(1989) 06 GUJ CK 0007

In the Gujarat High Court

F.H. Palejwala APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Constitution of India, 1950 — Article 318
Gujarat Public Service Commission (Conditions of Service) Regulations, 1960 — Regulation 7A, 8

Citation : (1989) 2 GLR 1222

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Judgement

R.C. Mankad, J.—Petitioner, a retired Chairman of the Gujarat Public Service Commission (''Commission'' for short) has to knock the doors of this Court to seek redress against the injustice done to him by the State of Gujarat-respondent No. 1 herein by refusing to pay to him pension in accordance with the amended Gujarat Public Service Commission (Conditions of Service) Regulations, 1960.

2. Petitioner was appointed as Chairman of the Commission under Government Notification No. PSC/1065/5704-G dated June 30, 1967 and he took charge of his office on July 4, 1967. The petitioner, on completion of 60 years of age, which was the age of superannuation, retired from service with effect from June 11, 1971 after serving for more than three years. The period of service qualifying for pension on the date of retirement of the petitioner was 3 years 10 months and 25 days. Under Government Resolution No. PSC/1671/ 1314-R dated April 5, 1971 one month and six days have been added to the aforesaid petitioner''s qualifying service of 3 years 10 months and 25 days. This addition is to be treated as service counting for pension as per the said Resolution. As a result of this addition, period of service qualifying for pension comes to 4 years.

3. In exercise of the powers conferred by Article 318 of the Constitution of India, the Governor of Gujarat has made Regulations called the Gujarat Public Service

Commission (Conditions of Service) Regulations, 1960 (''Regulations'' for short) Pan IV of the Regulations deals with pension and provident fund payable 10 the Chairman and Members of the Commission. Regulation 8, which is in Pan IV of the Regulations, insofar as is relevant reads as follows:

(ii) Subject to the provisions of these regulations, a member other than a member to whom Regulation 7A applies shall on ceasing to hold office be paid pension in accordance with the provisions of these regulations.

Regulation 7A applies to a member, who at the date of his appointment as such was in Government service in a permanent capacity and was entitled to draw pension on retirement from such service. Petitioner was not a Government servant on the date of his appointment as Chairman of the Commission. Therefore, Regulation 7A will not apply to him. He is entitled to pension in accordance with the provisions contained in Regulations 10 and 11. Regulation 10 provides for basic pension under Regulation 8. This Regulation insofar as is relevant read as follows on the date the petitioner retired from service:

(1)...

(2) in any other case:

(a) Rs. 2700/- per annum for the first three completed years of service for pension.

(b) a further sum of Rs. 600/- per annum for each subsequent completed year of service for pension: Provided that--

(a)...

(b) in the case of a member falling under Clause (2) the basic pension shall not exceed Rs. 60007-per annum.

Regulation 11 provides for additional pension to the Chairman of the Commission and it read as follows on the date the petitioner retired from service:

For each completed year of service for pension as Chairman, a Member who is eligible for a basic pension under Regulation 8 shall be entitled to an additional pension of Rs. 300/- per annum.

Provided that the aggregate amount of the basic and additional pension shall in no case exceed Rs. 7200/- per annum.

4. As per Regulations 10 and 11 of the Regulations, as in force on the date of the retirement of the petitioner, pension payable to the petitioner was calculated as follows:

(i) Basic pension : (a) Rs. 2700/- lump sum for 3 years service (b) Rs. 600/- For the 4th year''s service. Rs. 3300/- (ii) Additional : Rs. 1200/- For four years service at the rate pension of Rs. 300/- for each year. Total Rs. 4500/-

The petitioner was thus paid pension of Rs. 4500/- per annum from the date of his retirement from service.

5. Regulations 10 and 11 of the Regulations were amended with effect from December 1, 1971 Clause (2) of Regulation 10, insofar as is relevant read as follows after us amendment:

(2) in any other case:

(a) Rs 3600/- per annum for the first three completed years of service for pension.

(b) a further sum of Rs. 900/- per annum for each subsequent completed year of service for pension

Regulation 11 after its amendment read as follows:

For each completed year of service for pension as Chairman, a Member who is eligible for a basic pension under Regulation 8 shall be entitled to an additional pension of Rs. 450 - per annum.

Provided that the aggregate amount of the basic and additional pension shall in no case exceed Rs. 10,000/- per annum

6. It would thus appear that by an amendment, which came into force with effect from December 1, 1977, figure of Rs. 2700/- was substituted by figure of Rs. 3600/- in Sub-clause (a) and figure of Rs. 600/- was substituted by figure of Rs 900/- in Sub-clause (b) in Clause (2) of Regulation 10 and figure of Rs. 300/- was substituted by figure of Rs. 450/- and figure of Rs. 7200/- was substituted by figure of Rs. 10,000/- in Regulation 11.

