



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6844 of 2024**

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MANILAL MANGLAJI ZARIYA & ORS.
Versus
STATE OF GUJARAT & ORS.

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Appearance:

NIRAV V PARGHI(8032) for the Petitioner(s) No. 1,2,3,4,5
for the Respondent(s) No. 2,3,4,5

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

MS NIDHI VYAS, AGP for the Respondent(s) No.1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

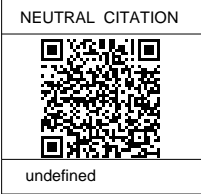
Date : 26/04/2024

ORAL ORDER

1. Heard learned Advocate Mr. Dhruv Thakkar for Mr. Nirav Parghi for the petitioners and learned AGP Ms. Nidhi Vyas for the respondent-State.

2. By way of these petitions, the petitioners have inter alia raised a grievance that though they have been working as daily wagers since numbers of years, the respondents are not according the benefits of Government Resolution dated 17.10.1988.

3. It is submitted that the petitioners are now being paid salary at a rate much less than what the petitioners are entitled to, if the respondent authorities had granted the benefit of the Government Resolution 17.10.1988 and subsequent Government Resolutions dated 15.09.2014 and



06.04.2016. It is further submitted that most of the petitioners have completed such time period by which if their services were considered, as per the Government Resolution dated 17.10.1988, then the petitioners would have been entitled for regularization and all consequential benefits arising from the same.

4. Considering the fact that as of now, there does not appear to be any decision by the respondents where the fact of the petitioners being entitled for benefits under the Government Resolution dated 17.10.1988, has been considered by the respondents authorities, in the considered opinion of this Court, the grievance of the petitioners could be assuaged at this stage if the respondents are directed to decide a representation which would be preferred by the petitioners individually. Learned Advocate Mr. Parghi and learned AGP Ms. Nidhi Vyas would not have any objection to such a course of action.

5. Before passing an order in the above terms, this Court deems it appropriate to refer to certain decisions of the Hon'ble Apex Court as well as this Court, where the scope and ambit of the Government Resolution dated 17.10.1988 has been laid down.



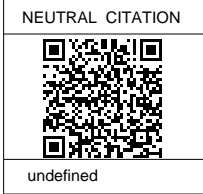
6. The Hon'ble Apex Court, in case of **State of Gujarat Vs. PWD and Forest and Employees' Union**, reported in (2019) **15 SCC 248**, at paragraph 14, has observed as thus:-

“14. Having regard to the above, we are confining our discussion to the aforesaid exceptions taken by the appellant. In the first instance, it is pointed out by the appellant that even if the respondents become permanent, they would be entitled to be fitted in the job description in terms of the Rules. What is (arising out of SLP (C) No. 43592 of 2018) & Anr. emphasised is that even after regularisation, their pay scales cannot be more than the pay which is given to the employees who are taken on permanent basis. This appears to be a very sound argument. The only plea was that whatever is given to such employees in other departments, same benefit be extended to the respondents as well. It is difficult to countenance this submission which we find to be legally impermissible. That is hardly any justifiable response to rebut the same. It is to be kept in mind that members of respondent union were all engaged on daily wage basis. No doubt, the appellant Government decided to confer certain benefits upon these daily wage workers depending upon the number of years of service they put in. Judgment dated July 09, 2013 proceeds on that basis. Under certain circumstances, namely, on completion of specified number of years of service on daily wage basis, these daily wage workers are entitled to become permanent. On attaining the status of permanency/regular employees, they become at par with those employees who were appointed on permanent basis from beginning, after undergoing the proper selection procedure on



proving their merit. These daily wagers cannot be given the pay scales which are even better than the pay scales given to regularly appointed employees. The Rules are statutory in nature (arising out of SLP (C) No. 43592 of 2018) & Anr. which have been framed in exercise of powers conferred by the proviso to Article 309 of the Constitution. On becoming permanent, such daily wagers can, at the most, claim that they be fitted in the job descriptions in terms of the said pay rules and their pay be fixed accordingly. The appellant is ready to do that. We, therefore, accept the plea mentioned in exception (i) above.

