
(2005) 05 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 9864 of 2003

Dr. Nalini V. Dave

APPELLANT

Vs

Government of Gujarat and Others

RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 108 FLR 100 : (2005) 3 GLR 1844

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : R.D. Dave, for the Appellant; P.D. Bhate, A.G.P. for Respondent Nos. 1, 2, 4 and 5 and A.R. Thacker, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—The petitioner, in this petition, after having worked for 34 years, as an Academician in the Faculty of Commerce of respondent No. 3-University, has not been paid the pensionary benefits, including Gratuity and other incidental benefits, arising out of the service and employment with respondent No. 3, though she has retired almost 5 years before; and having failed in receiving due and payable pensionary benefits, and despite repeated and sincere efforts, as a measure of last resort, she has knocked the doors of this Court, by invocation of the provisions of Article 226 of the Constitution of India, inter alia seeking directions against the respondent-authorities for payment of retiral dues and benefits.

2. With a view to evaluate and examine the merits of the petition and the challenge against it, let there be, at the outset, spectrum of material facts and skeleton projection of the profile of the basis for claiming the pensionary benefits, which have been denied, despite the fact that the petitioner has retired almost 5 years before.

Preambular Profile of Facts :

After having heard the learned Advocates appearing for the parties and considering the relevant and material facts emerging from the record of the present petition, the following aspects have emerged unquestionably :

(i) On 15-6-1996, the petitioner had joined services as a Lecturer in the College, known as "P. D. Malaviya College of Commerce" ("Commerce College", for short).

(ii) On 8-7-1985, on the same date, when she was relieved from the Commerce College, she joined as Lecturer in the Department of Commerce, Saurashtra University ("University", for short). Let it, also, be mentioned that her services in the said earlier Commerce College came to be considered and treated as confirmed as "continuous service" for service purpose, including the pensionary benefits, by virtue of Resolution No. NGC/1905 (84) KG dated 15-10-1984 of the Education Department, which means that the said period was to be considered towards the qualifying service period for consideration and fixity of the pension.

(iii) At the time when the petitioner was serving in the Commerce College, she was having Contributory Provident Fund ("C.P.F." for short) Account, from which the petitioner received the amount when she left the said Commerce College. However, as per the aforesaid Resolution, dated 15-10-1984, the Pension Scheme was compulsorily introduced in the University, and therefore, the petitioner deposited all the benefits and amounts received towards "C.P.F." in the Treasury for payment to the Government of Gujarat in the year 1989.

(iv) The petitioner, inter alia has, also, pleaded, repeatedly, that at the time of joining the services of the University, and thereafter, she, repeatedly, represented and approached the concerned officers of the said University for submitting the Option Form with regard to her joining the Pension Scheme. However, the said authority had not accepted the Option Form, but informed the petitioner that filing of the Option Form was not compulsory or mandatory in view of the aforesaid Resolution, by virtue of which the Pension Scheme was compulsorily introduced in the year 1982.

(v) Thereafter, the petitioner thought it expedient and sought Voluntary Retirement from the service on 1-8-2000, which respondent No. 3, University, by its letter dated 9-9-2000 to respondent No. 2, Director of Higher Education, requested to grant permission for Voluntary Retirement of the petitioner on 9-9-2000, which was, reiterated by respondent No. 3-University, by its letter dated 16-10-2000.

(vi) Again, let it be noted on 24-10-2000, respondent No. 3-University had written a letter and requested respondent No. 2, Director of Higher Education, to forward the Pension papers of the petitioner with suggestion that no Option Form was required, as the Compulsory Pension Scheme was introduced in the respondent No. 3-University.

(vii) On 30-10-2000, the petitioner informed respondent No. 3-University that since the question of Voluntary Retirement was not responded, much less

resolved, she may be deemed to be continued in her services from 1-11-2000, and thereafter, also. Respondent No. 2, Director of Higher Education, returned the Service Book along with other Pension papers by letter dated 7-11-2000 to respondent No. 3-University, seeking explanation regarding the Option Form.

