

**SPECIAL CIVIL APPLICATION NO. 3029 of 2011**

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....Respondents

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Appearances:

**Special Civil Application No.1563 of 1992 :**

MR YN OZA, SENIOR ADVOCATE WITH MR MJ MEHTA, ADVOCATE for the  
Petitioners

MR DG CHAUHAN, ADVOCATE for the Respondent - Board

**Special Civil Application No.11280 of 2010 with**

**Special Civil Applications No.12311 of 2010 to 12359 of 2010 with**

**Special Civil Application No.3029 of 2011 with**

MR SHALIN MEHTA, SENIOR ADVOCATE WITH MS VIDHI J BHATT,  
ADVOCATE for the Petitioners

MR HS MUNSHAW, ADVOCATE for the Respondent – Board

MR NEERAJ SONI, AGP for the Respondent – State Authority

**Special Civil Applications No.14758 of 2010 to 14761 of 2010 :**

MR SHALIN MEHTA, SENIOR ADVOCATE WITH MS VIDHI J BHATT,  
ADVOCATE for the Petitioners

MR HS MUNSHAW, ADVOCATE for the Respondent – Board

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CORAM: **HONOURABLE MR.JUSTICE PARESH UPADHYAY**

**Date : 31/01/2013**

**ORAL JUDGMENT**

1. Heard Mr. Y.N. Oza, learned senior advocate with Mr. M.J.Mehta, learned advocate, as well as Mr. Shalin Mehta, learned senior advocate with Ms. Vidhi J. Bhatt, learned advocate, for the petitioners, Mr. D.G. Chauhan and Mr. H.S. Munshaw, learned advocates for the respondent Board and Mr. Neeraj Soni, learned AGP for the respondent State Authority.

2.1 Learned senior advocate Mr.Oza for the petitioners in Special Civil Application No.1563 of 1992 stated that all the petitioners were appointed as daily wagers with the respondent - Gujarat Water Supply and Sewerage Board ('respondent Board' for short) upto the year 1988 and all are given benefits flowing from the Government Resolution dated 17.10.1988, whereby on completion of stipulated years of service, they are taken in the pay scale, however, it is the grievance of the petitioners that though the petitioners are granted benefits of Government Resolution dated 17.10.1988, some benefits are not extended to them, which are otherwise given to other permanent employees. To elaborate this grievance, it is stated that by learned counsel for the petitioners that benefits like, Transport Allowance, Traveling Allowance, Transfer Traveling Allowance, Leave Encashment and Leave Travel Concessions, are not extended to this set of employees.

2.2 Learned advocate for the petitioners in this petition has stated that, in view of the policy of the Government as contained in Government Resolution dated 17.10.1988, on completion of five/ten years of service, the persons who are originally appointed as daily wagers, are treated as regular employees, their pay is fixed in the regular pay scale and

other service conditions are also like any other regularly appointed employee. It is further stated that all these petitioners are given the regular pay scale like any other employee of the respondent Board, however above mentioned five benefits are not given to these petitioners. It is pointed out that in view of the policy of the Government as well as settled position of law, it is illegal and impermissible to discriminate between two sets of employees, on the ground of their initial mode of appointment, though now they are working at par on all counts. In this regard, reliance is placed on the decision of Division Bench of this Court in the case of ***State of Gujarat versus Mahendrakumar Bhagwandas*** reported in ***2011 (2) GLR 1290*** (LPA No.958 of 2001 and cognate matters, dated 18.03.2011). It is also indicated that the said judgment of the Division Bench of this Court was challenged by the State Authorities before Hon'ble the Supreme Court of India and the said challenge also failed vide order dated 09.11.2012 recorded on SLP (Civil) 35043-35048 of 2012. It is therefore contended that this issue is already concluded by this Court and these petitioners be also granted such benefits.

3. Mr. D.G.Chauhan, learned counsel for the respondent Board contended that, so far the grievance voiced in Special

Civil Application No.1563 of 1992 is concerned, the benefits flowing from Government Resolution dated 17.10.1988, regarding grant of pay scale and payment of dearness allowance, etc. are already extended to the petitioners and the benefits which do not flow from Government Resolution dated 17.10.1988 could not be claimed by the petitioners. Regarding the reliance placed by the petitioners on the decision of Division Bench of this Court in the case of *State of Gujarat versus Mahendrakumar Bhagwandas* [LPA No.958 of 2001] (supra), learned counsel for the respondent Board contended that in the said case, the permanency benefit was granted by the learned Single Judge and while rejecting the appeals against the said order, the Division Bench had expressed this view, and therefore the said judgment can not be applied in the facts of this case.

