujarat [PWD Employees Union v. State of Gujarat, Special Civil Application No. 8647 of 2008, order dated 29-10-2010 (Guj)] and connected matters and the fact that the said judgment is binding between the parties, we are of the view that the appellants should be directed to grant the benefit of the scheme as contained in the Resolution dated 17-10-1988 to all the daily-wage workers of the Forest and Environment Department working for more than five years, providing them the benefits as per our finding at para 29 above. The appellants are directed accordingly. The judgment and order passed by the learned Single Judge dated 29-10-2010 [PWD Employees Union v. State of Gujarat, Special Civil Application No. 8647 of 2008, order dated 29-10-2010 (Guj)] as affirmed by the Division Bench by its order dated 28-2-2012 [State of Gujarat v. PWD Employees Union, LPA No. 1754 of 2011 in Misc. Civil Application No. 17 of 2011, decided on 28-2-2012 (Guj)] stands modified to the extent above. The benefit should be granted to the eligible daily-wage workers of the Forest and Environment Department working for more than five years including those who are performing work other than building maintenance and repairing but they will be entitled for the consequential benefits w.e.f. 29-10-2010 or subsequent date from which they are so eligible within four months from the date of receipt/production of the copy of this order. The appeals stand disposed of with the aforesaid observation and directions to the appellant State and its authorities. There shall be no separate orders as to costs.

Review filed by the appellant against this judgment was also dismissed on January 29, 2014.

(arising out of SLP (C) No. 43592 of 2018) & Anr.

4. In the meantime, respondent Union preferred contempt petition in the High Court. The appellant, on the other hand, filed application for extension of time for compliance of the judgment dated July 9, 2013. This Court granted six weeks time for compliance.

5. Thereafter, the appellant issued GR dated September 15, 2014 as a policy decision to extend the benefit of the aforesaid judgments. The respondents herein filed another contempt petition submitting that this GR dated September 15, 2014 was not in conformity with earlier GR dated October 17, 1988 and, therefore, it amounted to contempt of the Court's order as the appellant had failed to carry out the directions of the Court by not giving the benefits in terms of GR dated October 17, 1988. The High Court has accepted the contention of the respondents herein. In its detailed judgment dated June 14, 2018, though it has held that case for contempt was not made out, at the same time, the petition is disposed of with the following directions:

"34. The respondents are directed to extend the benefits of Government Resolution dated 17.10.1988 as ordered by the Supreme Court in order dated 09.07.2013 passed in case of PWD Employees' Union (supra) and as reiterated by the learned Single Judge in its order on 11.6.2015 in the proceeding of SCA 9814 of 2014 and examine the case of all the concerned in light thereof and without being influenced by their own Government Resolution dated 15.9.2014, as we have categorically held that Government (arising out of SLP (C) No. 43592 of 2018) & Anr. Resolution to be not in consonance with the Supreme Court order dated 09.07.2013 passed in case of PWD Employees' Union (supra). The entire exercise shall be over within period of 60 days from the date of receipt of writ of the order. We dispose of this petition with aforesaid directions. Notice discharged in each matter. However, there shall be no order as to costs."

6. It may be noted that while giving the aforesaid directions, the order contains a detailed discussion to the effect that GR dated September 15, 2014 is deviation from earlier GR dated October 17, 1988 as per which the appellant was supposed to give the benefits to the respondents.

7. In challenging the aforesaid order of the High Court by way of present appeals, the contention of the appellant is that GR dated September 15, 2014 was in fact issued to implement the judgment of the court in letter and spirit. The case set up by the appellant is that the Forest Department in the State Government, while extending the above benefits to all the daily wage workers of the Forest Department, and in order to maintain uniformity with regard to applicability of GR dated October 17, 1988 to daily wage workers working in different divisions/Districts of the Forest Department of the State, issued a GR dated September 15, 2014. The said Resolution is based on GR dated October 17, 1988 and subsequent Resolutions. The reliefs granted by this Court have (arising out of SLP (C) No. 43592 of 2018) & Anr. been extended to nearly 58000 workers. The judgment of this Court as directed above has been substantially complied with. As per the appellant, the Forest Department of the State has followed the interpretation of core GR dated October 17, 1988 as revised and clarified from time to time and has come up with the GR dated September 15, 2014 with the assistance of the

Road and Building Department of the State.