7. Regulations 10 and 11 were further amended by the Government of Gujarat in General Administration Department Notification No. CS/86/28/PSC/ 4085/1123-R dated July 5, 1986 After this amendment Regulation 10 insofar as is relevant for our purpose reads as under:

(1)...

(2) in any other case an amount of Rs. 1400/- per annum for each of such number of completed years of service as member:

Provided that for the purpose of Clauses (1) and (2) service of less than 1 year but not less than six months shall be reckoned as one completed year of service

By the said Notification proviso to Regulation 11 has been deleted.

8. The contention of the petitioner is that as a result of the amendment of Regulations 10 and 11 with effect from December 1, 1977 he is entitled to Rs. 4500/- per annum as basic pension and Rs. 1800/- per annum as additional pension aggregating to Rs. 6300/- per annum for the period from December 1, 1977 to July 5, 1986 the date on which Regulations 10 and 11 were further

amended as aforesaid. The petitioner further submits that as a result of further amendment of Regulation 10 with effect from July 5, 1986 he is entitled to basic pension of Rs. 5600/- per annum at the rate of Rs. 1400/- per annum for each completed year of service and an additional pension of Rs. 1800/- per annum at the rate of Rs. 450/- per annum aggregating to Rs. 7400/- per annum with effect from July 5, 1986 onwards.

9. In view of the aforesaid amendments made in the Regulations the petitioner addressed a letter dated September 22, 1988 to the Accounts Officer requesting him to pay him pension at the revised rate. The Accounts Officer in turn wrote letter Ex. ''Br to the Chief Secretary. Government of Gujarat inviting reference to the letter of the petitioner and inquiring whether the provisions of Regulations as amended on December 1, 1977 and July 5, 1986 were applicable in case of persons, who had retired prior to the amendments. In reply to this letter, Under Secretary. General Administration Department, Government of Gujarat, wrote letter Ex ''D'' dated December 2, 1988 to the Accounts Officer in which it is stated to the effect that the amendments were prospective and benefits thereof could not be made available to those Members of the Commission who had retired prior to the amendments. It was stated that pension granted under the Regulations is payable for life time period and it would, therefore, mean that once the pension is granted under the relevant Regulations in force at the time of retirement of the Chairman/Member of the Commission, no benefit of any revised pension scheme is available to them The Accounts Officer, therefore, wrote letter Ex. ''C to the petitioner stating to the effect that pension at the revised rate was not admissible to pensioners who had served as Member of the Commission prior to the amendments of the Regulations. The petitioner was, therefore, informed that benefits under the amended Regulations would not be admissible to him. It is, therefore, that the petitioner has approached this Court by way of this petition under Article 226 of the Constitution seeking direction against the respondents to pay him pension as per the revised rate.

10. The stand which is taken up by the respondent is the same as was taken up by the State Government in its correspondence with the Accounts Officer. The respondents contend that amendments made in the Regulations have no retrospective effect and, therefore, the petitioner is not entitled to claim benefit of the pension under the amended Regulations. It is submitted that the petitioner has been offered benefit of pension, as had been admissible to him on the date of his retirement, and subsequent amendments of the Regulations would not entitle him to claim pension and additional pension at the revised rates.

11. There is no substance in the contention of the respondents. I have set out above Regulations 10 and 11 as they stood when the petitioner retired from service and their subsequent amendments. The question is whether the petitioner is entitled to the benefit of revised basic pension and additional pension as per the amendments made in these Regulations in 1977 and 1986. It is interesting to note that the amendments substituted figures in Regulation 10