(viii) Respondent No. 2-Director of Higher Education, as well as the Commerce College informed respondent No. 4-Director of Pension and Provident Fund, that the Option Form was not required, as per the Resolution dated 15-10-1984 and that the matter was referred, indicating similar other cases, wherein pension was released despite no option having been exercised. In the meantime, on 3-1-2001, the Additional Education Controller of Higher Education, on the basis of the qualifying service of the petitioner, granted Voluntary Retirement to the petitioner and the petitioner was, accordingly informed. The petitioner was, however, desired by respondent No. 3-University, by a letter dated 13-10-2001, to deposit interest on the amount received towards C.P.F. In response thereto, the petitioner had, also, deposited in the Treasury, the amount of interest, due and payable and the contribution towards the Provident Fund as well, earlier received from the Commerce College.

(ix) Despite all these facts, the petitioner went on raising grievance to the respondent-authorities. It was, also, specifically, brought to the notice of the authorities concerned that not only the amount of C.P.F. received from the College had been deposited in the Treasury in the year 1989, but even the interest, as directed, by the University and the Government, had been deposited. As such, the dues of interest, as well as, the penalty by way of interest was, also, directed to be deposited, which came to be paid by the petitioner on 11-2-2002.

(x) On 10-11-2001, once again, respondent No. 3-University, transmitted the Pension papers of the petitioner to respondent No. 2, Director of Higher Education, and the petitioner was informed by a letter dated 10-11-2001, that in the light of the Resolution, dated 15-10-1984, no Option Form was necessary.

(xi) Respondent No. 4, Director of Pension and Provident Fund, intimated to respondent No. 2-Director of Higher Education, for seeking the permission from the Government, since the Option Form was not submitted by the petitioner. Respondent No. 3-University, therefore, submitted the Pension papers to respondent No. 2, Director of Higher Education, with a request to grant permission for pension to the petitioner, as she was recommended to be qualified and eligible to claim pension. Again, by a letter dated 30-5-2002, respondent No. 3-University, informed respondent No. 4, Pension and Provident Fund Director, that in view of the Government Resolution, dated 15-10-1984, the petitioner was fully qualified and eligible for the pension, and also, the Secretary of the Education Department was also, requested by respondent No. 3-University, by a letter dated 12-6-2002, for passing appropriate orders, resolving the dispute since the petitioner was entitled to claim pension.

(xii) It will also be interesting to note, at this stage, that respondent No. 3-

University, once again, by a letter, dated 15-7-2002, repeated the request to respondent No. 1-Department of Education of the State of Gujarat, for early action by granting permission for the purpose of pension to the petitioner.

3. It will be seen from the aforesaid factual matrix that despite serious efforts and endeavours, as well as, the representations by and on behalf of the petitioner by the University, the Education Department did not resolve the avoidable controversy, and again despite the fact that, similarly, situated seven other cases were taken up by the Government and permission was granted for the entitlement of the pension, and as a result of which, the petitioner was left with no alternative, but to seek judicial redressal. That is how the petition is on hand.

4. After having given anxious thoughts and considerations to the affidavits-in-reply filed by the respondents and hearing the learned Advocates appearing for the parties, virtually, the aforesaid factual proposition articulated and emerging from the record of the present petition, has no longer been in controversy. The only question, therefore, which needs to be considered and adjudicated upon is, as to,

"whether the petitioner be penalised or denied the entitlement to claim pension, despite the fact that she has put in more than qualifying service for the purpose of earning pension, merely, on the ground that there was delay, which is not attributable to the conduct of the petitioner?"

5. The propositions of law developed in the Service Jurisprudence, with regard to the rights and entitlements of the pension, is very well celebrated that the payment of pension is not a pity or a grace from the master, but is a right invested in the employee upon the completion of the qualifying period of service. Could, then, such a right or entitlement be repudiated, merely, on the ground of so-called technicality or processual delay in submission of the Option Form is precisely, the issue or question that has been raised on behalf of the Government of Gujarat.

6. Before this question is gone into, let it be highlighted, at this juncture, that so far as the first spell of service of 13 years with the Commerce College is concerned, there was no Pension Scheme, as there was compulsory Contributory Provident Fund provision, to which the petitioner had subscribed and was paid back her contribution upon the change of her services, from the College to the Department of Commerce of respondent No. 3-University, on the same date i.e., 8-7-1985, the day on which she joined the Department of Commerce of respondent No. 3-University, as a Lecturer. And admittedly this has been considered and treated as confirmed as "continuous service" for the purpose of pension i.e., qualifying service for claiming pensionary benefits in terms of Government Resolution dated 15-10-1984.

