

(2013) 04 GUJ CK 0070

In the Gujarat High Court

Case No : Special Civil Application No. 17342 of 2012

Dhananjay Natvarlal Buch

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) LabIC 2602

Hon'ble Judges : R.R. Tripathi, J;R.D. Kothari, J

Bench : Division Bench

Advocate : Shirish Joshi, for the Appellant; Prakash Jani, LD. Government Pleader, Harsheel Shukla, AGP Sr. Advocate, Shalin Mehta and Hemang M. Shah, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—The matter was heard at length. Learned Advocate Mr. Shirish Joshi was heard for the petitioner. Learned Senior Advocate Mr. Shalin Mehta with learned advocate Mr. Hemang M. Shah was heard for the High Court of Gujarat and learned Government Pleader Mr. P.K. Jani with learned AGP Mr. Harsheel Shukla was heard for respondent Nos. 1 and 2. After the matter was heard at length, it was deemed proper to dispose of the same with the following directions, to which none of the learned advocates could convince this Court for not taking that course of action.

2. The facts of the case are that the petitioner joined the services as Judge, Labour Court in the month of October, 1986. It so happened that in the year 1996, the Departmental Promotion Committee met and decided to promote the other Judges of the Labour Court, who were juniors to the petitioner in same cadre. The reasons which came forward were that the petitioner was issued a charge-sheet on 7.6.1996 and that his probation period was continued, as he had not passed the departmental examination which he was required to pass under 1970 Examination Rules.

2.1 Learned advocate for the petitioner in this regard invited attention of the Court to a glaring fact that the charge-sheet pertained to an alleged misconduct on the part of the petitioner while he was Assistant Public Prosecutor between 24.8.1982 and 10.9.1986. Learned advocate submitted that whether so called misconduct on the part of the petitioner could have been the basis for issuing a charge-sheet while he was serving as Judge, Labour Court since October, 1986. The answer will be emphatically "No".

3. The facts then proceed further to the effect that on 25.10.1999, the High Court got the administrative control over "the judiciary dispensing justice in the labour cases" (labour judiciary). The petitioner continued to serve as Judge, Labour Court, reached the age of superannuation and retired on 31.12.2002.

3.1 It is the case of the petitioner that the Judges serving as Labour Court Judges were not required to pass the departmental examination under the 1970 Examination Rules. Not only that the learned advocate for the petitioner invited the attention of the Court to the fact that, the petitioner was granted exemption from passing the said examination and was communicated the same by communication dated 13.5.1991. After having received the intimation of grant of exemption, the petitioner made a request to the then Controlling Authority (the Government) to give him appointment on regular basis (as he was continued on probation on account of non passing of examination). On 20.2.1992, he was given appointment on long term basis.

3.2 It appears that the misfortune was bent upon to follow the petitioner on different occasions under different shades and that is why, on 10.8.1993 the Government decided that the exemption granted to the petitioner is uncalled for and the said decision was communicated to the petitioner by communication dated 10.8.1993. The petitioner challenged this decision/communication by filing SCA No. 10906 of 1993 wherein he was granted ad-interim relief and that continued until the petition came to be disposed of by order dated 25.3.2004 as having become infructuous on account of retirement of the petitioner on reaching the age of superannuation. It will be appropriate at this stage to mention that in the year 1995-96, the Government again decided that the post of Labour Judge held by the petitioner is such wherein the examination in question is not required to be passed and that decision is unaltered till date.

4. In short, it comes out that the petitioner was deprived of the promotion in the year 1996 by the Departmental Promotion Committee on the ground that (i) the petitioner is served with a charge-sheet dated 7.6.1996 and that (ii) the petitioner is on probation as he had not passed the departmental examination. But then the Government had finally come to the conclusion that Judges of the Labour Court are not required to pass the departmental examination on 19.9.1995. So far as the Departmental Inquiry which was ordered in the subject matter of the aforesaid charge-sheet was finally dropped by the High Court (as the High Court came into administrative control of the Labour Courts) on 28.11.2008. That being so, the Departmental Promotion Committee constituted

on 16.2.1996 could not have decided on 9.10.1996 that petitioner cannot be promoted as he is still on probation. After the decision dated 19.9.1995, the Departmental Promotion Committee had no reason to consider that the petitioner is on probation on account of non passing of the examination and to that extent, the factor which was taken into consideration by the Departmental Promotion Committee was extraneous and vitiated its decision.

5. In light of the aforesaid facts, the petitioner was wrongly denied promotion by the Departmental Promotion Committee in the year 1996. Both the grounds, on which he was denied promotion, became "non est". The inquiry came to be dropped in the year 2008 and the exemption which was once granted, later on withdrawn was again granted on 19.9.1995.

