

HIGH COURT OF GUJARAT**DANABHAI TOKARBHAI PARMAR***Versus***BANASKANTHA JILLA PANCHAYAT AND ORS****Date of Decision:** 19 August 2013**Citation:** 2013 LawSuit(Guj) 1188**Hon'ble Judges:** [C L Soni](#)**Case Type:** Special Civil Application**Case No:** 12466, 10355 of 2006**Final Decision:** Petition allowed**Advocates:** [G M Amin](#), [Niraj Ashar](#), [Dhaval M Barot](#), [R C Jani](#)**C. L. Soni, J.**

[1] Since the petitions for the relief of fixation of pension and other retiral benefits raise same issues, they are heard and decided together.

[2] The case of the petitioner in Special Civil Application No. 12466 of 2006 is that he was initially appointed as Tube Well Operator on 1.5.1970 by respondent No.1 Banaskantha Jilla (District) Panchayat. On formation of the Gujarat Water Resources Development Corporation the respondent No.2, the petitioner, with other employees of the District Panchayat, was transferred enblock to the Corporation on 16.6.1978. The petitioner was absorbed in the year 1981 as per the resolution passed by the Government. The petitioner then retired voluntarily on 5.9.1998. It is the case of the petitioner that he had written several letters. However, no action was taken by the concerned Executive Engineer but on 9.11.2005, the Executive Engineer, Banaskantha Jilla Panchayat, Irrigation Department intimated that the applications of the petitioner were sent for necessary action but ultimately, the petitioner was told that since he did not complete minimum 10 years service in the panchayat, he would not be entitled to pension. The case of the petitioner is that though he was transferred en-block to the Corporation in the year 1978, he and other employees were on deputation until they exercised options as per the resolution dated 14.10.1981 passed by the Government and till that date, he had completed more than 10 years of service and become eligible for pension for the services rendered with the District Panchayat.

[3] The case of the petitioner in Special Civil Application No. 10355 of 2006 is that he was initially appointed as Class IV employee by respondent No.1 District Panchayat on 4.10.1968 and served at different places in the District Panchayat till he and other employees were en-block transferred on 16.6.1978. Thereafter, by virtue of the resolution passed by the State Government in the year 1981, he was absorbed in the services of the corporation and ultimately, he retired in the year 1998. It is the case of the petitioner that since he has completed more than ten years of service in the panchayat, he was entitled to pension for the services rendered with the District Panchayat.

[4] The petitions are opposed by affidavit in reply filed on behalf of respondent NO.2. Stand taken by respondent no.2 in the reply is that as per Government Resolution dated 14th October, 1981, employees of the District Panchayat were required to exercise options either to continue with the panchayat services or with the Corporation and since the petitioners had not exercised option, they continued with the services of the Corporation and thus were not entitled to pension. It is further stated that by virtue of subsequent Government Resolution dated 18.1.1990, the Government had provided that the seniority of the employee in the Corporation shall be counted from the date of his joining in the Corporation or from the date of constitution of the corporation which ever was later. It is stated that since the petitioners were transferred to the Corporation on 16.6.1978, services rendered by the petitioners till 16.6.1978 were required to be considered as panchayat service as per which, the petitioners could not be said to have completed 10 years of service in panchayat for pension benefit.

[5] I have heard learned advocates for the parties.

[6] Learned advocate Mr.G.M.Amin appearing for petitioners in both the petitions submitted that when the petitioners were transferred en-block in the corporation, there was no resolution for permanent absorption of the petitioners in the Corporation, therefore, they could be only on deputation in the service of the corporation. Learned advocate Mr. Amin submitted that when the Government issued resolution dated 14.10.1981 providing for absorption of panchayat employees on exercise of option by them, the petitioners had already completed more than 10 years of service as panchayat employees. Learned advocate Mr. Amin submitted that the period after the petitioners were en-block transferred in the year 1978 till 1981, when the Government issued the resolution, since to be treated as on deputation in the services of the corporation as panchayat employees, said period of deputation of the petitioners cannot be counted in the services of the corporation as permanent employees of the corporation. Learned Advocate Mr. Amin submitted that though by subsequent resolution issued by the Government in the year 1990, it was provided by the State

Government that the seniority of the employee taken in the services of the corporation would be counted from the date of joining the services of the corporation, same was only for the purpose of seniority in the corporation and cannot take away the right of the petitioners to have services for the period between en-block transfer of petitioners to the date of resolution considered for the purpose of pension. Learned advocate Mr. Amin submitted that the very issue involved in these petitions is no longer res-integra and in fact, covered by the decision of this Court in the case of Narubha Mahobatsinh Jhala versus District Development Officer and Ors., in Special Civil Application No. 6690 of 1989 decided on 1.8.2000 and in subsequent petitions. He, thus, urged to allow the petitions.

[7] As against the above arguments, learned Asstt.G.P. Mr. Niraj Ashar appearing for Respondent No.3 submitted that since the petitioners were transferred in the year 1978 to the Corporation, they could not be said to have completed minimum 10 years of panchayat service to become eligible for pension. Learned A.G.P. Mr. Ashar submitted that the Government in subsequent resolution dated 18.1.1990 provided that the seniority of the panchayat employee transferred to Corporation shall be counted from the date of his joining the Corporation and, therefore, services of the petitioners rendered till 1978 could be said to be panchayat services and rest of the services after 1978 could be said to be the services in the Corporation and, therefore, the petitioners could not be made entitled to pension benefits for the services rendered by them with the respondent No.1 District Panchayat. He, thus, urged to dismiss the petitions.

