
(1999) 10 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No. 2420 of 1988

DR. W.M. Saiyad

APPELLANT

Vs

The State of Gujarat and Others

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Citation : (1999) 10 GUJ CK 0032

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : W.M. Saiyed, for the Appellant; S.K. Patel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—Heard the petitioner in-person and the learned counsel for respondents.

2. The petitioner is a retired medical officer of the Gujarat Medical Services, Class-II. He retired from the services on 31st July, 1987. In the special civil application, the petitioner prayed for following reliefs:

(a) the petition be allowed;

(b) accordingly, the initial pay fixation of the petitioner in the revised pay scale of Rs.2200-4000 be finalized in accordance with the Gujarat Civil Services (Revision of Pay) Rules, 1987 and he may be paid the difference of salary in arrears within such time as may be considered reasonable by the Hon"ble Court;

(c) Consequently, the pension and the D.C.R. gratuity and commutation of pension and the leave salary in respect of the Earned leave at the credit of the petitioner to which he be found entitled as on 1st August, 1987, on the basis of pay in the revised pay scale, be paid to him within such period as may be considered reasonable by the Hon"ble Court;

(d) the balance in the G.P. Fund account of the petitioner (A/c. No.PHGuj.12089)

with interest thereon right upto the date of authorization of payment, be paid to the petitioner forthwith;

(e) the petitioner be held eligible for interest of the D.C.R. gratuity in terms of the G.R. F.D. of the 14th August, 1979 and also on other claims at such rate as may be considered fair and reasonable, as the petitioner is no longer responsible for the delay;

(f) the petition be allowed subject to such other orders as may, in the esteemed opinion of the court, be found reasonable reasonable in the interest of justice;

(g) the petition be allowed with costs.

3. This writ petition has come up for preliminary hearing before the Court on 6.5.88 on which date notice was issued to the respondents. Thereafter, the matter was placed for admission in the Court on 22nd July, 1988, on which date, the court has been pleased to pass the following order:

Mr. Joshipura states that full pension, gratuity and G.P.F. have been paid. However, his grievance which only survives is payment of interest on this amount at the rate of 12% p.a. So far as this question is concerned, petition cannot be disposed of at this stage. Hence rule returnable on 26.12.88.

4. So now the only claim of the petitioner is of interest at the rate of 12% on the delayed payment of the amount of arrears of fixation of pay in the revised pay scale, pension and other retirementary benefits.

5. Reply to the special civil application has been filed by respondent No.2 and wherein it is stated that nothing now remains to be paid to the petitioner towards his claim as originally made in the Specail civil application.

6. From this reply, I find that the provisional pension was given to the petitioner but his final pension and other retirementary benefits were paid on 3rd July, 1988. The amount of provident fund has also been paid to the petitioner in the month of May 1988 with interest at the rate of 12% upto March 1988. So far as the amount of Provident Fund is concerned, it has been paid with interest at the rate of 12% p.a. upto March, 1988. So the petitioner is at the most entitled for interest on this amount from the month April 1988 upto the date in the month of May, 1988, i.e. the date on which this amount has been paid to him.

7. In the reply, it is not the case of respondents that delay in finalization of pension and other retirementary benefits of the petitioner is attributable to the petitioner in any manner. It is the case of respondents that delay has occurred due to time taken to complete administrative procedure. The averment in this respect made by respondents in reply to the special civil application are to be reproduced, which read as under:

(3) I state that the petitioner has filed the present special civil application for the payment of his retirement benefits of pension, gratuity, difference of pay and allowance under the Revision of Pay Rules, 1987, and also for the benefit of leave

encashment and other benefits. I further state that the petitioner was retired on 31.7.1987 on his superannuation. The petitioner has filed this petition on 6.5.1988 making grievances against the respondents regarding delay in payment of his retirement benefits. I state that the respondents have paid all the legitimate dues of the petitioner without any delay soon after completing all the administrative procedure, and, therefore, on 22.7.1988 when the matter came up on Board on the returnable date, Mr. Joshipura, advocate for the petitioner made a statement on behalf of the petitioner that full pension, gratuity and G.P. Fund have been paid and the only grievance remains is for the payment of interest on the delayed payments. Therefor, to explain the delay, the present affidavit-in-reply is filed. I say that in fact, no delay has been caused, but for completing the administrative formalities which are required for finalizing the case of the petitioner for making payment of the retirement benefits of the petitioner.

