

STATE OF GUJARAT & ORS.

v.

PWD EMPLOYEES UNION & ORS. ETC.
(Civil Appeal Nos. 5321-5322 of 2013)

JULY 9, 2013

[T.S. THAKUR AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]

Labour Law - Regularisation - Labour and other Unions made representation to the State Government making demands and issues relating to daily wage workers of different departments of the State Government - Committee constituted by the State Government under the Chairmanship of Minister of Road and Building Department - Committee made recommendations favouring regularisation - Recommendations of the Committee accepted and accordingly the State Government resolved to provide benefits of regularization scheme contained in Resolution dated 17th October, 1988 - Dispute over applicability of Resolution dated 17th October, 1988 - Held: Resolution dated 17th October, 1988 not limited to any particular department, and applied to all departments including Road and Building, Forest and Environment Department, Water Resources Department, etc. and to all daily wage workers including semi-skilled workers performing any nature of job, working in different departments of the State including the daily wage workers of the Forest Department performing work other than building maintenance and repairing work - However, as per scheme contained in Resolution dated 17th October, 1988, all daily wage workers not entitled for regularization or permanency in the services - Direction issued for grant of benefit of Resolution dated 17th October, 1988 to eligible daily wage workers of the Forest and Environment Department working for more than 5 years including those performing work

A *other than building maintenance and repairing w.e.f. 29th October, 2010 or subsequent date from which they are so eligible - Industrial Disputes Act, 1947 - s.25B.*

B The questions which arose for consideration in the instant appeals were: 1) Whether the daily wage workers of Forest and Environment Department working for 5 to 30 years for works other than building and maintenance and repairing work were entitled to derive benefits of the regularization scheme as contained in the Resolution dated 17th October, 1988 issued by the State from Road and Building Department; and (2) If so, whether the members of the respondent-employees Union working on daily wages for more than 5 to 30 years in the Forest and Environment Department of the State will be entitled for similar benefits of the scheme contained in the Resolution dated 17th October, 1988.

D **Disposing of the appeals, the Court**

E HELD: 1.1. From a bare reading of the Resolution dated 17th October, 1988, the following facts emerge: (a) Labour and other Unions made representation to the Government making demands and issues relating to daily wage workers of different departments of the Government. (b) The State Government constituted a committee under the Chairmanship, Minister of Road and Building Department. (c) The Committee was constituted for studying (i) the wages of daily wage workers; and (ii) work related services and facilities provided to the daily wage workers who are engaged in the building maintenance and repairing work in different departments of the State. (d) The recommendations of the Committee were accepted and accordingly the State Government resolved to provide the benefits of the scheme contained in the Resolution 17th October, 1988. [Para 19] [1108-B-G]

H 1.2. The daily wage workers who were engaged in

STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1093
ORS. ETC.

building maintenance and repairing work in different departments were already entitled for their work related facilities. Therefore, the Committee has not limited the recommendation to the daily wage workers working in building maintenance and repairing work in different departments of the State. The State Government vide its Resolution dated 17th October, 1988 has not limited it to the daily wage workers working in building maintenance and repairing work. The Resolution dated 17th October, 1988 is applicable to all the daily wage workers working in different departments of the State including Forest and Environment Department performing any nature of job including the work other than building maintenance and repairing work. [Para 20] [1108-G-H; 1109-A-B]

1.3. The Resolution of the State Government dated 17th October, 1988 is not limited to any particular department, it applies to all the departments including Road and Building, Forest and Environment Department, Water Resources Department, etc. Also the Committee headed by the Minister of Road and Building Department looked into the wages of daily wage workers and work related facilities provided to the daily wage workers engaged in building maintenance and repairing work in different departments, only for the purpose of its recommendations. The Committee has not limited the recommendations amongst the daily wage workers engaged in building maintenance and repairing work in different departments by its aforesaid Resolution. It is applicable to all daily wage workers including semi-skilled workers performing any nature of job, working in different departments of the State including the daily wage workers of the Forest Department performing work other than building maintenance and repairing work. [Para 21] [1109-F-H; 1110-A-B]

