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(2005) 12 GUJ CK 0075

In the Gujarat High Court

Case No : Special Civil Application No. 13250 of 2004

Dursinh Jugsinh Rathod — APPELLANT

Vs

State of Gujarat and Another — RESPONDENT

Date of Decision : 28-12-2005

Acts Referred:
Constitution of India, 1950 — Article 226
Gujarat Civil Services (Pension) Rules, 2002 — Rule 80(1), 80(2), 80(3)

Citation : (2005) 12 GUJ CK 0075

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : S.K. Patel, for the Appellant; K.L. Pandya, AGP for Respondent 1 and J.M. Barot and H.S. Munshaw for Respondent 2, for the Respondent

Judgement

D.H. Waghela, J.—Invoking Article 226 of the Constitution, the petitioner has approached this Court with a prayer to direct the respondents to finalise his claim of pension on the basis of the services rendered right from 28.11.1964 to 30.6.2002, the date on which he retired on reaching the age of superannuation.

2. The petitioner joined his service as a primary teacher on 28.11.1964 in the Ashram School and came to be absorbed on 29.12.1992 in the service of the District Education Committee, Mehsana. His claim for pension was thwarted by the District Education Committee on the ground that he had acquired lien with effect from 29.12.1992 and his total period of service after acquiring the lien was nine years, six months and three days and, therefore, relying upon Rule 80(1) of the Gujarat Civil Services (Pension) Rules, 2002, he was taken to have not completed ten years of qualifying service to be entitled to pension.

3. Despite issuance of Notice and Rule much earlier, no affidavit-in-reply is filed on behalf of the State Government and an affidavit, without even mentioning the designation of the officer who had executed it, has been filed on behalf of respondent No. 2. It is stated in that affidavit, produced today in the Court, that the petitioner had joined the service on 28.11.1964 in an Ashram School and

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worked upto 28.12.1992. It is also stated that: ''...As per G.R. dated 23.8.1973 passed by the Government of Gujarat through its Education Department, the petitioner is entitled to the benefit of pensionary benefits only from the date of getting the benefit of lien till the date of superannuation.... Thus, it is admitted that the earlier service in the Ashram School upto 28.12.1992 was not counted and considered for the purpose of granting the benefits to the petitioner.

4. It is clear from the above facts that there is no dispute about the petitioner''s service as a teacher in the Ashram School from 28.11.1964 till absorption and upto 30.6.2002 thereafter. According to the order dated 15.1.1993 (Annexure-A) granting lien to the petitioner, the petitioner was selected and his service after selection was to be counted under the District Education Committee for all purposes. According to the resolution dated 23.8.1973 of the Government of Gujarat, Education and Labour Department, teachers who were selected by the District Education Committee for absorption in their services would normally continue in the Ashram Schools; only absorbed teachers should surrender the amount of provident fund together with the management liabilities, if any, including interest accrued thereon and lying on the credit to the concerned District Education Committee and those Committees in return should pay the amount of pension to the teachers according to the rules after their retirement. In view of that resolution, the Director of Primary Education has, by letter dated 23.2.2004, conveyed to the District Education Committees that the question of counting the period of service rendered by the teachers in Ashram Schools with a lien was under consideration of the Education Department and, pending such consideration, provisional pension should be fixed on the basis of services rendered by the teachers after the date of acquiring lien under the District Education Committee. Apparently, the case of the petitioner even for provisional pension under the above resolution and the letter is not finalised on the ground that he had completed service of only nine years, six months and three days after acquiring the lien, which was taken to be less than ten years of qualifying service.

5. Plain reading of Rule 80 of the Gujarat Civil Services (Pension) Rules, 2002 would show that sub-rule (1) applies to the cases where service gratuity is required to be paid on account of the employee retiring before completing qualifying service of ten years. The subject of pension is covered by the provisions of clauses (a) and (b) of sub-rule (2) of Rule 80 and it is added by way of explanation in sub-rule (3) that in calculating the length of qualifying service, fraction of a year equal to six months and above shall be treated as a complete year and reckoned as qualifying service. Applying that extended definition, the petitioner would have completed the period of ten years of qualifying service even after acquisition of lien and absorption in the service of the District Education Committee. Therefore, the denial of even provisional pension is based apparently on complete misreading of Rule 80 and, therefore, the petitioner was entitled to be paid at least provisional pension immediately after his retirement since July, 2002.

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6. As for counting the earlier service rendered as a teacher in Ashram School, the afore-mentioned Government Resolution dated 23.8.1973 hardly leaves any room for doubting that the earlier service is also required to be counted for the purpose of payment of pension. However, that matter appears to be under consideration by the Education Department of the Government at least since 23.2.2004 and none of the parties have thrown any light on the subsequent resolutions, if any, and the decision taken by the State Government in that regard. Therefore, it may be appropriate for this Court to refrain from finally pronouncing upon the entitlement of pension after considering the services rendered in Ashram School by such teachers, particularly in view of the facts that the aforesaid resolution is dated 23.8.1973, the petitioner has been absorbed in the year 1992 and the subsequent resolutions, if any, in that regard are not placed on record and the matter was under active consideration of the Government. However, at the same time, the decision in such matter cannot be indefinitely postponed or awaited.

7. Therefore, at this stage, the petition is partly allowed with the direction to fix and pay provisional pension of the petitioner on the basis of his service from 29.12.1992 till 30.6.2002, applying the provisions of sub-rules (2) and (3) of Rule 80 of the Gujarat Civil Services (Pension) Rules, 2002, within one month of receipt of the writ of this order. The respondents shall pay the arrears of provisional pension to the petitioner with interest @ 9% from 1.10.2002 till the date of payment. The respondents are also directed to take and convey to the petitioner, within three months, final decision in respect of consideration of his previous service as a teacher under Ashram School after which the petitioner shall be at liberty to challenge such decision, if the decision is adverse to him. The respondents shall also make appropriate orders with regard to the provident fund amount credited to the account of the petitioner. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

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