
(1991) 07 GUJ CK 0012
In the Gujarat High Court
Case No : Spl. C.A. No. 3356 of 1980

C.G. Govindan

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-07-1991

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 10, 4
Constitution of India, 1950 — Article 226, 309

Citation : (1992) 2 LLJ 473

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

1. This petition under Art. 226 of the Constitution of India raises interesting question of interpretation of Resolution issue by the Finance Department, Govt. of Gujarat, dated July 25, 1980. Is an employee entitled to commuted leave in case of sickness of any member of his/her family who is though not economically, socially or otherwise dependent on such employee ?

The petitioner who was serving as Personal Assistant (Steno. Gr. I) in the City Civil Court at Ahmedabad applied for commuted leave for six days since his real sister was admitted to Seth V S Hospital with effect from September 10, 1980 to September 16, 1980. The application was made so September 25, 1980. His unmarried sister was staying with him and since she was suddenly taken ill she had to be hospitalised and the petitioner being only the mate member in the family was required to attend to her in the hospital for six days.

2. The application of the petitioner for commuted leave came to be rejected vide order, dated November 20, 1980 by the Principal Judge of the City Civil Court inter alia, on the ground that the petitioner was not entitled to commuted leave on the ground of sickness of his real sister as she was an earning member. It is admitted position the sister of the petitioner was serving in a private institution and her salary was around Rs. 1,000/- p.m.

3. The provisions for grant of leave are to be found in the Revised Leave Rules.

1935. They were framed in exercises of powers exercised under Civil Services (Classification, Control and Appeal) Rules and after coming into force of the Constitution of India, the same are treated as Rules framed under Art. 309 of the Constitution of India. It may be noted that these revised leave rules are now incorporated in Bombay Civil Services Rules. The word "Commuted Leave" is defined by Rule 4(vi) to mean leave taken under sub-rule (c) of Rule 10. The word "leave" includes Earned Leave, Half-pay Leave, Commuted Leave, Rule 10(c) deals with "commuted leave" and it provides that "commuted leave not exceeding half the amount of half pay leave due may be granted on medical certificate only to a Govt. servant in permanent employment subject to following conditions :

"(i) Commuted leave during the entire service shall limited to a maximum of 240 days.

"(ii) When commuted leave is granted, twice the amount of such leave shall be debited against the half pay leave.

(iii) The total duration of earned leave and commuted leave taken in conjunction shall not exceed 200 days."

From the provisions of said rules it becomes clear that a Govt. servant in permanent employment of the Govt. is entitled to half-pay leave to the extent of 20 days for each completed year of service. The half-pay leave due may be granted to a Govt. servant on medical certificate or on private affair. The commuted leave not exceeding half the amount of half pay leave is once again an entitlement of a Govt. servant subject to conditions referred to hereinabove. It becomes clear from this rule that when a Govt. servant applies for commuted leave, twice the a mount of such leave shall be debited against the half-pay leave due. He therefore, does not make any monetary benefit either for himself or for the members of his family. In fact, while applying for commuted leave the Govt. servant is losing twice the amount of his half-pay leave which would have been otherwise admissible to him.

4. Having seen this concept of "commuted leave" it will be necessary to refer to the Resolution issued by the Finance Department of State of Gujarat being Resolution No. LVE-1080/2251/P, dated July 25, 1980. Since the preamble of the said resolution is relevant for the purpose of determining the intention of the authority it is necessary to reproduce said resolution in its entirety :

"At present commuted leave not exceeding half the amount of half pay leave is granted to a Govt. servant on medical certificate for his/her sickness only subject to the fulfilment of other conditions mentioned in the Revised Leave Rules 1935 as amended from time to time. Several representations have been received by the Govt. from the Federations of State Govt. employees requesting for enlarging the scope of the admissibility of the commuted leave.

After careful consideration and in amplification of the existing provisions relating

to grant of commuted leave, Government is pleased to decide that Government servant may be granted commuted leave also in case of sickness of any member of his/her family, who is dependent on the Govt. servant.

The medical certificate which is now necessary in respect of the Government servant shall also be necessary when commuted leave is asked for on the grounds of sickness of any of the dependent members of the family of Government servant."

It may be noted that this resolution is passed by the State Govt. with a view to enlarging the scope of the admissibility of the commuted leave. After considering the representations received from the Federation of State Government employees the State Government has in amplification of the existing provisions relating to granting of commuted leave decided that a Government servant may be granted commuted leave also in the case of sickness of any member of his/her family who is dependent on the Government servant.