1.4. The impugned order passed by the Single Judge and the Division Bench arise out of the final order and

A judgment dated 29th October, 2010 passed by the High Court in SCA No.8647/2008 and connected matters wherein it was held that the nature of work showed that the daily wage-workers were engaged in the work which is perennial in nature. The said order has reached finality
B in absence of any challenge before the higher Court and hence became binding between the parties i.e. the appellant-State of Gujarat and the respondents-Employees Union. [Paras 22, 23] [1110-C-D; 1111-B]

C 1.5. However, as per scheme contained in Resolution dated 17th October, 1988 all the daily wage workers were not entitled for regularization or permanency in the services. Considering, the facts and circumstances of the case, the finding of the High Court dated 29th October, 2010 in SCA No.8647/2008 and connected matters and the
D fact that the said judgment is binding between the parties, the appellants are directed to grant the benefit of the scheme as contained in the Resolution dated 17th October, 1988 to all the daily wage workers of the Forest and Environment Department working for more than five
E years. The benefit should be granted to the eligible daily wage workers of the Forest and Environment Department working for more than five years including those who are performing work other than building maintenance and repairing but they will be entitled for the consequential
F benefit w.e.f. 29th October, 2010 or subsequent date from which they are so eligible. [Paras 25, 26] [1111-E-F; 1112-G-H; 1113-A, B-C]

G *Gujarat Forest Producers, Gatherers and Forest Workers Union vs. State of Gujarat* (2004) 2 GLH 302: (2004) 2 GLR 568 - overruled.

H *Secretary, State of Karnataka and Others vs. Uma Devi (3) and Others* (2006) 4 SCC 1: 2006 (3) SCR 953 and *A. Umarani v. Registrar Co-operative Societies and Others* (2004) 7 SCC 112 - held inapplicable.

STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1095
ORS. ETC.

Case Law Reference:

(2004) 2 GLR 568	overruled	Para 4	A
2006 (3) SCR 953	held inapplicable	Para 16(iv)	
(2004) 7 SCC 112	held inapplicable	Para 16(iv)	B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5321-5322 of 2013.

From the Judgment and Order 28.02.2012 of the High Court of Gujarat at Ahmadabad in Letters Patent Appeal No. 1754 of 2011 in Special Civil Application No. 8647 of 2008 and Letters Patent Appeal No. 88 of 2012 in Special Civil Application No. 8751 of 2008.

L.N. Rao, Shamik Sanjanwala, Hemantika Wahi, Mayank Pandey for the Appellants.

P.H. Parekh (for Parekh & Co.) for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted. These appeals have been preferred by the State of Gujarat and others against a common judgment dated 28th February, 2012 passed by the Division Bench of the High Court of Gujarat at Ahmedabad whereby Letters Patent Appeal No. 1754 of 2011 in Misc. Civil Application No.17/2011 preferred by the State of Gujarat and its officials has been dismissed and the order dated 25th August, 2011 passed by the learned Single Judge has been affirmed giving direction to the appellant-State and its officials to regularize the services of respondents-workmen.

2. The factual matrix of the case is as follows:

The Gujarat State Employees Union, Gujarat State Public Works Department Employees Union, Labour Union and other

A Unions made a representation to the State Government for regularization of daily wage workers, working since long. On their demand, the State Government constituted a Committee
 B vide Resolution dated 24th March, 1988 under the Chairmanship of Minister of Road and Building Department to make proper recommendations after studying the demands,
 C issues and questions of the Labour Unions. After thoroughly studying the wages of daily wage workers, work related services & facilities provided to the daily wage workers who were engaged in the building maintenance and repairing work
 D in different departments of the State such as Road and Building Department, Water Resources Department, Forest Department, Agriculture Department etc. the Committee made recommendations favouring the regularization. The State Government on considering the recommendations submitted by the Committee decided to accept all the said recommendations and resolved as follows:

