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2019 eGLR\_HC 10006144

Before the Hon'ble MR. A. S. SUPEHIA, JUSTICE

**DODIYAR PRATAPBHAI RAMABHAI AND 32 OTHER(S) Vs. GUJARAT FOREST DEVELOPMENT CORPORATION AND 1 OTHER(S)**

**SPECIAL CIVIL APPLICATION No: 12518 of 2008 , Decided On: 12/04/2019**

**(A) Headnotes will be incorporated when published in GUJARAT LAW REPORTER.**

Cases Referred to:

- (1) Union of India & Others Vs. All India Trade Union Congress & Others, 2019 (5) SCALE 130
- (2) State of Gujarat and Others Vs. PWD, 2018 (8) SCALE 79
- (3) State of Gujarat vs. PWD Forest Employees Union, 2019 (3) SCALE 642
- (4) Secretary, State of Karnataka Vs. Umadevi, 2006 (4) SCC 1
- (5) Upendra Singh Vs. State of Bihar and Others, 2018 (3) SCC 680
- (6) Gujarat Forest Producers Gatherers & Forest Workers Union Vs. State of Gujarat in Special Civil Applications No.4715/2003, 4435/2001, 8259/1996 and 2566/1997
- (7) State of Gujarat vs. PWD Employees Union, 2013 (12) S.C.C. 417 a
- (8) State of Gujarat & Ors. vs PWD Employees Union & Ors., 2013 (8) SCALE 579

**T H Sompura(862) For The Petitioner(S) No. 1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32, 33,4,5,6,7,8,9 Prakash Jani, Additional Advocate General With Ms Nidhi Vyas And Vishrut Jani, Agp For The Respondent(S) No. 2 Nandish Chudgar With Nirav Joshi And Mr Divyesh D Bais For Nanavati Associates(1375) For The Respondent(S) No. 1 Rule Served(64) For The Respondent(S) No. 1**

**A. S. SUPEHIA, J.** 1. In the present writ petitions, the petitioners have, inter alia, sought for quashing and setting aside the impugned decision dated 30.03.2007 passed by the respondent authority and also seek a direction to the respondent authority to give the benefit of placing them in the minimum pay-scale and further grant them benefit as per the agreement dated 01.10.1988, as are given to other employees, who are juniors to the petitioners. By way of an amendment, the petitioners have also sought for quashing and setting aside the Executive Order - Government Resolution dated 15.09.2014, being contrary to bipartite 2P settlement, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India, as the same has the effect of changing the service conditions of the petitioners, in such unilateral manner, resulting into wiping off the benefits of 22 years of service.

2. Since the common question is involved in this group of petitions, the same are heard together and are being disposed of by this common judgment. Special Civil Application No.12518 of 2008 being treated as a lead matter and the facts mentioned in the memorandum of petition are reproduced hereinbelow for deciding the present controversy.

3. Backdrop of the facts leading to the filing of the petition are that the petitioners are working with the respondent authority as daily-wagers chowkidars since more than 18-20 years. The petitioners have been working with the respondent authority sincerely and diligently as such since the date of joining. The nature of work of the petitioners is, as such, of permanent nature and that is the reason why the petitioners have been continued for so long period of 18-20 years.

3.1 It is the case of the petitioners that the daily-wagers workmen and their associations have been agitating with the Government of Gujarat on several demands. The Government appointed a Committee, whose Chairman was the then Hon'ble Minister of Roads and Buildings Department, Shri Daulatbhai Parmar. After taking into account the demands of the daily wagers, the Committee gave a report, accepting all the demands raised by them. Pursuant to the said report, a bi-partite agreement came to be entered into between the Government and the daily-wagers and their associations, wherein their demands came to be accepted. Pursuant to the said agreement, the Government issued Government Resolution dated 17.10.1988, wherein the entire scheme for daily-wagers came to be framed according to their period of service, which was part of the demands accepted by the Government.

