

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 4661 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18176 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18177 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18178 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18179 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18180 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18181 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18182 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18183 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18184 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18185 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18186 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18187 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18188 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18189 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18190 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18191 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18192 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18193 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18194 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18195 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 18196 of 2015**

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**R/SPECIAL CIVIL APPLICATION NO. 18241 of 2015**

**With**  
**R/SPECIAL CIVIL APPLICATION NO. 18242 of 2015**

**FOR APPROVAL AND SIGNATURE:**  
**HONOURABLE MS JUSTICE SONIA GOKANI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

PWD EMPLOYEES' UNION & 68 other(s)  
 Versus  
 STATE OF GUJARAT & 8 other(s)

Appearance:

Appearance:

MR SHALIN MEHTA, MS VIDHI J BHATT, ADVOCATE for the Petitioner(s) No. 1 – 69 IN  
**(SCA NO. 4661 of 2015 WITH SCA 18176 TO 18242 OF 2015)**

MS ML SHAH, GOVERNMENT PLEADER for the Respondent(s) -STATE

NOTICE SERVED(4) for the Respondent(s) No. 1,2,3,4,5,6,7,8,9

CORAM: **HONOURABLE MS JUSTICE SONIA GOKANI**  
**Date : 02/05/2017**  
**COMMON CAV JUDGMENT**

1. This group of petitions involve identical questions of facts and law and therefore they are being adjudicated by the common judgment and order where the facts are drawn from Special Civil Application No. 4661 of 2015.

2. The petitioner PWD Employees Union is a union registered under the Trade Union Act, 1920, having registration No. G-2382. The petitioner Nos.

2 to 69 are the members of the petitioner trade union. According to the petitioners due to inaction on the part of the respondent authorities in fixing their pay as per the Government Resolution dated 24.08.2009, issued by the Government of Gujarat and not counting their services prior to 1998, is in violation of their fundamental rights so also of the Articles 14, 16 and 21 of the Constitution of India.

3. The Executive Engineer, Ukai Dam Irrigation (now known as Narmada Water Resources and Kalpsar Department), had engaged the petitioners herein and others as daily wagers for completing the work in connection with the Ukai Dam. All the petitioners belong to tribal areas of Surat District. As per the averments in the memo of the petition, the petitioners worked for about 5 to 14 years nearly and their services came to be terminated by the respondent authorities, allegedly, without following the due procedure.

4. Aggrieved petitioner Nos. 2 to 69 along with other similarly situated employees had approached the Labour Commissioner but as the conciliation did not succeed, it became the matter of industrial dispute and hence reference was made to the Labour Court being Reference (LCS) No. 47 of 1999 and other cognate matters. After availing opportunities to both the sides, the Labour Court in the Reference (LCS) No. 47 of 1999 and other cognate matters passed award on 13.06.2002, holding in favour of the workmen

by quashing and setting aside the order of termination on the ground that such action was without following the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 ('the ID Act', for short). The Labour Court further directed that the workmen were to submit their details and on the strength of the same, the respondent authorities were to prepare a seniority list and as per such a seniority list they were to be given fresh employment as daily wagers without continuity of service or any backwages and that too against the sanctioned posts which are vacant and subject to the sanction of the government.

5. Both the sides were aggrieved by this award and therefore, the award dated 13.06.2002 came to be challenged before this Court by way of the Special Civil Application No. 17983 of 2003 and the allied matters and this Court dismissed all the petitions on 26.12.2003. The respondent authorities as well as the workmen therefore filed appeals being Letters Patent Appeal No. 26 of 2004 and the cognate matters. The Division Bench of this Court also dismissed the appeals filed by the State so also those of the workmen. The petitioners, therefore, filed a review application being Misc. Civil Application No. 2161 of 2004 and other matters which were partly allowed by the Division Bench. The petitioners also had filed Special Leave Petition (C) No. 6012 of 2006 before the Apex Court against the judgment and order dated 14.10.2004. Said SLP also came to be dismissed on

24.03.2006 on the ground of delay as well as on merits.

6. In the year 2007 the petitioners herein along with other similarly situated persons filed Special Civil Application No. 7491 of 2007 and other allied matters seeking reinstatement / reemployment as daily wagers since there was availability of work for about 700 to 800 daily wagers with the department of Respondent No.1.

7. On 22.03.2007 in Special Civil Application No. 7491 of 2007 and other allied matters, this Court directed the respondent authorities to consider the case of the petitioners and to also ensure that they get work in the near future from the respondents. Pursuant to such directions, the petitioners came to be reinstated / reengaged and they were extended the benefits in terms of Paragraph-2 of the Government Resolution dated 17.10.1988.

8. As the total period of the services rendered by each of them was not considered the petitioners preferred Special Civil Application No. 8617 of 2008 seeking directions to count their past services and fix their pay in terms of Paragraph-2 of the Government Resolution dated 17.10.1988. This Court vide its order dated 27.06.2008 directed the respondent authorities to consider the case of the petitioners counting their services rendered by each of them prior to the year 1998 and to also consider

their case for regular pay-scale as per Paragraph-2 of the Government Resolution dated 17.10.1988.