"RESOLUTION

E *The Government has taken into consideration the recommendations submitted by committee and so, it is decided to accept all recommendations of the Committee. Accordingly, it is resolved to provide following wages and services to daily wagers and semi skilled workers working in different departments of the State.*

F *1.It is decided to pay daily wages as per the prevailing Daily Wages Rules to daily wagers and semi skilled workers who has less than five years service as on 1.10.1988. If there is presence of more than 240 days in first year, he is eligible for paid Sunday, medical allowance and national festival holidays.*

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 H *(2) As per provisions of Section 25B of the Industrial disputes act, daily wagers and semi skilled workers who has service of more than five years but less than 10 years as on 1.10.1988, will get Rs.750/- as fixed monthly salary*

STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1097
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]

alongwith dearness allowance as per prevailing standard, for his working days. Moreover, he/she will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/She will be eligible for getting medical allowance and deduction of provident fund.

(3) As per provisions of Section 25B of the Industrial disputes act, daily wagers and semi skilled workers who has service of more than ten years but less than 15 years as on 1.10.1988, will get minimum pay scale at par with skilled work along with dearness allowance as per prevailing standard, for his working days. Moreover, he/she will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/She will be eligible for getting medical allowance and deduction of provident fund.

(4) As per provisions of Section 25B of the Industrial Disputes Act, daily wagers and semi skilled workers who has service of more than fifteen years as on 1.10.1988 will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave & national festival holidays. The retirement age of such semi skilled workers will be 60 years and their services will be rendered for pensionable period. As per provisions of Section 25B of the Industrial Disputes Act, daily wagers and semi skilled workers who have completed more than fifteen years of their service will get one increment, two increment for 20 years service and three increments for 25 years in the current pay scale of skilled worker and their salary will be

A *fixed accordingly on 1.10.1998."*

The aforesaid Resolution was issued and published with the consent of the Finance Department dated 14th October, 1988 and General Administrative Department dated 17th October, 1988.

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3. In spite of the Resolution of the State Government dated 17th October, 1988 the benefit was not provided to the daily wage workers of the Forest Department of the State. Aggrieved by the same, some of the daily wage workers of Forest Department filed a Special Civil Application No.3500 of 1992 before the High Court of Gujarat. The learned Single Judge by the judgment dated 21st March, 1997 relying on a common judgment dated 4th March, 1996, passed by the same Court in a group of similar cases, held that Resolution dated 17th October, 1988 is applicable to the employees of the Forest Department as well.

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4. Against the aforesaid decision an LPA No.1642 of 1999 was filed by the State Government which was dismissed by the Division Bench of the Gujarat High Court by its order dated 29th April, 2003. On being aggrieved by the same, the State Government moved before this Court by filing SLP(C)...of 2004 (CC No.10763/2004) which also got dismissed by the order dated 29th November, 2004. Thereby the finding that the Resolution dated 17th October, 1988 is applicable to the daily wage workers of the Forest Department reached finality. In another case when some of the daily wage workers of Forest Department moved before the High Court of Gujarat, the matter was referred to a larger Bench. A three-Judge Bench by its judgment in *Gujarat Forest Producers, Gatherers and Forest Workers Union vs. State of Gujarat*, (2004) 2 GLH 302: (2004) 2 GLR 568, held that the Government Resolution dated 17th October, 1988 is applicable only to the daily wage workers of the Forest and Environment Department engaged in the work of maintenance and repairing of constructions in that Department, and not to the daily wage workers engaged in

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STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1099
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]

other type of work in that Department.

