(2012) 05 GUJ CK 0037

In the Gujarat High Court

Case No : Letters Patent Appeal No. 237 of 2010 in Spl. C.A. No. 186 of 2010

B.T. Trivedi APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 1 GLR 30

Hon'ble Judges : R.R. Tripathi, J;G.B. Shah, J

Bench : Division Bench

Advocate : B.J. Trivedi with J.T. Trivedi and Ms. Jignasa B. Trivedi, for the Appellant; L.R. Pujari, A.G.P. for Respondent No. 1 and R.C. Kakkad, for the Respondent

Judgement

Ravi R. Tripathi, J.—Learned A.G.P. Mr. L.R. Pujari seeks permission to make necessary grammatical corrections in Para 6 of the further additional affidavit affirmed by A.H. Mansurti, Under Secretary to Government of Gujarat, Health and Family Welfare Department, Sachivalaya, Gandhinagar. Permission is granted.

1.1. Present Letters Patent Appeal is filed by the original-petitioner being aggrieved by the judgment and order dated 13-10-2010 by which the learned Single Judge of this Court is pleased to dismiss the petition summarily.

This Court is not able to restrain itself from observing right at the outset that the appellant-original petitioner, who incidentally happens to be a retired I.A.S. officer is before this Court advancing a thoroughly dishonest plea of "not having received the amount deducted from his honorarium though a resolution was passed for the same.

2. The controversy could have been placed at rest right at the stage of admission of the petition by saying that, ''it involves disputed question of fact'', namely, whether the amount if any, deducted from the honorarium on account of the petitioner receiving pension is paid or not is a pure question of fact. But then the

petition must have been entertained with a view to see that instead of driving a petitioner who happens to be not only a retired I.A.S. officer but also a retired Vice-Chancellor of Gujarat Ayurved University, if really required to be paid something, he need not be driven to Civil Court for filing a Civil Suit. In that case, then he would be waiting for his retiral dues, which could have been received only after a decree passed in the Civil Suit attains finality. This is borne out from the order of the learned Single Judge. For ready perusal order of the learned Single Judge is reproduced hereunder:

1. The petitioner has invoked Art. 226 of the Constitution for direction to reimburse Rs. 84,923-23 ps. together with running interest at the rate of 9% p.a. The petitioner is Ex-Vice-Chancellor of Gujarat Ayurved University and while serving as such paid total monthly emolument of Rs. 12,240/-. However, an amount of Rs. 4,000/- was deducted every month. Thereafter, by Government Resolution dated 15-7-2000, a fix salary or equivalent honorarium of Rs. 25,000/- per month was required to be paid with retrospective effect from 1-1-1996. While making the payment of arrears, the amounts actually paid to the petitioner were subtracted and the amount of difference being Rs. 2,66,487/- was paid.

2. It is now contended on behalf of the petitioner that since any deduction was not permissible from the monthly honorarium of Rs. 25,000/- the amount of Rs. 4,000/- deducted per month from the original salary was also required to be paid. Such claim of the petitioner appears to be based upon misconception and miscalculation insofar as the amounts of honorarium to which the petitioner was entitled was fully paid to him after deducting therefrom only the amounts, which were actually paid to him. Therefore, there cannot be a separate claim for Rs. 4,000/- per month on account of such amount having been deducted from the original salary of the petitioner. The calculation of arrears is duly explained in letter dated 17th April, 2008 (at Annexure-H) and no further claim is legally justified. Learned Counsel for the petitioner sought to press the fact that in communication dated 18-7-2007 (Annexure-G) figure of Rs. 6,14,645/- is shown to be payable while the actual total payment made to the petitioner is Rs. 5,30,645/-; but that discrepancy cannot by itself entitle the petitioner to any difference of salary in view of calculation accepted hereinabove. Therefore, the petition is summarily dismissed.

It is clear from the order that the petition was entertained in light of the peculiar facts of the case. The anxiety on the part of the Court to see that the petitioner gets his legitimate dues is not only misused but is stretched to such an extent that his conduct is found to be offending.

3. It is only on account of the misrepresentation by the petitioner that a simple question has attained complications and to that extent he is successful in creating all possible confusion/s.

