

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/SPECIAL CIVIL APPLICATION NO. 15693 of 2016**

=====

AMARSINH RAIJIBHAI PAGI

Versus

STATE OF GUJARAT & 3 other(s)

=====

Appearance:

MR DIPAK R DAVE for the Petitioner(s) No. 1

MR.S D MOTWANI(6681) for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the  
Respondent(s) No. 1

MR UM SHASTRI(830) for the Respondent(s) No. 2,3

NOTICE SERVED(4) for the Respondent(s) No. 1,4

=====

CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 19/01/2017

**ORAL ORDER**

1. The petitioner herein is aggrieved by non-making of the payment of the pensionary benefit by counting his entire length of service from 21.11.1981 to 30.06.2010 and therefore has approached this Court with following reliefs:

“(6)...

*(A) This Hon'ble Court may be pleased to issue a writ of mandamus and/or a writ in the nature of mandamus and/or any other appropriate writ, order or direction,*

*(i) to hold and declare that action on part of the respondents in not making payment of pensionary benefits to the petitioner by counting his entire length of service from 21.11.1981 till 30.06.2010 as illegal, unjustified, arbitrary and further be pleased to direct the respondents to fix the pension of the petitioner by counting his service from 21.11.1981 until the date of his retirement, i.e. 30.06.2010, and fix the pension accordingly;*

*(ii) to hold and declare that petitioner is entitled to all other retiral benefits including benefit of leave encashment and be pleased to further direct the respondents to pay amount of leave encashment of leave standing in the account of the petitioner;*

*(iii) to direct the respondents to pay difference of pensionary benefits, gratuity amount and leave encashment with 18% interest from the date when it fell due;*

*(B) Pending the admission hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the respondents to immediately fix the pension of the petitioner on the basis of his total length of service, i.e. from 21.11.1981 to 30.06.2010;*

*(C) Any other and further relief or reliefs to which this Hon'ble Court deemed fit, in the interest of justice; may kindly be granted;”*

2. It is an undisputed fact as can be culled out from the record is that the petitioner has joined the service in the office of the respondent NO.3 as a Rojamdard with effect from 21.11.1981 and he completed his services uninterruptedly as per Section 25 B of the Industrial Dispute Act for he has been given benefit of G.R. dated 17.10.1988 only on 01.12.1999 after 11 years. He was extended benefit of pay scale on 01.12.2004. His superannuation was on 30.06.2010. He has been paid gratuity for the period sixteen years but on the ground that after he was given benefit of pay scale, his period of service was only six, years he is being denied the pension.

3. This Court has heard the learned advocate on both the sides and also perused the material placed on record which includes service book of the petitioner and all other details.

4. Learned advocate Mr.Dipak Dave has urged this Court to allow the benefits of pension in case of the present petitioner as done in Special Civil Application No.17783 of 2015 which has been strongly resisted by learned advocate, Mr.Raval.

5. Having considered the submissions, apt would be to reproduce finding and observations of this Court in Special Civil Application No.17783 of 2015 wherein question of law raised is identical, what is held is thus:

*"8. On thus hearing considered the rival submissions of both the sides and on careful examination of the material on record and the settled position of law, this petition is **ALLOWED** for the following reasons:*

*9. Apt would be at the outset to refer to the decision of the Apex Court in case of **State of Gujarat vs. P.W.D. Employees' Union (Supra)** and its relevant findings profitably hereinunder:*

*"20.The daily wage workers who were engaged in building maintenance and repairing work in different departments were already entitled for their work related facilities. Therefore, what we find is that the Committee has not limited the recommendation to the daily wage workers working in building maintenance and repairing work in different*

departments of the State including Forest and Environment department performing any nature of job including the work other than building maintenance and repairing work. The decision of the Full Bench of Gujarat High Court in Gujarat Forest Producers, Gatherers and **Forest Workers Union (supra)** and the subsequent Resolution dated 22<sup>nd</sup> December, 1999 issued from Forest and Environment Department of the State, in our opinion are not sustainable, as the intent of Resolution dated 17<sup>th</sup> October, 1988 was not properly explained therein and, therefore, the aforesaid decision of Full Bench and Resolution dated 22<sup>nd</sup> December, 1999 cannot be made applicable to the daily wage workers of the Forest and Environment Department of the State of Gujarat.

21. In view of the aforesaid observation, we find that the full Bench of the Gujarat High Court in Gujarat Forest Producers, **Gatherers and Forest Workers Union (supra)** proceeded on erroneous premises to hold that the Resolution dated 17<sup>th</sup> October, 1988 is applicable only to the daily wage workers of Forest Department engaged in building maintenance and repairing work. The conclusions in the said judgment are not sustainable otherwise also. We have already noticed that the Resolution of the State Government dated 17<sup>th</sup> October, 1988 is not limited to any particular department, it applies to all the departments including Road and Building, Forest and Environment Department, Water Resources Department, etc. We have also noticed that the Committee headed by the Minister of Road and Building Department looked into the wages of daily wage workers and work related facilities provided to the daily wage workers engaged in building maintenance and repairing work in different departments, only for the purpose of its recommendations. The committee has not limited the recommendations amongst the daily wage workers engaged in building maintenance and repairing work indifferent departments by its aforesaid Resolution. It is applicable to all daily wage workers including semi-skilled workers performing any nature of job, working in different departments of the State including the daily wage workers of the Forest

