

(2003) 07 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 7599 of 1988

Bakul Tripathi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Gujarat University Act, 1949 — Section 20(1), 30, 31
Gujarat University Ordinances — Ordinance 172(15)

Citation : (2003) 2 GLR 1667

Hon'ble Judges : J.N. Bhatt, Acting C.J.; A.L. Dave, J

Bench : Division Bench

Advocate : D.C. Raval, for the Appellant; Archana C. Raval, Advocate for Respondent No. 1, S.N. Shelat, for Respondent No.2 and K.J. Brahmabhatt, for the Respondent

Judgement

J.N. Bhatt, Actg. C.J.

1. The petitioner has challenged the orders and communication at Annexure-C, E and F and amended Ordinances at Annexure D-2 and D-3 as illegal, unconstitutional, without jurisdiction and of no effect whatsoever with a further prayer to treat him as continuing in service till the end of the academic term beginning in November, 1988 and ending in April, 1989, by filing this petition under Article 226 of the Constitution of India.

2. A few material facts may be stated at the outset. The petitioner's birth-date is 27-11-1928 and he was to attain the age of 60 years on 27-11-1988. According to the petitioner, in Commerce faculty, under Ordinance 75 terms are expressly prescribed. The first term is beginning on 15th June and ending on 20th October. From 20th October to 10th November is Winter vacation and the second term begins on 11th November and ends on 7th April of every academic year, and from 7th April to 14th June is Summer vacation. In this context, it is stated by the petitioner that according to the well established statutory University policy,

the petitioner was to retire in the middle of the second term, and therefore, should have retired at the end of the term i.e., on 7-4-1989. Somehow or the other, such right is denied by the unauthorised action of the respondent-authorities and in express violation of the statutory provisions.

3. The Executive Council of the University, respondent No. 2 had framed Ordinance 172(15) prescribing the age of retirement of college teachers and providing that he will retire on the date on which he attains the age of sixty. This was made subject to the proviso that the date of superannuation shall be 10th November or 14th June of year whichever comes earlier after the teacher attains the age of sixty years.

4. The salary of the college teachers is paid by the State of Gujarat as a part of the grant paid to this affiliated colleges. State of Gujarat by resolution dated 9th June, 1987 provided that if a teacher happens to attain the age of 60 years in the middle of the term, he will retire at the end of the term and not at the end of the vacation following the term. The petitioner has also relied on a judgment given by the Gujarat Affiliated Colleges Service Tribunal in Application No. 74 of 1985, whereby it was decided that the teachers attaining the age of 60 years in the middle of the term are entitled to retire at the end of the term notwithstanding the occasional shifting of the term which may be necessitated due to disturbances or such other reasons. In this context, it is pleaded that the clarification made by the communication was that the teacher would retire at the end of the normal vacation and not the shifted vacation.

5. The further plea advanced by the petitioner is that at the beginning of the then academic year, the colleges started late due to delay in completion of examination work caused by the strike of the teachers. In June 1988, the term that was supposed to begin on 15th June, 1988 was delayed by more than a month. In June, 1988, the Executive Council of the University was not functioning. The Vice-Chancellor of the respondent No. 2-University by the communication dated 14-6-1988 informed all the colleges that he had amended Ordinance 172(15) and the amended Ordinance provided that a teacher who superannuates in the midst of the vacation will retire on the last day of the month in which he attains the age of sixty years. Thus, a major policy decision was taken by the Vice-Chancellor which could only be taken by the Executive Council. It is, therefore, pleaded that the action of the Vice-Chancellor is unauthorised and usurpation of powers of the Executive Council.