8. When these matters came up for preliminary hearing, respondents appeared through caveat. Since the appellant is maintaining that many benefits are given to the respondents in terms of the judgment, the appellant was advised to demonstrate as to how the judgment was implemented. On January 09, 2019, Mr. Ranjit Kumar, learned senior counsel appearing for the appellant, submitted a chart to this effect. Learned senior counsel appearing for the respondents requested for time to respond to the same and accordingly time was granted. Respondents filed their reply. The matter came up for hearing again on January 23, 2019 when the appellant sought time to take instructions qua certain averments contained in the reply. Accordingly, the matter was posted for hearing on February 06, 2019.

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9. During the arguments on February 06, 2019, the appellant handed over their submissions in response to reply filed by the respondent Union which has narrowed down the controversy considerably. Those matters where difference between the parties persists, arguments were heard.

10. In order to understand the manner in which judgment had been implemented by the appellant, we may reproduce the chart that was handed over to the Court on January 09, 2019. It is as under:

Number of Benefits Prevailing Present Pay years granted vide Standards of Daily Wages Scale (Grade worked GR dated Daily Wages on 29.10.2010 Pay + Pay 17.10.1988 on 17.10.1988 Band + D.A. + H.R.A. + Misc.

				Expens
1	Presence of more than 240 days in first year	Entitled to daily Rs.452/- wages as per month the prevailing daily wages	per Rs. 4456/- per month	
2	Service of more than five years and less than ten years	Entitled to fixed Rs.750/- monthly salary (D.A. 23%) along with DA as per prevailing standard	+ Fixed Pay Rs. 4440/- Grade Pay Rs. 1300 D.A. (45%)	of Ranging + Rs.15,144 of Rs. 18,3 +
3	Service of more than ten years but less than fifteen years	Minimum pay Pay Scale of scale at par Rs. 750-940 + with skilled D.A. (23%) workers along with DA	Pay Scale of Rs. 4440-7440 + Grade Pay of Rs. 1300/- + D.A. (45%) + 3% increment each year.	Rangin Rs. 12 Rs. 18 (accor the nu years worked
4	Service of more than fifteen years and HRA	Current pay Pay Scale of scale of skilled Rs. 750-940 + D.A. (23%) + additional 1	Pay Scale of Rs. 4440-7440 + Grade Pay of Rs. 1300/- +	Rs. 16 18,848 (accor the nu

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increment (3% D.A. (45%) + years + 3%) 3% increment worked) each year + additional 1 increment.

5	Service of more than 20 years	Pay Scale of Rs. 750-940 + D.A. (23%) + annual increment	Fixed Pay of Rs. 4440-7440 + Grade Pay of Rs. 1300/- + D.A. (45%) + 3% increment each year + 2 additional increment.	Ranging Rs. 1863 19414/- (accordi the numb years worked)
6	Service of more than 25 years	Pay Scale of Rs. 750-940 + D.A. (23%) + additional 3 increments (3% + 3% + 3% + 3%)	Fixed Pay of Rs. 20,005 Rs. 4440-7440 + Grade Pay of Rs. 1300/- + D.A. (45%) + 3% increment each year + additional 3 increment.	

11. The respondents have given their version in tabulated/chart form which according to them is in terms of GR dated October 17, 1988 as directed by this Court in its decision dated July 09, 2013. The chart prepared by the respondents is as follows:

Number of years Benefits under Prevailing Entitlement on worked GR dated Standard of 29.10.2010 17.10.1988 Wages under GR dated 17.10.1988 1 Presence of more Entitled to daily Rs.452/- per Rs. 4456/- per than 240 days in wages as per the month month year prevailing daily wages + Paid Sundays + Medical Allowance (MA) + National Festival Holidays 2 Service of more Entitled to fixed Rs.750/- + (D.A. Fixed Pay of Rs.

than five years and monthly salary 23%) 4440/- + Grade (arising out of SLP (C) No. 43592 of 2018) & Anr.

less than ten years along with DA as per prevailing standard	Pay of Rs. 1 D.A. (45%)
MA + deduction of General Provident	MA + deduction of GPF
	MA + deduction of GPF + 2 voluntary/

	Fund (GPF)	optional + 14	2	volunt
	2 voluntary/	casual leaves +		optional + 14
	optional/	holidays on		casual leaves
	restricted + 12	Sundays +		holidays
	casual leaves +	National		Sundays
	holidays on	Holidays		National
	Sundays +	allowed with		Holidays allo
	National Holidays	pay.		with pay.
	allowed with pay.			
3	Service of more	Minimum pay scale	Pay Scale of Rs.	
			Pay Band of Rs.	
	than ten years but	at par with skilled	950-1500 + D.A.	
			5200-20,200 with	
	less than fifteen	workers along with	(23%) + yearly	
			Grade Pay of Rs.	
	years	DA	increments.1900 + D.A.	
			(45%) + 3%	

