

(2000) 06 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 3633 of 1988

Ambalal L. Akhani

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Citation : (2000) 06 GUJ CK 0062

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : N.R. Shahani, for the Appellant;

Final Decision : Allowed

Judgement

M.S. Shah, J.—In this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 23.6.1987 (Annexure-L) passed by the State Government, Revenue Department, imposing penalty of stoppage of one increment without future effect as also the order dated 12.10.1987 (Annexure-N) passed by the State Government, rejecting the petitioner's application for review.

2. The petitioner was at the relevant time working as Mamlatdar in Sanand taluka of Ahmedabad (Rural) District. The petitioner had given certificate in the year 1979 to the effect that one Anitaben Dayanand Kathwalia was residing at Sanand since three years. This certificate dated 4.12.1979 was given for the purpose of registration with the Employment Exchange. The said certificate is at Annexure-C. The certificate also stated that it was also given on the basis of the report of the Talati-cum-Mantri of Sanand. Thereafter, on 18.9.1986 the State Government issued a show cause notice calling upon the petitioner to show cause as to why penalty should not be imposed upon the petitioner for showing gross negligence in issuing incorrect certificate of residence in favour of Anitaben Dayanand Kathwalia.

The petitioner submitted his reply dated 3.12.1986 (Annexure-G) stating that the petitioner had relied on the enquiry made and the report submitted by clerk H.B.

Chavada and Deputy Mamlatdar H.R. Shelat. The said employees had referred to Talati's report dated 18.9.1979 and the subordinate employees did not bring to the notice of the petitioner that thereafter the Talati had submitted another report on 24.10.1979. It was therefore submitted that the petitioner had not committed any misconduct. It was also submitted that the petitioner was busy with other matters like Chapter case u/s 107 of the Cr.P.C. and also attending meetings regarding planning arranged by the Ahmedabad District Panchayat at Ahmedabad. The petitioner had also to go to Anadej for attending another meeting.

The State Government, thereafter, passed the impugned order dated 23.6.1987 imposing the penalty of stoppage of one increment without future effect. The petitioner filed a review application. Since the review application was also rejected, the petitioner has approached this court.

3. Mr. N.R. Shahani, learned counsel for the petitioner, has submitted that the petitioner had not committed any misconduct. The petitioner had merely relied on merely the enquiry made by the subordinates and therefore, there was no misconduct as such. In the alternative, it was submitted that in any view of the matter, the authorities have imposed the penalty without following the procedure required to be followed for imposing major penalty. Although, stoppage of increment without future effect would ordinarily be a minor penalty, in the facts and circumstances of the case it has turned out to be a major penalty in view of the fact that the petitioner's increment was due on 1.7.1987 and that increment for the period 1.7.1987 to 30.6.1988 was withheld pursuant to the impugned order of penalty and thereafter the petitioner retired on superannuation on 30.11.1988. The petitioner's next increment subsequently came to be released with effect from 1.7.1987 but the petitioner did not get the benefit of salary with the increment for the period 1.7.1987 to 30.6.1988. The effect was that for the purpose of calculating the petitioner's pension as on 1.12.1988, the authorities took into account the petitioner's salary for last ten months' period i.e. from 1.2.1988 to 30.11.1988 which included a part of the period of penalty i.e. 1.2.1988 to 30.6.1988.

4. None appears for the respondent though served. There is no affidavit in reply.

5. Having heard learned counsel for the petitioner, it appears to the court that without going into the merits of the finding given by the Government that the petitioner had committed misconduct and therefore without entertaining the petitioner's contention on merits of the said finding, the impugned order of penalty cannot be upheld in the form in which it is passed for the reasons indicated hereinafter.

6. As per the settled legal position when an employee's increment is withheld with future effect it amounts to a major penalty and regular departmental enquiry is required to be held. Although on the face of it, the impugned order was an order of stoppage of one increment without future effect, in the peculiar

facts and circumstances of the case, it had the effect of being an order of stoppage of increment with future effect, particularly, in view of the fact that the penalty operated over a period which included five months out of last 10 months" service of the petitioner just prior to his retirement on superannuation, hence the petitioner's pension came to be fixed at a lower amount than what it would have been but for the order of penalty. This, therefore, operated as reduction in the petitioner's pay (for the purpose of pension) with future effect. Mr. Shahani is therefore justified in contending that the effect of the order of penalty was to reduce the petitioner's pensionable pay with future effect.

7. In view of the above finding, ordinarily this Court would have remanded the matter to the authorities for considering whether the respondents wanted to hold a regular departmental enquiry for imposing the aforesaid penalty but in the facts and circumstances of the case, this court does not think it proper to remand the matter to the authorities because in the first place the authority itself had imposed penalty of stoppage of increment without future effect and since the same penalty can be sustained and operated in such a manner that it does not have effect of reducing the petitioner's future pay or pension, the Court can in its discretion would mould the relief appropriately so as to make the penalty operative without allowing it to have any future effect. This can be done by directing the respondents to operate the penalty of stoppage of one increment without future effect with effect from 1.7.1986 to 30.6.1987 because the show cause notice was issued on 18.9.1986.

8. Another reason to adopt the aforesaid course of action and exercise the Court's discretion in favour of the petitioner is that the alleged misconduct in question took place in the year 1979 when the petitioner relying on the enquiry made and report submitted by his subordinates, issued the certificate, but the proceedings came to be initiated after a period of seven years which ordinarily would be considered to be beyond reasonable time.

9. Taking all the aforesaid factors into account cumulatively, the petition deserves to be allowed and the respondents are required to be directed to give effect to the impugned order of penalty in such a manner that the same does not adversely effect the petitioner's pension and the retiral benefits.

10. In the result, the respondents are directed to impose penalty of stoppage of one increment without future effect from 1.7.1986 to 30.6.1987 in lieu of the said penalty effected earlier w.e.f. 1.7.1987. The respondents are directed to refix and pay the petitioner's pension and other retiral benefits on the aforesaid basis within three months from the date of receipt of this order or a copy of the writ of this court whichever is earlier. Rule is made absolute to the aforesaid extent.