

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 629 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J. SHELAT**

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Approved for Reporting	Yes	No
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PRABHATSINH MATHURBHAI BARIA

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1MS FORUM BIMAL SUKHADWALA, ASSISTANT GOVERNMENT PLEADER
for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 1,3,4

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CORAM: HONOURABLE MR. JUSTICE MAULIK J. SHELAT**Date : 24/03/2026****JUDGMENT**

1. **RULE** returnable forthwith. Ms. Forum Bimal Sukhadwala, learned Assistant Government Pleader, waives service of notice of Rule on behalf of respondent-State.

2. At the outset, Ms. Forum Sukhadwala, learned AGP for the

respondent-State places on record Office Order No. 04 of 2026 dated 07.02.2026 by virtue of which the petitioner is granted the benefit of the Government Resolution dated 17.10.1988 w.e.f. 01.04.2008. Therefore, the narrow scope of this petition would remain as to from which date the petitioner would be entitled for grant of benefit under the Government Resolution dated 17.10.1988.

3. Heard Mr. Dipak R. Dave, learned Advocate for the petitioner and Ms. Forum Sukhadwala, learned AGP for the respondent-State.
4. The present writ petition is filed under Article 226 of the Constitution of India, seeking the following reliefs:

“(A) This Hon’ble Court may be pleased to issue a writ of mandamus and/or a writ in the nature of mandamus and/or any other appropriate writ, order or direction to

(i) To quash and set aside impugned order at Annexure-C to the petition passed by respondents:

(ii) direct the respondents to confer benefits of Government Resolution dated 17.10.1988 to the petitioner and he be treated as permanent employees after completion of 10 years of service i.e. from 1997 and accordingly he may be held entitled to have all the benefits of permanent

employees including regular pay-scale from 1997;

(iii) to direct the respondents to pay the difference of salary at the rate of 10% as per the award and thereafter regular salary to the petitioner from the date of award i.e. 16.02.2018 till date;

(B) Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to direct the of respondents to immediately fix pay the petitioner in pay-scale applicable to the permanent employees taking into consideration the length of service of the petitioner right from 1987;

(C) Any other and further relief or reliefs to which this Hon'ble Court deemed fit, in the interest of justice; may kindly be granted."

5. SUBMISSIONS OF THE PETITIONER:

5.1. Mr. Dave, learned Advocate appearing for the petitioner would submit that though the petitioner is entitled to receive the benefit of Government Resolution dated 17th October 1988, the same was wrongly denied by the respondent-State only on the ground that he had not completed 240 days of service when terminated. It is respectfully submitted that on getting termination of service of the petitioner, he approached the Labour Court by way of reference no. (T) 145 of 1998, who allowed his reference whereby he was reinstated in service with

continuity, thereby, as per provisions of Section-25(B) of the Industrial Disputes Act, 1947 (hereinafter referred to as “I.D. Act”), he is required to be continued in service and entitled to receive the benefit of Government Resolution dated 17th October 1988. It is further submitted that the aforesaid award dated 16th February 2018 passed by the Labour Court is also confirmed by this Court while dismissing the writ petition vide order dated 20.01.2020 passed in Special Civil Application No.14528 of 2018. Learned Advocate would submit that while examining case of the petitioner with regard to the illegal termination, the Labour Court categorically held that the petitioner has served with the respondents continuously as provided under Section 25(B) of the I.D Act. Learned Advocate therefore submitted that the office order no. 04 of 2026 granting benefit of government resolution dated 17.10.1988 is therefore required to be modified to the extent that the petitioner is entitled to the benefit of government resolution dated 17.10.1988 w.e.f. October, 1997 i.e the date on which the petitioner would complete 10 years of service.