9. These directions were not paid any heed to, however, in the year 2013 on completion of the period of five years from the year 2008, the pay of the petitioners had been fixed.

10. Except for petitioner No.22, it was fixed at the basic pay of RS.2550/- in the pay scale of 2550-3200 and they were also granted other benefits in terms of Paragraph-2 of the Government Resolution dated 17.10.1988.

11. It is further averred that on 24.08.2009, the State Government issued a resolution extending the benefits of 6<sup>th</sup> Central Pay Commission to the daily wage employees working with it. Correspondingly the pay scale was revised to Rs.4440-7440. Even in that case, if, their past services were not computed then also their pay was required to be fixed at Rs.4440/- in the pay band of Rs.4440-7440. The petitioners were continued to be paid at the minimum of the pay scale of Rs.2550-3200. They are also being paid emoluments of Rs.9451/- per month. It is averred by the petitioners that after their pay was fixed in the pay band of Rs.4440-7440, their basic pay will have to be Rs.4440/- and they are entitled to emoluments of Rs.12,182/- per month. According to the petitioners, on account of the above, they are incurring loss of Rs.2700/- (approximately) each



month.

12. It is the case of the petitioners that they have preferred this group of petitions for reengaging themselves in the office of the Superintendent Engineer, Ukai Canal, and office of the Superintendent Engineer, Surat Irrigation Circle and also in the office of Superintendent Engineer, Karjan Canal and office of Superintendent Engineer, Surat Irrigation Circle, Surat. It is thus their say that they cannot be permitted to lead their lives without human dignity and in contravention of the provisions of the Constitution of India. Therefore, this petition seeking following reliefs, as derived from Special Civil Application No. 4661 of 2015:

"34. ...

(A) Your Lordships may be pleased to issue a writ of mandamus directing or commanding the respondent authorities to fix the pay of petitioners no. 2 to 69 in the basic pay of Rs.4440/- in the pay band of Rs.4440-7440 in light of Government Resolution dated 24.8.2009 issued by the Government of Gujarat and pay them arrears of pay with 12% rate of interest from the date their pay was required to be fixed in the basic pay of Rs.4440/-;

(B) Your Lordships may be pleased to declare that the inaction on the part of the respondent authorities of fixing the pay of the petitioners no. 2 to 69 in light of the Government Resolution dated 24.08.2009 is bad in law, illegal, arbitrary, capricious and violative of the fundamental right of

the petitioners no. 2 to 69 guaranteed under Articles 14, 16, 21 of the Constitution of India;

(C) Your Lordships may be pleased to issue a writ of mandamus directing or commanding the respondent authorities to count the past service of petitioners no. 2 to 69 in light of the oral order dated 27.6.2008 passed in Special Civil Application no. 8617 of 2008;

(D) Your Lordships may be pleased to declare that the inaction of the respondent authorities of counting the past service of petitioner nos. 2 to 69 in light of the oral order dated 27.06.2008 passed in Special Civil Application no. 8617 of 2008 amounts to willful and deliberate disobedience of the order passed by this Hon'ble Court on 27.6.2008 and the same is bad in law, illegal, arbitrary, capricious and violative of the fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India.

(E) Pending admission and final hearing of the present petition, Your Lordships may be pleased to restrain the respondent authorities from taking any coercive action against the petitioners No. 2 to 69;

(F) Pending admission and final hearing of the petition, Your Lordships may be pleased to direct the respondent authorities to fix the pay of the petitioners no. 2 to 69 as per the Government Resolution dated 24.8.2009 issued by the Government of Gujarat.

(G) ..."

13. On behalf of the Respondent-Executive Engineer, Mechanical Division, in his affidavit-in-reply has denied all the averments and allegations. It is further their say that the directions sought for by the petitioners are to fix their pay at Rs.4440/- in the pay band of Rs.4440-7440 and it is the stand of the respondent that the petitioners were engaged as daily wagers. A detailed tabular chart has been given of each of the daily wagers. The government has adopted a policy that considering the services rendered by the workmen as skilled, unskilled labourers, the Government floated a scheme for regularization of daily wagers working as skilled, unskilled workmen.

14. The government resolution on 17.10.1988 pertains to the skilled and unskilled daily wagers and the manner in which the benefits are to be made available to them. The calculation of 240 days' in the services rendered by the petitioners will also be a vital consideration. It is an admitted fact that on implementation of the 6<sup>th</sup> Pay Commission in the State of Gujarat, the pay scale for unskilled daily wagers was revised and was made Rs.4440-7440. The petitioners are not the government employees. The state has revised pay and pay band for the daily wagers and they not being the government employees and therefore, pay as per revised rules shall not be applicable in their case. All those daily wagers who have been appointed prior to 17.10.1988 were only to entitle themselves the benefits of Central 6<sup>th</sup> Pay

Commission recommendations and they are not entitled to claim benefit of pay scale of Rs.4440-7440 being unskilled labourers working as daily wagers.