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5. In the meantime, the State Government took up the matter in its Forest and Environment Department. Referring to the Resolution dated 17th October, 1988 it was observed that the said resolution was passed by accepting the recommendations of the Committee appointed for studying wages, service oriented and other facilities giving to the daily wagers, labourers and workers employed for preservation and repairing constructions in various departments of the State viz., Roads & Building Department, Water Resources Department, Forest Department, Agricultural Department, Narmada Development Department, Water Supply Department and Panchayat & Rural Home Development and other departments, and it has been decided to give wages and service oriented facilities to such daily wagers, labourers and workers vide Resolution dated 17th October, 1988, of the Roads and Building Department and the then ancillary resolutions. With the aforesaid observation, the following decision was taken by the Resolution dated 22nd December, 1999:

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“RESOLUTOIN

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In connection with aforesaid preface regarding daily-wagers working in the Forest Department under the control of the Forest & Environment Department and resolution of Hon'ble Shri Daulatbhai Parmar Committee, it is resolved that,

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1. *On the basis of report of Hon'ble Shri Daulatbhai Parmar Committee, the Resolution dated 17/10/1988 of the Roads & Building Department, which is passed regarding wages, services & other facilities to be applied to the daily-wagers, labourers and workers of Forest Department under the control of Forest & Environment Department, cannot be applied in view of work of daily-wagers of the Forest Department and in view of nature of*

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A *work and financial arrangement and their temporary/seasonal & limited work, because on applying the said resolution, after completion of work, such daily-wagers cannot be employed continuously for long time where there is no work.*
B *But they are supposed to be removed. In view of the said circumstances, on the basis of report of Hon'ble Shri Daulatbhai Parmar Committee, there is no intention of applying Resolution dated 17/10/1998 of the Roads & Building Department to the daily-wagers of the Forest Department of the State Government.*
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2. *In the Notification issued from time to time regarding minimum wages also, minimum wages for the daily-wagers of the Forest Department is indicated separately and in view of the burden of their work, in comparison with daily-wagers of construction wages is indicated at less rate, which falls under heading of reasonable classification, therefore, the Resolution dated 17/10/1988 of the Roads & Building, Department cannot be applied for the said reasons.*
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3. *These orders have been passed in view of opinion/consent, vide entry dated 05/11/1999 of the Legal Department, entry dated 18/11/1999 of the Finance Department and entry dated 25/11/1999 of the Roads & Building Department."*
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On bare perusal of the Resolution dated 22nd December, 1999, we find that by such Resolution the State Government (Forest and Environment Department) wrongly interpreted the Resolution dated 17th October, 1988 that the said Resolution passed on the opinion of the Legal Department runs contrary to the Resolution of the State dated 17th October, 1988, and decision of the High Court of Gujarat dated 21st March, 1997 in Special Civil Application No.3500 of 1992, which was upheld
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**STATE OF GUJARAT v. PWD EMPLOYEES UNION & 101
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]**

by the Division Bench vide letter dated 29th April, 2003 and against which the SLP was dismissed by this Court on 29th November, 2004. A

6. The present case pertains to daily wage workers of the Forest Department, who have been in service for about 5-30 years as on 29th October, 2010, of more than 240 days for large number of years, doing full-time work of a perennial nature as stated by the High Court of Gujarat in its judgment dated 29th October, 2010. In the said judgment, the High Court directed the authority to consider the above stated factors while deciding the individual cases for regularization. B C

7. The Unions of the employees and individual workmen employed by the Forest Department approached the High Court of Gujarat in Special Civil Application No.6913 of 2006, inter alia, seeking directions to the State authorities for framing of a scheme for the purpose of giving permanent or quasi permanent status to the daily wagers of Forest Department in the light of their long services in the Forest Department on daily wage basis. By order dated 12th October, 2006, the High Court disposed of the aforesaid SCA permitting the petitioner Union (1st respondent in present matter) to make a detailed representation to the State authorities and directing the State authorities to consider the representation within a specified period. Pursuant to the aforesaid direction of the Court the Union (1st respondent herein) made a representation dated 30th October, 2006 to the Secretary, Forest and Environment Department, the Secretary, Finance Department, the Principal Chief Conservator of Forests and the Chief Conservator of Forests. After more than a year, the Deputy Conservator of Forests, Rajpipla West Division passed order dated 17th November, 2007 rejecting the representation dated 30th October, 2006 with respect to 12 daily wagers of the Rajpipla West Division. D E F G

8. Being aggrieved, the PWD Employees (1st respondent herein) filed a Miscellaneous Civil Application No.119 of 2008 H

A in SCA No.6913 of 2006 challenging the rejection order dated 17th November, 2007. By an order dated 31st January, 2008, the High Court of Gujarat directed the Secretary, Forest and Environment Department to decide the representation filed by the PWD Employees Union.