- 5.2.** Mr. Dave, learned Advocate, would further respectfully submit that the issue germane in the matter is no longer res

integra, having already been decided by two judgments of the Division Bench of this Court, in following cases:

- (i) ***State of Gujarat V/s. Ashok Laxmanbhai Parmar in Letters Patent Appeal No.1268 of 2017 dated 18/06/2018, reported in 2018 SCC OnLine Guj 2344;***
- (ii) ***Jamnagar District Panchayat & Anr. V/s. Girdharbhai Muljibhai Eradiya & Anr. in Letters Patent Appeal No.1205 of 2025 dated 10/11/2025.***

5.3. Making the above submissions, Mr. Dave, learned Advocate, would request this Court to allow the present writ petition.

6. SUBMISSIONS OF THE RESPONDENTS:

6.1. *Per contra*, Ms. Sukhadwala, learned AGP, would respectfully submit that as stated in the order dated 07.02.2026, it remained undisputed fact on record that the petitioner has not completed 240 days of service prior to his termination i.e. 20th March 1997 and merely because of the order of reinstatement with continuity of service passed by the Labour Court, it would not entitle the petitioner to claim any benefit flowing from Government Resolution dated 17th October 1988.

- 6.2. According to Ms. Sukhadwala, learned AGP, the petitioner's service has been rightly considered from 1998 and accordingly he has been granted benefits from 01.04.2008.
7. No other and further submissions are made.
8. Having heard learned Advocates appearing for the respective parties and after considering the facts of the present case, the issue germane in this matter would stand covered by the aforesaid cited two judgments of the Division Bench binding to this Court, wherein, the following proposition of law laid down:
- 8.1. In the case of ***Ashok Laxmanbhai Parmar (supra)***, it has been observed and held thus:

“5. Thus, the upshot of the aforesaid facts and discussion is that the present respondent-workman is denied the benefits flowing from the Government Resolution dated 17.10.1988 only on the ground that he had not completed 240 days in a year and his “continuity of service”, as granted by the Labour Court vide award dated 23.07.2007 and confirmed by this court, cannot be considered. The stand taken by the present appellants that the respondent - workman is not entitled to the benefits of the Government

Resolution dated 17.10.1988 deserves to be deprecated. Once it has been established by this court that the respondent - workman is reinstated in service with continuity of service, the workman would be entitled to get the benefits flowing from the Government Resolution dated 17.10.1988, and such benefits cannot be denied to the respondent-workman only on the ground that he has not worked for 240 days. He was forced to live without work because of his illegal termination. The appellants cannot take benefit of their illegal action. The termination of the respondent - workman was found to be illegal and contrary to the provisions of the Industrial Disputes Act, 1947.

The effect of continuity of service is to be conferred from the year 1996, when he was appointed as a daily wager. The impugned order dated 15.04.2016 is blissfully silent about denying the benefits of the Government Resolution dated 17.10.1988 to the workmen who have been reinstated with continuity of service. The Government Resolutions dated 17.10.1988 and 01.05.1991 envisage grant of benefits of pay fixation, pension, etc. to the daily wagers, who have completed certain number of years of service.”

(emphasis supplied)

8.2. In the case of ***Girdharbhai Muljibhai Eradiya (supra)***, wherein,

after referring the aforesaid judgment of the Division Bench of this Court, it has been observed and held thus:

*“4.4 The contention of the petitioners was that when the judgment and award of Labour Court granted them continuity of service and same was confirmed by the higher courts, the benefits arising from Resolution dated 17.10.1988 would be available to them as necessary corollary. The following observations of the Court in **Prabhatbhai Mudhwa (supra)** in paragraph 5 may be noticed with relevance,*

"It is an admitted fact that the petitioners have served since 1988 upto 31.3.1998; their services came to be terminated and they were reinstated on 13.5.2019 after the judgment and award of labour court, which granted them continuity of service. Therefore, it would necessarily follow that entire period of service of the petitioners from the respective date in the year 1988 till reinstatement or retirement, as the case may be, would have to be counted as continuous either based on actual service rendered or notionally in view of the continuity benefit conferred by the labour court."

