

(2024) 11 GUJ CK 0011

Gujarat High Court

Case No: Special Civil Application No. 22173 of 2022

Mahendra Jamnadas Parekh &  
Ors.

APPELLANT

Vs

Vs Gujarat Maritime Board &  
Ors.

RESPONDENT

**Date of Decision:** Nov. 22, 2024

**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 25B
- Bombay Civil Services Rules, 1959 - Rule 248

**Hon'ble Judges:** Nirzar S. Desai, J

**Bench:** Single Bench

**Advocate:** Dhruvi K Desai, Harshal N Pandya, Sejal K Mandavia

**Final Decision:** Allowed

### Judgement

Sr. No.,Name,"D a t e of  
Joining",Post,"D a t e of  
Retirement","Length of  
Service

1.,"Mahendra

Jamnadas Parekh",01.05.1985,Helper,30.06.2020,35 Years

2.,"Jasvantsinh

Karansinh Gohil",10.05.1985,Chowkidar,28.02.2014,29 Years

3.,"Lalubha

Bhikhubha Jadeja",19.09.1984,Mazdoor,31.05.2017,32 Years

Though, the dates of initial entry in service and the posts of the petitioners are different, the issue which is common in this petition is, as to whether, " ,,,,,, the petitioners are entitled to get the retiral benefits from the date of their regularization in service or from the date of their entry in government, ,,,,,, service or their initial appointment. ,,,,,,

7.1 Considering the above short issue involved in this petition, this Court perused the judgment relied on by learned Advocate, Ms. Desai, for the " ,,,,,,

petitioner in the case of "Executive Engineer Panchayat (MAA & M.) Department & Another" (Supra), wherein, the Division Bench of this " ,,,,,,

Court has observed and held as under at Paragraphs-10 to 15 thereof; ,,,,,,

"10. The issue can be looked from slightly different angle. As it likely to happen in many cases and appears to have happened in the, ,,,,,,

present case, actual order of regularization may not be passed immediately upon an employee having put in 10 years of continuous service" ,,,,,,

for variety of reasons such as inaction on the part of the employee to press for such benefits, verification needed at the hands of the " ,,,,,,

administration and sometimes, sheer inertia may delay actual regularization. Would that mean, the benefit of pension would be denied to an " ,,,,,,

employee because after the belated regularization he did not have sufficient time to render 10 years of qualifying service? The answer has, ,,,,,,

to be in the negative. ,,,,,,

11. In the past, same or similar issues have traveled to the Division Benches in Letters Patent Appeals. Learned Single Judge in case of " ,,,,,,

Tribhovanbhai Jerambhai v. Dy. Executive Engineer, SubDivision, R & B Deptt. & Anr. reported in 1998 (2) GLH 1, held that once a daily " ,,,,,,

rated workman is treated to be permanent in terms of resolution dated 17.10.1988, his entire continuous service from the date of entry till " ,,,,,,

retirement including his services rendered prior to the date of his regularization has to be taken into consideration for the purpose of, ,,,,,,

computing pension or for making pension available to the employee. This decision was carried in appeal by the employer before the, ,,,,,,

Division Bench. The Division Bench by order dated 04.04.2003 noted that the appeal had become time barred. Even on merits, the Division " ,,,,,,

Bench was not inclined to take a different view. ,,,,,,

12. In case of Surendranagar Dist. Panchayat and Anr. v. Umarm Khan Alikhan Malek and ors., Division Bench of this Court in its judgment" ,,,,,,

dated 29.03.2016 rendered in Letters Patent Appeal No.2047 of 2004, considered the issue where the employee had sought pensionary" ,,,,,,

benefits having worked from the years 1978 to 1991. The learned Single Judge applying the formula of section 25B of the Industrial ,,,,,,

Disputes Act held that the employee had put in continuous service for more than 10 years as a daily wager. He was entitled to benefit of ,,,,,,

Government Resolution dated 17.10.1988 including the benefits of pension. The administration had merely contended that the workman had ,,,,,,

not put in actual 10 years of service after regularization before he can seek pensionary benefits. ,,,,,,

13. Yet again, the Division Bench of this Court in case of Chhaganbhai Ranchhodbhai Rathod v. Dy Executive Engineer, vide judgment" ,,,,,,

dated 06.08.1998 rendered in Letters Patent Appeal No.1495 of 1997, took up the issue of pensionary benefits of a daily wager in terms of" ,,,,,,

Government Resolution dated 17.10.1988. The controversy was whether the employee had put in 10 years of service during which he had ,,,,,,

worked for not less than 240 days in every year. Learned Single Judge having rejected the petition, the employee had filed the said Letters" ,,,,,,

Patent Appeal. The Division Bench applying the provisions of Section 25B of the Industrial Disputes Act, held that the workman had put in" ,,,,,,

such service of a minimum 10 years and consequently granted the benefits of pension in terms of Government Resolution dated 17.10.1988. ,,,,,,

Here also the authorities had not raised a contention which is sought to be raised before us. ,,,,,,

14. Be that as it may, in view of the discussion above, we find no merits in this appeal. The same is therefore dismissed." ,,,,,,