3.2 It is further the case of the petitioners that there are several employees working with the respondent authority, who have been given the benefit of placing them in a minimum pay-scale, as agreed upon in the agreement dated 01.10.1988 and as provided in the Government Resolution dated 17.10.1988. It is the contention of the petitioners that they could obtain two such orders of two different persons; one of Shri Gulabbhai Motibhai Patelia, and another of Shri Kalubhai Jaisinhbhai Patelia. Both of them are working with the respondent authority along with the petitioners on the same post as chowkidars and both of them are juniors to the petitioners. Shri Gulabbhai Motibhai Patelia has been placed in the minimum pay-scale by virtue of the order dated 18.09.1988. Shri Kalubhai Jaisinhbhai Patelia has been placed in the minimum pay-scale by virtue of order dated 06.10.1988. Moreover, there is a Union registered as "Gujarat Forest Produce Gatherers and Forest Workers Union", whose members are also working with the respondent authority as Watchmen like the petitioners. The said Union also had demanded certain claims, which came to be accepted by the Government by virtue of the order dated 15.09.1997.

3.3 It is further the case of the petitioners that several co-daily wagers, who have been given the benefits of the said agreement dated 01.10.1988, are juniors to the petitioners, whereas the petitioners are the senior most workmen with the respondent authority, as they have already completed 18-20 years as daily-wagers with the respondent authority and, therefore, the petitioners are by course entitled to the said benefits of the agreement dated 01.10.1988 and the respondent authority cannot arbitrarily discriminate the petitioners, as the same is

Reliance on Articles 14 and 16 of the Constitution of India  
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3.4 Aggrieved by the said action of the respondent, the petitioners preferred Special Civil Application No.2545 of 2007 before this Court, wherein vide order dated 29.01.2007 this court directed the respondent to decide the representation within two months from the date of receipt of the representation. It is further the case of the petitioners that the petitioners, accordingly, made a representation on 15.02.2007 to the respondent, which came to be rejected by the order dated 30.03.2007.

4. Learned Senior Counsel Mr. Shalin Mehta appearing with learned advocate Mr. Sompura has submitted that the agreements clearly shows that the Forest Department is party to the agreement and, therefore, the same is binding upon the Forest Department. He has submitted that the respondent authority is part and parcel of the Forest Department and, therefore, the said agreement ipso facto applies to the respondent as well. He has further submitted that the respondent - Corporation is in fact doing the commercial activity of selling forest produce and is making income out of the sale proceeds. Further, it is asserted by learned Senior Counsel Mr. Mehta that the agreement is applied by the Government in almost all the Departments, including Sardar Sarovar Narmada Nigam Limited (SSNL), Gujarat Water Resources Development Corporation (GWRDC), Water Supply and Sewerage Board, Baucharaji Temple, Somnath Temple, Maritime Board, etc.

4.1 Learned Senior Counsel Mr. Shalin Mehta has submitted that the respondent is trying to make an artificial differentiation which is not at all there in the agreement dated 01.10.1988 and hence, the benefits from the resolution dated 17.10.1988 are required to be conferred on the petitioners.

4.2 It is further contended by learned Senior Counsel Mr. Mehta that the employees - daily wagers working in Panam Project have been granted the benefit of Government Resolution dated 17.10.1988 and one person Mr. Kalubhai Patelia, who is in fact originally working in the said Project, has been granted the benefit of said resolution. He has submitted that in the seniority list of Godhra Panam Division, which has been issued by the Government, the employees at Sr. Nos. 8, 10, 12, 13, 15, 16, 18, 19, 21, 30 and 47 are being paid the minimum pay-scale, which the petitioners are demanding, and many of these daily-wagers are juniors to the petitioners.

4.3 However, learned Senior Counsel Mr. Mehta has pointed out that the GEER Foundation is an autonomous organization with the Forest & Environment Department of Government of Gujarat, whose daily-wagers are working in the Gir Forest, are also conferred with the benefits of the Government Resolution dated 17.10.1988. It is submitted that the nature of work carried out by the daily-wagers of the GEER Foundation is same as that of the petitioners. The GEER Foundation is also separate entity under the total control of the respondent No.2. Thus, it is submitted that the petitioners, who were similarly situated daily-wagers working under the respondent No.1 - Corporation, cannot be denied the same benefits. It is submitted that respondent

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No.1 - Corporation is also a Government Undertaking, entrusted to carry out the same work, which is being carried out by respondent No.2, hence the Corporation cannot deny the benefits under the pretext of it being a separate legal entity. Thus, it is submitted that the deprivation of the benefits by the respondent No.1 is arbitrary and violative of Articles 14, 16 & 21 of the Constitution of India.