4. In my view, the argument of learned advocate for the respondent Board about non applicability of the above referred judgment of the Division Bench, can not be accepted and needs to be rejected. This Court, as a Single Judge, is bound by the decision of the Division Bench of this Court, since in my view, it is exactly on the point which is raised in the present group of petitions. In the said judgment, the Division Bench of this Court has, after taking into

consideration the historical background of issuance of Government Resolution dated 17.10.1988 and the subsequent changes in the said policy, observed to the effect that, it sounds absurd and baseless that employee employed on daily wage basis for 15 years would be made permanent under Government Resolution dated 17.10.1988 but subsequently re-branded and treated as a daily wager. The Division Bench further held that the attempt by the State Authorities that such employees had to continue as daily wage employees, with limited benefits and that they were at best permanent daily wage employees, is contradictory and has no backing of any legal provision or precedent. I am bound by these observations and findings of the Division Bench and further, independent of this also, I have no reason to take a different view in this regard. Therefore, in my judgment, the grievance voiced by the petitioners in Special Civil Application No.1563 of 1992 is already answered by the Division Bench as aforesaid and therefore this petition needs to be allowed.

5.1 So far other petitions i.e. Special Civil Applications No.11280 of 2010 and cognate matters are concerned, learned senior advocate Mr. Shalin Mehta has stated that those petitioners were appointed as daily wagers by the respondent Board after 30.11.1994. Even after these many

years, they are still being paid fixed wages and though they have put in more than five/ten/fifteen years of service, they are not given any benefit as per the Government Resolution dated 17.10.1988. It is pointed out that if the case of this group of petitioners are compared with the petitioners of Special Civil Application No.1563 of 1992, there is hostile discrimination made by the authorities of the Board, on the applicability of Government Resolution dated 17.10.1988. It is prayed that not only these petitioners should get the benefits of Government Resolution dated 17.10.1988 but should also be given the benefits which are claimed by petitioners of Special Civil Application No.1563 of 1992.

5.2 Learned advocate for the petitioners has drawn the attention of this Court to the circular of the respondent Board dated 08.06.1989, whereby the policy of the Government as contained in Government Resolution dated 17.10.1988 was adopted by the respondent Board. It is pointed out that though no appointments were to be made as daily wagers anywhere in the Government, after coming into force of Government Resolution dated 17.10.1988, considering the nature of work and activity which the respondent Board is assigned with, hundreds and thousands of daily wagers are appointed by the respondent Board also, like any other public

service department. Learned advocate for the petitioners has also drawn the attention of the Court to the circular dated 30.11.1994 issued by the respondent Board. It is contended that those, who are appointed subsequent to coming into force of Government Resolution dated 17.10.1988 but prior to 30.11.1994, are extended benefit of Government Resolution dated 17.10.1988 and the petitioners, who are appointed after 30.11.1994, are denied the same. It is also stated that appointments of daily wagers were made, prior to 1988, between 1988 and 1994 and even after 1994, and therefore it is contended that, when a daily wager was appointed can not be a determining factor to decide as to whether he is entitled to get the pay scale under Government Resolution dated 17.10.1988 or not. For the purpose of claiming other benefits, learned advocate for the petitioners has relied on the judgment of the Division Bench of this Court in the case of *State of Gujarat versus Mahendrakumar Bhagwandas* [LPA No.958 of 2001] (supra).

6. To contest this group of petitions, learned counsel for the respondent Board Mr. H.S.Munshaw pointed out that none of these petitioners were in the service when the Government Resolution dated 17.10.1988 was adopted and therefore, the benefits flowing from the said Government Resolution cannot



be extended to them. It is further contended that the respondent Board had issued circular on 30.11.1994 that no daily wager be appointed after that date and since these petitioners were appointed subsequent to the said circular of the respondent Board, they are illegal appointees and therefore they are not entitled to any benefit flowing from Government Resolution dated 17.10.1988. It is further contended that this Court has, in Special Civil Application No.26790 of 2007 and cognate matters decided on 01.07.2009, rejected the petitions of similarly situated employees of the respondent Board. It is further contended that in said matters, in the reply filed by the respondent Board, reference to the circular of the Board dated 30.11.1994 was also made. It is further pointed out that the said judgment of learned Single Judge dated 01.07.2009 was confirmed by the Division Bench vide order dated 11.10.2010 in Letters Patent Appeal No.2117 of 2010 and cognate matters. It is therefore contended that this Court may not take a different view in these petitions.

7. Learned AGP Mr. Soni representing the Government has adopted the arguments advanced by learned advocate for the respondent Board.

8. Having heard learned counsel for the respective parties and having gone through the record, this Court finds that Government Resolution dated 17.10.1988 *inter alia* provided that no appointment as daily wager shall be made by any office thereafter. Said Government Resolution dated 17.10.1988 was adopted as a policy by the respondent Board vide circular dated 08.06.1989. The said circular dated 08.06.1989 is on record along with affidavit in rejoinder. As per the said policy of the Government, no appointment was to be made as daily wager, thereafter. It needs to be observed that this policy of the Government has remained only on paper, and considering the nature of work of different Governmental organizations performing public duties, like the respondent Board which is assigned with the public duty of water supply and sewerage, the said policy is observed more in breach than in compliance. In this background, daily wagers continued to be appointed even in the respondent Board, even after circular of the Board dated 08.03.1989, and therefore the respondent Board again issued a circular dated 30.11.1994, reiterating that no more daily wagers be now appointed. Learned advocate Mr. Munshaw was specifically asked to confirm that atleast after 30.11.1994, no daily wager is appointed in the respondent Board. To this, learned