15. The rejoinder affidavit is filed by the petitioner the contents of which may not be necessary to be reproduced at this stage.

16. This Court has heard at length learned Sr. Advocate, Mr. Shalin Mehta, appearing with learned Advocate, Ms. Vidhi Bhatt, appearing on behalf of the petitioners and the learned Government Pleader, Ms. M.L. Shah, who too have strenuously made her submissions resisting the claim of the petitioners-workmen.

17. Both the sides also have tendered their written-submissions and sought to rely on various authorities to substantiate their say.

The issues that arise for the consideration of this Court are as under,

(i) Whether the petitioner Nos. 2 to 69 are entitled to the minimum of the pay of Rs.4440-7440 in terms of Paragraph-2 of the Government Resolution dated 17.10.1988 read with Government Resolution dated 24.08.2009 on completion of five years' service in the year 2012-2013?

(ii) Whether the petitioner Nos. 2 to 69 are entitled to the benefits of their past services in light of

the oral order dated 27.06.2008 passed in Special Civil Application No. 8617 of 2001?

18. It is an undisputed fact that the petitioners of the present group of petitions and other similarly situated persons worked with various divisional offices of the Narmada Water Resources and Water Supply and Kalpsar Department. Their services also had been taken for construction of Ukai Dam. As the Department had no work for this labour force, the State chose to sever the ties with them and that had given a cause of concern to the employees who became aggrieved by the action of each department. When moved to the conciliatory authority of the Labour Department, no positive outcome since had come out, the reference before the Labour Court under the ID Act was made. Accordingly, references being Reference Nos. 47 to 51 of 1999 were filed. There were other references also being Reference Nos. 15 of 1999, 284 of 1999, 146 of 1999, 2151 of 1999 and 186 of 1999 to 366 of 1999 and 205 to 622 of 1995.

19. After availing the opportunity to both the sides in accordance with law, an award came to be passed on 13.06.2002. The Labour Court issued certain directions that the State authorities were to prepare a seniority list of the workmen referred to in the common award, particularly, bearing in mind the fact that they had not attained the age of superannuation. It was also directed that as and when in the near future, any work is available, the State

authority shall consider allocating them work as had been granted to them prior to the filing of the references. Thus, for this entire workforce which continued to work for the government departments, the State authority had been directed to provide them work whenever available. It is not in dispute that there is no order of reinstatement nor of any continuity of service nor of backwages.

20. The State had challenged the awards by preferring the writ-petitions being Special Civil Application Nos. 3875 to 4399 of 2003. These petitions were not entertained by this Court by a judgment dated 09.04.2003. The Court was actuated by the fact that there was no financial burden upon the State authority if the award in question was implemented by the irrigation department and other State departments coupled with the fact that the irrigation department often needs to undertake the task of offering the work to the respondents, herein, in order of their seniority after preparing their seniority list. The Court also while dismissing the petitions observed thus:

*"It is really justice done by the Labour Court in favour of the respondent-workmen who are out of job for more than 20 years who are illiterate and scheduled tribes persons. Therefore according to my opinion the Labour Court has not committed any error in passing the impugned awards. ..."*

21. The Court, thus, found no justification in exercise of jurisdiction under Article 227 of the Constitution of India to interfere when the award was based on a detailed examination of the evidence produced before the Labour Court.

22. Letters Patent Appeal No. 26 of 2004 and other allied matters were preferred which too came to be dismissed vide judgment and order dated 14.10.2004.

23. The petitioners and other similarly situated persons also preferred Special Civil Application No. 17998 of 2003 with Special Civil Application No. 17989 of 2003 and Special Civil Application No. 18062 of 2003 as they had desired the grant of continuity of service along with reengagement. Those petition were also not entertained by the Court and the LPA preferred against the same being Letters Patent Appeal No. 572 to 274 of 2004 came to be dismissed vide order dated 14.10.2004.

24. Misc. Civil Application Nos. 2161 to 2163 of 2004 for review in Letters Patent Appeal Nos. 572 to 572 of 2004 came to be preferred, where the petitioners desired the grant of unconditional reengagement, such a prayer was not entertained and therefore, aggrieved petitioners had taken recourse to the Apex Court by filing Special Leave to Appeal (C) No. 6012 of 2006 and the Supreme Court also rejected the same vide order dated 24.03.2006.

25. After the first round of the litigation was over, another group of writ-petitions came to be preferred once again being Special Civil Application No. 7491 of 2007 and the allied matters with the principal prayer that the award of the Labour Court requires to be implemented seeking reengagement as and when the work is available. In other words, the implementation of the award of Labour Court by the respective State authorities was requested for. This petition had been disposed of vide order dated 22.03.2007 directing the State authorities to consider the case of the petitioners sympathetically. It also further directed the authorities to consider their case for reengagement whenever the work is available at those places where they were working as daily wagers. It further had directed to consider tribal daily wagers, not living in better condition of the society, purely on humanitarian grounds within a period of three months from the date of the receipt of the order. The petitioners were also permitted to challenge if there was any adverse decision given by the State.