*Department performing work other than building maintenance and repairing work.”*

*9.1 It is relevant to refer at this stage that after the initial resolution of 17.10.1988, the State has also published yet another resolution, availing benefits to many daily wagers subsequently. Therefore, to say that the petitioners joined as daily wager in post 17.10.1988 period and hence, disentitled to the benefit of this resolution and the decision of P.W.D.Employees's Union (supra) would be an unsustainable proposition.*

*10. Petitioner Nos.1 and 2 are respectively with the Maritime Board from October, 1992 and March, 1993 and have completed more than 23 years in the service. Their juniors have been benefited on account of respondent No.2 being accepted the resolution of 17.10.1988 in the year 1992, however, for the reasons best known to the respondent-State, their representation made pursuant to the direction of this Court has been turned down.*

*11. Once being adopted for the employees of the Board the benefits of the said resolution, the Board cannot discriminate and it had rightly forwarded the proposal to the State which has denied the proposal, overlooking the subsequent avilment of such benefits to the employer by virtue of resolution of the year 1994 also.*

*12. This Court also in case of similarly situated employees working as daily wager in Special Civil Application No.7570 of 2016 has granted benefits to them, along the line of the decision of the Apex Court in case of PWD Employees' Union (supra) has observed thus:*

“1. Rule. Mr. Ronak Raval, learned AGP waives service of notice of rule for and on behalf of the respondent -State.

2. The petitioner is before this Court seeking the following reliefs:-

- [a] to allow this petition with costs and to issue a writ of mandamus or any other writ, direction or order, enjoining upon the respondents to grant the pensionary benefits to the petitioner forthwith, directing payment of pensionary benefits forthwith, together with interest at the rate of 12% per annum from 1.11.2013, as the petitioner retired on 31.10.2013, until payment of the pensionary benefits, including the arrears and also direct to pay the monthly payment of pension regularly;
- [b] to kindly appropriate interim relief, including

provisional pension, pending the final disposal of this petition .

[c] to grant such further and other reliefs, as may be deemed to be just and proper.

3. The facts in capsulized form are as under :-

3.1 The petitioner joined service as a (Rojamdar) Watchman in Sathara Section under the respondents in 1975-76. It is his say that his appointment on the permanent post of Watchman was made with effect from 1.10.2006, though the petitioner ought to have been treated permanent as such with effect from his having first completed 240 days of service, as per the resolution dated 17.10.88 made on the basis of report of Daulatbhai Parmar Committee, i.e. with effect from 1.10.1991, from the date on which he has been absorbed with the salary of Rs. 750/-. The petitioner is aggrieved by the fact that although he had completed 10 years of service, he has been denied the benefit of pension. Therefore, the present petition with the aforementioned prayers has been filed.

4. Affidavit-in-reply is filed by the State contending inter alia that the petitioner was appointed as a daily wager in the year 1975-76 and thereafter, after completing five years of service, he was appointed as a unskilled worker and on his completion of 10 years of service, he was regularized with effect from 1.10.2006. On 31<sup>st</sup> October, 2013, the petitioner retired after attaining the age of superannuation. It is further contended that the petitioner's services as a daily wager was regularized on 1.10.2006, and at the time of his retirement on 31.10.2013, he since had not completed 10 years of service, and therefore, he is not entitled for pensionary benefits as per G.R dated 24<sup>th</sup> March, 2006. For the purpose of pensionary benefits, service period will be calculated on the basis of his date of regularization as a daily wager and he has not completed 10 years of service from the date of his regularization. Working of 240 days per year had been completed in the year 2006, as per details provided at Annexure R-1.

5. Rejoinder-affidavit denying all the contentions raised by the respondent authority has been filed by the petitioner. This Court has heard at length learned advocates appearing for both the parties and also perused the papers. The petitioner joined service as a Rojamdars-Watchman in Sathara Section under the respondents in 1975-76. He was treated as unskilled daily wager w.e.f. 1.10.1995 and his running pay scale was fixed at Rs.2550-55-2660-60-3200 for the work relating to irrigation management and canal repairing.

6. The petitioner was appointed as a permanent rojamdar with effect from 1<sup>st</sup> October, 2006. Although, he has insisted that from the first completion of 240 days of service, he ought to have been treated as permanent as per Government Resolution dated 17.10.1988. The petitioner retired on 31<sup>st</sup> October, 2013. There has been no departmental inquiry nor any judicial proceedings are pending against him. The only ground on which he has been denied the pensionary benefits is that he had not completed 10

years after regularization after having been regularized in 2006.

7. The question, therefore, arises for consideration of this Court is whether the petitioner can be denied the pensionary benefits on the ground that he was not having 10 years of service, from the date he has been regularized in the year 2006 and whether Government Resolution dated 24.3.2006 would preclude such grant ?