B 9. The Secretary, Forest and Environment Department rejected the application by his order dated 3rd May, 2008 which was a verbatim reproduction of the order dated 17th November, 2007 passed by the Deputy Conservator of Forests, West Division.

C 10. It is pertinent to mention that by order dated 3rd May, 2008 the Secretary, Forest and Environment Department, inter alia, admits that "the initial entry in the sense of engagement on daily wages does not suffer from any illegality or irregularity and was in consonance with the provisions of the Minimum Wages Act and continues to be so".

E However, the representation was rejected, on the ground that "the daily wagers have not worked on any duly sanctioned posts which were otherwise required to be filled up in a regular manner and further that no such duly sanctioned posts exist. Therefore, the Union's claim of one time regularization, the same being on non-existent posts, is not maintainable and is consequently denied".

F 11. After the rejection of the representation, the respondents-Employees Union had to again move before the High Court in SCA No.8647 of 2008 challenging the order of rejection dated 3rd May, 2008. On hearing the parties and perusal of record, the learned Single Judge of the High Court by its order and judgment dated 29th October, 2010 disposed of the representation recording the following facts:

H (i) *The Secretary, Forest and Environment Department, State of Gujarat has himself come to the conclusion vide order dated 3rd May, 2008 that initial entry of the daily*

STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1103
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]

wagers does not suffer from any illegality or irregularity but is in consonance with the provisions of Minimum Wages Act. Therefore, the question of regularization by removing the procedural defects does not arise.

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(ii) Looking to the nature of work described in the order dated 3rd May, 2008, the daily wagers are engaged in the work which is perennial in nature.

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(iii) The daily wagers of other Government Departments like Roads & Buildings Department, Narmada Water Resources, Water Supply and Kalpasar Department, etc. have been made permanent pursuant to the Government Resolution dated 17th October, 1988.

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(iv) The Department of Agriculture and Cooperation has also issued analogous resolution dated 20th December, 2005 to regularize the services of daily wagers of the Fisheries Department.

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(v) The Forest Department of the State of Maharashtra had also issued a scheme in the year 1996 quite similar to the Government Resolution dated 17th October, 1988 in respect to the daily wagers in their Forest Department.

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(vi) In compliance of award passed by the Labour Court in Reference (IT) No.386/88, a number of daily wagers of the Forest Department who have completed 5 years 900 days were absorbed against 22 supernumerary posts created.

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Learned Single Judge finally passed the following order:

"7. In the interest of justice, the following directions are issued which will meet with the ends of justice:

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1. The impugned order dated 3.05.2008 passed by the Secretary, Forest & Environment Department, State of Gujarat is quashed and set aside.

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- A 2. *The Secretary, Forest & Environment Department, State of Gujarat, is directed to consider the case of the petitioners for regularization/conferring permanent status, afresh in light of the facts of each individual case keeping in mind the observations made hereinabove and also to consider the scope of framing a scheme for giving quasi permanent status to the petitioners-daily wagers at par with the scheme for daily wagers in other Government Departments like Roads & Buildings Department, Narmada Water Resources, Water Supply and Kalpasar Department, etc., contained in Government Resolution dated 17.10.1988. In case, the authority is of the view that the benefits as prayed for cannot be granted then a reasoned order be passed supported by detailed reasons.*
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3. *The aforesaid exercise be undertaken within a period of two months from today.*
- E 4. *Liberty to revive the petitions in case of difficulty by filing required application/s."*

 Against the judgment dated 29th October, 2010 no appeal was preferred by the State Government or by any person and, thereby, the said judgment reached finality.