26. The State authorities passed an order on 04.08.2007 and it was directed that the petitioners since were engaged as daily wagers bearing in mind the Labour Court's order dated 04.08.2007 as petitioners worked as daily wagers prior to the Government Resolution dated 17.10.1988, they may be reengaged as daily wagers and they may be granted the



benefits of the Government Resolution dated 17.10.1988. These persons were to be given the work without considering the continuity of service and the backwages by preparing a seniority list on the basis of their date of birth and those who were below the age of 60 years were to be engaged. This communication dated 04.08.2007 referred to about 200 workmen of Karjan Dam and about 100 workmen of Ukai Dam as daily wagers. It is not in dispute that the petitioners accordingly in the year 2007-2009 came to be reengaged in the services and they were extended the benefits of the Government Resolution dated 17.10.1988.

27. Thus, their past services were not considered by the Respondent State authorities for counting total number of years of service and hence, they preferred Special Civil Application No. 8617 of 2008. This Court directed the Respondent State authorities to consider the case of the petitioners, counting their services rendered by them prior to the year 1988 and for regular pay-scale and the continuity of service. The respondent authority on completion of five years' service in fixed pay of the petitioner as per the Government Resolution dated 17.10.1988 at Rs.2550/- placed them in the pay scale of 2550-3220 (as per 5<sup>th</sup> Pay Commission) and granted other benefits as mentioned in the Government Resolution dated 17.10.1988. It is necessary at this stage to reproduce the relevant details.

"(1) 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.

(2) 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 miscellaneous leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(3) 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.

(4) 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

*lave in additional to 14 miscellaneous 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 of service in the current pay scale of skilled workers and their salary will be fixed accordingly."*

28. Yet, another Government Resolution issued by the State on 24.08.2009, which extends the benefits of 6<sup>th</sup> Central Pay commission to the daily waged employees working under them. According to this resolution, higher pay-scale corresponding to the pay scale of Rs.2550-3200 is in the scale of Rs.4440-7440. The petitioners approached this Court for fixation of their pay as per the Government Resolution dated 24.08.2009. Uncontrovertedly, on completion of five years the petitioners have been given the benefits of the Government Resolution dated 17.10.1988, placing them in the pay scale of Rs.2550-3200. The question raised was also with regard to the entitlement of these petitioners to the pay in pay scale of Rs.4440-7440 in terms of the Government Resolution dated 17.10.1988 and the Government Resolution dated 24.08.2009. It is a matter of record that the 6<sup>th</sup> Pay Commission has come into effect from 01.01.2006. The reason for resistance for the grant of these benefits so far as daily wagers are concerned, is the 6<sup>th</sup> clause of the Government Resolution dated 24.08.2009, which provides that the

daily wagers are not government employees and therefore, the Pay Revision Rules, 2009, shall not be applicable to them. The benefits which are extended to the daily wagers are extended out of sympathy but benefits of pay revision will not be applicable to them. Clause 13 of the very Government Resolution also provides that all these daily wagers who have been appointed prior to 17.10.1988 shall only be entitled to scale-to-scale basis the benefits of 6<sup>th</sup> Pay Commission. All the petitioners being unskilled daily wage workmen as daily wagers by virtue of the Clause-6 and 13 are not entitled to claim the benefits of pay scale of Rs.4440-7440. Thus, the sole cause of denial of benefit of fixation of pay in pay scale of Rs.4440-7440 is Clause 6 and 13 of the said Government Resolution.

29. It is argued by the learned Sr. Counsel that if one closely examines the importance of the Government Resolution dated 17.10.1988 and particularly Paragraph-2 of the said Government Resolution which provides that as per the provisions of Section 25B of the ID Act, the daily wagers, whose services are more than 5 years but less than 10 years as on 01.10.1988, will get Rs.750/- as fixed monthly salary along with dearness allowance as per the prevalent standards for his working days. Additionally, he would be getting 2 optional leaves, 14 miscellaneous leaves, Sunday leaves and national holidays so also medical allowance and deduction of the amount towards provident fund. It is pointed out

by the learned Counsel that the latest pay scale as per the 4<sup>th</sup> Pay Commission was Rs.750-940 which was given effect from 01.01.1986. Therefore, the minimum pay scale was taken as fixed monthly salary to be payable to a daily wager on completion of 5 years of service and therefore, it is urged that the clear intention of the Government is that on completion of 5 years service of daily wagers, a minimum of the pay scale of the pay prevalent at the relevant point of time when the daily wager becomes entitled to be paid salary in terms of Paragraph-2 of the Government Resolution dated 17.10.1988, needs to be made available to the daily wagers in agreed manner. Such a resolution though was a one time measure, the Scheme contained in the Resolution has become permanent also. More so, after the order of the Apex Court and therefore those of them who joined even after 01.10.1988 the benefit of 5-10-15 years should be made available to all those persons. He therefore, urged that those daily wagers on completion of 5 years would need to be granted the minimum of the said pay scale as fixed monthly salary along with dearness allowance. Likewise on completion of 5 years of service when 6<sup>th</sup> Pay Commission is in place, they would be granted the minimum of the said pay scale as monthly salary along with dearness allowance.

