(2022) 02 GUJ CK 0014

In the Gujarat High Court

Case No : R/Special Civil Application No. 1519 Of 2022

Augustinbhai Jigarbhai Palat APPELLANT

Vs

State Of Gujarat RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:
Constitution Of India, 1950 — Article 226
Evidence Act, 1872 — Section 45
Indian Veterinary Council Act, 1984 — Section 30

Citation : (2022) 02 GUJ CK 0014

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Gaurav K Mehta, Meet Thakkar

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 Rule returnable forthwith. Mr.Meet Thakkar, learned AGP, waives service of rule on behalf of the State â?" respondent.

2 At the outset, learned advocates for the respective parties fairly concede that the issue involved in the present petition is squarely covered by the

decision of this Court dated 28.01.2022 rendered in Special Civil Application No.18770 of 2021 and allied matter. The said judgment reads as under:

â??1 Rule returnable forthwith. Mr.Kurven Desai, learned AGP, waives service of rule on behalf of the State â?" respondent.

2 In this petition under Article 226 of the Constitution of India, the prayer of the petitioner is to direct the respondents to fix the benefits of

the 6th Pay and the 7th Pay Commission by including the benefit of NPPA.

3 It is undisputed that the issue is covered by a decision rendered by this Court

in Special Civil Application No. 10953of 2014 and allied

matters which was confirmed by the Division Bench of this Court in Letters Patent Appeal No. 907 of 2016 and allied matters.

4 Accordingly, since the issue is squarely covered, it will be in the fitness of things to reproduce the relevant observations of the Division

Bench rendered in the Letters Patent Appeal No. 907 of 2016, which read as under:

â??26. In the opinion of this court there was a legitimate expectation on the part of the petitioners that they are entitled to the benefit of

NPPA which has been given to them since decades. It is by now well settled that the doctrine of â??legitimate expectationâ?? imposes in

essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such â??legitimate

expectationâ??. Within the conspectus of fair dealing in case of â??legitimate expectationâ??, the reasonable opportunities to make

representation by the parties likely to be affected by any change of consistent past policy, come in. [see Union of India v. Hindustan

development Corpn., (1993) 3 SCC 499] . It was further held in the above decision that the protection of such legitimate expectation does

not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a personâ??s

legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by

showing some overriding public interest. In the facts of the present case, except for a mere assertion in the affidavit-in-reply there is nothing

to show that any decision was taken for some overriding public interest to withdraw the benefit of NPPA that was being given to the

petitioners. In fact as noted hereinabove, there is no decision worth the name and what is sought to be relied upon to deny the benefit of

NPPA to the petitioners is merely a noting on the file, that too, pursuant to an objection raised by the audit department.

27. A contention has been raised on behalf of the State authorities that upon the coming into force of the Gujarat Veterinary Council Act,

1984 â??minor veterinary servicesâ?? came into existence and that as the services of the Livestock Inspectors fall within the ambit of â??minor veterinary servicesâ?? and they were permitted to render the services under the supervision of a registered Practitioner, they

could not be said to be in the practice of Veterinary Medicine and therefore there was no good reason to pay NPPA to them. In this regard

it may be noted that the Indian Veterinary Council Act, 1984 has been enforced in the State of Gujarat from 15.1.2000 by a notification of

Government of India. Section 30 of the said Act, which is relevant for the present purpose reads thus:

30. Right of persons who are enrolled on the Indian veterinary practitioners register.â?"No person, other than a registered veterinary

practitioner, shallâ?" (a) hold office as veterinary physician or surgeon or any other like office (by whatever name called) in Government

or in any institution maintained by a local or other authority; (b) practice veterinary medicine in any State: Provided that the State

Government may, by order, permit a person holding a diploma or certificate of veterinary supervisor, stockman or stock assistant (by

whatever name called) issued by the Directorate of Animal Husbandry (by whatever name called) of any State or any veterinary institution

in India, to render, under the supervision and direction of a registered veterinary practitioner, minor veterinary services.

Explanation.â?"â??Minor veterinary servicesâ? means the rendering of preliminary veterinary aid, like, vaccination, castration, and

dressing of wounds, and such other types of preliminary aid or the treatment of such ailments as the State Government may, by notification

in the Official Gazette, specify in this behalf; (c) be entitled to sign or authenticate a veterinary health certificate or any other certificate

required by any law to be signed or authenticated by a duly qualified veterinary practitioner; (d) be entitled to give evidence at any inquest

or in any court of law as an expert under Section 45 of the Indian Evidence Act, 1872 (1 of 1872), on any matter relating to veterinary

medicine.