[8] Learned Advocate Shri Dhaval Barot appearing for respondent No.1 submitted that since the petitioners were transferred to the corporation in the year 1978, they could be said to have rendered their services in the panchayat till 1978 and, therefore, they would not be completing 10 years of service in the panchayat for the purpose of pension benefits. Learned Advocate Mr. Barot submitted that even after the Government issued resolution in the year 1981, seniority of the petitioners in the corporation since counted from the date of their joining in the corporation as per the resolution dated 18.1.1990, the petitioners would not be entitled to have their services for the period between 1978 to 1981 considered for the purpose of pension.

[9] Learned Advocate Mr. R.C. Jani appearing for respondent Corporation while adopting the arguments of learned advocate Shri Dhaval Barot, submitted that since the petitioners were transferred en-block in the corporation, the petitioners were treated as an employees of the corporation right from the year 1978. Learned Advocate Mr. Jani submitted that though the Government has issued resolution dated 14.10.1981 for absorption of panchayat employees on their exercising option, however, by virtue of the second resolution dated 18.1.1990, services of such employees were

required to be treated in corporation from the date of their joining i.e.1978. He, therefore, submitted that the petitioners could not be said to have completed more than 10 years of service with respondent no.1 District Panchayat and, therefore, they cannot be made entitled to pension benefits.

[10] Having heard the learned advocates for the parties and having perused the record of the case, it appears that there is no dispute about the fact that from panchayat service, the petitioners were en-block transferred with other panchayat employees to respondent no.2 corporation. However, such transfer of the petitioners to the corporation could only be by way of deputation as there was no resolution of the Government treating the petitioners and other panchayat employees as finally absorbed in the services of the corporation. It is required to be noted that both the petitioners had completed minimum 10 years of service including period of deputation before issuance of resolution dated 14.10.1981. By resolution dated 14.10.1981, panchayat employees were asked to exercise option either to be with the corporation or in the panchayat services. However, as provided in the resolution dated 14.10.1981, the employees were to be treated on deputation in the Corporation till two months from the date of resolution. Thus, if the petitioners could be said to be on deputation in the Corporation till December, 1981, such period of services of the petitioner could be said to be in the district panchayat because they could be said to have their lien with the District Panchayat.

[11] Contention raised by Learned A.G.P. that by virtue of subsequent resolution dated 18.1.1990, seniority of the employees like petitioners would be counted from the date of their joining services of the corporation and, therefore, from the date of en-block transfer, the services of the petitioners could be said to be the services in corporation cannot be accepted for the simple reason that the said resolution could not take away effect of the services of the petitioners rendered as deputationist between 1978 to 1981.

[12] This Court, in the decision rendered in the case of Narubha Mahobatsinh Jhala had an occasion to consider the similar issue and on consideration of the resolution dated 14.10.1981 issued by the State Government, held and observed in the said decision as under:

The short question that arises before me is, as to whether the petitioner is entitled to take the benefit of resolution, dated 14.10.1981 and seek addition of period of his service in the Corporation for claiming pensionary benefits. Relevant part of resolution has already been quoted above. It is not made clear in the resolution dated 14.10.1981 that work-charged employees are outside its purview. Even if the petitioner was work-charged employee, he could have claimed a right not to seek

transfer to the Corporation service but to seek employment elsewhere. Since his services were compulsorily transferred without taking any option from him under the resolution dated 14.10.,1981 along with other employees transferred from different departments, he would be deemed to be work-charged employee on deputation from the service of the Panchayat to the services of the Corporation. Period of service, therefore, spent by him in the Corporation has to be added to his pensionary service. It is also not in dispute that the petitioner on attaining superannuation age of 58 years, has retired on 30.4.1988 and before his retirement, had not exercised any option to be absorbed in the services of the Corporation. Subsequent resolution on which reliance has been placed on behalf of the State, therefore, cannot be made applicable to him as the same has been issued after his retirement.

[13] On the above consideration, the Court in the said petition directed the respondents to make available the benefits of pension to the petitioner by treating his services as panchayat services. Though in the present petition, when the resolution dated 18.1.1990 was issued by the State Government, the petitioners were in service, the same shall not convert the services of the petitioners rendered on deputation from 1978 to 1981 as services of permanent employees of the corporation, especially when the petitioners had completed 10 years of panchayat service with deputation before the resolution dated 14.10.1981 was issued. So far as the petitioner of Special Civil Application No. 10355 of 2006 is concerned, he was appointed on 4.10.1968 in respondent No.1 District Panchayat, and when he was en-block transferred on 16.6.1978 to the service of the corporation, he was about to complete ten years of service. In any case, when the resolution dated 14.10.1981 provided for extended period of deputation, petitioners are required to be held entitled to pension benefits considering their services rendered upto 14.10.1981 as panchayat services.

[14] Though the petitioners have prayed for pension benefits with interest at the rate of 18% p.a., however, during the course of hearing, learned advocate Mr. Amin stated that he is not pressing for the claim of interest in the present petitions as the petitioners would like to make representation for such claim before the respondent authorities. The Court has, therefore not gone into such claim of interest in these petitions. It is left open to the petitioners to make representation for claim of interest on the amount of pension to be paid to the petitioners.

[15] For the reasons stated above, the petitions are partly allowed. It is held and declared that the petitioners have completed more than 10 years of panchayat services and are thus held entitled to pension benefits on the basis of such panchayat services rendered by the petitioners. The Respondent No.1 and 3 are directed to take necessary action for finalizing the pension of the petitioner. The respondent No.1 and 3 are

directed to work out and pay the pension benefits to the petitioners within a period of three months from the date of receipt of this order. Rule is made absolute to the extent stated above.