30. Controverting these submissions learned Government Pleader, Ms. Shah, has urged that as far as the Government Resolution dated 24.08.2009 is concerned, same is passed earlier to scale revision

of these daily wagers who are granted earlier pay scale in the 5<sup>th</sup> Pay Commission revision. The petitioners were not born as daily wagers when the 5<sup>th</sup> Pay Commission came into existence and therefore, they cannot claim benefit of the said resolution of the 24.08.2009. It is further her say that in the past in some divisional offices, some of the similarly situated persons were granted either continuity of service or basic pay of Rs.4440/-. However, if some illegality is committed by those divisional offices, the same cannot be allowed to be perpetuated and reliefs under Article 14 cannot be claimed for an illegal order which is passed in favour of those who are neither similarly situated nor otherwise entitled. Therefore, the pay of Rs.4440/- cannot be granted to any person or party to the reference.

31. Thus, noting the submissions made by both the sides, the authorities pressed into service will be required to be taken into account.

32. So far as the issue of public holidays is concerned, the order of this Court passed in Special Civil Application No. 3607 of 1982 dated 22.04.1997 would need to be taken into consideration. Likewise the oral judgment in Letters Patent Appeal No. 353 of 1997 arising from the order of the learned Single Judge dated 22.04.1997 permits the public holidays for daily wagers. This was in relation to the workmen working at Ukai Dam who were engaged for

maintenance work for a number of years as daily rated workers and who were not given the benefits and had moved the High Court.

33. Against the aforesaid decision Apex Court was approached by way of Civil Appeal No. 2226 of 1998 and the Apex Court vide its order dated 09.08.2000 has confirmed the order of the Division Bench by condoning the delay but not entertaining the appeal of the State.

34. A review petition therefore was moved being Civil Appeal No. 622 of 2001. This was also dismissed on the ground of delay as well as on merits on 25.07.2001. Thus, the apex Court confirmed the entitlement of the public holidays for the daily rated workers. There are other judgments also passed by the Division Bench in Letters Patent Appeal No. 1037 of 2004 rendered on 14.10.2004 which was confirmed by the Apex Court in Special Leave Petition (C) No. 300 of 2005 on 08.04.2005.

35. Yet another judgment dated 18.03.2011, passed by the Division Bench in Letters Patent Appeal No. 958 of 2001, was confirmed vide order dated 09.11.2012, passed in Special Leave Petition (C) No. 35043 to 35048 of 2012. The Apex Court did not elaborate but simply by condoning the delay passed the following order:

*"Heard learned Counsel for the petitioner. Delay condoned. No merit."*

*The Special Leave Petitions are dismissed."*

36. So far as the question of the transport allowance is concerned the oral judgment rendered in Special Civil Application No. 3607 of 1982, where also this Court decided the issue of public holidays, which got confirmed upto the Apex Court.

37. There is yet another decision rendered in appeal referred to herein above being Letters Patent Appeal No. 958 of 2001, where also this issue was involved and got confirmed up to the Apex Court. Likewise, in LPA No. 958 of 2001 the issue of leave encashment at the time of retirement and death also was involved which also favoured the daily rated workers.

38. So far as the issue of counting of service from the date of joining for the purpose of pension is concerned, the learned Single Judge of this Court in Special Civil Application No. 5623 of 1997 was moved by the pathetic insensitivity shown by the State towards the employees who had served for almost 28 years. In that matter, the petitioner had been in service as daily rated workman from 1996 until he was treated as a permanent employee as per the Government Resolution dated 17.10.1988 and retired on 31.01.1994 on attaining the age of superannuation. In this factual background, when he was not granted the pension for a long time the Court addressed this issue as to whether he was entitled to pension or not



and discussing at length Rules of the Bombay Civil Services Rules 1959, commencing from Rule 230 onwards up to Rule 248 so also interpreting the Government Resolution dated 17.10.1988. The Court without hesitation concluded that the Government Resolution dated 17.10.1988 read with Government Resolution dated 30.05.1999 read with Rule 248 of the Bombay Civil Services Rules entitle the pensionary benefits to the petitioner before the Court, who was a daily rated workman, by counting the entire service period from 1986 to 1994 which was to be counted under Section 25B of the ID Act as qualifying service and determine the pension payable to the petitioner. The relevant observations deserve reproduction at this stage:

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.

39. This judgment has been followed thereafter by various other Benches and along the line several decisions have been rendered, viz. in Special Civil

Application No. 788 of 2005 dated 14.12.2005, Special Civil Application No. 4479 of 2000 dated 19.12.2006, Special Civil Application No. 3607 of 1982 dated 30.01.1996 and in Letters Patent Appeal No. 353 of 1997 on 22.04.1997. The judgment rendered by the Division Bench in Letters Patent Appeal No. 958 of 2001 on 18.03.2011 when was challenged before the Apex Court vide Special Leave Petition No. 35043 and 35048 of 2012, where also the Apex Court vide its order dated 09.11.2012 confirmed the same. The later judgment on this issue is in Special Civil Application No. 12300 of 2009 with Special Civil Application No. 12325 of 2009 dated 06.06.2016.