7.1 Can his service rendered prior to his regularization and more particularly from the year when he completed 240 days in a particular year be not considered for the purpose of calculating 10 years period.

8. The law on the subject at the outset deserves discussion.

9. In case of **State of Gujarat and Ors. Vs. PWD Employees Union & Ors.**, reported in **2013 (2) GLH 692**, wherein, the Court has observed as under:-

2. The factual matrix of the case is as follows:

The Gujarat State Employees Union, Gujarat State Public Works Department Employees Union, Labour Union and other Unions made a representation to the State Government for regularization of daily wage workers, working since long. On their demand, the State Government constituted a Committee vide Resolution dated 24th March, 1988 under the Chairmanship of Minister of Road and Building Department to make proper recommendations after studying the demands, issues and questions of the Labour Unions. After thoroughly studying the wages of daily wage workers, work related services & facilities provided to the daily wage workers who were engaged in the building maintenance and repairing work in different departments of the State such as Road and Building Department, Water Resources Department, Forest Department, Agriculture Department etc. the Committee made recommendations favouring the regularization. The State Government on considering the recommendations submitted by the Committee decided to accept all the said recommendations and resolved as follows:

#### RESOLUTION

The Government has taken into consideration the recommendations submitted by committee and so, it is decided to accept all recommendations of the Committee. Accordingly, it is resolved to provide following wages and services to daily wagers and semi skilled workers working in different departments of the State.

- 1). It is decided to pay daily wages as per the prevailing Daily Wages Rules to daily wagers and semi skilled workers who has less than five years service as on 1.10.1988. If there is presence of more than 240 days in first year, he is eligible for paid Sunday, medical allowance and national festival holidays.
- 2) As per provisions of Section 25B of the Industrial disputes act, daily wagers and semi skilled workers who has service of more than five years but less than 10 years as on 1.10.1988, will get Rs.750/- as fixed monthly salary alongwith dearness allowance as per prevailing standard, for his working days. Moreover, he/she will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/She will be eligible for getting medical allowance and deduction of provident fund.
- 3) As per provisions of Section 25B of the Industrial disputes act, daily wagers and semi skilled workers who has service of more than ten years but less than 15 years as on 1.10.1988, will get minimum pay scale at par with skilled work along with dearness allowance as per prevailing standard, for his working days. Moreover, he/she will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/She will be eligible for getting medical allowance and deduction of provident fund.
4. As per provisions of Section 25B of the Industrial Disputes Act, daily wagers and semi skilled workers who has service of more than fifteen years as on 1.10.1988 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 benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave & national festival holidays. The retirement age of such semi skilled workers will be 60 years and their services will be rendered for pensionable period. As per provisions of Section 25B of the Industrial Disputes Act, daily wagers and semi skilled workers who have completed more than fifteen years of their service will get one increment, two increment for 20 years service and three increments for 25 years in the current pay scale of skilled worker and their salary will be fixed accordingly on 1.10.1998.

The aforesaid Resolution was issued and published with the consent of the Finance



Department dated 14th October, 1988 and General Administrative Department dated 17th October, 1988.

23. The decisions in Umadevi (supra) and A. Umarani (supra) were regarding the question concerning regularization of employees entered by back door method or those who were illegally appointed encouraging a political set up, in violation of Article 14 and 16 of the Constitution of India. We are of the opinion that both the aforesaid decisions are not applicable in the present case i.e. to the members of the respondent- Employees Union for the following reasons:

i. The Secretary, Forest and Environment Department of the State of Gujarat by his order dated 3rd May, 2008 held that initially the entry of the daily wagers do not suffer from any illegality or irregularity but is in consonance with the provisions of Minimum Wages Act. Therefore, the question of regularization by removing procedural defects does not arise.

(ii) The Gujarat High Court by its judgment dated 29th October, 2010 passed in SCA No.8647 of 2008 while noticing the aforesaid stand taken by the State also held that the nature of work described in the order dated 3rd May, 2008 shows that the daily wage-workers are engaged in the work which is perennial in nature.

iii. The case of A. Uma Rani (supra) related to regularization of services of irregular appointees. In the said case this Court held that when appointments are made in contravention of mandatory provisions of the Act and statutory rules framed therein and in ignorance of essential qualifications, the same would be illegal and cannot be regularized by the State.

24. 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 regularize the services of all the daily wage workers working for more than five years or the daily wage workers working for more than five years are entitled for some other relief.

25. As per scheme contained in Resolution dated 17th October, 1988 all the daily wage workers were not entitled for regularization 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 has 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 leave in addition to 14 misc. leave, 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 has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition to 14 misc. leave, 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 has 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 benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled 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.

26. Considering, the facts and circumstances of the case, the finding of Gujarat High Court dated 29th October, 2010 in SCA No.8647/2008 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<sup>th</sup> October, 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 Paragraph 25 above. The appellants are directed accordingly. The judgment and order passed by the learned Single Judge dated 29th October, 2010 as affirmed by the Division Bench by its order dated 28th February, 2012 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 benefit w.e.f. 29th October, 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.