6. The petitioner received letter dated 4-11-1988 from respondent No. 3-Society informing him that he would retire on 30-11-1988. The respondent No. 3-Society has also placed on record its appreciation of the petitioner's very valuable service for more than 35 years. Thus, according to the petitioner he is denied the benefit of retiring at the end of the term as per the Executive Council's own policy decision and the statutory Ordinance. The petitioner further submitted that u/s 20(1)(xxxiii) read with Sections 30 and 31, it is the exclusive power of the Executive Council of the University to prescribe proper conditions of employment

of the teaching and non-teaching staff of the affiliated colleges. The policy of retiring teachers on attaining the age of retirement in the middle of term as prescribed by Ordinance 75 was laid down by the Executive Council by its Ordinance 172(15). The Vice-Chancellor of the respondent-University, therefore, has no power or authority in law whatsoever to amend the statutory Ordinance enacted by the Executive Council in exercise of its statutory power. It is, therefore, the case of the petitioner that the amendment to the statutory Ordinance 172(15) as per Annexures D-2 and D-3 is unjust, unreasonable and without jurisdiction.

7. It may be mentioned, at this stage, that pursuant to the interim order granted by this Court in favour of the petitioner in Civil Application No. 735 of 1989, amendment came to be made in the petition, which has not been controverted. It could very well be seen from the amended pleading that after 30th November, 1988, the petitioner had continued in service as per the orders of this Court passed on 30th November, 1988 and 3rd March, 1989. It is, therefore, the case of the petitioner that he has rendered service for the period beginning from 1st December, 1988 till the end of the term i.e., 7th April, 1989. He has, therefore, claimed salary for the said period on the principle of quantum meruit. It is specifically averred in the amended pleading that no other person was appointed on the post of the petitioner and that he has worked as such on the said post and the students and the institution, both, have benefited from the service of the petitioner. Therefore, he is entitled to salary for the period from 1st December, 1988 to 7th April, 1988 and other consequential benefits.

8. The Registrar of the respondent No. 2-University has filed affidavit-in-reply controverting and challenging the averments made by the petitioner in the petition. He has contended that the petitioner had no right to continue and there is uniform age of superannuation for all teachers, irrespective of whether he is a prominent literary figure or not and when Ordinance 172(15) was framed in 1984, the main object was to see that no difficulties are caused in the running of the college administration, and it was resolved that date of superannuation for the teachers appointed before 1st October, 1984 would be the date on which he attains the age of 60 years, but he may be continued till 10th November or 14th June, whichever comes earlier.

9. It is denied that the Vice-Chancellor has no jurisdiction to change the term under proviso to Ordinance 75. In short, the defence raised by the respondent-University is that the action taken by the University is quite justified and in accordance with the Ordinance and the rules and regulations. Again, in exercise of the powers, State of Gujarat, passed resolution to the effect that the retirement date shall be the date on which the University ends the academic year and not the end of the vacation.

10. After giving our critical appraisal and analytical evaluation of the provisions of the Ordinance and the vesting of powers in the Executive Council as well as the Vice-Chancellor and also the factum that by virtue of interlocutory order

granted by this Court, during the pendency of proceedings the petitioner had worked till the end of the term, in our opinion, the petitioner is entitled to salary and other incidental benefits during the extended period of service by virtue of order of this Court, and therefore, respondents are obliged to pay the salary for the period. We have no hesitation in finding that the claim made by the petitioner in respect of extended period and that too by way of salary is quite just and reasonable. It is, really, very unfortunate that a merited man of literature, after having put in 35 years of service had to knock the doors of justice for extended period of job on account of interpretation of the relevant Ordinances. A person who has put in such a long service and who is a man of letter may not be given a pat on the back, but at least, would not expect a slap on the cheek while winding up long academic career. Graceful going back is always a pleasant and enjoying experience for a service or salaried person. Be that as it may. We are of the clear opinion that the petitioner is entitled to salary and incidental benefits for the extended period of service in the light of the interim order passed by this Court in favour of the petitioner and correct exposition of the provisions of the Ordinance. The petition, therefore, is liable to be allowed to the aforesaid extent.

11. Consequently, the petition is allowed to the aforesaid extent with costs. Rule is made absolute to the aforesaid extent.