advocate Mr. Munshaw, after taking instructions from the authorities of the respondent Board, had stated that even after 30.11.1994, hundreds of daily wagers are appointed in the different offices of the respondent Board. Statement giving details in this regard is also placed on record. The present petitioners are denied benefits of Government Resolution dated 17.10.1988 only on the ground that they are appointed after circular of the respondent Board dated 30.11.1994, and the said circular provided that no more daily wagers would now be appointed. In this regard it needs to be recorded that, no daily wager was to be appointed after 1988/1989 by the respondent Board as per its own policy, then also such appointments were made and they are given benefit also flowing from Government Resolution dated 17.10.1988. Respondent Board reiterated such policy on 30.11.1994 and no daily wager was to be appointed thereafter but still the respondent Board appointed hundreds of such persons, like the petitioners. Further it would be wrong to call such appointments as an illegality by the respondent Board, since the same was for its genuine needs, to discharge its obligation of public service. When it comes to grant of benefit of Government Resolution dated 17.10.1988 to these daily wagers, it is the management of the respondent

Board which terms its action of appointing these daily wagers as an illegality, which is not only not acceptable in law but needs to be rejected and deprecated. Reference in this regard can be made to the decision of Hon'ble the Supreme Court of India in the case of **Bharatiya Seva Samaj Trust versus Yogeshbhai Ambalal Patel and Another** reported in **(2012) 9 SCC 310**, wherein, the Supreme Court has held to the effect that an employer can not agitate that he had committed some illegality at some point of time and therefore, the concerned employee is not entitled to some benefit. In view of this judgment, the argument of learned counsel for the respondent Board that daily wagers appointed by them after 30.11.1994, were illegal appointees and therefore they are not entitled to any relief, is rejected.

9. So far reliance placed by the learned counsel for the respondent Board on the decision of this Court in Special Civil Application No.26790 of 2007 and cognate matters dated 01.07.2009 is concerned, I find that the circular of the respondent Board dated 08.06.1989 was not put to the notice of the Court and the effect of its subsequent circular dated 30.11.1994 was also not point at issue. Further, after upholding the said order dated 01.07.2009 by the Division Bench on 11.10.2010 in Letters Patent Appeal No.2117 of

2010, there is subsequent decision of Division Bench of this Court dated 18.03.2011 and even an Special Leave Petition against the said judgment is dismissed as noted above. Further, the said, subsequent decision of the Division Bench of this Court dated 18.03.2011 is exactly on the point which is under consideration in this group of petitions. Under these circumstances, I am bound by this subsequent decision of Division Bench of this Court, which is followed to record this judgment and order, in this group of petitions. Learned advocate for the respondent Board has relied on the judgment of the Supreme Court in the case of **Raghavendra Rao and Others versus State of Karnataka and Others** reported in **(2009) 4 SCC 635**, to contend that when the appointments were not made legally, the appointees can not claim benefits. However, as recorded above, the view expressed by Hon'ble the Supreme Court of India in the case of Baratiya Seva Samaj Trust (supra) is not only subsequent and will have binding force, but on facts, is squarely applicable in this group of petitions, which this Court has followed.

10. Considering the totality of the facts and law as discussed above, I find that the grouping of daily wagers sought to be made by the respondent Board on the basis of the cut off date of 30.11.1994, to deny benefits of Government Resolution

dated 17.10.1988, is illegal and arbitrary and the same is rejected. It is held that even those daily wagers who are appointed after 30.11.1994 shall also be extended the benefits of Government Resolution dated 17.10.1988 and thus, they will stand at par with the petitioners of Special Civil Application No.1563 of 1992 and shall also be entitled to the benefits, which are claimed by and are directed to be paid to the petitioners of Special Civil Application No.1563 of 1992.

11. It is indicated by Learned advocates for the respondent Board that, during pendency of these petitions, some of the petitioners, either have abandoned their job and one was terminated for misconduct, by the respondent Board. In this regard therefore it is clarified that, while giving effect to the directions contained in this judgment and order, such persons shall be entitled to benefits only till they were in service and the judgment in this petitions *ipso facto* would not result in their reinstatement in any manner.

12. For the reasons recorded above, all these petitions are allowed. Respondents are directed to grant benefits of Government Resolution dated 17.10.1988 to these petitioners, as directed and clarified by this Court in the judgment and order dated 18.03.2011 recorded in Letters Patent Appeal

No.958 of 2011 and cognate matters. The calculation regarding the benefits flowing from these directions shall be made within a period of four months from today and actual payment thereof shall be made to the petitioners within a period of eight months from today.

13. Though above directions are qua the present petitioners only, it is expected that similarly situated poor persons working with the respondent Board may not be forced into avoidable litigation.

14. Rule, in each petition made absolute. No order as to costs.

Sd/-

**(PARESH UPADHYAY, J.)**

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