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 12. The 1st respondent- Employees Union, thereafter requested the Chief Secretary, Forest & Environment Department by letter dated 20th November, 2010 to consider the issue and pass an appropriate resolution in consultation with the Union. However, no action has been taken. Hence, the respondent Union filed Misc. Civil Application No.17/2011 in SCA No.8647/2008 and connected matters before the High Court.

H 13. When the matter was pending, the Principal Secretary,

**STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1105
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]**

Forest & Environment Department by order dated 21st April, 2011 rejected the request of regularization taking a stand that the job carried out by the respondents herein cannot be said to be perennial in nature. Before the High Court, Conservator of Forests filed affidavit giving details of number of daily wagers whose cases were examined and, inter alia, stating that by orders dated 21.4.2011 total 745 cases were considered and proposal to grant benefit has not found favour. One additional-affidavit was filed by the respondent-Union showing therein the fact that the State Government already regularized the services of 21 daily wagers of the Forest Department by creating supernumerary posts pursuant to the High Court of Gujarat order dated 21st March, 1997 passed in SCA No.3500 of 1992. There respondent-Union also filed a draft Amendment in Misc. Civil Application No.17 of 2011 with additional prayer to quash the order of rejection dated 21st April, 2011.

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14. Learned Single Judge of the High Court of Gujarat by order dated 25th August, 2011 allowed the Misc.C.A No.17 of 2011, inter alia, holding that the judgment dated 29th October, 2010 could not have been construed to mean to pass a reasoned order rejecting the representation of the respondents herein. An order was passed directing the State to frame a scheme for giving quasi-permanent status to the respondents herein in compliance with the judgment dated 29th October, 2010. Learned Single Judge also recorded the offer made on behalf of the respondents that they were willing to waive the financial benefits for the past period i.e. upto 29th October, 2010, subject to the fact that period of service rendered by them be counted notionally for other purposes.

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15. The aforesaid order of the learned Single Judge was affirmed by the Division Bench by the impugned common judgment dated 28th February, 2012. Hence, the present SLPs are preferred by the State.

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16. Learned *counsel for the appellant-State* contended as follows:

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A *(i) The High Court under Article 226 of the Constitution cannot direct absorption, regularization or permanency of the daily wage workers unless the recruitment itself was made in a regular manner in terms of the constitutional scheme.*

B *(ii) A large scale regularization of daily wage workers will increase the financial burden on the State.*

C *(iii) The respondents or its member cannot base their claim under Article 14 and 16 of the Constitution to seek permanence or quasi permanence in service .*

D *(iv) Direction given by the High Court is against the principle laid down by this Court in Secretary, State of Karnataka and Others vs. UmaDevi(3) and Others, (2006) 4 SCC 1 and A. Umarani v. Registrar Co-operative Societies and Others, (2004) 7 SCC 112.*

E *(v) Resolution dated 17th October, 1988 applies only to the daily wage workers who were engaged in building maintenance and repairing work as held by Full Bench of Gujarat High Court in Gujarat Forest Producers, Gatherers and Forest Workers Union vs. State of Gujarat (supra). The respondents or its members are not entitled to claim any benefit under the said scheme contained in Resolution dated 17th October, 1988.*

F 17. Per contra, according to learned counsel for the respondents, the judgment dated 29th October, 2010 passed in SCA No.8647/2008 and connected matters is binding between the parties i.e. the appellants and the respondents as it was not challenged by the appellants or any other person, on the contrary the appellants claimed to have complied with the judgment aforesaid. Learned counsel for the respondents contended as follows:

H *(i) The scheme contained in Resolution dated 17th*

STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1107
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]

October, 1988 is equally applicable to the daily wage workers of the Forest Department. It does not distinguish the employees on the basis of nature of job performed by one or the other daily wage workers. A

