

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/LETTERS PATENT APPEAL NO. 1432 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 18305 of 2021
With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2023
In R/LETTERS PATENT APPEAL NO. 1432 of 2023
With
R/LETTERS PATENT APPEAL NO. 222 of 2024
In
R/SPECIAL CIVIL APPLICATION NO. 11268 of 2023

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GUJARAT WATER SUPPLY AND SEWAGE BOARD & ORS.

Versus

GNANBA DASRATHSINH ZALA & ANR.

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Appearance:

MR HS MUNSHAW(495) for the Appellant(s) No. 1,2,3
 ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
 Respondent(s) No. 2

MS ASHLESHA M PATEL(6127) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 07/04/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. At the outset, learned advocate for the respective parties have submitted that the present matter may be ordered to be listed with Letters Patent Appeal No.840 of 2022 and allied matters and similar order may be passed.

2. Accordingly, in the present appeal following order is passed.

“1.We have heard Ms. Vrunda Shah, learned AGP for the respondent – State and Mr. K.M. Patel, Senior Advocate, who appears on behalf of Mr. H. S.

Munshaw, learned advocate for the appellant - Gujarat Water Supply and Sewerage Board.

2. The issue involved in all these Letters Patent Appeals is only confined to the grant of lumpsum compensation in lieu of compassionate appointment as per the Government Resolutions dated 5th July, 2011, 13th October, 2015 and 7th April, 2016.

3. It is the case of the State Government and the appellant Board that all the employees who were initially serving as daily wagers and subsequently made permanent and are also conferred the regular pay scale and on their revision of pay scale as per the Gujarat Civil Services (Revision of Pay) Rules, 2016 are not entitled to the benefit of lumpsum compensation, as the scheme of lumpsum compensation as promulgated by the State Government in the aforementioned Resolutions will only apply to the Class-III and Class-IV employees and not to the employees who are made permanent/regular after they have completed requisite number of years as daily wagers.

4. It is an admitted fact by the appellant that all the respondents -employees have been conferred the benefit of regular pay scales as per the Government Resolution dated 17th October, 1988, which has already been considered and approved by the

Supreme Court in the case of State of Gujarat & Ors. Vs. PWD Employees Union & Ors., (2013) 12 SCC 417 and subsequently in the judgment reported in (2019) 15 SCC 248 between the same parties.

5. As per the decision of the Supreme Court, which is premised on the interpretation of the benefits arising from the Government Resolution dated 17th October, 1988, a daily wager, who completes 5, 10, 15 years of services, are extended the benefit of regular pay scales. The Supreme the Court in judgment reported in 2019 (15) SCC 248, ultimately in paragraph no.14 has held that *“Under certain circumstances, viz. on completion of a 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 on a par with those employees who are appointed on a permanent basis from the 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 which have been framed in exercise of power confirmed by proviso to Article 309 of the Constitution. On becoming permanent, such daily wagers can at the most claim that they may be fitted in a job description in terms of the said pay rules and their pay may be fixed accordingly.”*

6. Thus, as per the judgment of the Supreme Court, the daily wagers, who have become permanent, and are made regular, are conferred the regular pay scale. However, they cannot be placed better than the pay scale given to the regularly appointed employees since the rules are statutory in nature which are framed in exercise of power confirmed by the Proviso to Article 309 of the Constitution of India.

7. The issue raised in the present group of appeals emanates from the judgment of this Court in the case of State of Gujarat Vs. Mahendrakumar Bhagwandas, 2011 (2) GLR 1290, wherein the Division Bench of this Court granted five benefits to the daily wagers who were made permanent or conferred the regular pay scales in light of the Government Resolution dated 17th October, 1988. The benefits pertain to encashment of leave, leave travel assistance, travelling allowance, uniform allowance etc. which are available to the Government servants. The Division Bench directed the State Government to confer such benefits since the daily wagers, who are extended the benefits of regular pay scale and are regularized in view of the Resolution dated 17th October, 1988 can be said to be permanent employees.

