

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 16978 of 2022**

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SACHINDRA JAGDISHCHANDRA PATHAK

Versus

STATE OF GUJARAT

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Appearance:

MS HARSHAL N PANDYA(3141) for the Petitioner(s) No. 1

MS SEJAL K MANDAVIA(436) for the Respondent(s) No. 2,3,4

MR AYAAN PATEL, AGP for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

**Date : 30-31/01/2024**

**ORAL ORDER**

1. Heard learned advocate Ms.Harshal Pandya on behalf of the petitioner, learned Assistant Government Pleader Mr.Ayaan Patel on behalf of the respondent - State and learned advocate Ms.Sejal Mandavia on behalf of the respondent nos.2 to 4.

2. By way of this petition, the petitioner inter alia challenges an order dated 26.07.2022 passed by the respondent no.4 herein more particularly contending that the same is in complete contravention of the law laid down by this Court as well as the Hon'ble Apex Court insofar as the benefit available to an employee under the Government Resolution

dated 17.10.1988.

3. Learned advocate Ms.Pandya on behalf of the petitioner would submit that the petitioner was appointed with the respondent Board in the year 1992 and having worked for a considerable long time with the respondents, had approached this Court by preferring Special Civil Application No.12582/2019 inter alia submitting that he may be declared to be entitled for the benefits of the Government Resolution dated 17.10.1988.

3.1. Learned advocate would submit that a learned Coordinate Bench of this Court vide an order dated 17.12.2021 had been pleased to allow the petition and whereas, the learned Coordinate Bench had inter alia directed the respondents to grant benefits of GR dated 17.10.1988 to the petitioner and to fix the pay of the petitioner after completion of 5, 10 and 15 years of service as the case may be.

3.2. Learned advocate would submit that since the said order had not been complied with, the petitioner had been constrained to prefer an application under the Contempt of

Courts Act and whereas ultimately the order dated 26.07.2022 had been passed. Learned advocate would submit that a bare perusal of the order would reveal that the order is in complete contravention of the GR dated 17.10.1988 as well as the judgments of this Court and of the Hon'ble Apex Court whereby the benefits as available to an employee under the said resolution have been enumerated.

3.3. Learned advocate would submit that the respondents have considered the petitioner as a semi-skilled worker, whereas the petitioner is in fact a skilled worker. Learned advocate would submit that further, while the date of entry of the petitioner i.e. 01.09.1992 has been correctly taken as a starting point and whereas at the first instance the petitioner is deemed entitled to certain benefits upon completion of five years, yet, at the next stage, where the benefits entitled to by the petitioner upon completion of ten years is concerned, the benefits are considered not from ten years of the date of entry, rather the calculation has been after taking ten years from the completion of five years from the date of entry.

3.4. Furthermore, learned advocate would submit that in the same way, as far as the benefits available to the petitioner

upon completion of fifteen years, the starting point for calculating the fifteen years is the date upon completion of ten years of service i.e. 01.06.2013. Learned advocate would submit that the calculation itself is totally bad in law de hors the provision of the GR dated 17.10.1988. Learned advocate would submit that in addition to the mistaken calculation which the learned advocate would be terming as deliberate, it would appear that the petitioner has been granted only three increments throughout his career. Learned advocate would submit that such grant of only three increments in the entire length of service is also completely de hors the GR itself.

3.5. Learned advocate replying upon the decision of the Hon'ble Apex Court in case of **State of Gujarat vs. Public Works Department and Forest Employees Union and Others** reported in **(2019) 15 SCC 248** would submit that while a daily waged employee upon completion of certain number of years i.e. 5/10/15 is entitled to certain benefits, what would be relevant is that upon completion of ten years, the employee concerned is entitled to be treated as a permanent employee and whereas all other benefits as available to a permanent employee should be given to the

employee concerned.

3.6. Learned advocate would submit that the respondent having deliberately calculated erroneously just to ensure that the petitioner is required to approach this Court once again, appropriate orders may be passed against the author of the order in question and whereas, this Court may also impose exemplary cost on the respondent.

4. This petition is vehemently opposed by learned advocate Ms.Sejal Mandavia on behalf of the respondent nos.2 to 4.

4.1. Learned advocate would submit that as such, except there being a typographical error in mentioning that the petitioner is a semi-skilled workman, the calculation is as per the GR itself more particularly the GR dated 17.10.1988 as applicable to the skilled workman. Learned advocate would submit that the impugned order, except for the said typographical mistake, has granted the petitioner all the benefits as entitled to by a skilled worker. As far as the calculation part is concerned, learned advocate would fairly submit that the calculation is erroneous and whereas, the department given some appropriate time, would redo the

same.

4.2. Insofar as the issue of increments is concerned, learned advocate would submit that the same is as per the provisions of the GR itself. Insofar as the benefits of 6<sup>th</sup> and 7<sup>th</sup> Pay Commission is concerned, learned advocate would submit that a proposal will be tendered to the government and upon the government approving the same, the benefits would be passed to the present petitioner.

5. Heard learned advocates for the respective parties and perused the documents on record.

5.1. Considering the submissions made by learned advocates for the parties and having perused the documents on record, it would appear that vide an order dated 17.12.2021, this Court had declared the petitioner to be entitled for the benefits of GR dated 17.10.1988. The impugned order dated 27.06.2022 is ostensibly passed in compliance of the order of this Court dated 17.12.2021. In the considered opinion of this Court, a bare perusal of the order dated 26.07.2022 clearly reveals that the same is in complete contravention of the benefits granted by the GR dated 17.10.1988.