4.4 It is submitted by learned Senior Counsel Mr.Mehta that the State Government can be directed to frame an appropriate scheme so that the benefits, which are taken to the Government Resolution dated 17.10.1988, can be made applicable to the petitioners. In support of his submissions, he has placed reliance on the judgment of the Supreme Court in the case of Union of India & Others Vs. All India Trade Union Congress & Others, 2019 (5) SCALE 130. Thus, he has submitted that in case of State of Gujarat and Others Vs. PWD, 2018 (8) SCALE 79 and State of Gujarat vs. PWD Forest Employees Union, 2019 (3) SCALE 642, it has held that the Government Resolution dated 17.10.1988 applies to all the departments of the State Government and the present corporation are also to lead forest and is liable to implement the Resolution dated 17.10.1988 and confer the benefits to the daily-wagers, who are working under the Corporation.

5. Learned advocate Mr.Nandish Chudgar for Nanavati Associates appearing on behalf of respondent No.1 - Corporation has submitted that the provisions of Government Resolution dated 17.10.1988 are not applicable to the petitioners - daily-wagers as they are not engaged in the construction activity. It is submitted that this fact has been affirmed by another Government Resolution dated 22.12.1999 issued by the Forest and Environment Department of the State Government stating that the provisions of the Government Resolution dated 17.10.1988 are not applicable to the daily-wagers working in the Forest Department.

5.1 Learned advocate Mr.Chudgar has submitted that the terms and conditions of the agreement dated 01.10.1988 do not become enforceable once the same is signed. He has submitted that the State Government was not a party to such agreement and in fact, the respondent - Corporation is an autonomous body which has to act as per the terms and provision granted by the State Government. He has submitted that the respondent - Corporation is a distinct entity from the Forest Department and hence, the Government Resolution dated 17.10.1988 does not mention that its provision would apply to the Corporation of the State Government. He has further submitted that since the State Government is the majority share-holder in the Corporation and hence, they have to follow the directions issued by the State Government.

5.2 It is also submitted by learned advocate Mr.Chudgar that the Supreme Court in the infirmity judgment in PWD Union has specifically held that the provisions of Government Resolution dated 17.10.1988 are applicable to the departments of the State Government and since the respondent - Corporation is an autonomous body which cannot be said to be a department of the State, the Government Resolution dated 17.10.1988 is not made applicable to the employees working under the Corporation.

5.3 By placing reliance on the Constitution Bench of the Supreme Court in case of Secretary, State of Karnataka Vs. Umadevi, 2006 (4) SCC 1, Mr.Chudgar has submitted that the petitioners have no right to claim regularization only on the basis of their length of service. He has submitted that an illegally appointed daily wager cannot claim regularization only because he has worked for number of years. In support of his submission, he has placed reliance on the judgment of the Apex Court in the case of Upendra Singh Vs. State of Bihar and Others, 2018 (3) SCC 680. Learned advocate Mr.Chudgar has contended that this Court while exercising the powers under Article 226 of the Constitution of India cannot direct the State or the respondent Board to formulate a scheme for the petitioners. In support of his submissions reliance is placed on the decision of the Supreme Court in the case of State of Jammu & Kashmir Vs. District Bar Association, Banipura, 2017 (3) SCC 410 and State of Tamilnadu Vs., Singamuthu, 2017(4) SCC 113.

5.4 As regards the contentions raised by learned advocate Mr.Sompura that the daily-wagers working in a Panam Project are granted the benefit of minimum pay-scale, Mr.Chudgar has submitted that the example given of Shri Gulabbhai Motibhai Patelia referred to in the petition is not an employee of the Panam Project and he belongs to the Godhra Forest Division, which is distinct from the respondent-Corporation and similarly, order dated 06.10.1988 referred to in the petition in respect of Shri Kalubhai Jaysinhbhai Patelia is mere a transfer order and not an order for placing the person in the regular pay-scale. Thus, it is submitted by learned advocate Mr.Chudgar that the provision does not deserve any acceptance and the Government Resolution dated 17.10.1988 cannot be made applicable to the respondent - Corporation.