4. To reiterate the facts, the petitioner being a retired I.A.S. officer is entitled to

receive pension. It is not the case of the petitioner that he did not get the amount of pension, which he was entitled to. Deliberately, the petitioner has not stated whether he received the amount receivable by him by way of pension. It is only when the learned A.G.P. invited attention of the Court to Annexure-1 to an affidavit-in-reply filed by Ms. Raksha Hathi, Under Secretary to Government of Gujarat, Health and Family Welfare Department, Sachivalaya, Gandhinagar, this fact is clearly brought on record. Annexure-1 is a tabular statement which shows that for a particular period (January, 1996 to October, 1997) the petitioner was entitled to receive an honorarium of Rs. 25,000/- per month. Now, this amount was paid after deducting Rs. 4,000/- because the petitioner was paid the amount due and payable to him as pension. Therefore, when the Government decided that the petitioner be paid full honorarium, Rs. 4,000/- which was deducted from the honorarium was to be repaid to him. Column No. 5 of this tabular statement shows ''an amount'' paid to the petitioner after deducting Rs. 4,000/-. Column 6 shows the amount is paid (after the decision was taken that Rs. 4,000/- was not to be deducted). The total of amount in columns 5 and 6 comes to Rs. 25,000/-.

5. This brings the matter to a stage where amount which was deducted from his honorarium of Rs. 25,000/- was made good by paying the amount mentioned in Column No. 6.

6. Now, any controversy or grievance can survive only and only if the petitioner was not paid his pension. In such an event, he could have contended that the amount which is not paid under the head of ''pension'' is required to be paid to him. But the petitioner has remained adamant and contended before this Court that once there is a Government Resolution dated 8th November, 2006, the Government must pay (either the Government or the Gujarat Ayurved University) separately showing to be the payment towards the amount deducted from his honorarium. This insistence is not only found to be misplaced, but also found to be mischievous. The Government Resolution dated 8th November, 2006 is produced at Annexure ''D'' page No. 19 of the appeal memo. Learned Advocate while reading this G.R. made all possible comments dissecting this G.R. ''word by word''. Learned Advocate also submitted that the Preface of Government Resolution is different whereas Resolution is different. Not only that he gave due recognition to the phrase used in the resolution, namely, "....., the phrase is translated by the learned Advocate for the petitioner to mean at the end of "mature consideration". Learned Advocate submitted that the fact that Resolution is passed only after ''mature consideration'' nothing further is required to be looked into except the strict compliance of he Government Resolution.

7. What is important is if the Government is able to point out to this Court that an error is committed in passing that Resolution, the Court is not expected to order compliance of that Government Resolution overlooking the mistake. Besides, it is pointed out to the Court that it has come to the notice of the Government, on perusing the file that the aforesaid Government Resolution is not found in original in the file, not only that, ''no notings are found in the file'' is

sufficient to allow the Government to have ''re-look'' in the matter. The fact that the appellant-original petitioner is the sole beneficiary of this Government Resolution dated 8th November, 2006 gives a reason to believe that this must have happened only at the instance of the petitioner. The Court has a reason to draw this inference and the reason is that when any irregularity is noticed presumption is to be drawn that the said irregularity has taken place at the behest of that irregularity.

8. The learned Advocate for the petitioner next submitted that the fact that the words used are ''the matter was under consideration of the Government'' is suggestive of the fact that everything was in order and it was only after taking into consideration the relevant facts that the Government passed the Government Resolution in question, and therefore, the Court must not go behind the Government Resolution and must not allow the Government also to go behind the Government Resolution and should see to it that the amount which is permitted to be paid to the appellant-original petitioner is paid to the petitioner. The learned Advocate for the appellant-original petitioner further insisted that the Government must show that the payment is made subsequent to the date of the Government Resolution. In the Government Resolution, it is mentioned that while making the payment to Shri B.T. Trivedi (retired I.A.S. officer), Ex-Vice-Chancellor, Gujarat Ayurved University, Jamnagar for the period 1-1-1996 to 7-10-1997, the amount of pension is deducted by the University, the sanction is accorded to pay that much amount to Shri Trivedi. It is also mentioned in the Resolution that these orders are passed pursuant to the sanction of the Finance Department on the file of even number, granting sanction by Note dated 23-1-2006. Taking advantage of the aforesaid phrase, learned Advocate for the appellant-original petitioner insisted that the Government must show that the payment of the amount deducted was made to the petitioner after the date of this Resolution. The basis of the submission of the learned Advocate is that the Resolution is passed at the end of "mature consideration". The Resolution specifically accords sanction to make payment of the amount which was deducted from the salary/honorarium payable to the petitioner for the period from 1-1-1996 to 7-10-1997. Learned Advocate for the appellant-original petitioner insisted that in absence of any proof coming on record that any amount is paid to the petitioner after 8-11-2006 (the day on which the Resolution was passed) is sufficient to hold that such amount is not paid to the petitioner.

