

(2014) 02 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 12642 of 2013

Dharmendrasinh Govindji Makwana

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 02 GUJ CK 0009

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : A.S. Supehia, for the Appellant; D.M. Devnani, Asstt. Govt. Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. D.M. Devnani, learned Assistant Government Pleader, waives service of notice of Rule for the respondents. On the facts, and in the circumstances of the case and with the consent of the learned counsel for the respective parties, the petition is being heard and finally decided, today. This petition, under Article 226 of the Constitution of India, has been preferred, inter alia, with a prayer to quash and set aside the orders dated 01.06.2013 and 13.06.2013, passed by respondent No. 3 and, further, to direct the respondents to grant the second higher pay-scale of Rs. 5000-8000 with effect from 15.06.2005, to the petitioner and revise his pay-scale as per the Gujarat (Revision of Pay) Rules, 2009.

2. The case has a checkered history. The petitioner was appointed on the post of Lino Bar Attendant on 15.06.1981. By an order dated 29.08.1992, the petitioner was granted the first higher pay-scale of Rs. 1350-2200 of the post of Lino Operator with effect from 16.09.1990. On introduction of the Revision of Pay Rules with effect from 1996, the pay-scale of the petitioner was revised to Rs. 4500-7500 with effect from 01.01.1996, by the order dated 28.01.1998.. By an order dated 07.01.2009, the aforesaid benefits which the petitioner had received

because of the higher grade scale and pay revision came to be cancelled and a recovery of Rs. 5,47,000/- was ordered by monthly installments of Rs. 5,000/-. Being aggrieved by the aforesaid order, the petitioner filed Special Civil Application No. 171 of 2009 before this Court challenging the same. By an order dated 12.02.2009, passed by this Court in the aforesaid petition, the order dated 07.01.2009, passed by the respondents was quashed and set aside on the ground of violation of the principles of natural justice. The respondents were directed to pass a fresh order after granting an opportunity of hearing to the petitioner.

3. After hearing the petitioner, respondent No. 3 passed an order dated 01.07.2009, maintaining his earlier order dated 07.01.2009. This order was challenged by the petitioner by filing a second petition, being Special Civil Application No. 7388 of 2009. By judgment dated 29.07.2010, the petition came to be allowed. It was observed by this Court in the aforesaid judgment that the orders dated 07.01.2009 and 01.07.2009 are quashed. The respondents were directed to refund the amount recovered from the petitioner. It was further observed that the petitioner shall be deemed to have received the second higher grade scale of Lino Operator with effect from 16.09.2005. The State Government filed Letters Patent Appeal No. 976 of 2011 against the aforesaid order which came to be dismissed on 04.07.2011. After dismissal of the Letters Patent Appeal, respondent No. 3 passed an order dated 14.06.2011, whereby the pay-scale of the petitioner was reduced with effect from 01.01.2006. By the said order, the basic pay of the petitioner came to be reduced from Rs. 13960/- to Rs. 10220/- with effect from 01.01.2006. His grade pay was also reduced from Rs. 2800/- to Rs. 2400/-. The petitioner filed a third petition in this Court, being Special Civil Application No. 8079 of 2011, challenging the order dated 14.06.2011. By an order dated 28.12.2011, this Court disposed of the petition by directing the respondents to examine the case of the petitioner in accordance with law. After hearing the petitioner, respondent No. 3 re-fixed the pay-scale of the petitioner vide the impugned order dated 01.06.2013 and ordered consequential recovery. This order is impugned in the present petition. By a consequential order dated 13.06.2013, respondent No. 3 directed recovery of an amount of Rs. 2,09,960/- in installments of Rs. 6,000/- per month from the pay of the petition. This is the second order that is impugned in the present petition.

4. Mr. A.S. Supehia, learned advocate for the petitioner, has submitted that the impugned orders are against the letter and spirit of the judgment dated 29.07.2010, passed in Special Civil Application No. 7388 of 2009, which has been confirmed by the Division Bench. It is submitted that in spite of specific directions contained in the said judgment that no recovery ought to be made from the petitioner, such recovery has been directed to be effected by the impugned order. In fact, the Court had directed the respondents to refund the amount recovered from the petitioner. It is further submitted that this Court, vide aforementioned judgment, has held that the petitioner shall be deemed to have received the second higher grade scale of Lino Operator with effect from

15.06.2005, therefore, the grade-pay of the petitioner could not have been reduced by the impugned order.

5. Mr. D.M. Devnani, learned Assistant Government Pleader, has submitted that the earlier affidavit-in-reply filed by respondent No. 3 on 29.08.2013, is a result of improper understanding of the judgments and orders of this Court. Now the said respondent has filed another affidavit, affirmed on 04.02.2014, wherein the said respondent has tendered an unconditional apology for inadvertently misconstruing the aforesaid judgment of this Court. It is submitted that now, by filing the affidavit dated 04.02.2014, on behalf of respondent No. 3, wherein an unconditional apology has been tendered by the deponent thereto, it is stated that further order dated 29.01.2014, has been passed, whereby, the orders of recovery have been cancelled.

6. At this stage, learned advocate for the petitioner submits that as nothing is stated in the said affidavit regarding the pay-fixation of the petitioner, directions may be issued to the respondents to fix the pay of the petitioner in light of the judgment dated 29.07.2010, passed in Special Civil Application No. 7388 of 2009.

7. Mr. D.M. Devnani, learned Assistant Government Pleader, submits that the apology tendered by respondent No. 3 in the affidavit dated 04.02.2014, may be accepted, as the orders for recovery against the petitioner have now been cancelled by an order dated 29.01.2014. It is further stated by the learned Assistant Government Pleader, upon instructions from Shri Bholusingh Gangasingh Thakur, who is the deponent of the affidavit dated 04.02.2014, and is personally present in the Court today, that the pay-fixation of the petitioner shall be made in light of the directions issued by this Court in judgment dated 29.07.2010, passed in Special Civil Application No. 7388 of 2009.

8. Having heard learned counsel for the respective parties and considering the affidavit dated 04.02.2014, filed on behalf of respondent No. 3 and the unconditional apology tendered therein, this Court thinks it fit to accept the apology, in view of the fact that by order dated 29.01.2014, the orders of recovery against the petitioner have been cancelled. Further, learned Assistant Government Pleader has stated before the Court, under instructions from the deponent of this affidavit, that the pay-fixation of the petitioner shall be carried out in light of the judgment dated 29.07.2010, passed in Special Civil Application No. 7388 of 2009. It, therefore, appears that the grievances of the petitioner have been substantially redressed.

9. In the result, the petition is partly-allowed. The pay-fixation of the petitioner shall be carried out in light of the judgment dated 29.07.2010, passed in Special Civil Application No. 7388 of 2009. The respondents are further directed to take consequential action upon the order dated 29.01.2014, passed by respondent No. 3, and the amount to be refunded to the petitioner, shall be paid to him. The respondents shall pass fresh reasoned orders in accordance with law and in light of the judgment dated 29.07.2010, rendered in Special Civil Application No. 7388

of 2009, after granting the petitioner an opportunity of hearing. The entire exercise shall be undertaken by the respondents within a period of six weeks from today. Rule is made absolute, to the above extent. There shall be no orders as to costs.