10. A detailed guideline in the form of directions is provided for the Daily Wagers and semi skilled and skilled workers who have rendered services of more than 15 years holding that they would be considered as permanent workers and semi skilled workers will get current pay scale of skilled workers along with Dearness Allowance, Local City Allowance and House Rent Allowance. 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.

11. This Court in case of **Kankuben Amarbhai Vadher Vs. State of Gujarat and three** passed in **Special Civil Application No. 12531 of 2014 with Special Civil Application No. 12532 of 2014 dated 2.3.2016 [Coram : Mr. J.B Pardiwala, J.]** was considering whether the period of service prior to regularization should be considered for the purpose of calculating the retiral benefits or not. The Court referred to the decision of Special Civil Application No. 16904 of 2015 wherein, the petition succeeded and was allowed, granting retiral benefits. The respondent -authorities were directed to finalize the pension and other retiral dues within stipulated time period. The Court clarified the legality and validity of the policy of the Government as reflected from the Government Resolution dated 24<sup>th</sup> March, 2006. It has been held and observed thus :-

6. Both the writ applicants have retired from the service and now the problem is as regards their dues, i.e. whether the period of service prior to regularization should be considered for the purpose of calculating the retiral benefits or not. I need not go into this issue because the same is squarely covered by the judgment and order of this Court dated 9<sup>th</sup> February, 2016 rendered in Special Civil Application No.16904 of 2015.

1 Rule returnable forthwith. Mr. Rashesh Rindani, the learned Assistant Government Pleader waives service of notice of rule for and on behalf of the respondents.

2 By this writ application under Article 226 of the Constitution of India, the petitioner a retired government servant has prayed for the following reliefs:

11(A) Your Lordships may be pleased to allow this petition

with costs and be pleased to issue a writ of mandamus or any other appropriate writ, order or directions directing the Respondent Authorities to forthwith pay Pension, Gratuity and other monetary benefits to the petitioner herein on the basis of his date of employment as 20/09/1986 as per the Government Resolution dated 17/10/1988 and the Judgment and Order dated 08/12/2011 passed by this Honble Court in Special Civil Application No.7725 of 2002 along with 12% simple interest per annum on the delayed payment.

(B) Your Lordships may be pleased to grant such further and other reliefs, as may be deemed to be just and proper.

3 The case of the petitioner may be summarized as under :

3.1 The petitioner was appointed as a daily wage employee in the Irrigation Department. The Industrial Tribunal, Bhavnagar vide award dated 8<sup>th</sup> November, 2001 in the Reference (IT) No.26 of 1996 directed the authorities to reinstate the petitioner and similarly situated workmen and also granted them the benefits they were entitled to in accordance with the Government Resolution dated 17<sup>th</sup> October, 1988. The State Government being dissatisfied with the award challenged the same before this Court by filing the Special Civil Application No.7725 of 2002 [**State of Gujarat vs. Nirubha Vajubha Sarvaiya and others**]. The learned Single Judge of this Court vide judgment and order dated 8<sup>th</sup> December, 2011 modified the award and partly allowed the said petition. The learned Single Judge made the following observations in paras 3.0, 3.1 and 3.2 as under:

3.0 Taking into consideration the totality of the facts of the case, this Court deems it proper that the award and order dated 8<sup>th</sup> November 2001 be modified by substituting the direction issued by the learned Member of the Industrial Tribunal for treating them permanent from the date of publication of the award and giving them the benefits of permanency from that day, by a direction that, 'the authorities shall take into consideration the date of entry as set out by the authority itself in a tabular Statement marked as 'II', Page 136 in Column No. 3 of that Statement and give them the benefits flowing from Government Resolution dated 17<sup>th</sup> October 1988 on the basis of the said dates'. Along with the date of entry, the authorities shall take into consideration the number of days worked by the workmen, which are placed on record by way of 'Attendance Sheet', which is produced at Page 137 as mark 'III', which is verified by the authorities after this Court

directed them to do so.

3.1 By this direction, the interest of justice will stand served, so far as respondent Nos. 1 to 5 and 7 to 22 are concerned. But, so far as respondent No 6 is concerned, he having expired on 6<sup>th</sup> November 2001, just a day prior to the date of award, it is directed that, in his case, the authorities shall consider the number of days worked by him from date of entry till the date he expired.

3.2 The communication dated 11<sup>th</sup> November 2011 is to be complied with by changing the Schedule annexed to it in light of the direction issued herein above.

3.2 Pursuant to the judgment and order dated 8<sup>th</sup> December, 2011 referred to above, the respondent No.2, with the approval of the respondent No.1, passed an order dated 8<sup>th</sup> August, 2013, wherein the date of joining of the petitioner in service has been shown as 20<sup>th</sup> September, 1986.

3.3 It appears that by an order dated 28<sup>th</sup> February, 2014, the office of the Pension and Provident Fund prepared the papers of pension of the petitioner as evident from the page - 42 to this petition. The petitioner was informed about the same vide letter dated 13<sup>th</sup> March, 2014, which is at page 43 to this petition. However, thereafter, there is no further development in the matter, and therefore, the petitioner had to come before this Court.

