

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5623 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TRIBHOVANBHAI JERAMBHAI

Versus

BY EXECUTIVE ENGINEER

Appearance:

MR SANDEEP N BHATT for Petitioner

MR DA BAMBHANIA for Respondent No. 1

MRS. TALATI, ASST. GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 31/03/98

ORAL JUDGEMENT

1. The petition relates to travails of a person who has been in the employment of the State Government for almost 28 years and still awaiting for his retiral benefits in terms of the Government's order, revealing a pathetic insensitivity towards the fellow employees who has superannuated and look for a peaceful and quiet life

at the twilight of his life banking upon the retiral benefits assured under the relevant rules and orders of the State authorities themselves.

2. The facts which are not in dispute are that the petitioner had been in service of the State Government mostly as a daily rated workman since 1966 until he was treated permanent in terms of Government Resolution dated 17.10.1988 and retired on completing sixty years on 31.1.1994. After laying the claim before the Assistant Labour Commissioner and Provident Fund Commissioner his retiral benefits in the form of gratuity and provident fund contributions were determined and paid by treating the period of service rendered by the petitioner from 1966 to 1994. However, the pension, the regular source of income to maintain a retired employee had not so far not been granted. In fact, an attempt has been made to show that the petitioner is not entitled to pensionary benefit because he has not completed qualifying service as per the award read in the light of Bombay Civil Services Rules governing the grant of pension.

3. Though initially the learned counsel for the respondent tentatively sought to urge that as on the date of retirement on 31.1.1994 the petitioner has not completed 10 years of service as daily rated employee and he cannot be treated as permanent in terms of resolution dated 17.10.1966. But when it was pointed out that in reply the respondents have admitted that the petitioner was a daily wager for the period of 1966 to 1987. It is further revealed from the reply that though department initially treated the petitioner in employment as daily rated workman on work charge establishment with effect from 16.4.1987 only, and paid gratuity for that period only, ultimately on a dispute having been raised in that regard the petitioner was held to be in service with effect from 1966 and gratuity was paid for the entire period from 1966 to 1994, the learned counsel candidly stated that the fact that petitioner was in service of respondents since 1966 cannot be disputed. This further makes it clear that as on date resolutions dated 17.10.1988 was made by the Government the petitioner had been in employment of State for more than ten years as daily rated employee, entitled to be treated as permanent.

4. The short question which concerns the issue before me is whether the petitioner is entitled to pension or not. Primarily, the question of pension in pensionable service has been determined under Section III of the Bombay Civil Services Rules, 1959 commencing from

Rule 230 onwards. It has been contended by the learned counsel for the respondents that the petitioner being on daily wages, was not holding a pensionable service under Section 230 nor he falls in the exception to the Rule provided thereunder, therefore, the services rendered on daily wages basis prior to his becoming permanent cannot be considered as qualifying service for the purpose of pension.

5. It was urged also that the service has been declared as pensionable by the resolution dated 17.10.1988 by the Government, which deems a daily rated workman on completion of ten years service as on 1.10.1988 or thereafter as deemed to be in permanent service and has been made entitled to pension. However, for the purpose of entitlement of pension under resolution the service on regular basis only has to be counted for determining qualifying service and entitled to pension. As the petitioner has not been on permanent basis after he can be deemed to have become permanent as on 1.10.1988, for the qualifying period of ten years he is not entitled to pension.

6. This plea, in my opinion, cannot be sustained being contrary to record and Government's own decision.

7. Rule 230 of Bombay Civil Services Rules says that unless in any case it is otherwise provided by or under the Rules a Government Servant is considered in pensionable service if he holds substantively a permanent post in Government service. The argument is that though the petitioner may be treated as permanent under Resolution dated 17.10.1988, he cannot be deemed to holding a permanent post. Without going into this contention it may be noticed that rule itself envisages that a person may be otherwise eligible to pension if so provided by or under the Rules. In this connection, attention has been drawn to Rule 248 of the Rules.