15. In view of the order passed in present Letters Patent Appeal, Civil Application No.13101 of 2015 will not survive and hence, the same is" ,,,,,,

also disposed of.â€ ,,,,,,

7.2 Similarly, while deciding Letters Patent Appeal No. 1518 of 2017 vide its order dated 10.04.2018, the Division Bench of this Court observed as" ,,,,,,

under at Paragraphs-5 to 7 thereof; ,,,,,,

5. Reliance was placed on the judgment of this Court in the case of Tribhovanbhai Jerambhai v. Deputy Executive Engineer, reported in 1998 (2) GLH 1, in support of contention that the service rendered as a 'daily wager' ought to be considered for the purposes of counting the period of qualifying service for pension purpose. Learned Single Judge has considered the said judgment and we too, deem it fit to reproduce the relevant paragraphs which learned Single Judge has reproduced:

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 regularization 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.â€" ,,,,,

(emphasis supplied),,,,,

6. Reading of the judgment categorically suggests that there is no room for doubt that Government Resolution dated 17.10.1988 when read,,,,,

in the context of meaning of continuous service as defined under Section 25B of the Industrial Disputes Act suggests that while conferring,,,,,

benefits, viz. pensionary benefits, calculation of the entire service rendered even prior to the benefit of the regular pay scale being" ,,,,,

conferred needs to be considered for the purpose of awarding pensionary benefits. (from the date of initial appointment as a daily wager),,,,,

7. Learned Single Judge has observed that the judgment so rendered has attained finality and, therefore, in consonance with the question" ,,,,,

of law decided by the Division bench, learned Single Judge thought it fit to give the direction as reproduced herein above in the earlier part" ,,,,,

of the judgment.â€,,,,,

7.3 Thereafter, in Paragraph-8 of the aforesaid decision, the Division Bench of this Court has referred to the decision of the Honâ€™ble Apex Court" ,,,,,

in the case of â€˜Executive Engineer Panchayat (MAA & M.) Department & Anotherâ€™ (Supra) and has observed as under at Paragraphs- 9 and,,,,,

10 thereof;,,,,,

â€9. Having therefore considered the issue at hand, it leaves no manner of doubt that after repeated reiteration of position of law as" ,,,,,

rendered by this Court in the judgment referred to herein above, the directions are given by learned Single Judge that entire period of" ,,,,,

service rendered by him, including those years of service as 'Rojmadar' where he has rendered continuous service of 240 days a year has to" ,,,,,

be considered for the purpose of extending pensionary benefits. The stand of the Government, therefore that the respondent herein had not" ,,,,,

completed the stipulated period of qualifying service is, undisputedly a stand, which is contrary to the settled position of law, in view of the" ,,,,,

judgments referred to. Therefore, we have no reason to interfere with the direction given by learned Single Judge in the judgment impugned" ,,,,,

herein.,,,,,,

10. Letters Patent Appeal is accordingly dismissed along with Civil Application for stay.â€,,,,,

7.4 Even the Coordinate Bench of this Court, while deciding Special Civil Application No. 1902 of 2020 vide order dated 30.03.2022, placed reliance" ,,,,,

on the aforesaid two decisions of the Division Bench of this Court and ultimately held that a person, whose service are regularized, is entitled to get" ,,,,,

the retiral benefits from the date of his initial entry in service or initial appointment and not from the date of his regularization.,,,,,

7.5 Another Coordinate Bench of this Court also took the similar view, while deciding Special Civil Application No. 11767 of 2020 vide order dated" ,,,,,

14.06.2022, by relying on the aforesaid two decisions. Further, what is most important to take-note is the fact that in the last decisions relied on by the" ,,,,,

learned Advocate, Ms. Desai, appearing for the petitioner, it was Gujarat Maritime Board, itself, who is the respondent, herein, was a party-" ,,,,,

Respondent in those matters also. Thus, considering the fact that the issue involved in this petition has already been decided by the Division Bench as" ,,,,,

well as the Coordinate Bench of this Court, this Court shall be bound by the same and this petition deserves to be allowed by holding that the" ,,,,,

petitioners are entitled to get the retiral benefits from the date of their entry in service or initial appointment and not from the date of their ,,,,,

regularization in service.,,,,,

8. Resultantly, this petition is allowed and the Respondents are directed to re-calculate the retiral benefits, to which the petitioners are entitled to, from" ,,,,,

the date of their entry in service or from the date of their initial appointment within the period of one month from the date of receipt of a copy of this ,,,,,

order and to pay the petitioners arrears within the period of one month, thereafter. In case, if, the aforesaid exercise is not completed within the" ,,,,,

aforesaid period, the petitioners shall be paid the amount of arrears, along with interest at the rate of six per cent per annum." ,,,,,

8.1 It is, further, clarified that as the issue, whether, the services rendered by the petitioners as daily-wagers, before being regularized and given the" ,,,,,

status of a regular Government servant, can be reckoned, so as to invoke the provisions of the Payment of Gratuity Act, 1972, after the age of" ,,,,,

superannuation and retirement as State Government employee, is pending before the Larger Bench of the Honâ€™ble Apex Court, the same is kept" ,,,,,

open qua the present petitioners.,,,,,

8.2 Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.,,,,,,