5.5 Finally, it is submitted by learned advocate Mr.Chudgar that the GSFDC had also sent a proposal to the State Government for conferring the benefit of the Resolution dated 17.10.1988 and had requested to allot the grant accordingly, but the same is not rejected by the State Government. It was submitted on behalf of respondent No.2 that GSFDC has not taken any decision regarding the applicability of the judgment and order dated 09.07.2013, passed by the Apex Court, but the Corporation has previously forwarded the proposal for the status of permanency to the workmen is as under:

(a) The Corporation has passed a Board Resolution No.169.21 dated 27.06.2012 for the permanency of workmen. The Board has approved the same subject to approval of the State. The Corporation has again passed Resolution No.180.20 dated 14.11.2014 for the admissibility of the benefit of Resolution dated 17.10.1988. The Board has resolved to forward the proposal to the State Government for approval;

(b) The Corporation has forwarded the said proposal on 24.11.2014 along with Resolution No.180.20 dated 14.11.2014 to the State Government. The Corporation has sent reminder on 21.10.2015. Ultimately, vide communication dated 18.03.2019, the State Government Forest and Environment department informed the GFDC rejected the proposal of the GFDC. The same is tendered by learned Advocate Mr.Chudgar. and is taken on record. It is stated therein that the agreement between the GFDC and its Union to implement the Government Resolution dated 17.10.1988 will not bind the State Government since the 'State' was

not a party. It is further stated that GFDC is registered as a company in which the share of state government and central government is 62% and 38% respectively, hence the directions issued by the Supreme Court in the case of PWD (supra) will not apply to GFDC.

As regard 10 daily-wagers who are party to the present petition, it is stated that no benefit which are granted to 385 daily-wagers vide Award dated 11.05.1992 in Reference (IT) No.386 of 1988 can be extended to such petitioners since the Division Bench vide order dated 22.11.2010 passed in Letters Patent Appeal No.2136 of 2010 has clarified that the benefits which are granted to the daily wagers who were party to the Reference (IT) No.386 of 1988 shall not be treated as precedent. Thus, the 10 petitioners, who are claiming the benefit of the Award dated 11.05.1992, cannot be granted.

6. Learned Additional Advocate General Mr.Prakash Jani appearing on behalf of the respondent No.2 has submitted that the State Government was not a signatory to the agreement dated 01.10.1988 and, hence, the same cannot be made applicable to the petitioners. It was submitted that the petitioners have not worked in the capacity to which the benefits have been extended in the Government Departments. Reliance is placed on the order of the Full Bench of this Court by order dated 12.04.2004 in the case of Gujarat Forest Producers Gatherers & Forest Workers Union Vs. State of Gujarat in Special Civil Applications No.4715/2003, 4435/2001, 8259/1996 and 2566/1997. Paragraph No.31 is reproduced hereinbelow for ready reference:

"The Government Resolution dated 17th October 1988 is applicable to the daily wagers of the Forest & Environment Department engaged in the work of maintenance and repairs of constructions in that Department, and not to the daily wagers engaged in other types of work in that Department."

6.1 It was submitted on behalf of respondent No.2 that the Gujarat State Forest Development Corporation was not a signatory to that agreement dated 01.10.1988 and furthermore any agreements of the Government Resolutions issued by the Government do not automatically devolve to the corporate entity - Gujarat State Forest Development Corporation. The Forest Department is extending benefits of the scheme of 17.10.1988 pursuant to the judgment and order passed by the Apex Court dated 09.07.2013 in the case of State of Gujarat vs. PWD Employees Union, 2013 (12) S.C.C. 417 and pursuant to the recent judgment and order passed by the Apex Court dated 15.02.2019 in the case of State of Gujarat vs. PWD Forest Employees Union, 2019 (3) SCALE 642. Pursuant to the aforesaid judgment and order, the Apex Court has modified and expanded to cover the daily-wagers in all types of work which has been operationalized by the Government Resolution dated 15.09.2014 and thereon all its subsequent addenda and corrigenda. Therefore, Government Resolution dated 17.10.1988 is not applicable to the Gujarat State Forest Development Corporation.