(ii) The Resolution dated 22nd December, 1999 issued by the Forest & Environment Department, Government of Gujarat was not brought on record before the High Court. It is for the first time without any leave from this Court such fact has been brought on record by filing additional documents. The Full Bench judgment in Gujarat Forest Producers, Gatherers and Forest Workers Union vs. State of Gujarat (supra) was also not placed before the High Court, therefore, the appellants cannot derive any advantage of the same. B C

(iii) The Resolution dated 22nd December, 1999 issued from Forest & Environment Department is contrary to the scheme contained in Resolution dated 17th October, 1988 issued by the State of Gujarat. D

(iv) The Full Bench of the Gujarat High Court in Gujarat Forest Producers, Gatherers and Forest Workers Union (supra) wrongly interpreted the scheme contained in Resolution dated 17th October, 1988. The same is not binding in case of the respondents who were not parties to the said case. E F

18. The main questions which arise for our consideration in these appeals are:

(1) Whether the daily wage workers of Forest and Environment Department working for 5 to 30 years for works other than building and maintenance and repairing work are entitled to derive benefits of the scheme contained in the Resolution dated 17th October, 1988 issued by the State from Road and Building Department; G

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A (2) *If so, whether the members of the respondent-*
employees Union working on daily wages for more than
5 to 30 years in the Forest and Environment Department
of the State will be entitled for similar benefits of the
B scheme contained in the Resolution dated 17th October,
1988.

19. From a bare reading of the Resolution dated 17th
October, 1988, the following facts emerge:

C (a) *Labour and other Unions made representation to the*
Government making demands and issues relating to
daily wage workers of different departments of the
Government.

D (b) *The State Government constituted a committee under*
the Chairmanship, Minister of Road and Building
Department.

(c) *The Committee was constituted for studying*

E (i) *the wages of daily wage workers; and*

(ii) *work related services and facilities provided to the*
daily wage workers who are engaged in the building
maintenance and repairing work in different departments
of the State.

F (d) *The recommendations of the Committee were*
accepted and accordingly the State Government resolved
to provide the benefits of the scheme contained in the
Resolution 17th October, 1988.

G 20. The daily wage workers who were engaged in building
maintenance and repairing work in different departments were
already entitled for their work related facilities. Therefore, what
we find is that the Committee has not limited the
H recommendation to the daily wage workers working in building
maintenance and repairing work in different departments of the

STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1109
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]

State. The State Government vide its Resolution dated 17th A
October, 1988 has not limited it to the daily wage workers
working in building maintenance and repairing work. What we
find is that the Resolution dated 17th October, 1988 is
applicable to all the daily wage workers working in different
departments of the State including Forest and Environment B
Department performing any nature of job including the work
other than building maintenance and repairing work. The
decision of the Full Bench of *Gujarat High Court in Gujarat
Forest Producers, Gatherers and Forest Workers Union*(supra
and the subsequent Resolution dated 22nd December, 1999 C
issued from Forest and Environment Department of the State,
in our opinion are not sustainable, as the intent of Resolution
dated 17th October, 1988 was not properly explained therein
and, therefore, the aforesaid decision of Full Bench and
Resolution dated 22nd December, 1999 cannot be made D
applicable to the daily wage workers of the Forest and
Environment Department of the State of Gujarat.

21. In view of the aforesaid observation, we find that the
full Bench of the Gujarat High Court in *Gujarat Forest
Producers, Gatherers and Forest Workers Union*(supra) E
proceeded on erroneous premises to hold that the Resolution
dated 17th October, 1988 is applicable only to the daily wage
workers of Forest Department engaged in building
maintenance and repairing work. The conclusions in the said
judgment are not sustainable otherwise also. We have already F
noticed that the Resolution of the State Government dated 17th
October, 1988 is not limited to any particular department, it
applies to all the departments including Road and Building,
Forest and Environment Department, Water Resources
Department, etc. We have also noticed that the Committee G
headed by the Minister of Road and Building Department
looked into the wages of daily wage workers and work related
facilities provided to the daily wage workers engaged in
building maintenance and repairing work in different
departments, only for the purpose of its recommendations. The H

A Committee has not limited the recommendations amongst the daily wage workers engaged in building maintenance and repairing work in different departments by its aforesaid Resolution. It is applicable to all daily wage workers including semi-skilled workers performing any nature of job, working in different departments of the State including the daily wage workers of the Forest Department performing work other than building maintenance and repairing work.

