

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 688 of 2021****In R/SPECIAL CIVIL APPLICATION NO. 14173 of 2018**

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BAHDURBHAI DEVARABHAI KHAVAD**Versus****DY. EXECUTIVE ENGINEER, SURENDRANAGAR JAL SINCHAN SUB
DIVISION & 1 other(s)**

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Appearance:**MR. VISHAL P THAKKER(7079) for the Appellant(s) No. 1
MS DHWANI TRIPATHI, AGP for the Respondent(s) No. 1,2**

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CORAM: HONOURABLE MR. JUSTICE R.M.CHHAYA**and****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK****Date : 10/03/2022****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE R.M.CHHAYA)**

1. Feeling aggrieved and dissatisfied by the judgment and order dated 15.10.2020 passed by the learned Single Judge in Special Civil Application No. 14173 of 2018, the original petitioner has preferred this intra court appeal under clause 15 of the Letters Patent.

2. Heard Mr. Vishal Thakker, learned advocate for the appellant and Ms. Dhvani Tripathi, learned advocate for the respondents.

3. The short facts arising in this appeal are as under -

3.1 That the appellant was working as a daily wager at Sayla, Dist. Surendranagar, since 06.11.1984 and

was superannuated on 29.04.2008 as daily wager. The appellant herein approached this Court under Article 226 of the Constitution of India and inter alia prayed for appropriate writ, order or direction directing the respondent authorities to pay all the consequential pensionary benefits and has also prayed for 18% interest on delayed payment.

3.2 It was the case of the appellant before this Court that his services were terminated against which, he along with other persons had filed Reference (LCS) No. 274 of 1991, which came to be allowed. Relying upon the judgment of this Court in Special Civil Application No. 4713 of 2008, the appellant filed writ petition No. 22252 of 2017 and contended before this Court that the appellant is also entitled to similar benefits as granted to one Nagjibhai Karapda, a similarly situated daily wager and also claimed benefits of Government Resolution dated 17.10.1988 and other subsequent policy decisions.

3.3 This Court (one of us), relying upon the earlier decision in the case of Nagjibhai Karapda, issued the following directions to the respondents -

"7. Be that it may; in facts of this case, the respondent authorities are hereby directed to consider the case of the petitioner as per the prevailing policy. Such decision shall be taken keeping in mind the ratio laid down by this Court in Special Civil Application No. 4713 of 2008 within a period of three month from the date of receipt of this order and the order be communicated to the petitioner."

3.4 The record indicates that while the case of the appellant was under examination as per the direction issued by this Court, the appellant approached this Court by way of an application under Section 12 of the Contempt of Courts Act, 1971 being MCA No. 780 of 2018. The Division Bench was pleased to dispose of the same by observed thus -

"5. It is not disputed that during the pendency of the Misc. Civil Application, the respondents have extended the benefit of pensionary benefits and also paid necessary amounts as determined, extending the benefit of pension etc. During the course of arguments, without disputing receipt of such amounts, learned counsel Shri Vishal P. Thakkar has submitted that the respondents have not paid interest on such delayed payments. It is submitted that there was a specific relief in the petition for payment of interest on such pensionary benefits as such, respondents have not fully complied with the directions issued by this court.

6. We are not convinced with such submission made by the learned counsel. In the earlier order passed by this Court in Special Civil Application No.4713 of 2008 or in the order passed by this Court in Special Civil Application No.22252 of 2017, there is no direction at all for payment of interest on delayed payment. In that view of the matter, it cannot be said that the respondents have not fully complied with the directions issued by this Court. As much as pensionary benefits are extended and received by the applicant, during the pendency of this application, we are of the view that it is not a fit case to be proceeded further under the provisions of the Contempt of Courts Act, 1971. Accordingly, this application is closed."

3.5 Thereafter, the present appellant file the present writ petition being SCA No. 14173 of 2018 and prayed as under -

"(A) YOUR LORDSHIPS be pleased to issue an appropriate writ, order or direction, directing the respondent-authority to pay interest @ 18% P.A. on delayed payment of retiral dues to the petitioner from the date of super annuation of petitioner in the interest of justice and equity along with stringent cost on the respondent authorities;

(B) YOUR LORDSHIPS be pleased to issue an appropriate writ, order or direction, directing the respondent-authority to pay interest @ 18% P.A. on delayed payment of retiral dues to the petitioner from the date of super annuation of petitioner pending admission, hearing and final disposal of this petition"

As the said petition came to be dismissed, the appellant-original petitioner has preferred this Appeal.