9. In the considered opinion of this Court, there cannot be any misplaced argument than this. If the authority (Gujarat Ayurved University) is able to point out to this Court that, in all, Rs. 25,000/- was payable to the petitioner of which an amount of Rs. 11,800/- was paid to him (deducting Rs. 4,000/-, the petitioner was getting pension) and subsequently an amount of Rs. 13,200/- was paid to the petitioner bringing the total to Rs. 25,000/- per month. This Court is not able to understand and appreciate that then what remains to be paid to the appellant-original petitioner. Only because the authority did not pay an amount after 8th

November, 2006, branding it as payment of ''deducted amount'', it cannot be held that the petitioner is not paid the amount which was deducted from his honorarium.

10. The learned Advocate Mr. R.C. Kakkad appearing for the respondent made available for perusal a tabular statement, which is placed in support of the contents of letter dated 17th April, 2008 written by Principal Secretary, Health and Family Welfare Department, which is addressed to the appellant-original petitioner, a copy of which is produced at Annexure ''H'' page 26 of the appeal memo. There, it is specifically mentioned that in all an amount of Rs. 5,30,646/- was payable to the appellant-original petitioner at the rate of Rs. 25,000/- per month (in October only for 7 days, an amount of Rs. 5,645/- was payable which made the total amount to be Rs. 5,30,645/-). It is specifically mentioned that an amount at the rate of Rs. 11,800/-, totaling to Rs. 2,64,158/- was paid. Thereafter, an additional amount of Rs. 2,66,487/- is paid. The total of these two amounts comes to Rs. 5,30,645/-. The learned Advocate for the appellant-original petitioner, on instructions from the petitioner, is not ready to understand and accept this simple proposition contained in the said letter. It is effectively demonstrated by the aforesaid tabular statement that nothing more remains to be paid to the appellant-original petitioner.

11. As against this, learned Advocate for the appellant-original petitioner pressed into service other communications dated 20-6-2007, 30-5-2007 and 18-7-2007. These are the communications from the Joint Secretary, Health and Family Welfare Department, Gujarat Ayurved University - two of them are addressed to Vice-Chancellor Dr. S.S. Savarikar and one is addressed to the Registrar, Shri R.M. Jhala. The calculation set out therein is contrary to what is stated hereinabove. In all these three letters it is mentioned that an amount of Rs. 84,000/- was deducted towards pension. The amount of Rs. 84,000/- is mentioned twice, this could have been correct provided on one hand the appellant-original petitioner did not receive pension from the concerned authority and on the other the amount of Rs. 4,000/- was deducted from his honorarium/ salary. But as mentioned hereinabove, this is not the fact. The fact is that the petitioner did receive the pension which he was supposed to receive as mentioned in Annexure ''R-1'' and Annexure ''R-2'' annexed to the affidavit-in-reply filed on behalf of respondent No. 1 affirmed by one Ms. Raksha Hathi, Under Secretary to Government of Gujarat, Health and Family Welfare Department. Now if that is so, only Rs. 84,000/- was to be paid which stood paid when the petitioner was paid Rs. 2,66,487/-.

12. Learned Advocate for the appellant-original petitioner was granted time on 12th April, 2012, by passing the following order:

On 24th January, 2012, this Court (Coram : A.L. Dave & Mohinder Pal, JJ.) passed the following order:

After hearing the learned Advocate Mr. Trivedi and learned Advocate Mr. Kakkad, we are of the view that original records are required to be examined by this Court to ascertain whether the amount demanded by the petitioner has already been paid or not.