5. What does the word "dependent" mean ? Is it referable solely to economic or financial dependence ? Can it be applied to social dependence or dependency arising from other circumstances ? In order to be eligible to earn the benefit of this resolution the dependent must be economically or financially dependent on the Government servant, is the assertion made by the State Government through its Ld. AGP, Mr. B. M. Mangukia. On the other hand, Mr. A. K. Clerk, Ld. Advocate for petitioner submits that the word "dependent" shall have to be given its widest possible meaning, firstly because the Government has not thought it fit to restrict the benefit in the case of economic dependence only. He secondly submits that the purpose of issuance of Government resolution was to enlarge the scope of admissibility of commuted leave and that purpose would be defeated if narrower construction is given to the words employed in the resolution. He thirdly submits that when the State Government has not used the words "economically dependent" or "financially dependent" it would not be permissible for the court or for the Government to restrict the scope of the resolution when the objective was to enlarge or to amplify the scope of the admissibility of commuted leave, and the infirm or aged father or mother with regular flow of income savings or with regular flow of income from business, though dependent in every sense socially or physically on their son or daughter who happens to be Government servant would be taken out of the term "dependent" if narrower meaning is given to the said term. Mr. Clerk further submits that the resolution shall have to be read purposefully and meaningfully and in the context of the fact that in response to the demand from the Federation of Government employees the Government in fact wanted to enlarge the scope of admissibility of commuted leave. Realities of the present life shall have to be accepted and shall have to be countenanced while interpreting said resolution.

6. The life style of the people shapes the profile of the land and not vice versa. Law, not being an abstraction but a pragmatic exercise, the legal inference to be

drawn from a govt. resolution is conditioned by the attendant circumstances. The intention of the Government in issuing resolution is to be gathered from the preface of the resolution and it has to be gathered from the social milieu. The constructions of Government resolution divorced from the attendant circumstances and the need for issuance of such Government resolution, would deprive the resolution of its very soul. So long as it survives as document laying down policy or guidelines a judicial peep in the official files to ascertain the executive intention is essential and desideratum. Such beneficial Government resolutions which are intended to extend the benefit of commuted leave cannot be and should not be deprived of their legitimate area of operation by introduction of words which are not there. To say that "dependent" would include "dependent economically or financially" is firstly re-writing the resolution and secondly it would be impermissible exercise to restrict the natural meaning of the word "dependent". Such a meaning would deprive a large number of Government employees from benefit of commuted leave if they are required to attend their infirm dependents who are socially or otherwise in all respects dependents on them solely on the ground that financially they are well of or they had the regular flow of income. When by Government resolution some benefit is sought to be conferred on the class of Government employees which in its turn does not result into any financial loss to the government the approach should be to extend that benefit but not to unduly restrict the same by reading something from without which is not there within. Reference in this connection may be made to the decision of the Supreme Court, in the case of Baldev Sahai Bangia Vs. R.C. Bhasin, . In the context of as to how a beneficial resolution should be interpreted the Supreme Court made certain observations. Question before the Supreme Court was as to whether a tenant who has shifted to foreign country leaving his mother, sister and brother in tenanted house can be said to have ceased to occupy the house. What meaning should be given to the word "family" and whether it should be restricted to be a mere family of the tenant himself consisting himself, wife and children or should it be extended to his mother, brother, sister and father who were residing with him was the question before the Supreme Court. Supreme Court observed as under (Para 17) :

"A conspectus of the connotation of the term "family" which emerges from a reference to the aforesaid dictionaries clearly shows that the word "family" has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members of descendants from the common ancestors who are actually living with the same head. More particularly, in our country blood relations do not evaporate merely because a member of the family the father, the brother or the son leaves his household and goes out for sometime."

The Court further observed that the beneficial provision must be meaningfully constructed so as to advance the object of the Act, and curing any lacuna or defect appearing in the same. This very principle was pithily brought out by Lord Atkin in the case of AIR 1944 35 (Privy Council) in following words :

"The words of a remedial Statute must be constructed so far as they reasonably admit so as to secure that the relief contemplated by the Statute shall not be denied to the class intended to be relieved."

From the aforesaid principle it becomes clear that the word "dependent" occurring in the resolution shall have to be given wider meaning so as to include not only economically or financially dependents but also those persons who are socially dependents or dependents for several other necessities of life. The word "dependent" shall have to be meaningfully and purposively construed. Any narrow interpretation to the said word would, in fact denude the resolution of its content. In the case of S.P. Jain Vs. Krishna Mohan Gupta and Others, , Justice Sabyasachi Mukherji (as he then was) applied this very principle and observed as under (para 18).

"We are of the opinion that law should take pragmatic views of the matter and respond to the purpose for which it was made and also take cognizance of the current capabilities of technology and life style of community. It is well settled that the purpose of law provides a good guide to the interpretation of the Act. Legislative futility is to be ruled out so long as interpretative possibility permits."

7. I am, therefore, of the opinion that the word "dependent" occurring in the resolution dated July 25, 1980 shall have to be given a wider meaning so as to include those who are socially or otherwise dependent on Government servant irrespective of their financial condition. Perhaps, consistent with this meaning which I intend to give to the word "dependent" this court also in its administrative side granted commuted leave to two Judges of the City Civil Court in the case of sickness of their father and mother as is pointed out by the petitioner in his affidavit-in-rejoinder. I am, therefore, of the opinion that the decision of the Principal Judge of the City Civil Court to reject the application for commuted leave of the petitioner is required to be quashed and set aside and on the interpretation stated hereinabove it is required to be declared that the petitioner was entitled to commuted leave as per the Government Resolution dated July 25, 1980 Annexure "B" to the petition.

8. In the result, petition succeeds. Application of the petitioner for six days from September 11, 1980 to September 16, 1980, dated September 22, 1980 is hereby granted and the other, dated November 20, 1980 Annexure "C" to the petition is hereby quashed and set aside. Rule made absolute accordingly with no order as to costs.