40. So far as the medical allowance and the group insurance are concerned, the judgment has been passed by the Division Bench in Letters Patent Appeal No. 958 of 2001 and when the same was challenged before the Apex Court by way of Special Leave Petition No. 35043 & 35048 of 2012, the Apex Court dismissed the same vide order dated 09.11.2012.

41. It can thus be noticed from various decisions which have been sought to be relied upon that this Court on different facets of entitlement of the daily wagers has already concluded and held their entitlement so far as public holidays, transport allowance, leave encashment at the time of retirement and death and the counting of the service from the date of joining for the purpose of pension etc. are concerned, it also includes medical allowance as well

as the group insurance as mentioned herein above on the issue on which the Court has held such entitlement of the daily wagers the challenge of which had been taken right up to the Apex Court by the State and it also has been turned down in most of the matters.

42. The Government Resolution dated 17.10.1988 had been issued separately for skilled, semi-skilled and unskilled labourers. As mentioned at paragraph No.31, herein above, that unskilled and semi-skilled workers who have completed more than five years but less than 10 years of service, the fixed pay with dearness allowance and other allowances had been specifically provided. This Court cannot be oblivious of the fact that the reference of the fixed pay at the time of issuance of the said Resolution was Rs.750/- as the scale which was prevailing at the relevant point of time was Rs.750-940. It is true that the same was meant for one time measure and this Court also cannot be oblivious of the decision of the Apex Court in the case of **"SECRETARY, STATE OF KARNATAKA VS. UMA DEVI"**, reported in AIR 2006 SC 1806, where the Court had permitted as one time measure and had directed all the departments to undertake the same wherever the recruitment had been done without following the procedure prescribed under the law but otherwise when the person had fulfilled all other requirements. The Government Resolution dated 30.05.1999 coupled with the various decisions of the Apex Court and of this Court would lead to

conclude that this is a permanent policy. The Court also needs to take note of the fact that the benefit of this resolution had been made available to the petitioner counting their services from the year 2007-2008. As provided in the very Resolution itself on completion of 5 years of service but less than 10 years the scale starts and the fixed monthly salary is made available with dearness allowance, two optional leaves, 14 miscellaneous leave, national holidays and Sunday holidays etc., whereas on completion of 10 years' service but less than 15 years' benefit of the minimum pay-scale as given to the central workers would start flowing.

43. The Apex Court also in '**STATE OF GUJARAT VS. PWD EMPLOYEES' UNION**', (2013) 12 SCC 417, directed the State Government to grant the benefits of the Scheme as contained in the said resolution to all the daily wage workers of the Forest Department, Environment Department working for more than 5 years. The Court also held that those who are performing building, maintenance and repair would be entitled to such benefits with effect from 20.10.2008 and the subsequent date from which they are so entitled to within four months from the date of receipt or production of copy thereof. The relevant observations of the Apex Court reads thus:

*"23. The decisions in Uma Devi (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 17th 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."*

44. It is quite apparent that while hearing the plight of those who were before the Apex Court, the Apex Court has rendered directions also bearing in mind the decision in '**SECRETARY, STATE OF KARNATAKA VS. UMA DEVI**' (Supra) for those persons who have rendered the services for more than 5 years or those who have as daily wage workers been working for more than that period. It is also quite apparent from the record that the pay scale in 4<sup>th</sup> Pay Commission was made effective from 01.01.1986. The 5<sup>th</sup> Pay Commission was given effect from 01.01.1996 where the pay scale was 2550-3200. The pay in pay band in 6<sup>th</sup> Pay Commission was given effect from 01.01.2006 is Rs.4440-7440 with a grade pay of Rs.1300/-. Those of them who have had completed five years' service had been given the fixed pay of Rs.750/- as per 4<sup>th</sup> Pay Commissioner. Those of them who have completed five years of service in the year 2012-13, so far as the Special Civil Application No. 4661 of 2015 is concerned, this Court fails to fathom the reservation

on the part of the State government to put a clause in the Government Resolution dated 27.06.2008 and thereby not allowing the benefits of the Gujarat State Services Rules, 2009 to the daily wagers. Possibly the reservation could be since various benefits needed to be given out of compulsion due to various directions of the Courts and therefore they would not be entitled to any benefits.

45. If one goes by the affidavit-in-reply filed by the State the benefit of the said GR is unavailable to all those persons who are daily wagers as is quite apparent from the tenor of the said affidavit. It also says that those of them who are not so far regularized and have not completed 10 years of service can not even insist on the grant of any scale.

46. The petitioners had been given minimum fixed pay of Rs.2550/- per month. If one does consider the grant of minimum fixed pay in the case of those very employees at the time when they were first granted fixed pay on their completion of five years' period, it was the minimum of the scale prevalent at the relevant point of time which was made available to them. This was given as per the benefits prescribed in the Government Resolution dated October 17<sup>th</sup>, 1988. Over and above those benefits which have been discussed hereinabove, it clearly refers to the fixed pay, which is minimum of the pay-scale and on completion of 10 years' period, the employees would

start getting pay-scale and other benefits, whereas those of them at the end of 15 years, would get pay-scale and higher pay benefits.