(Emphasis supplied)

2. A responsible officer from respondent No. 2-Gujarat Ayurved University, preferably, its Registrar, with a competent Accounts Officer, preferably, Chief Accounts Officer shall remain personally present before this Court with original record, at 11-00 a.m., on the next date of hearing, so as to explain the contents of pages 60 and 114, in particular.

3. Learned Assistant Government Pleader, Mr. L.R. Pujari shall see to it that an officer not below the rank of Deputy Secretary, Health and Family Welfare Department shall remain personally present before this Court, at 11-00 a.m., on the next date of hearing, to explain the contents of Government Resolution dated 8th November, 2006 to this Court. On a joint request made by learned A.G.P. Mr. L.R. Pujari for respondent No. 1 and learned Advocate Mr. R.C. Kakkad for respondent No. 2, the matter is adjourned to 18th April, 2012.

It will be in fitness of things if the officers from the Government and the authority (Gujarat Ayurved University) put their heads together and resolve the controversy involved in the matter by the next date of hearing.

13. After this order was passed, the matter was listed on 18-4-2012 and on 18-4-2012 this Court passed the following order:

1. Pursuant to order dated 12-4-2012, Shri R.M. Zhala, Registrar, Gujarat Ayurved University and Shri R.J. Mandalia, Chief Accounts Officer, Gujarat Ayurved University are present before the Court. Shri C.P. Thakor, Deputy Secretary, Health & Family Welfare Department, is also present before the Court.

2. Learned A.G.P. Mr. L.R. Pujari has produced on record a copy of resolution dated 17-4-2012, whereby resolution dated 8-11-2006 is cancelled.

3. A copy of Resolution dated 17-4-2012 is given to learned Advocate Mr. Trivedi for the appellant. Learned Advocate for the appellant wants some time to take instructions on the position emerging on issuance of this Resolution dated 17-4-2012, by which Resolution dated 8-11-2006 is cancelled.

4. At the request of the learned Advocate for the appellant, the matter is adjourned to 2-5-2012.

For the present, presence of the officers is dispensed with.

14. It was expected from the appellant-original petitioner, who is a retired I.A.S. officer and not a Class-III or Class-IV employee or an illiterate person, who may not be able to understand and appreciate the controversy involved in the matter, that he will understand the issue involved in the petition. It is only because the appellant-original petitioner refused to understand that the Court is constrained

to observe that the present litigation is a deliberate and calculated attempt on the part of the appellant-original petitioner to pocket an amount which he is not entitled to. The Court is not able to understand as to how can there be any confusion in a matter like this. Even at the cost of repetition, the Court feels it necessary to reiterate that,-

(i) ''The petitioner - appellant as a retired I.A.S. officer was getting pension'',

(ii) It is not his case that he did not get his pension.

(iii) As he was given an assignment of Vice-Chancellor, he was entitled to receive honorarium/salary.

(iv) As the law stood at the relevant time, an amount equivalent to the amount of pension payable to the appellant-original petitioner was deducted from the said honorarium/salary.

And

(v) Later on, law was amended and the appellant-original petitioner was to be paid back the amount deducted from the amount payable to him. It is on record that a total amount at the rate of Rs. 25,000/- per month is paid to the appellant-original petitioner.

15. This Court deems it proper and necessary to take a serious note of the averments made in the further additional affidavit affirmed by A.H. Mansuri, Under Secretary to Government of Gujarat, Health and Family Welfare Department, Sachivalaya, Gandhinagar wherein it is stated in Para 5.1 that-

