

(1988) 04 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 5112 of 1987

Aniruddha A. Dave

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 05-04-1988

Acts Referred:

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 174(1), 174(3), 174(A)

Citation : AIR 1988 Guj 257 : (1988) 2 GLR 37 : (1989) 1 LLJ 66

Hon'ble Judges : J.P. Desai, J

Bench : Single Bench

Advocate : K.B. Trivedi, for the Appellant; G.D. Bhatt, Asstt. Govt. Pleader, instructed by A.R. Dave, Govt. Solicitor, for the Respondent

Judgement

1. This petition is filed by Mr. A. A. Dave, a Retired Judge of this Court seeking certain reliefs enumerated at Para 8(A) and 8(B).

2. The facts giving rise to this petition may be briefly stated as follows : -

The petitioner was a sitting Judge of this Court in the year 1974. He was appointed as Tribunal under the provisions of the Secondary Education Act, 1972. vide Resolution dt. 30-4-1974. On attaining the age of 62 the petitioner retired on 1-9-1974. But thereafter also he continued to be the Secondary Education Tribunal until 31-8-1977. The petitioner was then appointed as Tribunal under the Gujarat Affiliated Colleges Services Tribunal Act, 1982. vide Government Order dt. 1-5-1982 and he worked as Tribunal under the said Act from 29-5-1982 to 28-5-1984. Copy of the order dt. 30-4-1974 appointing the petitioner as Tribunal is produced by the petitioner with a list of documents. The relevant portion of the said order is as follows: -

"(i) he shall draw his present salary of Rs. 3500/- per month till September 1st, 1974 which happens to be the date of his superannuation attainment of the age of 62 years.

(ii) after reaching superannuation age of 62 years, with effect from September 1st, 1974 he shall get a remuneration at the rate of Rs. 3,500/- per month less pension admissible to him and also minus pension equivalent of gratuity."

3. In view of the aforesaid clauses of the order dt. 10-4-1974, pension equivalent of gratuity was deducted from the emoluments of the petitioner after he retires as a Judge of this Court. The grievance of the petitioner is that the deduction of the said amount of pension equivalent of gratuity is illegal and hence he is entitled to get back the said amount from the respondents, which amount has been illegally deducted. That amount which is illegally and unauthorisedly deducted, as per the say of the petitioner, comes to Rs. 14,463/-. The petitioner has filed this petition for issuance of an appropriate writ directing the respondents to make payment of the said amount to the petitioner.

4. The respondents have been served and Mr. G. D. Bhatt, learned Assistant Government Pleader has appeared on behalf of the respondents, no affidavit-in-reply has been filed in this petition. This petition was filed in this Court in the month of Sept. 1987. Notice pending admission was issued returnable on 13-10-1987. No affidavit-in-reply was filed at that time and hence Rule was made returnable on 30-11-1987. Thereafter also the matter was adjourned from time to time, but even then no affidavit-in-reply has been filed on behalf of the respondents till today. The learned Addl. Government Pleader Mr. Anil R. Dave and the learned Assistant Government Pleader Mr. G. D. Bhatt stated that letters have been written to the respondents for filing the affidavit-in-reply in this matter but they have not heard anything from the respondents. This Court is, therefore, constrained to proceed further with the matter in absence of any affidavit-in-reply on the part of the respondents.

5. The order dt.30-4-1974 clearly mentions that after reaching the superannuation age of 62 years with effect from Sept. 1. 1974 he i.e. the petitioner shall get a remuneration at the rate of Rs. 3500/-per month less pension admissible to him and also minus pension equivalent of gratuity. In view of this specific mention in the order of appointment, one might be prima facie inclined to say that the petitioner has no case. But the petitioner has relied upon a decision of the Supreme Court reported in Shiveshwar Prasad Sinha Vs. Union of India (UOI) and Others, , which clearly shows that the action of the respondents in deducting the amount of pension equivalent of gratuity has no foundation in law and, therefore, the petitioner is entitled to the reliefs claimed by him in this petition. In the case before the Supreme Court, it appears that the petitioner in that case was a sitting Judge of the Patna High Court and he was appointed as the Chairman of the Andhra Pradesh Administrative Tribunal at Hyderabad when he was a sitting Judge of that High Court and he reached the age of superannuation on 1-2-1980 and he ceased to be a Judge of that High Court from that date but he continued to be the Chairman of the Tribunal up to 30-11-1981 when on the ground of ill-health he resigned. It appears that the Government of India in the Ministry of Home Affairs laid down the terms and

conditions of service of the Chairman and Members of the Andhra Pradesh Administrative Tribunal. which indicated the terms so far as the Chairman of the Tribunal was concerned. The relevant portion of the same reads as follows: -

"Chairman - The same remuneration /allowances and conditions of service as admissible to a High Court Judge provided. that on retirement as a Judge, the pay plus pension and pension equivalent of other retirement benefits, if any, shall not exceed Rs. 3500/-".