4 Mr. Rindani, the learned Assistant Government Pleader appearing on behalf of the State - respondent clarified his stance. According to him, it is not in dispute that the petitioner was appointed as a daily wager. According to him, although the Industrial Tribunal passed an award regularizing the services of the petitioner, yet the said order was modified to a certain extent by a learned Single Judge of this Court and such modification has some bearing on the issue in question. He further clarified that the services of the petitioner have been regularized from 2011 and the petitioner attained the age of superannuation in 2013. Mr. Rindani also clarified that all the benefits which accrued in favour of the petitioner, as provided in the Government Resolution of 17<sup>th</sup> October 1988, have been conferred upon him. However, according to Mr. Rindani, the petitioner is not entitled to pension. According to Mr. Rindani, the continuity of service cannot

be given for the purpose of regularization as it will amount to overreaching the order passed by the learned Single Judge modifying the award.

5 Mr. Rindani invited my attention to the Government Resolution passed by the State Government dated 24<sup>th</sup> March, 2006 which is at page 60 to this petition. The said resolution provides that the continuity of service should not be given even if the services are regularized ultimately.

6. Mr. Rindani invited my attention to the following averments made in the affidavit-in-reply filed on behalf of the State respondent:

At the outset, I say and submit that the prayers as sought for by the petitioner deserves closer consideration. It also needs to be inquired as to whether the prayer sought for by the petitioner in actuality is fortified by the judgment of this Honble Court dated 08.12.2011 passed in Special Civil Application No.7725 of 2015 as claimed for by the petitioner since there is no direction even for namesake in the said order for payment of pensionary and mandatory benefits to the petitioner as prayed for by the same in the present petition. Per say, a cursory consideration of the available record pertaining to the controversy raised in the present petition would reveal of an acute absence of congruence in the claim made in the captioned petition, the prayers prayed for in the petition, viz a viz the records pertaining to the present controversy and the policy of the State Government in that regard. The following paras if the present affidavit in reply would further bring forth the glaring contradiction interese the claims of the petitioner and the record pertaining to his claims as also the policy of the State Government.

3. It is submitted that if the pleadings made in the petition were to be considered, it would arise that post the passing of the judgment and order dated 08.12.2011 in Special Civil Application No.7725 of 2002 and in due compliance thereto, the respondent authorities and more particularly the deponent, passed order dated 10.10.2013, whereby, benefits as would accrue to the petitioner under the Government Resolution dated 17.10.1988 were conferred. A closer consideration of the order dated 10.10.2013 would yield that the petitioner was conferred such benefits accruing to him on account of application of para 1 of GR dated 17/10/1988 from 08.11.2006. In other words it was resolved vide the said order dated 10/10/2013 that the petitioner had completed 5 years of service as per the prescriptions of para 1 of

GR dated 17/10/1988 on 08/11/2006 and therefore all benefits accruing to him on account of his such qualifying service were accordingly made available to him. It goes without saying that thereafter all benefits as would accrue to the petitioner as a regularized daily wager while taking into consideration prescription of the GR dated 17/10/1988 would follow. Differently said, the petitioners eligibility of avail benefits upon completion of qualifying service of 5-10 years and over 10 years would be subsequently determined and all benefits as would accrue to the same on completion of such qualifying services respectively would accordingly be made available. Considering the records of the petitioner with regards his service rendered and after taking into consideration the fact that the same completed 5 years of qualifying service (as requisited by GR dated 17/10/1988) on 08/11/2006, the same would have completed further 5 years on 08/11/2011 and it would only be thereafter i.e. completion of 10 years that benefits of permanency would be made available to the petitioner as per para 2 of GR dated 17/10/1988. A copy of the Government Resolution dated 17.10.1988 is annexed herewith and marked as Annexure R I. It is submitted that accordingly on the basis of the service records of the petitioner and the prescriptions of GR dated 17/10/1988 it would arise that the petitioner completed 10 years of qualifying service on 08/11/2011 and therefore all benefits of permanency could be conferred upon him from 08/11/2011. Thus it would not be in dispute that the aspect of determining pensionable service and consequent benefits accruing therefrom (as prescribed in the GR dated 17/10/1988) could have arisen only after the petitioner attained permanency could be conferred upon him from 08/11/2011. Thus it would not be in dispute that the aspect of determining pensionable service and consequent benefits accruing therefrom (as prescribed in the GR dated 17/10/1988) could have arisen only after the petitioner attained permanency. What would also not be undisputed is the fact that the petitioner after attaining permanency may also have to retire from his active service on attaining 60 years which has been determined as the date of retirement as per GR dated 17/10/1988. Thus while bearing the said prescriptions in mind, it becomes a matter of record that (1) the petitioner would be conferred permanency from 08/06/2011 with all consequential benefits including retirement benefits (2) the petitioner including would retire from active service upon attaining permanency after age of 60. It is submitted that the records of the petition as also the pleadings made therein suggest that the petitioner attained the age of retirement in 2013 i.e. 2 years after permanency was conferred upon him. Since the same retired in 2013, as a permanent daily wager, determination of pensionable service for the purpose of retirement benefits became imperative.