6.2 It was submitted on behalf of respondent No.2 that in regard to the authority and powers of the State Government for management and control over the Gujarat State Forest Development Corporation Limited (GSFDCL) is as under:

(a) GSFDCL has been created by the Government of Gujarat and has been incorporated under the Companies Act, 1956 as a Government Company as on 20.08.1976;

(b) GSFDCL is a Government Company incorporated under the Companies Act, 1956, wherein the State Government has 62% of shareholding and the Central Government is having 38% of shareholding;

(c) GSFDCL is an independent autonomous body registered under the Companies Act and controlled by the Board of Directors, who are appointed by the Governor of Gujarat;

(d) The directors are appointed by the Governor of Gujarat, as per Article 85 of the Articles of Association. However as per the Article 95 of the Articles of Association, the Managing Director (MD) subject to the provisions of the Companies Act and these Articles shall be entitled to the management of the whole of the affairs of the company and he shall exercise his powers as such MD subject to the overall superintendence, control and direction of the Board of Directors of the Company;

(e) As per the Memorandum of Association of the Corporation, the main objective of the Corporation is to undertake proper and scientific exploitation of the forest products, including its collection, converting, transporting, processing, grading etc.;

(f) Government Resolution of the Finance Department dated 14.03.2008 fixed the prior approval of the Government by the State Public Sector Enterprise, which includes the Boards, Corporations and Companies for the effective monitor and working of the PSE;

6.3 It was submitted on behalf of respondent No.2 that the Court has raised the third issue/question that how many employees of the corporation have been taken back in the Forest Department and they have been granted benefit of Government Resolution dated 17.10.1988. In regard to the applicability of Government Resolution dated 17.10.1988 oblique motive the Corporation as under:

(a) The benefits of Government Resolution dated 15.09.2014 is not extended to the Corporations' daily-wagers;

(b) None of the employees of the Corporation has been taken back in the Forest Department and has been granted the benefit of the Government Resolution dated 17.10.1988;

(c) The workman who has obtained the awards from the appropriate Industrial Tribunals and further orders from various Courts have been given the benefits by creating a supernumerary post, and not as a policy of the Corporation granted such entitlements;

(d) The writ applicant has raised the repeated plea that the juniors were granted such benefits is not true, as such they obtained the award from the appropriate Industrial Court and they were not party to the industrial award passed in IT Reference No.386 of 1988, which was confirmed up to the Apex Court.

6.4 It was submitted on behalf of respondent No.2 that the petitioners have claimed that their juniors have been given benefit as per agreement dated 01.10.1988 is factually incorrect. It was submitted that the State Government has not applied the applicability of the Government Resolution dated 17.10.1988 to the Corporations. It was stated that the writ applicant is repeatedly claiming the benefits as granted to Mr.Patelia is not applicable to the writ applicant on the following grounds:

(a) The writ applicant is claiming the benefits out of the IT Reference No.386 of 1988, which is not applicable in case of the present petition;

(b) That on 11.05.1992, an award is passed between the Chief Conservator of Forest, Vadodara to give the benefit of permanency from 01.01.1989;

(c) That being aggrieved by the award dated 11.05.1992, a writ petition being Special Civil Application No.468 of 1994 is filed by the Forest Department. That on 18.08.1994, the High Court has dismissed the writ petition;

(d) The State Government has filed Special Leave to Appeal (Civil) No.5590 of 1996 against the judgment and order dated 18.08.1994 passed in Special Civil Application No.468 of 1994. The Supreme Court, by its order dated 15.07.1996 dismissed the Special Leave petition.



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(e) The Union has filed Misc. Civil Application No.1167 of 1997 before this Court for extending benefits to 385 workers as per the Industrial Tribunal award passed in IT Reference No.386 of 1988. The Court by its order dated 08.08.1997, passed an order to examine the case of 385 workers, and to extend the benefit within 02 months.

(f) Pursuant to the aforesaid judgment and order, the State Government, Forest and Environment Department has passed Resolution dated 15.09.1998 for sanctioning the supernumerary watchmen post as per order of this court in Misc. Civil Application No.1167 of 1997 in IT Reference No.386 of 1988;

(g) One Shri Dadubhai Umnadbhai Kohar has filed Special Civil Application No.4944 of 2009 claiming the benefits of the award passed by the Industrial Tribunal in Reference IT No.386 of 1988. The Court by its order dated 09.09.2009 granted the benefits as prayed for by the writ applicant;

(h) Being aggrieved by the judgment and order dated 09.09.2009, the State Government has preferred Letters Patent Appeal No.2136 of 2010 in Special Civil Application No.4944 of 2009. The Division Bench of this Court by its order dated 22.11.2010 held that "no precedent for any other case of similar nature" is applicable;

(i) As far as the general applicability of the order in Reference IT No.386 of 1988 to other similarly situated workmen in the department is concerned, the question has been answered in negative by Division Bench of this Court in Letters Patent Appeal No.2136 of 2010 in Special Civil Application No.4944 of 2009.