The effect of the aforesaid clause of the conditions of service will be the same, viz. that pension equivalent of gratuity was to be deducted from the amount of remuneration payable to the Judge appointed as a Chairman after his retirement. The wordings of the order in the case of the petitioner as reproduced earlier has also the same effect. In the case before the Supreme Court it was laid down in the condition of service that the pay plus pension and pension equivalent of other retirement benefits shall not exceed Rs. 3500/- while in the order dt. 30-4-1974 appointing the petitioner as Education Tribunal. it is laid down that the petitioner shall get a remuneration at the rate of Rs. 3500/- per month less pension admissible to him and also minus pension equivalent of gratuity. The effect of the conditions in both the cases is the same, though the wordings are different. It appears that before the Supreme Court, the learned Counsel appearing for the respondents was unable to lay his hands on any statutory provisions which would authorise such a deduction. The gratuity is payable under S. 17A of the High Court Judges (Conditions of Service) Act, 1954 as amended by Act No. 35 of 1975 as pointed out by the Supreme Court in that judgment. There is further amendment of the aforesaid Act by the Amending Act of 1986 whereby the amount of gratuity is raised to Rs. 50,000/- but there is no other change. It appears from the facts of the case before the Supreme Court that the petitioner in that case was a sitting Judge of the High Court and then continued as a Chairman after his retirement and no recovery was to be made from his pension when he retired. In the present case also it is not shown that any recovery was to be made from the pension payable to the present petitioner before me. The petitioner in that case continued to be the Chairman of the Tribunal till he retired on the basis of re-employment and re-employment was covered by the terms indicated therein, the relevant portion of which is reproduced by me in this judgment. It was conceded before the Supreme Court, by the learned Counsel appearing for the respondents that the re-employment was contractual and the terms of the contract indicated that the petitioner was entitled to a salary not exceeding Rs. 3500/-. The petitioner in that case did not claim more than Rs. 3500/- including the pension. The petitioner's claim therein was that after deducting the amount of pension, he was entitled to the balance sum and out of the said balance amount, pension equivalent of gratuity was not deductible every month as contended by the petitioner in that case. The learned Counsel for the respondents before the Supreme Court relied upon the provisions, contained in Clause 9(1)(c) of Part D of Schedule II of the Constitution, in support of his contention that pension equivalent of gratuity was deductible every month. The Supreme Court pointed

out that the said provision relates to the Judges of the Supreme Court and the particular provision indicates that if a Judge of the Supreme Court has been a Judge of the High Court previously and before appointment as a Judge of the Supreme Court if he had received a retirement gratuity in respect of previous service, his salary has to be reduced by the pension equivalent of gratuity. The Supreme Court observed that that was absolutely on the basis that the retirement has come to an end when the Judge of the High Court had become a Judge of the Supreme Court and that provision or the principle underlying the provision can have no application to a case of the type where the Judge has retired and he undertakes a different service on contractual basis. The Supreme Court ultimately held that there was absolutely no justification for deduction of the pension equivalent of gratuity, so far as the petitioner before the Supreme Court was concerned. The facts of the case before the Supreme Court and the facts in the present petition are on all fours and, therefore, the decision of the Supreme Court can be pressed into service and has rightly been pressed into service by the petitioner in the present case. In view of the above decision of the Supreme Court, the petitioner is entitled to the reliefs claimed by him and there is no answer to the said claim of the petitioner. The learned Assistant Government Pleader Mr. G. D. Bhatt who appears for the respondents was unable to satisfy me as to how the petitioner's claim can be negative in view of the above decision of the Supreme Court. The petition is, therefore, required to be allowed and the, reliefs claimed by the petitioner are required to be granted.

