

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3655 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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? : NO
1 to 5 NO

LALJIBHAI JIVRAJBHAI GOHEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3655 of 1999
MS RUKHSANA M PATHAN for Petitioner No. 1
MR PREMAL JOSHI AGP for Respondent No. 1
RULE SERVED for Respondents No. 2-3
-

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/03/2002

C.A.V. JUDGEMENT

1. By this petition under Article 226 of the
Constitution, a senior citizen, retired after incurring

physical incapacity during the course of his employment, has approached this Court, taking help of the Legal Aid Committee, for invalid pension. According to the petition, the petitioner joined the service of the respondent at the age of 18 and, after serving for 30 years as a daily-wager and work-charged employee, he lost vision of both the eyes and was discharged on that ground on 30.6.1989. Accentuating his miseries were the circumstances of his being the one-man family without spouse, son, daughter, brother or sister. The petitioner, aged 54 at the time of premature retirement was paid a paltry sum of Rs.2,502/- as gratuity and Rs.5004/- as service gratuity in due course.

2. The invalid pension to the petitioner was denied on the ground of having served less than the requisite 10 years of pensionable service. The service rendered by him as a daily-wager was not considered in accordance with the instruction dated 26.8.1996 of the Government. Thus, the entitlement of the petitioner for invalid pension hinges upon clubbing of his service as a daily-wager and the subsequent service as work-charged employee. There is no dispute about the fact that he was taken on the work-charge establishment in the year 1982 after completion of more than five years of service as a daily-wager.

3. In a case with similar background in Special Civil Application No.2836 of 1998, the Court (Coram: K.R.Vyas, J.) has, relying upon the Division Bench judgment of this Court in CHHAGANBHAI RANCHHODBHAI RATHOD v. DEPUTY EXECUTIVE ENGINEER in Letters Patent Appeal No.1495 of 1997 decided on 6.8.1998 and in TRIBHOVANBHAI JERAMBHAI v. DEPUTY EXECUTIVE ENGINEER [(1998 (2) GLH 1], held that the Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension. It is also held that, according to the Resolution dated 17.10.1988, the workmen who, as on 1.10.1988 or thereafter, completes 10 years of continuous service to be counted in accordance with the provisions of Section 25-B of the Industrial Disputes Act, 1947 ('the Act' for short) shall be deemed to be permanent. The entire continuous service from the date of entry including the services rendered prior to the date of regularization is taken into consideration for the purpose of computing pension or making pension available to such retired employee under the aforesaid Resolution. Therefore, following the ratio of the aforesaid judgments, the continuous service rendered as a daily-wager by the petitioner prior to his being taken on

the work-charge establishment was required to be taken into consideration for the purpose of computing pensionary benefits. The learned Assistant Government Pleader appearing for the respondents conceded that the ratio of the aforesaid judgments applied in the facts of this case.

4. Accordingly, the petition is allowed and the respondents are directed to calculate the pensionary benefits payable to the petitioner within two months from toady and to pay the arrears within one month thereafter. If the amount is not paid by the respondents within the stipulated time, the same shall have to be paid to the petitioner with 10% interest from the date of expiry of

the date by which it should have been paid till the date of actual payment. Rule is made absolute accordingly with further order to pay to the learned counsel for the respondent Rs.1,500/- by way of costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)

\$\$\$\$\$\$\$\$\$