(j) Therefore, the award passed in IT Reference No.386 of 1988 is not applicable in the case of the present writ applicant, and without availing the alternative remedy available under the law, filed the present petition.

7. I have heard the learned advocates for the respective parties. I have given thoughtful consideration to the submissions advanced by the learned advocates. The following facts are established from pleadings:

a) The Gujarat Forest Development Corporation is a "State" within the meaning of Article 12 of the Constitution of India.

b) It is the instrumentality of the State of Gujarat. No grants are paid by the State Government towards its administration towards the pay and allowances of its employees.

c) The pay and allowances are controlled by the state government and the benefits or revision of pay and pay fixation are subject to approval of the Forest and Environment Department of the State Government.

d) All the petitioners have completed more than 20 years of service in the GFDC as daily-wagers.

e) Initially, the daily wagers, who were engaged in building maintenance and repairing in different department, were conferred the benefit of Government Resolution dated 17.10.1988 which provides for fixation of pay after completion of particular number of years. The supreme Court in the case of State of Gujarat & Ors. vs PWD Employees Union & Ors., 2013 (8) SCALE 579, made the same applicable to all the daily wagers performing any nature of work engaged in any department of the state of Gujarat including the Forest and Environment Department.

f) By the judgment reported in PWD Employees Union & Ors (supra), the Supreme Court further clarified the manner and method of fixation of pay and pension to such daily-wagers. It was observed that those daily-wagers, who became entitled to get the status of regular/permanent employees before 01.04.2005, have to be given the benefit of GPF, however, who attain this status after the said date will be governed by CPF/NPS (New Pension Scheme).

g) In the present case, the petitioners are working as daily wagers in the GFDC and are governed by the EPF Scheme. Thus, the contributions and rules governing daily wagers under the GPF/CPF/NPS are different to the petitioners who are governed by the EPF scheme.

h) The petitioners are denied the benefit of Government Resolution dated 17.10.1988 only on the basis that they are employees of a statutory body and their case cannot be equated with the daily-wagers engaged by the departments of the State Government and the benefit of Government Resolution dated 17.10.1988 cannot be extended to them, hence, they cannot be placed in the pay-scale as prescribed therein. Resultantly, they are denied the benefit of pension.

8. The petitioners are asserting their rights by placing reliance on the agreement dated 01.10.1988 entered into between the Union and the GFDC. Such contention is ill-founded since the State Government was not a party to such agreement. It is an acknowledged fact that all the pay-scale and other benefits are granted by the GFDC after the approval of the State Government. The fixation of the pay-scale and the benefit of revision of pay-scale is controlled by the State and, hence, such an agreement which is entered into by the Union and GFDC in absence of the State as a party cannot be made binding on the State. No mandamus  
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can be issued to the State for implementation of the agreement in wake of the fact that it is not a party.

9. The petitioners in the instant writ petitions are claiming their right to be treated equally with the other daily-wagers, who are working under the different departments of the State and are being paid the regular pay-scale as per the Government Resolution dated 17.10.1988. They are claiming that the different departments with the State Government such as Gujarat Maritime Board, Irrigation Department and Institutions under it, like Gujarat Engineering Research Institute (GERI), Water and Land Management Institute (WALMI), Sardar Sarovar Narmada Nigam Limited (SSNL), Gujarat Water Resources Development Corporation (GWRDC), Gujarat Water Supply and Sewerage Board (GWSSB), Gujarat Tourism Department and also the employees of GEER Foundation, who are being given the benefits of 17.10.1988 be conferred the benefits of regular pay-scale. They are being paid the wages as per the Minimum Wages Act from the funds of the GFDC. Stricto sensu, the benefits of the Government Resolution dated 17.10.1988 cannot be made directly applicable to the petitioners. The Supreme Court in the afore-noted judgment in the case of PWD Employees (supra) has enunciated that the scheme envisaged under the Government Resolution dated 17.10.1988 will apply to all the daily-wagers working under the Government departments. It is not in dispute that such daily-wagers are governed under the GPF scheme, whereas, the petitioners are governed under the EPF scheme. The Government Resolution dated 17.10.1988 cannot be made applicable to the petitioners, who are working under a statutory body raising its own funds without the aid of the Government. However, the petitioners who are engaged as daily-wagers cannot be treated as such throughout their lifetime. The expression "once a daily wager, always a daily wager", is an anathema to the welfare state. Since, the scheme promulgated vide Government Resolution dated 17.10.1988 is made applicable to all the departments of the State Government, the daily-wagers, who are working in the statutory bodies within the meaning of Article 12 of the Constitution of India, cannot be left unaided. The petitioners cannot be made to suffer on such deceptive discrimination. It is well-settled proposition of law that the High Court while exercising the powers under Article 226 of the Constitution of India cannot direct the State Government to frame a scheme for regularization for daily-wagers, but in the instant case there is already a scheme which is in existence and made applicable to the daily-wagers of all the departments of the State Government.