8. By placing reliance on the aforesaid Division Bench, it appears that for the first time a view was

taken by the learned Single Judge in the judgment dated 7th October, 2016 passed in Special Civil Application No. 1795 of 2013, extending the benefits of the compensation flowing from the Government Resolution dated 5th July, 2011 to the legal heirs of deceased daily wagers who are made permanent in view of the Government Resolution dated 17th October, 1988.

9. Subsequently, following the aforesaid judgment in the case of ***Mahendrakumar Bhagwandas (supra)***, numerous writ petitions were filed by the legal heirs of the daily wagers, who are made permanent, seeking benefit of compensation in lieu of compassionate appointment as per the policies of the State Government.

10. The learned Single Judges conferred such benefits by placing reliance on the judgment of the Division Bench in the case of ***Mahendrakumar Bhagwandas (supra)***. The Division Benches confirmed such view of the learned Single Judges and in few cases, the SLPs were dismissed *in limine*. One of such judgments is the judgment dated 29th June, 2018 passed by the Division Bench in Letters Patent Appeal No.1951 of 2017, where similar contentions were raised by the State Government. The Letters Patent Appeal was dismissed by considering the judgment in the case of ***Mahendrakumar***

Bhagwandas (supra) and earlier judgment passed by this Court. SLP (C) Diary No. 13632 of 2019 filed against the said judgment was dismissed by the order dated 8th May, 2019 by recording that *“Delay condoned. In the facts and circumstances of the present case, we see no reason to entertain this special leave petition. The special leave petition is dismissed.”*

11. The latest order, which is pointed-out by the learned advocates appearing for the respective parties, is the order dated 20th January, 2025 passed by the Supreme Court in SLP (C) Diary No. 3576 of 2024, wherein the appellant, Gujarat Water Supply and Sewerage Board assailed the judgment and order dated 24th August, 2023 passed in LPA No. 934 of 2023 and allied matters. The Supreme Court, while dismissing the Special Leave Petitions has recorded in the order dated 20th January 2025 :

“3. Questions of law raised by learned Solicitor General are kept open for being considered in an appropriate case.

4. The order impugned shall not be treated as a precedent.”

12. Thereafter, the employee has been paid the benefits as directed by this Court.

13. Today, it is contended by the State Government as well as the appellant Board that since

the question of law has been kept open, the Court may reconsider the entire issue afresh. Various submissions have been advanced by Mr. K. M. Patel, learned Senior Advocate for the appellant – Board and Ms.Vrunda Shah, learned AGP for the respondent – State. It is contended that the issue with regard to the grant of compensation in lieu of the State Government policies emanating from the Government Resolution dated 5th July, 2011, 13th October, 2015 and 7th April, 2016, emanates from the judgment of the Division Bench in the case of ***Mahendrakumar Bhagwandas (supra)***. It is submitted that the Division Bench, in the said case had granted five benefits to the daily wagers, who were made permanent in view of the Government Resolution dated 17th October, 1988 which is at par with the regularly appointed Class-III and Class-IV employees which cannot be done. Hence, it is submitted that the State Government has filed SLP (C) no.4827 of 2023 against the final judgment and order dated 8th December, 2022 passed in LPA No.1048 of 2022 passed by this Court and by the order dated 20th March, 2023, the Supreme Court has granted interim stay of the impugned judgment.

14. We have perused the judgment and order dated 8th December, 2022 passed in LPA No. 1048 of 2022 by the Coordinated Bench. The Coordinate Bench, while placing reliance on the judgment in the

case of ***Mahendrakumar Bhagwandas (supra)*** and by placing reliance on the earlier judgments rendered by the Division Benches and against which the SLPs were dismissed, has directed the State Government to confer the five benefits arising from the Division Bench judgment in the case of ***Mahendrakumar Bhagwandas (supra)***.