(4) I further state that the petitioner was retired on 31.7.1987 and even prior to that, on 9.1.1987 the Superintendent, Mental Hospital, Baroda, sent all the case papers of the petitioner to the Additional Director, Medical Services, Gandhinagar, for finalization of the pension case of the petitioner. Thereafter, the office of the Additional Director, Medical Services, Gandhinagar, after scrutinising all the papers, forwarded the same to the office of the Accountant General, Ahmedabad on 9.2.1987. I further state that simultaneously the papers were forwarded to the Government for counter signature on the Annexures 5, 6 and 7 with regard to no objection, no dues, no inquiry and no events and as per the information of the deponent, on receipt of the said papers, the office of the Accountant General, Ahmedabad raised some queries therein and returned the papers to our office. I say that as the office of the Accountant General, Ahmedabad, has raised a query with regard to the fixation of the pay of the petitioner as per the Revision of Pay Rules, 1987, after fixation of the pay of the petitioner as per the Revision of Pay Rules, 1987, our office again forwarded the relevant papers to the office of the Accountant General, Ahmedabad, on 2.6.1988, who in turn forwarded the same to the office of the Director of Pension and Provident Fund, Ahmedabad, along with necessary approval. I say that the Director of Pension and Provident Fund has ultimately sanctioned the case papers of the petitioner on 16.6.1988 regarding his pension and gratuity. Accordingly, the pension and gratuity benefits were paid to the petitioner on 3.7.1988 and in this way, there is no delay on the part of the respondent authority in payment of the retirement benefits and, therefore, there is no question of granting any interest on the payment, as prayed for by the petitioner.

(5) I further state that so far as the payment of G.P. Fund is concerned, an application of the petitioner was received by the office of the Mental Hospital, Baroda and the same was forwarded to the office of the Additional Director of Medical Services, Gandhinagar, on 7.9.1987. I say and submit that after making necessary counter signature on the said application, the same was sent to the office of the Accountant General, Rajkot vide letter dtd.11.11.1987, who in turn

sanctioned the same on 13.4.1988 and the amount of G.P. Fund was paid to the petitioner in the month of May, 1988, including the interest at the rate of 12% per annum, upto March 1988 and in this way there is no delay in making payment of the amount of G.P. Fund and hence there is no question of granting interest as prayed for by the petitioner.

(6) As regards the other benefits also, I state that the respondent authorities have decided the case papers of the petitioner very promptly and without any delay and, therefore, the interest as prayed for by the petitioner is not required to be paid and hence the claim of the petitioner with regard to the interest on delay payment is required to be rejected.

8. The petitioner was retired on 31st July, 1987. The revised pay scale Rules of 1987 were given effect to from 1.1.86 and the pension and retirement benefits of the petitioner could not be finalized by the concerned authorities on the ground that the petitioner's pay was not fixed in the revised pay scale with effect from 1.1.86. Thereafter, the papers were moved and it is really shocking that in such matters, the respondents have made delay which is called to be the time taken in administrative procedure but no explanation whatsoever has been given for this delay. Simply making of a statement that due to time consumed in administrative procedure this delay has occurred, is hardly of any help, substance or relevance in the present case. The respondents have to make it clear that delay has been caused for the reasons beyond their control.

9. The Court is seeing everyday that hundreds of cases are coming up before it by the employees or officers of the State Government where they have not been paid the pension and other retirement benefits. The date of retirement of each and every employee and officer serving with the State Government is made known on the date on which he enters in the service. It is not a fact which is uncertain. Retirement is a fact which is certain for every employee and officer. I fail to see why it is not possible for the respondents to give to a retired employee/ officer on the date on which he retires from services, in addition to farewell and memento, the P.P.O. and G.P.O. The papers in this case for pension and other retirement benefits of the petitioner have been moved well in advance but curiously enough, the same could not be completed and the amount could not be paid to the petitioner before 3rd July, 1988. This delay of more than one year and six months in processing of these papers and payment of retirement benefits to the petitioner is wholly unreasonable and unjustified for which otherwise also, no cogent and reasonable explanation has been furnished by respondents. Despite of the Government Resolutions and guidelines, I am constrained to observe that the same are being only there for flouting of the same. The guidelines and the Resolutions etc. have been made so that prompt payment of retirement benefits is being made to the retired employees and officers but contrary to it, several writ petitions are coming up in this Court seeking relief for disbursement of retirement benefits because of inordinate delay in payment of these benefits. In the case of State of Mysore Vs. C.R. Sheshadri and

Others, , their Lordships observed:

"a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant not unusual in government, it is becoming necessary to issue directions, in several cases, for early payment of these dues".