4. Apropos to the above and in furtherance thereto the State

Government vide its resolution dated 24/03/2006 had prescribed the criteria for determination of pensionable service in cases of daily wagers having attained permanency on account of application of GR dated 17/10/1988. Since the petitioner was one such daily wager having attained permanency on account of the application of GR dated 17/10/1988, the said policy of the state government with regards determination of pensionable service of permanent daily wagers as envisaged in the GR 24/03/2006 became applicable to his case. A copy of the Government Resolution dated 24.03.2006 is annexed herewith and marked as Annexure R II.

A perusal of the stipulations of the said GR dated 24/03/2006 would reveal that pensionable service of permanent daily wagers was to be considered from the date they attain permanency. Application of the said stipulation to the case of the petitioner would yield that the same has only afforded 2 years of service which can be considered for the purpose of payment of pension (2011 being the year in which the same attained permanency and 2013 being the year when he retired) when the same in actuality ought to have afforded 10 years for becoming eligible for pension even as per GR dated 17/10/1988. Taking such facts of the case of the petitioner and law in the form of policy of the State Government as is in vogue vide GR dated 24/03/2006, the prayers as sought for by the petitioner would become inconsequential.

6. It is submitted that therefore the prayers of the petitioner to the effect of considering his entire service for the purpose of pensionary and mandatory benefits would be contrary to a governing policy of the State Government. Besides, such policy of the State Government has also not been challenged by the petitioner and therefore such prayer of the petitioner contrary to a policy of the State Government would even otherwise become illegal and unsustainable. The petitioner, as already explained above cannot be said to have elapsed the requisite pensionable service of 10 years so as to make himself eligible for availing pension as per the policy of the State Government envisaged in GR dated 24/03/2006 and therefore his case has been accordingly dealt with by the deponent. As such in absence of any challenge to the said policy of the State Government, the petitioner cannot be made an exception to its application since such exceptional treatment to the petitioner would be violative of Article 14 of the Constitution of India. Moreover if the case of the petitioner were at all considered/entertained, the same would serve to be a disastrous precedent.

7 Mr. D.G. Shukla, the learned advocate appearing for the petitioner submitted that it is a settled position of law that the continuity of service could not have been denied once the services



are regularized. He seeks to rely on a decision of this Court rendered by a learned Single Judge in the case of **Tribhovanbhai Jerambhai vs. Dy. Executive Engineer, Sub-Division, R & B Department** [(1998) 2 GLH 1]. He submitted that once a daily rated workman is treated to be permanent under the Resolution dated 17<sup>th</sup> October 1988, his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularization is taken into consideration for the purpose of computing pension or making pension available to such retired employee.

8 Mr. Shukla also placed reliance on one unreported judgment delivered in the case of **Rupaben Dahyabhai Parmar vs. State of Gujarat** [Special Civil Application No.852 of 2003] decided on 12<sup>th</sup> September, 2012.

9 Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the petitioner is entitled to draw pension.

10 It is not in dispute that the petitioner has been regularized in terms of the Government Resolution dated 17<sup>th</sup> October, 1988. Mr. Rindani, the learned Assistant Government Pleader made himself clear that whatever benefits extended so far in favour of the petitioner are flowing from the Government Resolution dated 17<sup>th</sup> October, 1988. However, the petitioner is not entitled to draw pension.

11 The Government Resolution dated 17<sup>th</sup> October, 1988 confers 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 has 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 leave in addition to 14 misc. leave, 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 has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover,

such daily wagers will get two optional leave in addition to 14 misc. leave, 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 has 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 benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled 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.

12 In the case of **Tribhovanbhai (supra)**, the learned Single Judge took the view observing as under:

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.[Emphasis supplied]

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.

13 Following Tribhovanbhai (supra) in the case of **Rupaben (supra)**, the learned Single Judge took a view observing as under:

5. Heard learned advocates for both the sides. Perused the papers on record. The issue involved in this petition is squarely covered by the decisions of this Court. This Court in the case of Tribhovanbhai (supra) has held that once a daily rated 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 regularization is taken into consideration for the purpose of computing pension or making pension available to such retired employee. Therefore, the plea of the respondents that the services rendered by the petitioner prior to his confirmation in service cannot be taken into consideration has no merit inasmuch as the petitioner has also relied upon the same Resolution. In the resolution dated 17.10.1988 it has been envisaged that those workmen who as on 01.10.1988 or thereafter complete ten years of continuous service to be counted in accordance with provisions of Section 25 B of the I.D. 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 and they were made entitled for pensionary benefits. The same view is reiterated in the case of Karshanbhai (supra) and the unreported decision of this Court.

6. The continuous service for the original petitioner is to be counted from the date of entry in service until he retired including his services rendered prior to the date of his regularisation for the purpose of computing pension. Therefore the petitioners are entitled to pensionary benefits and the arrears thereupon.