10. Though, the principle of "equal work and equal pay" is not strictly apply in the present case, it would be apposite to borrow some of the observations made by the Supreme Court with reference to discrimination of the employees working as daily-wagers, temporary and as ad hoc. The supreme Court has observed thus:

"In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does

not do so. The Supreme Court has observed that the principle of "equal work and equal pay" is not strictly apply in the present case, it would be apposite to borrow some of the observations made by the Supreme Court with reference to discrimination of the employees working as daily-wagers, temporary and as ad hoc. The supreme Court has observed thus:

constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

11. Thus, the Supreme Court has enunciated that it is fallacious to determine artificial parameters to deny fruits of labour and any act, of paying less wages, as compared to others similarly situated employee constitutes an act of exploitative enslavement, and such action is oppressive and coercive. There cannot be any quibble on the law enunciated by the Supreme Court in the decisions on which the reliance is placed by the Respondent - GFDC, wherein, the Supreme Court has held that the regularisation cannot be conferred on daily wagers, contractual employees, temporary employees merely because they are continued for a long time.

12. In the considered opinion of this Court, and in light of the afore-noted facts, this Court is constrained to issue any directions against the State Government to accord approval to the proposal sent by GFSDC and directly confer the benefit of the Government Resolution dated 17.10.1988 to the daily - wagers working under the GFDC. However, the Supreme Court in the case of All India Trade Union Congress & Ors (supra) while considering the issue of regularization of the casual workers has observed thus:

"16. The High Court failed to see that it is not the function of the Courts to frame any Scheme but it is the sole prerogative of the Government to do it.

17. All that the High Court, in exercise of its extraordinary power under Article 226 of the Constitution, can do is to direct the Government to consider for framing an appropriate Scheme having regard to the facts and circumstances of any case which this Court did in the case of Union of India (supra) but not beyond it. It is only in an exceptional case where the Court considers it proper to issue appropriate mandatory directions it may do so but not otherwise."

The facts of the case as unraveled designate that the petitioners who are working since 25 years in the GFDC as daily wagers cannot be treated as such till they reach the age of retirement. The State Government has framed the Scheme of 17.10.1988 of placing such daily wagers in the regular pay scale. The Supreme Court has also approved the same, and made it applicable to all the departments of the State Government. Some of the Boards and Corporations have also adopted it. The respondent GFSDC had also sent the proposal of adopting the Resolution dated 17.10.1988 to the State Government, but the same is refused. Thus, the respondents are hereby directed to undertake the necessary exercise and frame a Scheme or in the alternate adopt Government Resolution dated 17.10.1988 in order to void the discrimination.

13. The State Government, while examining the issue raised in the present petition, shall keep in mind the observations made by this Court and also shall be alive to the fact that the petitioners

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are working since 20 to 30 years as daily-wagers and they cannot be left in helpless condition after they have retired. The State Government after consultation with the respondent - Corporation shall carry out the necessary exercise of framing the scheme so that the petitioners, who are/were working since long, can at least be conferred the benefit of fixation of regular pay scale as conferred to the daily-wagers working in the Government Departments of the State Government, Boards / Corporations. The respondents shall ignore the communication dated 18.03.2019 while re-examining the issue.

14. Necessary orders / decision shall be taken by the State Government within a period of three months from the date of receipt of the writ of this Court.