15. We have also perused the memo of the Special Leave Petition (C) no.4827 of 2023 filed by the State Government. The State Government has categorically, while referring to the decision in the case of *State of Gujarat Vs. Karshanbhai K. Rabari, 2006 (6) SSC 2021*, the decision of the Division Bench in the case of *Mahendrakumar Bhagwandas (Supra)* and also while referring to the decision in the case of *State of Gujarat Vs. PWD Employees Union, 2013 (12) SSC 417*, has specifically pleaded that the daily wagers are not entitled to such benefits since the daily wagers even after they become permanent can neither be treated as Class-I, Class-II, Class-III or Class-IV employees as prescribed in Rule 3 of the Gujarat Civil Services Classification Recruitment (General) Rules, 1967 nor they can be treated as Government servants as defined in Section 2(b) of the Gujarat Civil Services (Conduct) Rules, 1971.

16. It is also contended by Mr. Patel, learned Senior Advocate and learned AGP that daily wagers,

who are made permanent in view of the Government Resolution 17th October, 1988, cannot be said to be Class-III and Class-IV employees, who are appointed or recruited through regular recruitment process and the issue is pending before the Supreme Court.

17. Thus, the issue with regard to the grant of compensation in lieu of compassionate appointment also stems-out from the judgment rendered by the Division Bench in the case of ***Mahendrakumar Bhagwandas (Supra)***, we at this stage would like to wait for the final decision of the Supreme Court in SLP (C) No.4827 of 2023, which is filed by the State Government. In case the Apex Court holds that the daily wagers, who have acquired the status of permanent employee, are entitled to five benefits by treating them as Class-III or Class-IV Government employees, then the issue raised in the present appeals will get resolved in favour of the respondents.

18. Hence, ***we direct the Registry to list the present appeals after the decision of the Supreme Court in SLP (C) No.4827 of 2023.***

19. Meanwhile, since it is noticed by us that various legal heirs of the employees are already extended the benefit of lumpsum compensation, after the judgments of the learned Single Judges,

which is confirmed by the Division Bench and in some of the matters, the SLPs are also dismissed, we are of the opinion that the appellant-Board and the State Government shall also extend the benefit to the respondents.

20. At this stage, Mr. K. M. Patel, learned Senior Advocate has submitted that the *status-quo* granted by the Division Bench may be extended. However, we are not inclined to extend the same as the documents which are produced on record, reveal that the appellant-Board has already conferred the benefit of lumpsum compensation to the legal heirs of the employees, after the approval of the State Government. One of such documents is produced in LPA No. 840 of 2022 at page 107 and 108. The State Government Department, Narmada Water Resources and Water Irrigation Department, has informed the appellant-Board to extend the benefits of the Government Resolution dated 5th July, 2011 to its employees. The State Government has also extended the benefit of lumpsum compensation to various persons who are similarly situated to the respondents since passing of the first judgment in the year 2016. By now, more than eight years have passed and numerous orders are passed by this Court and the benefits are extended, hence we are not inclined to deprive the benefits to the respondents as directed by the learned Single

Judges.

21. Hence, we direct the appellant-Board and the State to extend such benefits to the respondents, subject to the result of the present Letters Patent Appeals. We also direct the respondents to file an Undertaking before this Court in the respective captioned appeals promising to return the amount in case the appeals are allowed and the orders passed by the learned Single Judges are *set aside*. The Board and the State Government shall extend the benefits only in cases of such employees who file the Undertaking before this Court as well as before the respective Departments.

22. The amount, which is already deposited before this Court as directed by the Coordinate Benches or the learned Single Judges, shall be disbursed to the employees on filing such Undertakings as directed above.

23. It is clarified that the present order is confined to the LPAs which are listed before us. We have not opined anything on merit at this stage and the writ petitions, which are pending before the respective benches, shall be dealt with on their own merits, after taking into consideration the submissions advanced by the learned advocates appearing for the respective parties.

24. It is clarified that it will be open for either of the parties to file a note before the Registry to get the present matters listed after the disposal of SLP (C) No. 4827 of 2023.”

3. To be heard with Letters Patent Appeal No.840 of 2022 and allied matters.

(A. S. SUPEHIA, J)

(NISHA M. THAKORE,J)

RATHOD KAUSHIKSINH/2

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: KAUSHIKSINH JILUSINH RATHOD(HC00957), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 08/04/2025 15:07:32