providing for basic pension and figures in Regulation 11 providing for additional pension. In other words, all that had been done by the amendments is to substitute figures which originally stood in Regulations 10 and 11. Besides substituting the figures nothing more had been done. No amendment is made to the effect mat pension at the revised rates would be admissible to only only members who had retired on or after the date of the amendment. Regulations 10 and 11 provide for basic pension and additional pension respectively payable to the Member who is appointed as Chairman of the Commission. When the petitioner retired from service basic pension and additional pension were payable at certain rates However, alter the amendments rates have been changed. In the absence of any specific provision indicating that the revised rates are applicable only to those, who had retired on or after the date of the amendment of the Regulations, the revised rates would be applicable to all the Members Chairman of the Commission, who have retired from service. In order to attract the application of the revised rates after the amendments, the only question which one has to address himself is whether the person claiming pension is a retired Member or Chairman of the Commission. If answer to this question is in the affirmative, the person claiming pension would be entitled to the basic pension and additional pension at the revised rate. Whether or not the Member/ Chairman retired from service prior to the date of the amendment is entirely irrelevant. The Regulations are framed in exercise of the powers conferred by Article 318 of the Constitution. It is not disputed that it is under the Regulations that the petitioner is entitled to the basic pension and additional pension. Once the Regulations are amended to revise rates of basic and additional pension, the Members and the Chairman of the Commission, who have retired from service would be entitled to claim benefit or revised rates in absence of specific provision saying that the revised rates are applicable only to those Members and Chairman, who have retired on or after the date of the amendment. It is true that the revised rates of basic and additional pension, as per the amendments, are prospective. In other words, the revised rates come into force only with effect from the date of the amendment and not prior to that date. The amendments are, therefore, prospective in operation. When a Member or Chairman who has retired from service prior to the date of the amendment claims basic pension and additional pension at the revised rates he is not seeking to give retrospective effect to the amendments. All that he is claiming is that in view of the amendments made in Regulations 10 and 11 he is entitled to basic pension and additional pension at the revised rates from the date the amendments came into force. This would not amount to giving retrospective effect to the amendments as is sought to be urged on behalf of the respondents. It is only if such Member or Chairman claims basic pension and additional pension at the revised rates from the date he retired from service, it would amount to giving retrospective effect to the amendments.

12. Had the amendment of the Regulations provided that the revised rates would apply only to those Members/Chairman who have retired from service on or after

the date of the amendments, yet such provision would have been liable to be struck down being violative of Art 14 of the Constitution as laid down by the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), ; Union of India Vs. Bidhubhushan Malik and Others, and N.L. Abhyankar and Others Vs. Union of India and Others, . In D.S. Nakara''s case the Supreme Court held that the eligibility criteria, ''being in service and retiring subsequent to the specified date'' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and being wholly unrelated to the objects sought to be achieved, was thoroughly arbitrary and violative of Article 14 of the Constitution. It was, therefore, unconstitutional and liable to be struck down. In Bidhuhhushan Malik''s case the Supreme Court confirmed the decision of the Allahabad High Court which had struck down the words ''and who has retired on or after the 1st day of October, 1974'' in paragraph 10 of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954 as unconstitutional. Similar view was taken by the Supreme Court in N.L. Abhyankar''s case. Therefore, even if the amendments of the Regulations had prescribed a cut off date for being eligible for pension at the revised rates, such cut off date would have been unconstitutional violative of Article 14 of the Constitution. However, the question whether or not the cut off date was unconstitutional does not arise in the present case since the Regulations do not provide for such a cut off date. As already pointed out above, the amendments do not restrict the application of the revised rates to only those Members and Chairman who have retired on or after the dates of the amendments. In my opinion, on a plain reading of Regulations 10 and 11 as amended, petitioner is entitled to basic pension and additional pension at the revised rates with effect from the dates, the amendments came into force. In other words, the petitioner is entitled to basic pension of Rs. 4500/- per annum and additional pension of Rs. 1800/- per annum aggregating to Rs. 63007- per annum from December 1, 1977 to July 4, 1986 and basic pension of Rs. 5600/- per annum and additional pension of Rs. 1800/- per annum aggregating to Rs. 7400/- per annum with effect from July 5, 1986.

13. In the result this petition is allowed. It is declared that the petitioner is entitled to basic pension and additional pension at the revised rates as per the amendments of Regulations 10 and 11 of the Regulations made in the years 1977 and 1986. The respondents are directed to pay to the petitioner basic pension of Rs. 4500/- per annum and additional pension of Rs. 1800/- per annum aggregating to Rs. 6300/- per annum from December 1, 1977 to July 4, 1986 and basic pension of Rs. 5600/- per annum and additional pension of Rs. 1800/-per annum aggregating to Rs. 7400/- per annum with effect from July 5, 1986 onwards. The respondents are directed to pay to the petitioner arrears of difference of pension and additional pension payable to him as aforesaid for the period from December 1, 1977 to July 4, 1986 and July 5, 1986 to June 30, 1989 within three months from the date of the receipt of the wni of this Court. The respondents are further directed to pay to the petitioner monthly pension on the

basis that the petitioner''s basic pension is Rs. 5600- per annum and additional pension is Rs. 1800/- per annum aggregating to Rs. 7400 - per annum regularly every month with effect from July 1, 1989 The monthly pension for the month of July at the said rates will become payable on August I. 1989.

Rule made absolute accordingly with costs. Cost quantified at Rs. 1000/-.