22. The impugned order passed by the learned Single Judge and the Division Bench arise out of the final order and judgment dated 29th October, 2010 passed in SCA No.8647/2008 and connected matters. The said order has reached finality in absence of any challenge before the higher Court and hence became binding between the parties i.e. the appellant-State of Gujarat and the respondents-Employees Union. Therefore, none of the parties including appellants-State of Gujarat can rely on Full Bench decision in *Gujarat Forest Producers, Gatherers and Forest Workers Union*(supra) to scuttle the decision and direction given by the Gujarat High Court in SCA No.8647/2008 and connected matters.

23. The decisions in *Uma Devi* (supra) and *A. Umarani* (supra) were regarding the question concerning regularization of employees entered by back door method or those who were illegally appointed encouraging a political set up, in violation of Article 14 and 16 of the Constitution of India. We are of the opinion that both the aforesaid decisions are not applicable in the present case i.e. to the members of the respondent-Employees Union for the following reasons:

(i) *The Secretary, Forest and Environment Department of the State of Gujarat by his order dated 3rd May, 2008 held that initially the entry of the daily wagers do not suffer from any illegality or irregularity but is in consonance with the provisions of Minimum Wages Act. Therefore, the question of regularization by removing procedural defects does not arise.*

STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1111
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]

(ii) The Gujarat High Court by its judgment dated 29th October, 2010 passed in SCA No.8647 of 2008 while noticing the aforesaid stand taken by the State also held that the nature of work described in the order dated 3rd May, 2008 shows that the daily wage-workers are engaged in the work which is perennial in nature.

(iii) The case of A.Uma Rani (supra) related to regularization of services of irregular appointees. In the said case this Court held that when appointments are made in contravention of mandatory provisions of the Act and statutory rules framed therein and in ignorance of essential qualifications, the same would be illegal and cannot be regularized by the State.

24. Thus, the principal question that falls to be considered in these appeals is whether in the facts and circumstances it will be desirable for the Court to direct the appellants to straightaway regularize the services of all the daily wage workers working for more than five years or the daily wage workers working for more than five years are entitled for some other relief.

25. As per scheme contained in Resolution dated 17th October, 1988 all the daily wage workers were not entitled for regularization or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

“(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working

A *days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.*

B *(iii) Daily wagers and semi skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily*
 C *wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/ she will be eligible for getting medical allowance and deduction of provident fund.*

D *(iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance.*
 E *They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers*
 F *and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly."*

G **26. Considering, the facts and circumstances of the case, the finding of Gujarat High Court dated 29th October, 2010 in SCA No.8647/2008 and connected matters and the fact that the said judgment is binding between the parties, we are of the view that the appellants should be directed to grant the benefit**
 H **of the scheme as contained in the Resolution dated 17th**

STATE OF GUJARAT v. PWD EMPLOYEES UNION & 1113
ORS. ETC. [SUDHANSU JYOTI MUKHOPADHAYA, J.]

October, 1988 to all the daily wage workers of the Forest and Environment Department working for more than five years, providing them the benefits as per our finding at Paragraph 25 above. The appellants are directed accordingly. The judgment and order passed by the learned Single Judge dated 29th October, 2010 as affirmed by the Division Bench by its order dated 28th February, 2012 stands modified to the extent above. The benefit should be granted to the eligible daily wage workers of the Forest and Environment Department working for more than five years including those who are performing work other than building maintenance and repairing but they will be entitled for the consequential benefit w.e.f. 29th October, 2010 or subsequent date from which they are so eligible within four months from the date of receipt/production of the copy of this order. The appeals stand disposed of with the aforesaid observation and directions to the appellant-State and its authorities. There shall be no separate orders as to costs.

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Appeals disposed of.