5.2. Before examining the order on merits, this Court would rely upon the observations of the Hon'ble Apex Court in case of **PWD and Forest Employees Union (supra)** more particularly whereby the Hon'ble Apex Court was considering the issue with regard to the scope and ambit of the GR dated 17.10.1988. Paragraph No.14 of the said decision being relevant for the present purpose, is reproduced hereinbelow for benefit:-

*"14. 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 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 9-7-2013 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 on a 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 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."*

5.3. Having regard to the observations made by the Hon'ble Apex Court, it would appear that the GR dated 17.10.1988 envisages that upon completion of specified number of years of service on daily basis, an employee who has originally been appointed as a daily wager, is entitled to the benefit of permanency. Upon attaining the status of permanent employee, the employee concerned would be entitled to be treated at par with those employees who are appointed on permanent basis after undergoing a regular recruitment process.

5.4. It would appear that the GR dated 17.10.1988 insofar as the present petitioner is concerned, more particularly considering the submission made by learned advocate



Ms.Mandavia that the petitioner was in fact a skilled worker, would be entitled to grant of permanency upon completing ten years where in each year the petitioner has completed more than 240 days of service as per Section 25B of the Industrial Disputes Act.

5.5. As held by the Hon'ble Apex Court, upon the status of permanency being granted, the petitioner would be required to be treated at par as other similarly situated permanent employees who had been appointed through direct selection.

6. Perusal of impugned order dated 26.07.2022 inter alia reveals that at the first instance, the respondents have calculated the benefit entitled to by the petitioner upon completion of five years from the date of his joining i.e. from 01.09.1992. It would appear that after the said calculation, the respondents have calculated the benefits which the petitioner would be entitled to upon completion of ten years. Though, the calculation of the ten years is made from the date the five years are completed, learned advocate Ms.Mandavia has fairly stated that the said calculation is erroneous and whereas, the calculation of the ten years should be made from the date the petitioner had joined service and completes 240

days per year for ten years.

6.1. Thus, it would appear that the impugned order dated 26.07.2022 would require to be interfered with and whereas, the respondents would require to recalculate the entitlement of the petitioner for grant of benefit as per the GR dated 17.10.1988 as observed hereinabove.

6.2. Furthermore, insofar as the benefit of revision of pay as per the recommendation of the 6<sup>th</sup> and 7<sup>th</sup> Pay Commission, while it is sought to be contended by learned advocate Ms.Mandavia upon instruction that the respondents have not forwarded any proposal for the same since they were in an oral direction from the State Government not to move any such proposal without any direction of this Court and whereas, such a situation has been strongly opposed by learned AGP Mr.Ayaan Patel on behalf of the respondent - State. Learned AGP Mr.Patel would submit that in absence of any written instructions by the State Government, any submission with regard to any oral instructions may not be countenanced by this Court.

6.3. At this stage, learned advocate Ms.Mandavia under

instruction of Mr.Jagdishbhai Babubhai Kharadi, Deputy Secretary, Gujarat Maritime Board, has submitted that appropriate proposal for grant of benefits as per the 6<sup>th</sup> and 7<sup>th</sup> Pay Commission would also be undertaken by the respondents within one week from today.

7. Considering the above situation, more particularly since it appears that under the guise of some oral instructions of the State Government, which contention has been strongly opposed by the State Government, the respondents have not forwarded any proposal for grant of the benefits of revision of pay under the 6<sup>th</sup> and 7<sup>th</sup> Pay Commission, hence, appropriate orders with regard to the same, more particularly for directing the respondents to pay the interest to the petitioner upon the arrears of the said pay revision atleast from the date the petition has been filed, is also required to be passed.

8. Having regard to the above observations, discussion and conclusions, the following directions are passed:-

(i) The impugned order dated 26.07.2022 is hereby quashed and set aside.

(ii) It is clarified that the quashing of the said order shall not

entail seeking of any recovery from the present petitioner for the amount already paid.

(iii) The respondent nos.2 to 4 shall recalculate the entitlement of the petitioner for grant of benefits as per the GR dated 17.10.1988 more particularly as per the observations of the Hon'ble Apex Court as reproduced hereinabove. The recalculation shall be carried out by the respondents within a period of four weeks from the date of receipt of this order. The respondents shall also make appropriate payment to the dues to which the petitioner would be entitled to after the recalculation and whereas the respondents would be entitled to set off the amount already paid to the petitioner as per order dated 26.07.2022 and whereas the remaining dues shall be paid to the petitioner within a period of four weeks after the exercise as above is completed.

(iv) The respondent nos.2 to 4, upon recalculating the benefits as available to the petitioner, more particularly upon the petitioner attaining the status of a permanent employee on completion of ten years, shall also forward appropriate proposal to the State Government for grant of revision of pay

under the 6<sup>th</sup> and 7<sup>th</sup> Pay Commission Recommendations and whereas, such proposal shall be moved within one week from the date the order granting permanency to the petitioner is passed by the respondents.

(v) The petitioner shall be entitled to be granted interest upon arrears of the revision of pay as per the 6<sup>th</sup> and 7<sup>th</sup> Pay Commission more particularly from 30.08.2022 i.e. the date on which the petition is filed till the date of disbursement at the rate of 6% per annum. The State Government shall ensure appropriate disbursement of the arrears of the 6<sup>th</sup> and 7<sup>th</sup> Pay Commission and interest thereupon as directed to the petitioner within a period of six weeks from the date of the proposal is moved by the respondent nos.2 to 4.

9. With the above observations and directions, the present petition stands disposed of as allowed. Liberty is reserved in favour of the petitioner to revive the petition in case of difficulty. Direct service is permitted.

Bhoomi

**(NIKHIL S. KARIEL,J)**