
(1984) 01 GUJ CK 0003
In the Gujarat High Court

Biharilal V. Vaishnav

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-01-1984

Acts Referred:

Citation : (1984) 2 GLR 1372

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Judgement

R.C. Mankad, J.—Unreasonable and incomprehensible stand taken up by the State Government has driven the petitioner, a retired Small Cause Judge, who was re-employed as Registrar's Nominee on the Board of Nominees, Ahmedabad Division to file this petition to claim benefit under resolution Annexure "F" dated December 4, 1979.

2. Petitioner retired as Judge of the Small Causes Court, Ahmedabad, on February 29, 1976. He was appointed as Registrar's Nominee on the Board of Nominees, Ahmedabad Division with effect from the date he took charge by order Annexure "C" dated August 9, 1979. Petitioner took charge as Registrar's Nominee on August 16, 1979. It is not in dispute that at the time when petitioner was appointed as Registrar's Nominee on the Board of Nominees, he was entitled to draw honorarium in addition to his pension under Government resolution Annexure "A" dated May 25, 1971. Opening part of the said resolution reads as under:

With a view to bringing about uniformity in the amount of honorarium payable to the Chairman/President and Members of various Tribunals in the State, Government is pleased to decide that the following criteria shall be followed for fixing the remuneration/Honrarium of the Chairman/President and Members of the Sales Tax Tribunal, the Revenue Tribunal and the Co-operative Tribunal.

Then follows Clause (iii) which is important for our purpose and it reads as under:

(iii) In case retired Government servants are appointed as Chairman/President or

Members of any Tribunal, they shall be given 75% of the value of Honorarium and, in addition, they shall be allowed to draw and retain their pension.

Clause (v) deals with Registrar's Nominee and it reads as follows:

(v) For the purpose of these orders, Registrar's Co-operative Societies Nominee on the Board of Nominees, referred to in Section 98 of the G.C.S. Act 1961, shall be treated on par with members of Tribunals.

Clause (iii) of the said resolution deals with the question of honorarium to be paid to retired Government servants who are appointed as President/Chairman and Members of Tribunals whereas Clause (v) makes it clear that persons appointed as Registrar's Nominee on the Board of Nominees have to be treated on par with the members of the Tribunal. A Government servant who has retired is appointed as Chairman/President or Member of a Tribunal or Registrar's Nominee on the Board of Nominees, will be entitled to honorarium as provided in Clause (iii) in addition to the pension payable to him. In other words, the Government servants who are re-employed either as Chairman/President or Member of a Tribunal or a Registrar's Nominee are entitled to honorarium as provided in Clause (iii). Clause (i) of the resolution fixes the remuneration for a member of Tribunal at Rs. 1000/- per month. Therefore, under Clause (iii) when a retired Government servant is re-employed as Member of the Tribunal or as Registrar's Nominee, he would be entitled to honorarium of Rs. 750/- per month in addition to the pension payable to him. Petitioner was, therefore, entitled to honorarium at the rate of Rs. 750/- per month when he was appointed as Registrar's Nominee on the Board of Nominees. It appears that additional remuneration was payable to Chairman or Member of Board of Nominees or Registrar's Nominees after completing continuous service of three years as Chairman or Member of Board of Nominees or as Registrar's Nominee under Government Resolution Annexure "E" dated April 18, 1979. But that resolution is not relevant for the purpose of resolving the controversy involved in the present petition.

3. The question of revising the honorarium paid to retired Government servants who were appointed as Chairman/President and Members of various Tribunals was under consideration of the Government and the Government after careful consideration of this question issued resolution Annexure "F" dated December 4, 1979. The question which I have been called upto to answer in this petition is whether this resolution applies to the petitioner and whether he can claim honorarium as fixed under the said resolution. In the preamble of this resolution a specified reference is made to Government Resolution Annexure "A" dated May 25, 1971. Before referring to the decision of the Government contained in the resolution, it is important to refer to the opening part of the resolution which reads as follows : "The orders referred to in the preamble inter alia provide for grant of honorarium to retired Government servants who are appointed as Chairman/President and Members of various Tribunals." Thereafter the resolution proceeds to record the decision of the Government in the following words : "After