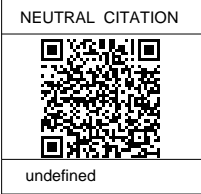
7. From the above quoted paragraph, it would clearly appear that the Hon'ble Apex Court had inter alia clarified that upon an employee, who had originally been appointed on daily-wages, completing a specific number of years, more particularly the same being in consonance with Section 25B of Industrial Disputes Act, then the employee is entitled to be granted benefits of permanency. The Hon'ble Apex Court has also further inter alia observed that upon attaining the status of permanency the employee, who was born in the department as daily-wager is entitled to be treated at par with employees, who have been appointed on regular/permanent basis by way of direct selection.



8. In case of **State of Gujarat and Anr. Vs. Mahendrakumar Bhagvandas & Another**, reported in **2011(2) GLR 1290** the Division Bench of this Court had stated the very position as stated by the Hon'ble Apex Court as noted herein above and whereas the Division Bench had also observed that the employees, upon being granted the benefits of permanency are also entitled to be granted the benefits of pension, higher pay scale, etc.

9. In case of **Executive Engineer Panchayat (MAA & M) Department and Another Vs. Samudabhai Jyotibhai Bhedi & Ors.**, reported in **2017(4) GLR 2952**, Division Bench of this Court had taken the view that upon completion of a certain number of years, while the employees concerned would be entitled to claim permanency and whereas the period of service put in by the employees concerned on the date when they were treated as permanent employees was to be treated as continuous service for deciding pension as available to the petitioners.

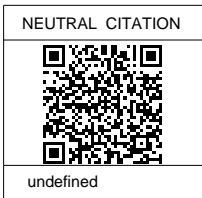
10. It would also be pertinent to mention here that in a proceeding before the Hon'ble Apex Court i.e. in SLP No.7229 of 2022, the State has accepted its liability of paying leave encashment of 300 days to the employees,



who have been granted permanency under G.R. dated 17.10.1988.

11. In case of **Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation**, reported in (1985) 4 SCC 71, the Hon'ble Apex Court has inter alia laid down that while computing the period of service rendered by an employee under Section 25 of ID Act, Sundays and Public Holidays also to be added. The said decision though not expressly as regards the scope and ambit of G. R. dated 17.10.1988, yet the law laid down is to be followed while computing the number of days having put in by an employee while considering his case for grant of benefits under the said Government Resolution.

12. The above are but few of the important decisions on the aspect of the applicability of the G. R. dated 17.10.1988 and whereas the above law as well as any further decisions that would have been passed by this Court or Hon'ble Apex Court shall be kept in mind by the respondents while deciding the representation which the petitioners would prefer individually.



13. In view of the above observations, the following directions are passed.

(i) The petitioners i.e. each of the petitioners to prefer an individual representation before the concerned respondents i.e. the Range Forest Officer of the Range in which they are working within a period of three weeks from today, with a copy to the Deputy Conservator of Forest of the Range concerned. The representation shall be comprehensive representation containing all relevant fact specific to each of the employees.

(ii) The Range Forest Officer concerned, in consultation with the Deputy Conservator of Forest, and if required, in consultation with the Principal Chief Conservator of Forest, shall decide the representation of the petitioners within a period of eight weeks from the date of receipt thereof.

(iii) Appropriate consequential benefits, if any, shall be paid to the petitioners within a period of four weeks thereafter.

(iv) In case the petitioners are aggrieved by the decision, which would be taken by the respondents, as a whole or



in part, then it would be open for the petitioners to challenge the same before appropriate forum in accordance with law.

(v) It is clarified that this Court has not gone into the merits of the matter and whereas the respondents shall take appropriate decision strictly in accordance with law and taking into consideration the law laid down by the Hon'ble Apex Court as well as this Court as referred to hereinabove. At the same time, it requires to be observed that the law as far as G.R. dated 17.10.1988 having been settled, except for the issue pending before the Hon'ble Apex Court, the respondents shall do well in applying the law laid down by this Court and Hon'ble Apex Court in this regard in its true perspective.

14. With the above observations and directions, the present petition stands disposed of. Direct service is permitted.

(NIKHIL S. KARIEL,J)

Manoj Kumar Rai