8. Rule 248 of the Bombay Civil Services Rules provide that Government may by general or special order permit service other than pensionable service for performing which a government servant is paid from State revenues or from a local fund to be treated as a duty counting for pension. In issuing such order the Government is to specify the method at which the amount of duty shall be calculated and may impose any condition which it thinks fit. Thus Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension.

9. In the resolution dated 17.10.1988, it has been envisaged that those workman who as on 1.10.1988 or thereafter completes ten years of continuous service to be counted in accordance with provisions of Section 25B of the Industrial Disputes Act shall be deemed to be permanent and amongst other benefits conferred on being treated as permanent their age of superannuation was fixed at 60 years and they were made entitled for pensionary benefit. By yet another resolution dated 30.5.1989 (Annexure E), in which a specific query was raised at item No (6) with reference to resolution dated 17.10.1988, about the calculation of period of qualifying service for the purpose of entitlement to pension in connection with the pensionary benefits made available to those daily wagers who are deemed to be permanent on completion of ten years of service and it was specifically made clear that within the meaning of resolution dated 17.10.1988, the service which is to be counted is that which can be said as continuous within the meaning of Section 25B with effect from the date of entry in the service is duty counted for the purpose of pension and pension has to be accordingly determined. This does not say that qualifying service is to be counted with effect from date of becoming permanent. This leaves no room of doubt that the resolution dated 17.10.1988 along with clarification issued on the various aspects of it vide resolution dated 30.5.1989 is in consonance with the provisions of Rule 248 of the Bombay Civil Services Rules, 1959 which provide that Government has not only power by general or special order to permit service other than pensionable service, for performing which a Government servant is paid from State revenues or from a local fund, to be treated as duty counting for pension and in issuing such an order Government is to specify the method by which the amount of duty shall be calculated for the purpose of pension. Once the Government has made it clear that those who have completed ten years of service as daily rated workman are to be deemed permanent with effect from and after 17.10.1988 and are entitled to various benefits on that basis including pension and thereafter has provided by the resolution dated 30.5.1989 that the continuous service for the purposes of pension, made available to employees under resolution dated 17.10.1988, is to be counted with effect from the date of entry in the service provided it can be continuous within the meaning of Section 25B of the Industrial Act, thus making it clear that once a daily rated workman is treated to be permanent under the resolution dated 17.10.1988 his entire continuous service from the date of entry until he

retires including his services rendered prior to the date of his regularisation is taken into consideration for the purpose of computing pension or making pension available to such retired employee.

10. There is yet another aspect of the matter. Assuming that Bombay Civil Services Rules do not provide for grant of pension to those, who are not holding a permanent post in the service, then it must be held that daily rated workman working on daily wages, are ex cadre employees and not governed by particular service rules, but are governed by terms of employment under which they have been engaged. This further leads to conclusion that area of employment on daily wages is not covered by statutory rules either promulgated under Act 309 or by other legislature enactment. That is the area left uncovered by specific law, and such employment is in exercise of general executive powers of the State and terms and conditions of such employment is governed by terms of order under which such employment is made and shall be further governed by orders made by State in exercise of its executive power from time to time. The resolution dated 17.10.88 and 30.5.89 shall thus govern the terms of employment of such employees. If considered from this view, the conclusion will be the same.

11. In view of the aforesaid, I have no hesitation in coming to the conclusion that resolution dated 17.10.1988 read with resolution dated 30.5.1989 read with Rule 248, of the Bombay Civil Services Rules, the petitioner is entitled to pensionary benefits by counting the entire period of service from 1966 to 1994 until the date of his retirement which is to be counted continuous under Section 25B of the Industrial Disputes Act as qualifying service and determining the pension payable to the petitioner who has retired on 31.1.1994, on that basis.

12. Accordingly, this petition is allowed. The respondents are directed to compute the pension payable to the petitioner on the aforesaid basis within the period of months from today and release the arrears of pension payable to the petitioner on such determination within a further period of one month and start making regular payment of pension with effect from the date of such determination. The petitioner be paid the costs of this petition which is quantified at Rs.3000/-.

Rule made absolute accordingly.

(Rajesh Balia, J)