15. As regards the petitioners Nos.1, 9, 12, 13, 15, 20, 24, 25, 26, 28, 29 and 32 of Special Civil Application No.12518 of 2008 are concerned, they are only denied the benefit of award dated 11.05.1992 passed in Reference (IT) No.386 of 1988 by the Industrial Tribunal on the ground that they were not the parties to the reference and the Division Bench in the order dated 22.11.2010 passed in Letters Patent Appeal No.2136 of 2010 has clarified that the order passed in Special Civil Application No.4944 of 2009 by the learned Single Judge conferring the benefit of award of the Tribunal shall not be treated as precedent. It is pertinent to note that afore-noted petitioners were all employed by the State Government in one Panam Project which was subsequently handed over to the GFDC. The Union of such workers approached Industrial Tribunal, Ahmadabad by filing Reference (IT) No.386 of 1988 claiming certain benefits like two pairs of clothes, badges, caps, etc. and regularization. By the award dated 11.05.1992 passed by the Respondent - GFDC was directed to treat the daily-wagers permanent with effect from 01.01.1989. The order of Tribunal reads as under:

"This reference in respect of demand No.2 & 3 and their sub-demands is dismissed. So far as demand No.1 is concerned the first party is directed to make permanent with effect from 1-1-89 all those persons who has actually discharging the function of plantation watchman for 240 days of continuous service in each of the 4 or more years preceding 1-1-89 or for 900 in the aggregate preceding 1-1-89 and who would complete such continuous service on a date subsequent to 1-1-89 shall be made permanent on the concerned dates as the case may be. Such persons who are made permanent shall be paid pay and allowances in the pay scales prescribed for the post watchman in the other government departments besides other benefits which are usually given to the regular watchman in other Government department. The parties are directed to bear their own cost."

16. Thus, the intention of the Tribunal was to confer such benefits to all the daily-wagers of the Panam Project, who are engaged for 240 days and for 4 years or more or 900 days preceding 01.01.1989 and also such benefit shall be granted to those daily-wagers, who complete the same after 01.01.1989. The benefit was extended to 385 workmen after the award was confirmed up to the Apex Court. One of such workman who was not extended the benefit approached this Court by filing Special Civil Application No.4944 of 2009. The Coordinate Bench of this Court vide judgment dated 09.09.2009 directed the respondents to extend the benefit of Award dated 11.05.1992 to the petitioner by holding that such workman cannot be denied the benefits

Reply to the govt. that copy is not a party to the award. The judgment was carried further

before the Division Bench in Letters Patent Appeal No.2136 of 2010 by the respondent - State. By the order dated 22.11.2010, the Division Bench disposed of the Letters Patent Appeal upon the statement made by the learned Advocate General stating that the appellant- State will not press the Letters Patent Appeal on an understanding and condition that the respondent workman will not press the contempt petition and the benefits shall be paid to him as per the directions of the learned Single Judge and the same shall not be treated as precedent.

17. The learned advocate for the respondent workman agreed for the same and did not raise any objections. Thus, in view of the consensus arrived between the respective parties, the Division Bench disposed of the appeal by observing that the grant of such benefits shall not be treated as precedent.

18. The entire scheme of the Panam Project was invited by the Forest and Environment Department of the State of Gujarat. By the judgment of the Apex Court, the benefit of Government Resolution dated 17.10.1988 is conferred to the daily-wagers of all departments. Thus, as the law enunciated by the Apex Court in PWD Employees Union (supra), all the daily-wagers, who are working in the departments of the State Government, are conferred by the benefits of Government Resolution dated 17.10.1988. Since the same is made applicable to all the daily-wagers, the benefits flowing from the award dated 11.05.1992 passed in Reference (IT) No.386 of 1988 are required to be conferred to the afore-noted petitioners. Such petitioners were engaged by the Forest and Environment Department and not by the GFDC. They are entitled to the benefit as per the award dated 11.05.1992 passed in Reference (IT) No. 386 of 1988. If the petitioners had remained under the Forest Department, they would have benefited from the law enunciated by the Apex Court in the case of PWD Employees Union (supra). Thus, the petitioners cannot be denied either the benefits of the award dated 11.05.1992 passed in Reference (IT) No.386 of 1988 to the afore-noted 12 petitioners or the benefit emanating from the judgment of the Apex Court in the case of PWD Employees (Supra). The respondent - State is hereby directed to pass appropriate orders granting the similar benefit to the aforementioned petitioners which was granted to the daily-wagers, who were engaged in the Panam Project.

19. Rule made absolute to the aforesaid extent. The petition stands partly allowed.

