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**(2025) 01 GUJ CK 0053**

**Gujarat High Court**

**Case No:** Special Civil Application No.19456 of 2022

Savitaben Dalabhai Soya

APPELLANT

Vs

Vs State of Gujarat & Ors.

RESPONDENT

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**Date of Decision:** Jan. 20, 2025

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

**Bench:** Single Bench

**Advocate:** Nilesh M Shah, H S Munshaw, S G Udhwani

**Final Decision:** Allowed

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**Judgement**

Nirzar S. Desai, J

1. Heard, learned Advocate, Mr. Shah, appearing for the petitioner, learned AGP, Mr. Udhwani, for Respondent Nos. 1 and 4 and learned Advocate,

Mr. Munshaw, for Respondent Nos. 2 and 3.

2. With the consent of the learned Advocates for the parties, this matter is taken-up for final hearing and disposal, today. Hence, RULE. Learned

AGP, Mr. Udhwani, waives service for Respondent Nos. 1 and 4 and learned Advocate, Mr. Munshaw, waives for Respondent Nos. 2 and 3.

3. By way of this petition, the petitioner has prayed for the following reliefs;

“(18) “

(A) to issue writ of certiorari and / or any other writ or writs or orders of directions.

(B) to quash and/or set aside Order Ann-E dt.09-09-20 to the extent of not granting benefit of Resolution dt.17-10-88 from 01-01-91 and to

direct the Respondents to give the benefit of Resolution dt.17-10-88. Ann-K to the Petitioner with effect from 01-01-91 to 15-06-93

notionally and further be pleased to direct the Respondents to give difference of salary from 16-06-93 to 31-01-21 (with revision of pay).

(C) to direct the Respondents to grant retirement benefits like Pension, Gratuity and Leave encashment of 300 days to the Petitioner

considering total service of 34 years continuous service with 12% interest from 01-02-21 till its actual implementation.

(D) during the pendency of this petition by way of interim relief to direct the Respondents to give pay slips from April, 18 to January, 21 to the Petitioner.

(E) to grant any other relief as this Hon'ble Court may deem fit in the interest of justice.

(F) to allow this petition with costs.â€

4. The brief facts of the case, as stated by learned Advocate, Mr. Shah, appearing for the petitioner are that the petitioner was employed by Deputy

Executive Engineer, Panchayat (R&B) Sub Division, Limdi, i.e. Respondent No.3 herein, as a daily-wager in the year 1980 and he continued to work

as such, till the termination of his services along with other co-workers by the concerned Respondent vide order dated 21.10.1987. Hence, the

petitioner and his co-workers raised an industrial dispute before the Labour Court, Surendranagar, by way of Reference (LCS) Nos. 234 & 236 of

1991.

4.1 Labour Court, Surendranagar, partly allowed both the References vide order dated 15.06.1993, by quashing and setting aside the order dated

21.10.1987, and thereby granted reinstatement to the petitioner and the co-workers on their original post, as per their seniority, but, without continuity

of service and the back-wages.

4.1.1 Being aggrieved with non-grant of continuity of service and the back-wages, the petitioner challenged the order of the Labour Court,

Surendranagar, before this Court by way of Special Civil Application Nos. 2733 of 1994, where, the Coordinate Bench of this Court vide its judgment

and order dated 01.08.2005 partly allowed the same and quashed and set aside the order of the Labour Court, Surendranagar, to the extent it did not

grant the benefit of continuity of service to the petitioner and ordered the concerned Respondents to grant the same from the date of filing of the

Reference, i.e. from the year 1991. However, the petitioner was not granted the benefit of back-wages.

4.1.2 After the order dated 01.08.2005, since, the petitioners and the co-workers were not granted re-instatement, they were constrained to file

Special Civil Application No. 5938 of 2012 and ultimately, they came to be reinstated in service vide order dated 19.02.2013 and thereafter, the

petitioner continued to work, till he attained the age of superannuation, i.e. up to 31.01.2021. It is the case of the petitioner that pursuant to an

application made by her, she was granted the benefit of GR dated 17.10.1988, with effect from 01.04.2018, by taking into consideration her

reinstatement in service with effect from 08.04.2013. vide order dated 09.09.2020.

4.1.3 It is the case of the petitioner that after her retirement, she was denied the retiral benefits, such as pension, gratuity, 300 days leave encashment

etc. by taking into consideration the service of the petitioner from 19.02.2013 to 31.01.2021, i.e. for only eight years, and by taking a stand that as the

petitioner has not completed required number of years in service, she cannot be granted the retiral benefits, like pension, gratuity, 300 daysâ€™ leave

encashment etc., though, the petitioner has already been granted the other benefits, as per GR dated 17.10.1988.

4.2 In the above background, the petitioner has approached this Court, seeking the reliefs as reproduced at Paragraph-3, herein above.