47. One aspect at this stage deserves a specific reference is that Shri Daulatbhai Parmar Committee gave its report for skilled, semi-skilled and unskilled workers; on the strength of which the Government Resolution dated October 17, 1988, was published by the Roads and Buildings Department of the State of Gujarat. This was a move to absorb many of those employees who had continued to work with the Government for a number of years and who were getting the daily wages. Moved by the predicament of many such workers, bearing in mind the laudable objective of the Industrial Disputes Act, 1947, and particularly section 25B of the Act, categories were made for those of them i.e. the employees (i) who had not completed five years of service on October 01, 1988, (ii) who had completed five years of service on October 01, 1988 and (iii) who had completed 10 years of service on October 01, 1988 and (iv) who had completed 15 years of service on October 01, 1988.

48. While making this move as a welfare State, to ameliorate the situation of many employees, the Government had put a complete ban on any engagement of daily wagers. The Government went to an extent of saying that those officers who breached such practice of employing daily wagers would be personally liable and the salary, that will be payable to such a daily

wager, would be deducted from the salary of such officer. However, this practice had continued even beyond October 01, 1988. The Government, therefore, needed to come out with yet another Government Resolution dated August 24, 2009 in the wake of continuation of such engagement of daily wagers even thereafter.

49. When such employees approached this Court, this Court had upheld the engagement of those employees engaged beyond October 01, 1988 in wake of the Government Resolution dated August 24, 2009.

50. The continuation of engagement of daily wagers was without following the dictum in case of 'SECRETARY, STATE OF KARNATAKA VS. UMA DEVI' (Supra), thus, in contravention of the decision of the Apex Court, which had permitted only by way of one time measure regularisation of those employees who otherwise had been discharging their services without following the process of recruitment for number of years. Certain exceptions carved out in subsequent decision of Apex Court in '**STATE OF KARNATAKA & ORS. VS. M L KESARI & ORS.**', (2010) 9 SCC 247 of course permitted regularisation with fulfillment of specific requirements. Government resolution of 24<sup>th</sup> August, 2009, extended the date and thereby included many in its fold. Be that as it may, this Court notices that so far as the present petitioners are concerned, the engagement of these persons was between the years 1970 and 1990 at the time when the Executive

Engineer, Ukai Dam, Irrigation Department ( now known as Narmada Water Resources, Water Supply and Kalpasar Department) had appointed the petitioners as daily wagers in connection with construction of the dam. It was in the year 1999 that their services came to be terminated abruptly. When challenged by way of raising various References being Reference (LCS) Nos.205 of 1995, 47 of 1999 and 52 of 1999, under section 10 of the Industrial Disputes Act, all the Reference cases resulted into a common judgment and award on June 13, 2002, which directed the present respondent-State to prepare the seniority list of the petitioner-workers who would meet the age bar set for Government employment and those workmen from the seniority list would be given fresh daily wage without continuity of service or any back wages, only against the sanctioned posts, subject to permission of the Government.

51. As mentioned at the time of detailing the chronology of events, the challenge subsequently on the part of the petitioners and the respondents since had failed, the impugned judgment and award has continued to hold the field.

52. Due to inaction on the part of the respondent-authorities, the petitioners preferred Special Civil Application No.7491 of 2007 and allied matters in the year 2007, wherein this Court by an order dated March 22, 2007 disposed of the said group of petitions, by directing the respondents to



consider sympathetically the plight of the petitioners therein. They also made a request to allow them the benefit of Government Resolution dated October 17, 1988, as they had been serving even prior to the year 1988. This Court directed the respondents to pass a reasoned order in accordance with law within a period of three months. In light of the communication dated August 04, 2007 of the respondent Nos.1 addressed to the respondent No.7, directing to reengage in service all the petitioners of Special Civil Application No.7491 of 2007 and cognate matters, the respondent Nos.2, 3, 5, 6 and 8 issued office orders reinstating the petitioners and other similarly situated employees as indicated in the letter dated August 04, 2007, by treating their services as fresh appointment and to pay them in accordance with the Government Resolution dated October 17, 1988.

Of course, once again in the year 2008 by way of preferring Special Civil Application No.8617 of 2008, the petitioner-workers made a request to consider their past services and to grant them the benefit of the Government Resolution dated October 17, 1988. This Court on June 27, 2008, had directed the respondent-authorities to consider their case in light of the decision of the Apex Court, particularly considering the Government Resolution dated October 17, 1988.