5.1. I say that earlier affidavit-in-reply was filed on 26th August 2010 by the concerned Under Secretary, Government of Gujarat Mr. Sunil Kantilal Soni, and thereafter, entire affidavit is filed by the Under Secretary, Government of Gujarat Smt. Raksha Hathi on 6th October, 2010. In the said affidavit, they have given detailed statements regarding the payment made to the appellant towards honorarium from that it is very clear that the amount of honorarium which is entitled considering the period. It has been already paid to him and not entitle to any further amount towards the same. I clearly state that at the time of hearing of the petitioner, however I file this additional affidavit to bring to the notice of the Hon''ble Court that on proper perusal and examining the file relating to the present case it is noticed that no amount is payable on perusal and the consent given by the Finance Department on 23-2-2006 by its Note it was relating to not to recover the excess amount of arrears paid to him there was no any approval given by the Finance Department to make payment towards any amount deducted from the pension it also noticed that there was no any draft/noting made in the file of the department for issuing any such Government Resolution and there was no any original office order in the file, only the xerox copy of the scud Government resolution dated 8-11-2006 was passed by misinterpreting the noting made by the Finance Department without obtaining necessary approval from the Competent Authority the said Government Resolution was "void-ab initio", therefore by Government Resolution dated 17-4-2012 the said Government Resolution was cancelled by the Government and annexed hereto marked as Annexure and copy of Government Resolution dated 17-4-2012.

(Emphasis supplied)

16. The deponent has also stated in the said affidavit that even Government is at a loss to understand and find out as to how come the G.R. dated 8-11-2006 got generated. Because what is found by the Government is that there is no any original office order in the file. Not only that prima facie also the Resolution dated 8-11-2006 is passed under some misconception and the noting ought to have been considered and appreciated in a proper perspective i.e. if the Gujarat Ayurved University has already paid the amount @ Rs. 25,000/- per month then the amount which was deducted stood paid, and therefore, there was no reason for the Government to pass a Resolution saying that sanction is accorded to pay the appellant-original petitioner the amount deducted by the University. Assuming for the sake of argument that the Government passed a Resolution on 8th November, 2006, granting sanction to repay the amount deducted, to the petitioner, then it should have been interpreted to mean that sanction was granted retrospectively to the payment already made. The insistence on the part of the appellant-original petitioner that the amount must be paid after the date of the Government Resolution is not only unwarranted but mischievous.

17. In Para 6, it is stated that,-

6. I say that it is also decided to find out and inquire into under what circumstances the aforesaid Government Resolution was issued and who were the officers responsible for issuance of such Government Resolution without proper procedure and also taking the necessary action against them in accordance with law.

In view of this, the petitioner has already been paid the amount for which the petitioner is entitled to, and therefore, the claim of the petitioner for the remaining amount is not tenable.

18. It is settled law that even if an amount is ordered to be paid or paid under an error, the recipient of the same does not become entitled to such amount and he cannot be allowed to retain the same. In the present case, though Government Resolution is passed on 8th November, 2006, the appellant-original petitioner cannot insist that he must be paid the amount mentioned therein even if it has already reached to him. It was examined by the Court and was found that after the amount as stated by the Gujarat Ayurved University was paid, no other amount remains payable to the appellant-original petitioner. Therefore, the Resolution dated 8th November, 2006 can be construed to have granted retrospective sanction.

19. Learned Advocate for the appellant-original petitioner has filed a detailed ''further affidavit'' running into 24 pages and has taken all possible contentions

challenging the G.R. No. GAU/1004/4210/Chh dated 17-4-2012, whereby the Government has cancelled Government Resolution dated 8-11-2006. A copy of Government Resolution is placed at page No. 143 along with the affidavit of Mr. A.H. Mansuri. Learned Advocate for the petitioner very vehemently submitted that by virtue of G.R. dated 8-11-2006, a right had accrued in favour of the appellant-original petitioner and the same could not have been withdrawn or wiped off by the Government by another G.R. dated 17-4-2012, more particularly, by violating the principles of natural justice. The learned Advocate for the appellant-original petitioner invited attention of the Court to the submissions made and incorporated in ''further affidavit'' starting from page No. 145 (internal page No. 1) to page No. 162 (internal page No. 18). The submissions made therein are learned and suggest the pain taken by the learned Advocate, but then they are not required to be considered by this Court in the present case, because firstly, right if any, which is alleged to have been created in favour of the appellant-original petitioner by Government Resolution dated 8th November, 2006 was non-existent because as set out hereinabove the said Government Resolution was passed on misconception of facts. Secondly, in reality no right is withdrawn or wiped off by Government Resolution dated 17th April, 2012, because the amount which was sanctioned to be paid by Government Resolution dated 8th November, 2006 was already paid to the appellant-original petitioner. Therefore, all these submissions become academic and are not required to be dealt with by this Court.