5. Learned Advocate, Mr. Shah, appearing for the petitioner submitted that the law on the subject is very clear and when the Labour Court has

granted reinstatement from the date of the filing of the Reference and when the same is not challenged by the Respondents, then, the said order has

become final and therefore, the Respondents ought to have considered the reinstatement of the petitioner in service from the date of filing of

Reference, i.e. from 01.01.1991, and the Respondents ought to have considered the length of service of the petitioner from 01.01.1991 and in view of

the judgment of the learned Single Judge dated 01.08.2005, rendered in Special Civil Application Nos. 2732 & 2733 of 1994, whereby, the petitioner

was granted the benefits of continuity of service, while denying back-wages, which is not challenged by the Respondents and the same has attained

finality. It was, therefore, prayed that the petitioner was required to be granted the benefits, as per the judgment dated 01.08.2005, by counting and by treating the petitioner in service from 01.01.1991, till his actual date of retirement.

5.1 It was, further, submitted that when the petitioner has already been granted the benefits of GR dated 17.10.1988, there is no justification in denying

the retiral benefits to the petitioner in view of catena of decisions of the Apex Court as well as of this Court. It was, therefore, prayed that this petition

be allowed and the petitioner's service be counted from the date of filing of Reference, i.e. from 01.01.1991, till his date of actual retirement and

he be also granted the benefits of pension, gratuity, 300 days' leave encashment.

5.2 In support of his submissions, learned Advocate, Mr. Shah, placed reliance on the decision of this Court, Dated: 06.03.2020, rendered in Special

Civil Application No. 20894 of 2017 and the allied matter, whereby, in similar set of facts, learned Single Judge of this Court granted the benefit of

continuity of service to the petitioners therein by considering their past services to be treated as services for the purpose of granting the benefit of GR

dated 17.10.1988 and that the tenure, during which they were out of service, could not be treated as a disqualification to deny the benefits of aforesaid

GR to the petitioner.

5.2.1 Learned Advocate, Mr. Shah, brought to the notice of this Court that the order dated 06.03.2020 was challenged by two of the Respondents

therein by way of Letters Patent Appeal Nos. 663 & 722 of 2020, which came to be dismissed by the Division Bench of this Court vide two separate

orders dated 06.02.2024 and 13.02.2024, respectively. It was, therefore, prayed that the present petitioner be also granted the similar reliefs by

allowing this petition.

6. On the other hand, learned Advocate, Mr. Munshaw, appearing for Respondent Nos. 2 and 3 submitted that the affidavit-in-reply filed by these

Respondents makes it clear that the petitioner served for only eight years and that too, after the order dated 15.06.1993 passed by the concerned

Labour Court and therefore, she is not entitled to get the benefits, as prayed for, in this petition and therefore, this petition be dismissed.

7. Learned AGP, Mr. Udhwani, though, vehemently opposed this petition, he was not in a position to dispute the fact that the issue is covered and he

also could not point out any other judgment, which would support the case of the Respondents.

8. I have heard the learned Advocates for the parties and have also perused the material on record. The short issue / question, which is involved in this

petition, is that, when the petitioner was directed to be reinstated in service from the date of filing of Reference, i.e. 01.01.1991, and when the order

dated 15.06.1993, passed by the concerned Labour Court is not challenged by the Respondents and the same has attained finality and pursuant

thereto, the petitioner was reinstated in service with effect from 19.02.2013, the same would go to indicate that the order passed by the concerned

Labour Court was complied with by the Respondents, though, belatedly and when the Coordinate Bench of this Court has granted the benefit of

continuity of service to the petitioner vide order dated 01.08.2005, passed in Special Civil Application Nos. 2732 & 2733 of 1994, whether, the

Respondents are justified in denying retiral benefits to the petitioner by counting her services from 2013 to 2021, i.e. for the eight years only, or not.

8.1 If, the judgment and order dated 01.08.2005, passed in Special Civil Application Nos. 2732 & 2733 of 1994 and relied on by the learned Advocate

for the petitioner, is perused, the petitioner is specifically denied the benefit of back-wages, however, she is granted the benefit of continuity of

service. Now, if, the order dated 01.08.2005, whereby the petitioner is granted continuity of service, is read with the order dated 15.06.1993, passed by

the concerned Labour Court, which held the termination of services of the petitioner illegal, then, the services of the petitioner are required to be

counted from 01.01.1991 and therefore, the Respondents are not justified in denying the retiral benefits, such as pension, gratuity, 300 daysâ€™ leave

encashment to the petitioner.

8.2 The learned Single Judge of this Court, while passing the order dated 01.08.2005, has taken into consideration the law in this regard and has held

that the past service of the petitioner shall have to be counted from 01.01.1991 to 31.01.2021, i.e. from the date of filing of the Reference before the

concerned Labour Court till his date of superannuation, for the purpose of granting the retiral benefits, i.e. pension, gratuity etc., to the petitioner.

9. Resultantly, in view of the above discussion, this petition is allowed. The Respondents are directed to grant the retiral benefits, such as pension,

gratuity, 300 daysâ€™ leave encashment etc., to the petitioner by taking into consideration his service from 01.01.1991 to 31.01.2021, within the

period of TWELVE WEEKS from the date of receipt of a copy of this order.

Rule is made absolute, accordingly. No order as to costs. Direct service is permitted.