4.5 The Court further observed after noticing that the judgment and award of the Labour Court was confirmed by this Court in Special Civil Applications, which were dismissed,

"...in para-5 of the impugned communication, the petitioners were specifically denied the benefits of Resolution dated 17.10.1988. It was stated that

the petitioners would be entitled to minimum wages only. In the same way, those petitioners who have retired w.e.f. 31.7.2017 have also been denied the benefits of Resolution dated 17.10.1988, which otherwise would have to be granted to them in the facts of the case. Respondent No.2 authority has evidently ignored and disregarded the effect in law required to be given to the judgment and award of the labour court confirmed by this court as above in denying the benefits of Resolution dated 17.10.1988. The benefits flowing therefrom have to be accorded their to into account the petitioners taking respective factual matrix of services."

"5. The Division Bench in **Ashok Laxmanbhai Parmar (supra)**, dealt with similar set of facts and the grievance to observe thus, extracting from paragraph 5,

"...the present respondent workman is denied the benefits flowing from the Government Resolution dated 17.10.1988 only on the ground that he had not completed 240 days in a year and his "continuity of service", as granted by the Labour Court vide award dated 23.07.2007 and confirmed by this court, cannot be considered. The stand taken by the present appellants that the respondent workman is not entitled to the benefits of the Government Resolution dated 17.10.1988 deserves to be deprecated. Once it has been established by this court that the respondent - workman is reinstated in service with continuity of service, the workman would be entitled to get the benefits flowing from the Government Resolution dated 17.10.1988, and such benefits cannot be denied to the respondent workman only on the ground that he has not worked for 240 days."

5.1 It was further observed that when the workman was forced to leave duties on account of unlawful termination by the employer, the employer cannot take benefit of its own illegal action to deny continuity of service, which was otherwise granted by the lower court.”

(emphasis supplied)

9. Even in the aforesaid last decision of the Division Bench of this Court, while rejecting the arguments of the respondent-State, also referred to recent past judgments of the Hon'ble Supreme Court in the cases of ***Vinod Kumar & Ors. V/s. Union of India reported in (2024) 9 SCC 327*** and ***Jaggo V/s. Union of India reported in 2024 SCC OnLine SC 3826***.
10. Thus, in view of the aforesaid peculiar facts and circumstances of the case and when the stand taken by the respondent-State in the present case is already turned down by the aforesaid two judgments passed by the Division Bench of this Court, there is no reason to deviate from such view, which is otherwise binding to this Court.
11. In the present case it is undisputed that the Labour Court has found that the petitioner has rendered continuous services as per Section 25(B) of the I.D Act and therefore the benefits of

Government Resolution dated 17.10.1988 would flow from the date of initial appointment, i.e, October 1987.

CONCLUSION:

- 12.** In view of the foregoing reasons, I pass the following order:
- (i).** The respondents are directed to give all consequential benefits of Government Resolution dated 17th October 1988 to the petitioner w.e.f. October 1987 notionally up to 20.03.1997. The petitioner is entitled to be placed in the pay scale w.e.f October, 1997 and his 10% wages as per the direction of the Labour Court in Reference (T) no. 145 of 1998 shall be payable from the date of termination till 16.02.2018. The petitioner shall be entitled to actual difference in wages from 16.02.2018 as per the Government Resolution dated 17.10.1988.
 - (ii).** Once, the aforesaid benefits will be paid by the respondents to the petitioner, as the petitioner is still in service, the respondents are directed to pay him regular salary with all service benefits.
 - (iii).** All the arrears shall be paid to the petitioner on or before

30.04.2026, failing which the petitioner shall be entitled to receive any such arrears amount with 6% interest from 01.05.2026 till its realisation.

13. Accordingly, in view of the foregoing conclusion, the present writ petition is hereby partly allowed. Rule is made absolute, to the aforesaid extent. There shall be no order as to costs.

(MAULIK J. SHELAT, J)

NILESH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PARMAR NILESHKUMAR R(HCD0068), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 25/03/2026 11:16:39