5.1 There is no "dispute" or "contest" to the aforesaid facts. To that extent, they can be said to be facts admitted by the parties".

5.2 Learned Government Pleader did invite attention of the Court to two more facts; (i) that though the juniors of the petitioners were promoted in the year 1996, he did not challenge that action of either promoting the juniors or not promoting the petitioner, and (ii) though the inquiry was dropped in the year 2008, the petitioner did not approach this Court until the present petition is filed in the year 2012.

5.3 Technically, it can be said that the petitioner has approached this Court belatedly. But then, whether this delay has caused any prejudice to any other party, is the factor which is required to be taken into consideration. Coupled with that, it is also required to be taken into consideration that the Judge who was charge-sheeted in the year 1996 and due to that, his case was not considered by the Departmental Promotion Committee, may not be in such state of mind that he can challenge the decision of Departmental Promotion Committee until he gets himself but of that charge-sheet. In light of that, even if the petitioner has approached late to this Court, the same can be taken into consideration at the time of granting the relief to the petitioner.

6. Taking into consideration the aforesaid facts, this Court is of the opinion that the interest of justice will be met if the High Court on its administrative side is asked to recommend the case of the petitioner to the Government to consider and give promotion to the petitioner from the date his juniors were given promotion on the basis of the Departmental Promotion Committee in the year 1996. This direction is required to be given because both the factors on which the Departmental Promotion Committee did not consider the petitioner fit for promotion had become non est subsequently and therefore, injustice which is done to the petitioner is required to be redressed.

7. The petitioner in this behalf has prayed for the following reliefs in Clause (A) of Para. 20 which is reproduced for ready perusal:-

20(A). This Hon"ble Court may be pleased to issue appropriate writ, direction

and/or order in the nature of mandamus or any other writ, order or direction directing the respondent Nos. 1 and 2 to immediately issue an order of promotion to the post of the Member of the Industrial Tribunal with effect from 8.5.1997 or earlier than that, to the petitioner, then to extend him all the benefits resulting out of such promotion including placing the petitioner in the list of seniority of Ld. Members of the Industrial Tribunal with effect from 8.5.1997 and to extend benefits of said post and also to issue the order of promotion to the post of the President of the Industrial Tribunal, if the petitioner was according to his seniority in the cadre of the Member of the Industrial Tribunal would so permit and provide. Resultantly, petitioner's pension may be fixed in the post of the Member of the Industrial Tribunal or that of the President of the Industrial Tribunal with effect from 8.5.1997 and to release him all the monetary benefits arising out of the aforesaid promotions forthwith.

8. Taking into consideration the reliefs prayed for, (i) once the High Court on its administrative side recommends the case of the petitioner to the Government for deciding the same with sympathetic approach about his promotion to the post of Member, Industrial Tribunal, the Government will consider the same and will pass necessary orders in this regard, (ii) So far as his promotion to the post of President, Industrial Tribunal is concerned, the petitioner is very fair in seeking relief i.e. "if according to seniority, he had become entitled to get the promotion to the post of President, Industrial Tribunal, his case is required to be considered". The High Court on its administrative side should recommend his case for consideration for promotion to the post of President, Industrial Tribunal and the Government should then consider his case for the same, (iii) Once the High Court on its administrative side recommends the case of the petitioner and the Government considers the same with due sympathy and passes the necessary orders, the appropriate effect thereof in terms of monetary benefit be given to the petitioner. It is clarified that the petitioner should be then treated to have retired from services (on reaching the age of superannuation on 31.12.2002) from the post to which he is found eligible and promoted pursuant to the aforesaid directions and all post-retiral dues should be paid on that basis.

8.1 Taking into consideration the delay aspect and the submissions made by the learned Government Pleader in that regard, the petitioner will not be given any difference of pay for the period from 1997 to 31.12.2002 i.e. the salary he received as a Judge, Labour Court and the salary which he would have received as Member, Industrial Tribunal or President, Industrial Tribunal.

9. At the request of learned advocate Mr. Joshi, taking into consideration the age of the matter and the age of the petitioner, it is expected that the High Court on its administrative side will make recommendations as early as possible preferably by 31.5.2013. The Government is also expected to act as expeditiously as possible and pass necessary orders within six weeks from the date of receipt of recommendations from the High Court. It will be a matter of appreciation if the petitioner is able to get the consequential benefits of the orders which may be

passed by the Government of Gujarat in terms of enhanced retiral dues and pension etc. The petition is allowed to the aforesaid extent, with no order as to costs. Rule is made absolute to the aforesaid extent only.