MA + deduction of MA + deduction increment every CPF of CPF year 2 voluntary/ 2 voluntary/ MA + deduction optional + 14 optional + 14 of GPF casual leaves + casual leaves + holidays on holiday on 2 voluntary/ Sundays + Sundays + optional + 14 National Holidays National casual leaves + allowed with pay. Holidays holiday on allowed with Sundays + pay National Holidays allowed with pay 4 Service of more Current pay scale Pay Scale of Rs. Pay Band of Rs.

than fifteen years	of skilled worker	950-1500 + D.A.	5200-20,200 w
	with DA and HRA +	(23%) +	Grade Pay of
	local	additional 1	1900 +
	compensatory	increment (3%) +	(45%) + addit
	allowance	(3%) yearly	1 increment +
		increment +	increment eve
		local	year + l
		compensatory	compensatory
		allowance and	allowance
	Gratuity + house	rent	house
	Pension + General	allowance.	allowance
	Provident Fund		
		Gratuity +	Gratuity
	2 voluntary/	Pension +	Pension
	optional leaves +	General	General
	14 days Casual	Provident Fund	Provident Fun
	Leave + 30 days		
	earned leave + 20	2 voluntary/	2 volunt
	days half-pay	optional leaves	optional leav

(arising out of SLP (C) No. 43592 of 2018) & Anr. leave during the + 14 days 14 days Casual year + holidays on Casual Leave + Leave + 30 days Sunday every 30 days earned earned leave + week + National leave + 20 days 20 days half-pay Holidays. half-pay leave leave during the during the year year + holidays + holidays on on Sunday every Sunday every week + National week + National Holidays.

Holidays.

5 Service of more Two increment for Pay Scale of Rs. Pay Band of Rs. than twenty years 20 years service 950-1500 + D.A. 5200-20,200 with in the concerned (23%) + Grade Pay of Rs.

	pay scale of skilled worker	additional increment (3%) + (3%) yearly increment + local compensatory allowance and house rent allowance.	2 1900 + (45%) + addit 2 increment + increment eve year + l compensatory allowance house allowance
		Other benefits as mentioned in row 4 of column 4.	Other benefit mentioned row 4 of colu 4.
6	Service of more than 25 years Three increment for 25 years service in the concerned pay scale of skilled worker	Pay Scale of Rs. 950-1500 + D.A. (23%) + additional increment (3%) + (3%) yearly increment + local compensatory allowance and house rent allowance.	Pay Band of R 5200-20,200 w Grade Pay of 1900 + (45%) + addit 3 increment + increment eve year + l compensatory allowance house allowance
		Other benefits as mentioned in row 4 of column 4.	Other benefit mentioned row 4 of colu 4.

12. The appellant has, in the written submissions, generally accepted the position given above. However, the appellant has given this acceptance subject to following exceptions:

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(i) In the category mentioned at Serial Nos. 3, 4, 5 and 6, every worker is not entitled to the pay scale mentioned by them as per GR dated October 17, 1988 or in the corresponding scale on October 29, 2010 because once they become permanent, they will have to be fitted in the job description in terms of the Gujarat Civil Services (Revision of Pay) Rules, 2009 (hereinafter referred to as the 'Rules') as revised from

time to time and not by Minimum Wages Act. Any anomaly within the same job description between people who have been regularly appointed and these workers of the respondent union would mean that everybody else will ask for it not only in this department, but other department of Government will have great difficulty in adhering to it. The pay scale mentioned in Serial Nos. 3, 4, 5 and 6 cannot be applied across the board.

(ii) The old Pension Scheme has been scrapped by the Government and Contributory Pension Fund (CPF) Scheme/New Pension Scheme (NPS) has been introduced with effect from April 01, 2005. Therefore, CPF Scheme/NPS has been made applicable under the GR dated September 15, 2014, and the benefits of the same are being granted to the workers of the respondent union.

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(iii) Similarly, the old General Provident Fund (GPF) Scheme has been scrapped by the Government and CPF Scheme has been introduced with effect from April 01, 2005. Therefore, CPF Scheme has been made applicable, and the benefits of the same are being granted to the workers of the respondent union.

(iv) The worker is given benefit of past services considering the earlier period on which he worked for more than 240 days in a year.

(v) The GR dated October 17, 1988 provides for 14 days of casual leave including 2 days of voluntary leave/optional leave.