6. Before parting with this judgment, I am constrained to observe here that even though this petition was filed in the month of Sept. 1987 and sufficient time was given to the respondents to prepare, appear and have their say before me, the respondents have not filed any affidavit-in-reply. It pains me to observe that in spite of several letters written by Mr. Dave and Mr. G. D. Bhatt to the respondents, the respondents have not responded to the said letters of the learned Advocates. It also pains me to observe here that the petitioner, a Retired Judge of this Court, wrote a letter to the Secretary to the Government of Gujarat, Education Department on 18-4-1986, copy whereof is produced at Annexure "A" for refund of the pension equivalent of gratuity deducted from his emoluments, but the respondents did not even had a courtesy to reply to the said letter of the petitioner. A letter, copy whereof is produced at Annex. "B" was also written by the Registrar of the Education Tribunal to the Under Secretary, Education Department, respondent No. 2 in the present petition requesting him to pass necessary orders for refund of the pension equivalent of gratuity so far as the petitioner is concerned and also so far as the other two Chairman of the Tribunal, viz. Shri M. C. Trivedi and late Shri V. V. Bedarkar, both being retired Judges of this Court. No reply appears to have been sent to this letter also. The decision of the Supreme Court in the case of Shiveshwar Prasad Sinha v. Union of India, (supra) was rendered on 16-9-1985 and has been reported as stated above in the year 1986. It is surprising that in spite of this clear decision of the Supreme Court, which applies on all fours to the facts of the present case, the

respondents have not taken care to make amends and refund the amount to the petitioner as prayed for by him. It appears that because of the above attitude adopted; by the respondents, the petitioner, a retired Judge of this Court was constrained to file this petition before this Court which could have been avoided if the respondents had considered the request made by the petitioner vide letter dt. 18-4-1986.

7. As a result of the aforesaid discussion, the petition is allowed and the respondents are directed to refund the amount of Rs. 14,463/- to the petitioner with interest at 12% per annum from the date of this petition till the amount is paid to the petitioner. The respondents shall refund the amount to the petitioner as early as possible but not later than eight weeks from the receipt of the writ of this Court by them.

8. Before parting with this judgment, I would like to impress upon the respondents that any deduction of pension equivalent of gratuity from the emoluments paid to the retired Judges of this Court who have been given assignment by the Government after retirement as High Court Judges will be, on the face of it, unauthorised for the reasons recorded in this judgment. I would also like to draw their attention to the judgment of the Supreme Court" reported in Shiveshwar Prasad Sinha Vs. Union of India (UOI) and Others, which has been discussed in" this judgment and particularly, Para 5 of the said judgment of the Supreme Court, which clearly indicates that any such deduction of pension equivalent of gratuity would be unauthorised. The Supreme Court has observed at Para 5 of the judgment that any such deduction will have the effect of depriving the Judge of the amount of gratuity to which he is lawfully and legitimately entitled. It is, therefore, expected that any such deduction of the amount of pension equivalent of gratuity from the emoluments paid to retired Judges will be stopped forthwith and whatever amount might have been deducted on this count will be refunded as early as possible to these retired Judges and they will not be constrained to approach a Court of law. In particular, it appears from the letter written by the Deputy Registrar of the Education Tribunal to respondent No. 2 the Under Secretary, Government of Gujarat, Education and Labour Department, copy of which is on record in this petition, that the amount of pension equivalent of gratuity has been deducted from the emoluments paid to Mr. M. C. Trivedi, a retired Judge of this Court and late Mr. V. V. Bedarkar, also a retired Judge of this Court on their appointment as Education Tribunal. It is expected that the amount of pension equivalent of gratuity which has been deducted from the emoluments paid to Mr. Trivedi and Mr. Bedarkar will be refunded to Mr. Trivedi and Mrs. Bedarkar as early as possible so that they may not be constrained to approach a Court of law for the same.

9. I am constrained to make the above observations because the two instances, one of late Mr. N. J. Mankad and another of Mr. M. H. Jani which are on record of this Court, show that the State Government was not prepared to accept the just and legitimate claims of Mr. Mankad and Mr. Jani, even though there were

judgments of this Court in favour of similarly situated employees which left no doubt that the claims of late Mr. Mankad and Mr. Jani, were just and legitimate. The State Government was not even prepared to accept the recommendation of this Court on its administrative side and, therefore, late Mr. Mankad and Mr. Jani were constrained to file petitions before this Court. It is expected that the State Government in future will see that legitimate claims of employees including retired employees are accepted and they are not constrained to approach a Court of law. If such a course is adopted by the State Government, the employees will not be put to unnecessary hardship and expenses and the avoidable litigation will be avoided and much of the public time of this Court and the Government officers who have to attend to such litigation will be saved and the amount which the Government has to spend for defending such litigation will be saved so that the said amount can be utilized for some better purpose.

10. The Registrar of this Court is directed to forward a copy of this judgment to the Chief Secretary, Government of Gujarat, Sachivalaya, Gandhinagar, with a forwarding of D. O. letter for information so that he may take necessary action in the matter and may also issue necessary instructions to all concerned in the light the observations made in this judgment.

11. Petition allowed.