7. Since, in the Department of Commerce of respondent No. 3-University, the Compulsory Pension Scheme was not in existence, it was not possible for the

petitioner to continue with the C.P.F. Account, which was available and in existence in the Commerce College. The petitioner, therefore, deposited the whole amount received towards C.P.F. from the Commerce College with the concerned Department of the State of Gujarat through the Treasury Office in the year 1989.

8. Since, the amount of C.P.F. received from the Commerce College was retained by the petitioner, she paid interest at the simple rate, whereas, she was required to pay, over and above, the simple interest, on the retention of the amount, to the extent of two and a half percent by way of penal interest. Accordingly, respondent No. 3-University, by its letter, dated 13-10-2001, directed the petitioner to deposit the said amount, which came to be deposited and respondent No. 3-University was informed by a letter, dated 15-10-2001. Of course, the petitioner has highlighted in the said letter that since there was not any appropriate instruction in writing for penal interest, she had to pay Rs. 13,276/- without her fault. No doubt, the amount came to be deposited, as directed, in the Treasury Office, at Rajkot. It was also, clarified in the said letter that there was no double payment, as far as, the date 8-7-1985, is concerned, which is the date on which she was relieved from the Commerce College. Therefore, on the same day, she resumed in the Department of Commerce in respondent No. 3-University. The doubt raised by the University about having received the salary of that day from both institutions, was clarified by the petitioner. The break-up and the amount deposited with interest by the petitioner is, also, placed on record. (At Page 71 in this petition).

9. It appears that the peculiar aspects and special circumstances obtainable in the present case are, also, not seriously considered and properly examined and appreciated by respondent No. 3-University. The question of exercise of option could be raised when there is something to be opted for out of more than one options. In the present case, so far as the first spell of 19 years of actual service in the College for the period 15-6-1966 to 8-7-1985, as a Lecturer is concerned, admittedly, it had only one Scheme and that too, C.P.F. There was, therefore, no question of exercising any option. Likewise, during the period of service from 8-7-1985 till the date of Voluntary Retirement on 31-12-2000 in the Department of Commerce of respondent No. 3-University, there was, also, compulsory scheme of pension. There, also, there was no question of exercising any option, particularly, when compulsory scheme was in existence.

10. It is in this context, it must be appreciated that there was no any fault or inaction or omission or commission on the part of the petitioner, which would disentitle the right to claim the pension, much less the dispute of raising the Option Form, of late. Even assuming that there is a delay in exercise of the option, then, also the available rights to pension, in this set of circumstances and special facts, cannot be allowed to thwart. Needless to reiterate that the Court is vitally concerned and the main anxiety of the process of the decision-making and judicial adjudication has been to do justice and to undo injustice suffered, and

thereby, render substantive justice, which cannot be eclipsed by a processual or technical objection. Delay in such a fact situational reality could never tantamount to a defeating factor against the entitlement of right to pension. It is a celebrated proposition of law that in such circumstances and in such special factual realistic profile, the expiry of time, specified in the Resolution or delay in submission of the Option Form, cannot defeat the Liberalised Scheme of Pension.

11. In this context, there is a host of judicial pronouncements to substantiate this view. However, let there be a special mention of the latest view of the Hon''ble Apex Court in *Union of India (UOI) and Others Vs. D.R.R. Sastri*, , which fully supports the view this Court is inclined to take, at this juncture, assuming that there is a delay in submission of the Option Form.