4. Mr. Vishal Thakkar, learned advocate appearing for the appellant contended that the appellant has worked for 24 years and is therefore entitled to retiral benefits including pension, which has been granted after delay and after the order was passed by this Court in earlier writ petition being SCA No. 22252 of 2017. Mr. Thakker further contended that the appellant is entitled for the pensionary benefit from the date of his superannuation and as there is delay, the appellant is entitled to interest as prayed for in the petition. Mr. Vishal Thakkar also relied upon the following three judgments -

1) Shah Babulal Balkrishna Vs. State of Gujarat and Anr reported in 1997(2) GLR 1700

2) Vijay L. Merotra Vs. State of UP reported in AIR 2000 SC 3513 = 2000 AIR SCW 2678

3) Rajnikant R. Upadhyay Vs. Gujarat Govt and Ors. reported in 2001 (3) GLR 2628

5. Per contra, Ms. Dhvani Tripathi, learned AGP has opposed the appeal and has contended that similar prayer has been considered by the Division Bench of this Court in the case of Nagjibhai Karapda who was co-worker of the appellant and the said appeal is dismissed. Ms. Tripathi contended that the present appeal being meritless, deserves to be dismissed.

6. No other or further contentions, grounds or submissions have been raised by the learned advocates appearing for the respective parties.

7. As can be seen from the factual matrix arising in this appeal, it is a matter of fact that the appellant was a daily wager and not a regular employee of the respondent no.1. It is also a matter of fact that his services were discontinued on he being terminated on 26.02.1991 and came to be reinstated on 01.07.1994. Further, the facts reveal that after attending the age of superannuation in the year 2008, the appellant, for the first time, approached this Court by way of writ petition being SCA No. 22252 of 2017 for the direction for payment of consequential pensionary benefits. After

examining the case of the appellant, this Court was pleased to direct the authorities to decide the same within a stipulated time of three months. As can be culled out from the affidavit in reply filed before the learned Single Judge, the order dated 14.03.2018 was implemented by the Respondent authority on 14.08.2018 and immediately, the payment was made.

8. As such, we also find from the order passed by the coordinate bench in MCA No. 780 of 2018 that the very plea of interest was examined by the coordinate bench and no direction was given for payment of interest on the late payment and the coordinate bench has come to the conclusion that there is full compliance of the directions issued by this Court in SCA No. 22252 of 2017. Thus, we find that there is no delay in making payment of the retiral dues. As correctly observed by the learned Single Judge, the right of the appellant for pensionary benefits accrued on 14.03.2018 when the directions were issued.

9. In the judgment of this Court reported in Shah Babulal Balkrishna (supra), the pensionary amount of gratuity was found to be illegally withheld on the ground of pendency of two departmental inquiries whereas in the case on hand, not only the fact that the appellant was a daily wager, his right accrued on 14.03.2018 and not before that and hence, the said judgment is of no avail to the petitioner. Similarly, the judgment of this Court in the case of

Rajnikant R. Upadhyay (supra) as well as the Hon'ble Apex Court in the case of Vijay L. Merotra (supra) are on totally different factual matrix. It is a matter of fact that right of the appellant for pensionary benefits accrued on 14.03.2018 and the payment is made within a period of five months. It is also a matter of fact that the appellant relied upon the judgment of this Court in SCA No. 4713 of 2008 and on the basis of which, this Court issued directions in SCA No. 22252 of 2017 and in the case of employee Nagjibhai Karapda, a similar prayer of interest came to be rejected being LPA No. 884 of 2020 dated 02.12.2020.

10. As we find that there is no delay in making payment of pensionary benefit as alleged by the appellant, no case for interference is made out. As aforesaid, the judgments relied upon by the learned counsel for the appellant does not take the case of the appellant any further. The learned Single Judge in para 6 has observed thus -

"6. Considering the issue on hand, unlike the regularly selected government employee whose right of pension crystallizes on the date he superannuates with no controversy as to his continuity of service, this was a case where the petitioner was initially engaged as a daily wager in the year 1984 whose services were terminated in the year 1991. The award of reinstatement was made and by virtue of the operation of the award of reinstatement with continuity of service and the resolution dated 17.10.1988, it was the case of the petitioner that he was entitled to pensionary benefits. He retired on superannuation in 2008. The petition

was filed for terminal benefits in the year 2017 which was decided in the year 2018 wherein this court held in favour of the petitioner. It was only when the petitioner got a final adjudication in his favour on 14.03.2018, the right of the petitioner for pensionary benefits can be said to have been accrued. The payments are made and delay cannot be said to be unexplainable or unreasonable so as to warrant payment of interest and entitlement of the petitioner to such interest. In view of the above, the petition is dismissed. Rule is discharged."

We are in total agreement with the observations made by the learned Single Judge and no case for interference is made out. The appeal being bereft of any merits, deserves to be dismissed and is hereby dismissed. Connected Civil Application, if any, stands dismissed. There shall be no order as to costs.

सत्यमेव जयते (R.M.CHHAYA,J)

THE HIGH COURT
OF GUJARAT (HEMANT M. PRACHCHAK,J)

BIJOY B. PILLAI

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