7. In the case of Baiji Nath Gupta(supra), the Apex Court has held that if the pension was not determined in

accordance with the rules on account of any laches or grounds on the part of the appellant, the appellant obviously would not be entitled to payment of interest for the delayed payment of pension and if the Government was responsible for the delay, necessarily the appellant would be entitled to the payment of interest on the delayed payment. similar view has been taken by the Apex Court in the case of (1) Uma Agrawal Vs. State of UP, reported in AIR 1999 SC 1212 (199) 3 SCC 438: 1999 SCC (L&S) 742: (1999)2 CLR 156: (1999) 2 SLR 22: (1999)1 LLJ 1335), (2) Vijay L. Mehrotra Vs. State of U.P. and others, reported in (2001) 9 SCC 687 (=2000 Lab IC 2663: (2000)2 LLJ 253: (2000)3 LLN 1: (2000) 2 SLR 686) and (3) Gangahanume Gowda Vs.Karnataka Agro Industries Corpn. Ltd., reported in AIR 2003 SC 1526. Learned counsel for the respondent is unable to dispute the aforesaid proposition.

8. In the premises, petition is allowed. The respondents are directed to compute the pensionary benefits payable to the legal heirs of the original petitioner-workman Shri Dahyabhai Parmar from the date of his retirement till the date of his death i.e. from 31.08.1996 to 21.02.2006 and make payment within a period of three months from the date of receipt of the writ of the order of this Court.

14 Thus, judging the issue in light on the principle of law discussed and explained in the above two decisions, I have no hesitation in coming to the conclusion that the petitioner is entitled to draw pension. So far as the Government Resolution dated 24<sup>th</sup> March, 2006 is concerned, the same, in my view, should not come in the way of the petitioner as his right accrued much before the resolution came into force. I am not impressed by the submission canvassed on behalf of the State respondent as regards the observations made by the learned Single Judge in para 3.0 in the case of **State of Gujarat (supra)** referred to above. It is true that the award was modified to a certain extent, but, in my opinion, such modification has no bearing as such with the right of the petitioner to draw pension, more particularly, in view of the two decisions referred to above. In my view, para 3.0 should help the petitioner to a certain extent. In so many words, while modifying the award passed by the Tribunal, the learned Single Judge observed that the authorities shall take into consideration the date of entry as set out by the authority itself in a tabular Statement and extend benefits flowing from the Government Resolution 17<sup>th</sup> October, 1988.

15 For the foregoing discussion, this application succeeds and is hereby allowed. The State - respondent authorities are directed to finalize the pension of the petitioner within a period of four weeks from the date of receipt of the writ of this order and pay the requisite amount with arrears within a period of four weeks thereafter. Rule is made absolute. Direct

service is permitted.

7. Mr. Munshaw, the learned advocate appearing for the Panchayat submitted that his client will prepare the appropriate proposal in this regard and forward the same to the pension department. I expect the authorities of the Panchayat to expedite the process of preparation of the proposal, and once the proposal is received by the concerned department of pension, the same shall look into at the earliest and pass appropriate orders considering the observations made by this Court.

8. In view of the above, both the writ applications are allowed. The respective respondents of both the writ applications are directed to finalize the pension and other retiral dues of the petitioners within a period of eight weeks from the date of receipt of the writ of the order and pay the requisite amount with arrears within a period of four weeks thereafter. I clarify that I have otherwise not gone into the legality and validity of the policy of the Government as reflected from the Government Resolution dated 24<sup>th</sup> March, 2006. Rule is made absolute to the aforesaid extent.

13. Decision of Tribhovanbhai Jerambhai vs. Dy. Executive Engineer, Sub-Division, R & B Department (Supra) was challenged by preferring Letters Patent Appeal No. 696 of 1999 which was dismissed at an admission stage on 24.4.2003. It was then not challenged before the Apex Court.

13.1 Whereas, against the decision rendered in case of Rupaben Dahyabhai Vs. State of Gujarat (Supra), no Letters Patent Appeal is preferred and thus, both the decisions have attained finality.

13.1 The issue raised in this petition thus is no longer res integra and is squarely covered by the said decisions. The continuous service for the purpose of pension is required to be counted with effect from the date of continuous service within the meaning of Section 25B of the Industrial Act till his date of retirement. It is not to be counted from the date of his becoming permanent, as averred by the respondent-State.

14. Definition of continuous service is provided under Section 25B of the Industrial Disputes Act, 1947 read thus-

**25B. Definition of continuous service** For the purpose of this Chapter -

[1] a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

[2] where a workman is not in continuous service within the meaning of clause [1] for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

14.1 A workman thus is deemed to be in continuous service for a period of one year, if during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days.