12. In *Union of India and Ors. v. D.R.R. Sastri (supra)*, there was delay in exercising the option for Liberalised Pension Scheme in lieu of C.P.F., which was considered factually to disentitle to pension. In that case, the respondent, a railway employee, option for Contributory Provident Fund, and thereafter, going on deputation to Heavy Engineering Corporation and resigning from the Railways after 22 long years of service and getting absorbed in the Corporation; when, subsequently, Liberalised Pension Scheme came to be introduced with retrospective effect from a date prior to the date of his resignation from the Railways, the Railway Board, by its letter dated 22-7-1974, enabling all the members of the C.P.F. to opt for this Scheme, directed the General Manager to bring the same to the notice of all the retired Railway servants. However, the respondent was not informed of the Scheme and retired from the Corporation without any pension, as the Corporation had no pensionable scheme. In such circumstances, despite the expiry of the time specified by the Railways for opting for the Liberalised Pension Scheme, the respondent's right to claim pension of Liberalised Scheme, despite delay, was upheld on refunding the amount he had already received. It is, therefore, very clear from the proposition of the law expounded in the said decision that in such a situation, a person can be allowed to exercise option even long after the expiry of the prescribed time-limit so that the substantive right to claim pension is not defeated by the processual provision. The facts of the present petition, even if it is held that there is a delay in exercising the option, then, also, it is fully covered by the pronouncement of the Hon''ble Supreme Court.

13. The Court is required to render substantive justice by resorting to the interpretation, which would augment and advance the object and design of the benevolent provision, like entitlement to pension, and not to defeat it. The first spell of service in the College, as a Lecturer, almost, for a spell of 19 years, has to be tagged with the second spell, as a Lecturer in the Department of Commerce of respondent No. 3-University, more so, when the benefit or amount availed under the C.P.F. Scheme by the petitioner, after relief from the Commerce College and joining the Department of Commerce in respondent No. 3-University on the same day, without any loss of time, has been fully refunded and returned

to the Government through the Treasury Office, with interest and also when directed with penal interest, as articulated, hereinabove.

14. It is really very unfortunate with the bureaucratic approach and dogmatic perception, despite the grant to similarly situated cases of seven persons, the petitioner, who is a Senior Citizen, is made to run from pillar to post for the rightful claim of pension, even after fully returning all the benefits and the amounts received by her under the C.P.F. Scheme with not only simple interest, but also, with penal interest for almost three years and that too without when the avowed policy of the Government has been that the first cheque of pension has to be presented to the employee on the last date of service before the employee leaves the office upon superannuation. It is nothing, but heart stilling and painful perception adopted by the concerned authority.

15. It must be remembered that in the decision-making process by the Administration of Justice, the Courts or any quasi-judicial or even Administrative Authority, should, always, address itself :

(i) Do we want to give Shylock or Solomon justice?

(ii) Do we want to be dogmatic or pragmatic?

(iii) Do we want only an idealistic - imperceptible proposition or a realistic, useful and productive outcome?

(iv) Should law be static, unresponding to the needs of hour, so as to see that the substantive justice is rendered, as the in-charge of the decision-making process must make every attempt and endeavour to inspire the confidence of the affected persons, more so, when in a sensitive category case, like pension, Freedom Fighters Rights, Women and Children, Handicapped and Have-nots, are involved in such a process.

16. The ultimate design and desideratum of any law is the public good. If dogmatic approach or processual insistence evaporates substantive justice, no useful and fruitful purpose could be subserved. Hopefully, the cry raised in this judgment would not be lost in the wilderness, but will be ringing in the right ears for effective and efficient discharge of administrative and statutory obligations by the officers and the bureaucrats so that so many litigatns like the petitioner, who could be given due and payable amount and entitlements, expeditiously, without any stress and strain.

17. Before parting, this Court is unable to resist the temptation of issuing the following directions in order to obviate further delay and to see that the long awaited issue in respect of pension is settled :

(i) Respondent No. 2, Director Higher Education and other concerned authorities, shall, immediately, start the process of finalisation of the issue of pension to the petitioner, as the matter is stuck up for avoidable question, which is now resolved. Therefore, respondent No. 2 shall proceed with the matter,

expeditiously, and transmit all the papers for the payment of pension and pensionary benefits to respondent No. 4, Director of Pension and Provident Fund, on or before 16th June, 2005.

(ii) Respondent No. 4, Director of Pension and Provident Fund, shall finalise the payment of Pension, Gratuity and other pensionary benefits on or before 30th July, 2005.

(iii) The rate of interest on the delayed payment w.e.f. 1-1-2000 till the date of payment shall be calculated at the rate of eight percent per annum and for any delay beyond 30th July, 2005, the rate of interest will be nine per cent per annum.

18. In the result, the petition stands allowed accordingly. Rule made absolute without any order as to costs.