Thus, section 30 of the Indian Veterinary Council Act, 1984 bars persons other than registered veterinary practitioners from practising

veterinary medicine. The proviso thereto, however, carves out an exception and permits persons holding a diploma or certificate of veterinary supervisor, stockman or stock assistant issued by the Directorate of Animal Husbandry of any State or any veterinary institution

in India to render minor veterinary services under the supervision and direction of a registered veterinary practitioner. Vide notification

dated 29th November, 2012 the State Government, in exercise of powers conferred by the explanation to Clause (b) of section 30 of the

Indian Veterinary Council Act, 1984 has specified minor veterinary services for the purposes of the Act and has permitted a person holding

a diploma or certificate of Veterinary Supervisor, Stock man, Stock Assistant or Livestock Inspector (by whatever name called) issued by the

Directorate of Animal Husbandry of any State, or any Veterinary Institution in India to render the Minor Veterinary Services mentioned

therein under the supervision and direction of a registered Veterinary Practitioner. On behalf of the State Government nothing has been

shown to indicate as to what is the difference in the nature of services that the petitioners were permitted to discharge prior to the State

Government specifying the nature of minor veterinary services, to demonstrate the difference in the situation prior to and after such services

having been specified. Moreover, the Indian Veterinary Council Act came to be adopted by the State of Gujarat in January, 1999, despite

which the benefit of non-private practicing allowance continued to be granted to the petitioners. Thus, nothing substantial has been pointed

out on behalf of the State authorities as to how by virtue of specification of minor veterinary services, the Livestock Inspectors are no

longer entitled to carry on private practice and therefore, the petitioners who are not permitted to carry on private practice are no longer

entitled to the benefit of NPPA. Moreover, it is not even the case of the State authorities that Livestock Inspectors in the District Panchayats,

etc. who were permitted to carry on private practice are no longer permitted to do so after minor veterinary services came to be specified.

The contention that in view of minor veterinary services having been specified, the petitioners are not entitled to NPPA, therefore, does not

merit acceptance.

28. The substratum of the controversy arising in the captioned matters is the objection raised by the audit department in fixation and grant

of the NPPA. Such an abrupt action has jeopardised the pension and retirement benefits of the Live Stock Inspectors who have retired from

service. During their entire service tenure, no objection was taken by the local fund audit and their pay was revised and fixed with the

approval of the audit department and the heads of the department. Accordingly, the pension and the retirement benefits were also fixed on

that basis. Thus, such an action of the audit department needs to be strictly deprecated. The pay scale/pension of the employees cannot be

refixed/reduced by the audit department arbitrarily. The learned Single Judge was, therefore, wholly justified in holding that the petitioners

are entitled to the benefit of NPPA.

29. For the foregoing reasons, this court does not find any infirmity in the impugned judgment and order dated 28.3.2016 passed by the

learned Single Judge in Special Civil Applications No.10953 of 2014, No.12238 of 2014, warranting interference. The letters patent

appeals, therefore, fail and are, accordingly, dismissed. The judgment and order passed by the learned Single Judge shall be complied with

within a period of four weeks from the date of receipt of a copy of this order.

30. In the light of the above discussion, Special Civil Applications No.17245 of 2016, 17275 of 2016 and 18114 of 2016 are hereby

allowed. The impugned communication dated 29.9.2014 as well as the circular dated 20.1.2015 are hereby quashed and set aside. The

respondents are hereby directed to give the benefit of 15% NPPA on revised pay under Sixth Pay Commission and Seventh Pay Commission.

The payment of Non-Private Practicing Allowance (NPPA) to the petitioners shall be restored and their pay scale/pension shall be refixed

and paid accordingly. The recovery of the amount towards NPPA is quashed and set aside, and any amount which is recovered from some

of the petitioners shall be refunded. The entire exercise of refixing the pay/ pension and payment of difference of such amount shall be

carried out within a period of four weeks from the date of receipt of a copy of the judgment. Rule is made absolute accordingly in each of

the petitions, with no order as to costs.â??

5 Accordingly, the petitions are allowed. The respondents are directed to fix the 6th Pay and the 7th Pay Commission benefits and /or

pension as the case may be of the writ applicants by including the NPPA.

The NPPA shall be treated as a part of the pay-scale. This exercise shall be completed within a period of three months from the date of

receipt of copy of this order and the petitioners will be paid difference towards the arrears within a period of two months thereafter.

Pension also in case of those retired petitioners may also be revised accordingly. The petitions are accordingly, allowed. Rule made

absolute to the above extent.â??

3 Accordingly, the petition is allowed. The respondents are directed to extend the benefits of 15% of NPPA to the petitioners after fixing the pay as

per 6th Pay and the 7th Pay Commission benefits and / or pension as the case may be of the writ applicant by including the NPPA.

The NPPA shall be treated as a part of the pay-scale. This exercise shall be completed within a period of three months from the date of receipt of

copy of this order and the petitioners will be paid difference towards the arrears within a period of six months thereafter. Pension also in case of those

retired petitioners may also be revised accordingly. The petitions are accordingly, allowed. Rule made absolute to the above extent.