20. This Court is conscious of the fact that in the event any right is created even by an error, the authority before withdrawing or wiping out that right, has to give an opportunity of hearing to the person, who is affected. But in the present case, no right is created in favour of the appellant-original petitioner by the said Government Resolution dated 8th November, 2006, because as stated hereinabove, the amount mentioned therein is already paid to the appellant-original petitioner, and therefore, these submissions are not to be considered by this Court.

21. In the ''further affidavit'', the appellant-original petitioner is willfully silent on the aspect of ''he having received the pension from an authority who was under an obligation to pay that pension to the petitioner''. In fact, on 2-5-2012 a specific query was put to the learned Advocate for the appellant-original petitioner in this regard and he was expected to answer the same pointing out to this Court whether he has received his pension or not. But the appellant-original petitioner has avoided to answer and has not placed any material to show that the appellant-original petitioner did not receive his pension or received lesser amount. At this juncture, reference to page Nos. 129 to 132 is very relevant. The amount payable to the petitioner for the period starting from "December, 1995" to November, 1997 is set out in a tabular form (Annexure R-2). The authority - Director (Pension and Provident Fund) has included ''December 1995'' and has shown that the amount for that period was paid to the petitioner on 1st January 1996, whereas the amount payable to him for the period from January 1996 to

November, 1997 is paid on 1st February, 2000. The contents of table were explained by the learned Assistant Government Pleader appearing for the State saying that in the month of December, 1995, the pension payable to the appellant-original petitioner was only Rs. 4,000/-, which came to be revised to Rs. 13,000/-. The enhanced pension of Rs. 13,000/- starting from January, 1996 till October, 1997 is paid to the appellant-original petitioner on 1st February, 2000, subject to necessary deduction on account of ''commutation''. The learned Assistant Government Pleader for the State further submitted that entry No. 1 in a table at page No. 131 is very indicative. It shows that in December, 1995, the appellant-original petitioner was entitled to receive Rs. 4,000/- by way of pension and after deduction of commutation of pension he was paid Rs. 3,192/- on 1-1-1996. Thereafter, on 1st February, 2000, he was paid at the rate of Rs. 13,000/- after deducting necessary amount towards commutation of pension. This is stated to reiterate that the petitioner has received the amount receivable by him under the head of ''pension'' from the concerned authority, who in this case is Director, (Pension and Provident Fund).

22. On the other hand, Gujarat Ayurved University who deducted the amount of Rs. 4,000/- from the salary/honorarium did make good the same by paying Rs. 2,66,487/- and thus the petitioner stood paid a total sum of Rs. 5,30,645/- at the rate of Rs. 25,000/- per month towards salary/ honorarium.

23. Coming to the larger question, here is a petitioner who approaches this Court by a petition praying that-

to allow this petition with costs and issue a writ of mandamus or any other appropriate writ, direction or order in the nature of writ, enjoining upon and directing the respondents to reimburse him Rs. 84,923-23 p., together with running interest at 9% per annum for the period from the time it became payable until the time it is actually made;...

24. The petition was considered by this Court and was summarily dismissed. Against that order, the petitioner filed Letters Patent Appeal in which respondent No. 2 filed an affidavit-in-reply affirmed by one R.M. Jhala, Registrar, Gujarat Ayurved University and the deponent has stated in Para 5.3 as under:

5.3. With reference to grounds Para-C of the memo of appeal, I respectfully submit that as per the provision of the Statute Vice-chancellor is entitled to get honorarium of Rs. 25,000/-. It is submitted that for the period from 1-1-1996 to 7-10-1997 has to pay Rs. 5,30,645/- to the appellant out of which Rs. 2,64,159/- has been paid as per salary slip of every month and arrears amount of Rs. 2,66,486/- has been paid by draft bearing No. 579270/1621 dated 3-10-2000 thus total amount of Rs. 5,30,645/- has already been paid to the appellant for which the appellant was entitled. It is submitted that he has regularly paid Rs. 25,000/- per month for which the appellant was entitled and other amount of pension has already been paid to the appellant thus all the amount has already been paid to the appellant and now no any further amount remain unpaid, meaning thereby no further amount is required to be paid to the appellant. It is pertinent to note that as per the demand of the appellant if Rs. 4.000/- per month is to be paid further then honorarium would be Rs. 29,000/- for which appellant was not entitled, it is clarified that the appellant was entitled for Rs. 25,000/- per month as honorarium.