10. As said earlier, the date of retirement of every Government employee or officer is very much known in advance. It is difficult to appreciate why the processing of and collecting the requisite information and issuance of pension pay order or fixation of pay in the revised pay scale or issuance of no liability certificate or last pay certificate should not be completed before the date of retirement of the concerned employee/ officer so that payment of gratuity amount as well as other retirementary benefits could be made on the date of retirement or on the following day and pension at the expiry of following month. Necessity for prompt payment of all retirement dues to a Government employee/ officer immediately after his retirement could not be over emphasized and necessity of prompt payment of retirementary dues to a Government employee/ officer on his retirement should have been rule. In a case there is delay and laches in finalization of pension case, payment of the amount of retirementary benefits, etc. to the Government servant/ employee/ officer, then it certainly exposes the State of Gujarat and its officers and make them liable to pay penal interest on this retirementary dues.

11. The Hon''ble Supreme Court, in several cases, has awarded interest at the rate of 12% p.a. for this delayed payment of retirement dues to a Government servant/ officer. Recently, in the case of Dr. Uma Agrawal v. State of U.P. & Anr., Writ Petition (Civil) No.771 of 1995, decided on 22.3.99, the Apex Court has awarded lumpsum interest on delayed payment of retirementary benefits to the appellant therein.

12. If we go by the facts of this case and the reply of the respondents, certainly I find it a clear case where the respondents have failed to furnish any explanation, good, bad or indifferent for this long delay in finalization of the pension case and other retirementary benefits of the petitioner. The case in hand is clear example of departmental delay which is not excusable. The petitioner has approached to this Court at the stage where he was not given retirementary benefits. Fixation of pay of the petitioner in the revised pay scale should have been taken promptly and it should have been drawn much before his retirement but it has been done after long delay and this is not an excusable act.

13. Taking into consideration the totality of the facts of the case, I find sufficient justification and merits in the claim of the petitioner for interest on this delayed payment of retirementary benefits to him. In the result, this special civil application succeeds and the same is allowed and the respondents are directed to pay interest at the rate of 12% p.a. on the amount of arrears of fixation of pay of the petitioner in the revised pay scale with effect from 1.1.86 till the date of

payment thereof, the amount of arrears of pension from the due date till the date of payment and other retirement benefits. So far as the amount of GPF is concerned, this amount has been paid with interest at the rate of 12% p.a. upto March 1988 and the petitioner is entitled for interest on this amount from the month of April 1988 and upto the date in the month of May 1988 on which date this amount has been paid to him, at the same rate.

14. It is a case where a retired officer has been compelled by none other than a Welfare State and its officers to approach this court. It is unfortunate that the petitioner has to engage two advocates in this case but despite of paying them handsome amount, ultimately he himself has to make submissions. The petitioner has demanded heavy amount of costs as what he stated that for one year, he has to move from his place of residence to Gandhinagar, number of times which cost him heavily. Secondly, he stated that he paid Rs.5,000/= towards the fees of Mr. M.N. Joshipura, advocate, and Rs.3,000/= to Mr. W.A. Uraizee, advocate. Apart from this he incurred Rs.500/= as expenses for filing of the special civil application. This statement of the petitioner regarding payment of fees to two advocates has to be accepted. Similarly the statement of amount of expenses which he incurred in filing of this petition has to be accepted. However, the amount which he incurred for going to Gandhinagar for his claim, is difficult to accept for want of sufficient material on record. The respondent State of Gujarat is directed to pay Rs.8,500/= as costs of this writ petition to the petitioner.

15. The Chief Secretary to the State of Gujarat is free to hold an inquiry in the matter and whosoever officer is found responsible for this delay in finalizing the pension matter of the petitioner, this amount of interest and costs be recovered from him.

16. Rule is made absolute in terms aforesaid.