careful consideration, Government is pleased to decide that officers appointed on re-employment basis as Chairman/members on various tribunals should be allowed honorarium equal to pay and allowances drawn at the time of their retirement minus gross pension i.e. pension including pension equivalent of D. C. R. G. or the honorarium as admissible to re-employed persons under existing orders referred to in the preamble, whichever is higher". The decision of the Government embodied in the resolution relates to "officers appointed on re-employment basis". If the resolution is read as a whole, it is clear what is meant by the expression "officers appointed on re-employment basis". It can only mean retired Government Servants who are re-appointed to a post under the Government. The question of re-employment would arise only in case of a retired Government servant. When a Government servant who has retired is appointed again to a Government post, he is said to have been re-employed by the Government. No special meaning has been assigned to the expression "officers appointed on re-employment basis" used in the resolution. As pointed out above it obviously has reference to retired Government officers who are again appointed to a post under the Government. The said resolution Annexure "F" modifies the resolution Annexure "A" dated May 25, 1975 to the extent mentioned above. Therefore, both the resolution Annexure "A" and Annexure "F" will have to be read together for the purpose of finding out to whom resolution Annexure "F" applies. The combined reading of the said two resolution clearly brings out that resolution Annexure "F" applies to a retired Government servant who has been re-employed as President/ Chairman or Member of any Tribunal or Registrar's Nominee. In other words, the President/Chairman or Member of any Tribunal or the Registrar's Nominee would be entitled to claim honorarium as fixed under resolution Annexure "F". It may be recalled that under Clause (v) of the resolution Annexure "A" Registrar's Nominee on the Board of Nominees has to be treated on par with members of Tribunals. Therefore, for the purpose of resolution Annexure "F" the Registrar's Nominee on the Board of Nominees is to be treated as a Member of Tribunal or on par with Member of Tribunal.

4. Petitioner was a retired Small Cause Judge when he was appointed as Registrar's Nominee on the Board of Nominees. He was, therefore, a retired Government servant who was re-employed. There is nothing in the resolution Annexure "F" to indicate that the Registrar's Nominee on the Board of Nominees is excluded from its purview. If a retired Government servant is appointed as Registrar's Nominee on the Board of Nominees, he would be covered by resolution Annexure "F" he being "an officer appointed or re-employment basis". As already observed above, there is no special meaning assigned to the expression "officer appointed on re-employment basis" and, therefore, plain and ordinary meaning should be assigned to this expression. As indicated earlier, this expression means a retired Government servant who has been appointed again or in other words retired Government servant who has been re-employed. In spite of the above clear and unambiguous position, the Government by its letter Annexure "H" dated October 30, 1982, informed the petitioner that since his

appointment could not be considered to be on re-employment basis, he could not be given benefit of the resolution Annexure "F" dated December 4, 1979. It is not explained as to why petitioner cannot be treated as "Government servant who has been re-employment". No return is filed on behalf of the respondents explaining the stand taken up in the letter Annexure "H". I have no doubt whatsoever in my mind that petitioner is a Government servant who has been re-employed as Registrar's Nominee and he is, therefore, entitled to the benefit of resolution Annexure "F" dated December 4, 1979. There is absolutely no reason or justification for denying him the benefit of this resolution. Petitioner was, therefore, entitled to draw honorarium equal to pay and allowances drawn at the time of his retirement minus gross pension that is pension including pension equivalent of D. C. R. G. or the honorarium as admissible to re-employed persons under the existing order, Annexure "A" dated May 25, 1971 whichever is higher under the terms of the resolution Annexure "F" dated December 4, 1979.

5. In the result, this petition is allowed. The decision of the Government contained in letter Annexure "H" dated October 30, 1982, denying the benefit of the resolution Annexure "F" dated December 4, 1979 to the petitioner is quashed and set aside. It is declared that petitioner is entitled to the benefit of higher rate of remuneration as fixed under the Government Resolution Annexure "F" dated December 4, 1979 with effect from December 1, 1979 till he worked as Registrar's Nominee. Respondents are directed to fix the remuneration of the petitioner at the enhanced rate prescribed under Government Resolution Annexure "F" dated December 4, 1979 from December 1, 1979 and to pay the same to the petitioner within two months from the date of receipt of the writ of this Court. In case the respondents fail to pay the honorarium/remuneration as stated above they shall be liable to pay interest at the rate of 12 per cent per annum on the amount payable to the petitioner from May 14, 1981, the date on which the petitioner by his letter Annexure "G" demanded the payment of the honorarium/remuneration as per resolution Annexure "F" till the date of payment.

Rule made absolute with costs.