53. This Court notices that the litigation in

respect of the benefits to be made available to the petitioners and continuity of service after the award to engage them on daily wage, the matter then had travelled up to the Apex Court, but at no stage, the respondent-authority had succeeded and, therefore, obviously when this Court directed by order dated June 27, 2008 while dealing with Special Civil Application No.8617 of 2008, there could not have been any question of regularizing their services on administrative side in the wake of first decision, which had been taken long ago. At the same time, it cannot be denied that the petitioners have virtually worked prior to the year 1988. It is a matter of record that they belong to tribal areas and they have been engaged without following any process of recruitment and, therefore, it was also possible for the respondents to act arbitrarily and terminate their services as and when they deemed it appropriate. However, there will be no need for further elaborate or adjudicate the issue considering past litigations by and between the parties. Suffice to note that their reinstatement in service was on daily waged basis, on the basis of the seniority list, which was to be prepared by the respondents.

54. In the wake of Government Resolution dated October 17, 1988, even if their services can be considered from the time the impugned order dated June 13, 2002 was passed, their entitlement for fresh daily wage employment without continuity of service or back wages against the sanctioned post which were

vacant, subject to permission of the Government, could not have been denied. Viewing from these aspects, in the opinion of this Court, denying the petitioners the benefit of Government Resolution dated August 24, 2009, would surely be an act of discrimination. The petitioners when were taken up in service in the year 2008, would complete five years of service in the year 2013. The Government of Gujarat has issued the Government Resolution dated August 24, 2009, granting 6<sup>th</sup> Central Pay Commission to the daily wage employees working in different departments of the Government of Gujarat. The respondent-authority has also passed an order that the petitioner Nos.2 to 69 have completed more than five years of service, but less than 10 years of service and, therefore, they would not be entitled to basic pay of Rs.4440 in the pay band of Rs.4440-7440 along with the Dearness Allowance, Medical Allowance, etc. in light of the Government Resolution dated August 24, 2009 issued by the respondent-State, which is the corresponding revised pay band of the pay scale of Rs.2550-3200.

55. Examining such a claim from another angle, If one goes by the Government Resolution dated October 17, 1988, on completion of 10 years of service, the daily wagers and semi-skilled workers would be entitled to get minimum pay-scale at par with skilled workers along with Dearness Allowance and other benefits. Likewise, on completion of more than 15 years of service, they would be entitled to

be considered as permanent workers and would get present pay-scale of the skilled workers along with Dearness Allowance, Local Compensatory Allowance and other benefits. Thus, with more than 10 years of service and less than 15 years of service, they are put at par with the skilled workers and are found entitled to the minimum pay-scale and with more than 15 years of service, they would be entitled to the present pay-scale of the skilled workers. It is unfathomable as to how these workers could be denied the benefit when there is a corresponding rise of the pay-scale from Rs.2550-3200 to Rs.4440-7440. Having specifically placed them in the pay-scale of Rs.2550-3200, this Court finds that denial of minimum pay-scale of Rs.4440/- to the petitioners is discriminatory and contrary to the object of the Government Resolution dated October 17, 1988 and breach of the decision of the Apex Court in the case of **PWD Employees Union (supra)**.

56. This Court at this stage is also conscious of the communication dated October 22, 2010, addressed by the Superintending Engineer, Ukai Circle (Civil) to the office of the Executive Engineer, Ukai Division No.1, wherein certain benefits like Dearness Allowance, Minimum Wages, holidays, etc. have been **DIRECTED** to be given pursuant to the order dated June 27, 2008 passed by this Court in Special Civil Application No.8617 of 2008, wherein the respondent-authority was directed to consider the demands made by the petitioners. It is to be noted that there was

no adjudication. The respondents were to use their good office, of course, in accordance with law and to avail them the benefits, if permissible under the Government Resolution dated October 17, 1988, or otherwise. The petitioners having failed to get the continuity of service and back wages after the Tribunal had awarded limited prayers in favour of the petitioners, allowing them a fresh daily wage employment without continuity of service against the sanctioned posts when all challenges have failed, this Court does not deem it appropriate to consider the prayer of treating their past services for the purpose of calculating the benefits as per the Government Resolution dated October 17, 1988.

57. Their challenge, therefore, as mentioned above, having failed for considering continuity of past services up to 2004, the same cannot be granted. However, their entitlement to be continued on these posts from the date of their re-engagement in the year 2007/2008 shall need to be granted.

58. For the foregoing reasons, the present petitions succeed and the same are, accordingly, **PARTLY ALLOWED**. The respondent-authorities are **DIRECTED** to fix the pay of the petitioners in the pay band of Rs.4440-7440 with 9% interest from the date of their entitlement, i.e. from the date of their reengagement, which shall be paid within a period of **THREE MONTHS** from the date of receipt of a copy of this order.

59. Independent of that, all the benefits which are otherwise available to them, shall be **MADE AVAILABLE** to them treating their services from the year 2008. The respondent-authorities may also regard the grant of these benefits from the date the award in favour of the petitioners. However, so far as the grant of specific prayers is concerned, the respondent-authorities are directed to place the petitioners in the minimum pay-scale of Rs.4440/- with 9% interest. Any other periodical benefits, if any, flowing from the Government Resolution dated October 17, 1988, should be made available to them in accordance with law.

60 Rule is made absolute, accordingly. Direct Service is permitted.

**(SONIA GOKANI, J)**

UMESH/-