14.2 In case of the present petitioner, such continuous service is to be effected from 1st October 1991.

15. The decision rendered in case of **Ashoksinh Pratapsinh Sarvaiya & 2 Vs. State of Gujarat & Ors.** [Special Civil Application No. 810 of 2014] profitably deserves reproduction wherein, the Court has held and observed thus :-

7. Thus, what is transpired from the written statements, is the interpretation of the provision of G.R. dated 17<sup>th</sup> October 1988. The State has remained silent qua the aspect on which the Division Bench was laid to pass an order as there was an order placed on record dated 8<sup>th</sup> August 2013. There was infact no scope for changing the same in any manner. However, it appears that on account of some judgment of the Supreme Court in respect of daily wagers rendered on 28<sup>th</sup> November 2005, as could be seen from paragraph nos.14 of the written statement of the State, the observations are pressed into service for denying the continuity of service, though it cannot be said to be an appropriate and correct reliance upon the provision of G.R. dated 17<sup>th</sup> October 1988. Infact, as could be seen from the aforesaid discussion, the order dated 8<sup>th</sup> August 2013 is unequivocally clear qua granting of benefit. According to that benefit to all i.e. granting of continuity of service, as considered earlier was the correct methodology and on that basis, many of the employees were awarded the benefit. However, for the reasons best known to the respondents, they had chosen not to accord this permission, which in view of this Court is not just and proper. Everything is turning upon the provision of G.R. dated 17<sup>th</sup> October 1988. The plain and simple reading thereof would indicate that the same is required to be taken into consideration,



then also, it would be clear enough to indicate that the daily wager, who had put in less than five years' service as on 1<sup>st</sup> October 1988, they were ordered to be paid the minimum wages admissible to them and those, who completed the 240 days, they were to be treated eligible for all the benefits i.e. Medical Assistance, National holidays, Sunday, Paid Sunday etc., and the provision of Item No.2 in the G.R. dated 17<sup>th</sup> October 1988 unequivocally indicate that on 1<sup>st</sup> October 1988, based upon 25 (B), persons were to be given benefits of fix pay with increment etc., and Dearness Allowance. Thus, the counting of 25 (B) is definitely pressed into service and unfortunate attempt on the part of the State in wriggling-out on this, after making assurance to the Court in contempt proceedings was not called for and therefore, the same is required to be deprecated. The Court is unable to accept the submission of the State that the daily wagers were not entitled to seek continuity, as in their case also provision of Section-25 (F) of the I.D. Act, cannot be ousted by the State. The State has not indicated as to in what circumstances and in what manner and in what interpretation, the Supreme Court rendered this decision in case of State of Gujarat Vs. Thakor Hathaji Mohanji which was rendered on 28<sup>th</sup> November 2005. The said observations cannot be utilized for interpreting the benefits, which have been admissible under the Government Resolution dated 17<sup>th</sup> October 1988. The explanation sought to be given for not according treatment, which was accorded to the workman i.e. Rajubhai Naranbhai, as could be seen from paragraph nos.7 and 8 of the written statement of the respondent-State appears to be not correct, as the pendency of the case before the Supreme Court without there being any prohibitory order shall not deprive the similarly situated workmen to receive the identical benefits and hence, on this ground also, the treatment, which was accorded to Rajubhai Naranbhai ought to have been accorded to the present petitioners. The Court is also unable to accept the submission canvassed on behalf of the State in paragraph no.15 qua considering the reckoning of 240 days. Infact, the entire exercise was redounded in light of the decision of this Court, which have effect of modifying the award. The real interpretation of the order dated 8<sup>th</sup> December 2011 warranted granting of benefit to the present petitioners also from the date of the entry into the service and as the same is wrongfully denied, the entire exercise is required to be deprecated for the aforesaid reasons.

Further, the Supreme Court's observation in case of State of Gujarat and others V/s. PWD Employees Union and others, reported in (2013) 12 Supreme Court Cases 417, also would help the case of the present petitioners. Hence, the petition is allowed with following directions.

8. The respondents are directed to rework the fixation of pay and consider the date of entry of the petitioners into service directly in accordance with the Government Resolution dated 17<sup>th</sup> October

1988 and grant all the benefits flowing therefrom and the entire exercise should be completed within the period of three months from the date of receipt of this order.

16. It is quite apparent from the record that the petitioner, as mentioned hereinabove, was regularized on 1.10.2006 and on attaining the age of superannuation, on 31.10.2013 he retired. He had worked with the respondent from the year 1975-76 but since his continuous service has been from 1<sup>st</sup> October 1991, his service should be calculated from October 1991, and therefore, he should be treated to be entitled to get pension and other benefits from 1.10.1991 till 31.10.2013.

17. In wake of the discussion above, this petition is allowed by directing the respondent-authorities to grant all the benefits including of pension treating his service from dated 1<sup>st</sup> October, 1991 till the date of retirement i.e. 31<sup>st</sup> October, 2013.

18. Rule is made absolute. However, there shall be no order as to costs. Direct service is permitted.”

13. Considering the ratio laid down in the aforementioned decisions and bearing in mind the fact that the total number of the years this petitioner has put in is 29 years and he has been also paid gratuity for the period of 16 years. The ratio laid down above would entitle the petitioner to enjoy the pension and accordingly, this petition deserves to be allowed.

14. Resultantly, this petition is **ALLOWED**. The communication rejecting representation of the petitioner by respondent being discriminated deserve to be set aside. Petitioners shall be given the benefit of ***State of Gujarat vs. P.W.D.Employees' Union*** and all G.R. following the said decision on completion of 10 years service, shall be made availed for all consequential benefits of service treating them as permanent on their part.

Cost to be the cost in cause. Direct Service is permitted

**(MS SONIA GOKANI, J)**

M.M.MIRZA