However, due to inadvertent translation errors, the judgment passed by this Court directed 14 days of casual leave in addition to 2 days of voluntary leave/optional leave. Therefore, the GR dated September 15, 2014 has incorporated the two days of voluntary leave/restricted leave and 12 days of casual leave which is applicable to all Government employees.

13. Having regard to the above, we are confining our discussion to the aforesaid exceptions taken by the appellant. In the first instance, it is pointed out by the appellant that even if the respondents become permanent, they would be entitled to be fitted in the job description in terms of the Rules. What is (arising out of SLP (C) No. 43592 of 2018) & Anr. emphasised is that even after regularisation, their pay scales cannot be more than the pay which is given to the employees who are taken on permanent basis. This appears to be a very sound argument. The only plea was that whatever is given to such employees in other departments, same benefit be extended to the respondents as well. It is difficult to countenance this submission which we find to be legally impermissible. That is hardly any justifiable response to rebut the same. It is to be kept in mind that members of respondent union were all engaged on daily wage basis. No doubt, the appellant Government decided to confer certain benefits upon these daily wage workers depending upon the number of years of service they put in. Judgment dated July 09, 2013 proceeds on that basis. Under certain circumstances, namely, on completion of specified number of years of service on daily wage

basis, these daily wage workers are entitled to become permanent. On attaining the status of permanency/regular employees, they become at par with those employees who were appointed on permanent basis from beginning, after undergoing the proper selection procedure on proving their merit. These daily wagers cannot be given the pay scales which are even better than the pay scales given to regularly appointed employees. The Rules are statutory in nature (arising out of SLP (C) No. 43592 of 2018) & Anr. which have been framed in exercise of powers conferred by the proviso to Article 309 of the Constitution. On becoming permanent, such daily wagers can, at the most, claim that they be fitted in the job descriptions in terms of the said pay rules and their pay be fixed accordingly. The appellant is ready to do that. We, therefore, accept the plea mentioned in exception (i) above.

14. Insofar as plea at paras (ii) and (iii) is concerned, the appellant intends to deny the benefit of GPF on the ground that w.e.f. April 01, 2005, CPF Scheme/NPS has been introduced. However, on that basis, all such employees cannot be denied the benefit of GPF. The earlier pension scheme continues to annued to the benefit of those who enter the service before April 01, 2005. Therefore, all those daily wagers who become entitled to get the status of regular/permanent employees before April 01, 2005 has to be given the benefit of GPF. To put it otherwise, April 01, 2005 would be treated as cut-off date. All those persons who would be entitled to regularisation/permanent status prior to April 01, 2005 shall be given the benefit of earlier scheme i.e. GPF. However, those who attain this status after April 01, 2005 shall be governed by CPF Scheme/NPS.

(arising out of SLP (C) No. 43592 of 2018) & Anr.

15. Insofar as exception (iv) mentioned by the appellant is concerned, there appears to be some merit therein. For counting the number of years for giving benefit to the workers in terms of judgment dated July 09, 2013, only those years would be taken into consideration wherein these workers had worked for 240 days or more in a year i.e. in consonance with the GR dated October 17, 1988. Furthermore, there is no direction in the judgment of this Court to the effect that the period of service of 240 days in a year should be only in the initial year and not thereafter. In fact, when the learned senior counsel for the respondents were confronted with the aforesaid position, they conceded to this position.

16. Insofar as exception (v) noted above is concerned, it is not in dispute that regular employees are entitled to 12 days of casual leave in a year i.e. applicable to all Government employees and the respondents could not dispute this. The respondents workers who have been working on daily wage basis cannot be given casual leave which is more than the entitlement extended to regular Government employees. We accept the plea of the appellant that GR dated October 17, 1988 which provides for 14 days casual leave including 2 days of voluntary/optional leave is the result of inadvertent transaction error. Even otherwise, as (arising out of SLP (C) No. 43592 of 2018) & Anr. pointed out above, the casual leave for daily wagers cannot be more than the regular Government employees. We, therefore, hold that the respondents employees shall be entitled to 12 days of casual leave and 2 days of voluntary leave/restricted leave.

17. With the aforesaid clarifications, the benefits payable to the members of the respondents union shall now be worked out and the same be paid to them. Exercise in this behalf shall be completed within a period of two months from the date of this judgment. The impugned judgment of the High Court is modified and the appeals are allowed to the aforesaid extent.

.....J. (A.K. SIKRI)J. (S. ABDUL NAZEER)
.....J. (M.R. SHAH) NEW DELHI;

FEBRUARY 15, 2019.

(arising out of SLP (C) No. 43592 of 2018) & Anr.