(Emphasis supplied)

Learned Advocate for the appellant strongly objected to the use of the word ''regularly'' in the aforesaid Paragraph and stated that the amount of arrears was paid in the year 2000 only, and therefore, to say that the petitioner was paid Rs. 25,000/- per month ''regularly'' is not correct.

25. In the opinion of this Court, the aforesaid submission is too technical. What is submitted by the deponent is whatever amount was payable to the petitioner before the amount was raised to Rs. 25,000/- was paid to him regularly. Besides, soon after the amount was enhanced to Rs. 25,000/- the difference was paid to the appellant-original petitioner on 3rd October, 2000. That being so, the objection on the use of word ''regularly'' raised by the appellant-original petitioner is found without any merit and the same is rejected. The question which falls for consideration of this Court is that after the aforesaid affidavit was filed, the appellant-original petitioner ought to have gracefully withdrawn the appeal along with the petition, but instead of that the petitioner insisted that the contents/averments of the aforesaid affidavit are not correct and the appellant-original petitioner is entitled to Rs. 84,923-23 paise with running interest at the rate of 9% per annum for the period from the time it became payable until the time it is actually made. This claim of the petitioner is found to be not only misconceived and misplaced, but mischievous by this Court. Taking advantage of the language used in G.R. dated 8-11-2006, the appellant- original petitioner insisted that as the Government Resolution is passed on 8-11-2006, the authorities must show to the Court that the amount ''deducted'' is paid after the date of the G.R. The logic advanced was that if the amount had already been paid prior to the date of the Resolution then the Government would not have passed that Resolution. Only because a G.R. is passed, does it confer a right on a petitioner to receive that amount even if there is an apparent error? The answer is ''No''. The petitioner can approach this Court more particularly under Art. 226 of the Constitution of India only with clean hands and could press into service his legitimate rights and not rights which according to him have been created in his favour on account of some erroneous Resolution having been passed.

26. As discussed hereinabove, assuming for the sake of argument, there is an error in passing the Government Resolution dated 8th November, 2006, but then that will not entitle the appellant-original petitioner to receive the amount afresh which is already received by him. Therefore, the action of the appellant-original petitioner is found to be not only unreasonable, unjust and improper but also mischievous to that extent, and therefore, this Court deems it proper to dismiss the appeal with exemplary costs. This Court also deems it proper to make the

deposit of this cost to be condition precedent for filing any further proceedings in the matter.

27. This Letters Patent Appeal is dismissed with cost of Rs. 1,00,000/- (Rupees one lakh only). The amount claimed by the so-called mischievous petitioner is Rs. 84,923-23 paise with interest at the rate of 9%, and therefore, we deem it proper to impose the cost as aforesaid. It is a settled law that the justice should be done with mercy, but there is another saying also "mischiefs must not go unpunished." It is also well-known that "mistakes are to be pardoned and mischiefs are to be punished." In this case, on the aforesaid facts, this Court is of the opinion that the appellant-original petitioner has filed this frivolous petition and not only that after the respondent filed reply in the Letters Patent Appeal, he did not allow the wisdom to prevail on him. It is on record by way of affidavit filed by the Gujarat Ayurved University as well as by the Government that the appellant-original petitioner was paid the amount which was deducted from the honorarium as mentioned in the affidavit on 3-10-2000 by Demand Draft and the amount of arrears of pension was also paid to him on 1-2-2000. In G.R. dated 8-11-2006 it is mentioned that the Government has decided not to recover the amount of Rs. 2,09,924/- paid to the petitioner in excess towards the arrears. At the request of the learned Advocate for the appellant-original petitioner, the Court restrains itself from going into that issue otherwise, prima facie, there appears no justification as to why any amount paid in excess towards the arrears should not have been recovered from the appellant-original petitioner.