
(2012) 09 GUJ CK 0032

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1107 of 2012 in Special Civil Application No. 7601 of 2012

G.T. Jadeja

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Citation : (2012) 09 GUJ CK 0032

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Nasrin N. Shaikhs, for the Appellant;

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G.B. Shah

1. We have heard learned counsel for the appellant. This Letters Patent Appeal has been filed challenging the order dated 19.7.2012 passed by the learned Single Judge in Special Civil Application No. 7601 of 2012 by which the learned Single Judge has dismissed the writ petition. The appellant was initially appointed as Assistant Heavy Vehicle Operator on 19.1.1982 in Bhavnagar under the respondents. Thereafter he was sent on deputation to Gujarat State Land Development Corporation Ltd. from 1982 to 1994. While on deputation the appellant was promoted as Heavy Vehicle Operator from 14.12.1987. From 2004 till retirement on 6.11.2008, the appellant served in the office of the Deputy Director of Agriculture, Amreli. The appellant became eligible for the first higher grade scale from 14.12.1996 since he had completed 9 years service in the post of Heavy Vehicle Operator to which he was promoted on 14.12.1987. He applied for the first higher grade scale by letter dated 22.12.1997. By letter dated 8.5.1999, Jt. Director of Agriculture, Rajkot informed the appellant that due to the adverse remarks in the confidential report, he is not entitled to the higher grade scale as envisaged in Government Resolution dated 16.8.1994. The appellant represented his case. Ultimately respondent No. 2 informed the

appellant that he cannot be granted higher grade scale since he had not discharged the duties of Heavy Vehicle Driver due to sunlight allergy. The appellant filed appeal dated 10.5.2005 before respondent No. 3 against non-grant of higher grade scale and since there was no response, he again filed appeal on 17.11.2005. However, by order dated 6.11.2008 passed by respondent No. 2, the appellant has been retired prematurely from service. On 7.10.2011, the Agriculture & Cooperative Department passed order of punishment of deduction of Rs. 500/- p.m. from monthly pension of the appellant for the period of one year. The appellant preferred Special Civil Application No. 7601 of 2012 for getting the higher grade scale and increments. The learned Single Judge, by order dated 19.7.2012, dismissed the petition mainly on the ground that the appellant had earlier preferred series of petition i.e. Special Civil Application No. 1252 of 2009 before this Court which came to be dismissed on 13.4.2009 against which Appeal has been preferred by the appellant which was also dismissed on 20.7.2010 by the Division Bench of this court and ultimately the SLP filed before the Apex Court which also came to be dismissed on 29.11.2010.

2. Learned counsel for the appellant submitted that the appellant became eligible for the first higher grade scale from 14.12.1996 since he had completed 9 years' service. Since he has not been granted the scale, the appellant had applied for the higher grade scale by letter dated 22.12.1997. She submitted that though correspondence was going on between the appellant and the respondent department, only on 14.7.2009 after a long period of 5 years, the respondent informed the appellant that no appeal lies against the higher grade scale. She submitted that against this order the appellant approached the High Court and the learned Single Judge has dismissed the petition of the appellant on 19.7.2012. She further submitted that the learned Single Judge has erred in concluding that the petition is time barred. The learned counsel argued that in view of the decision of the Apex Court in the case of Shiv Dass Vs. Union of India (UOI) and Others, , reasonable period of writ petition is three years, therefore, the petition is in time and not time barred. It is her submission that the appellant has been compulsorily retired in 2008 so he could not file petition immediately before the High Court. She submitted that the appellant had challenged different orders by way of different proceedings such as the order of inflicting punishment by way of deducting Rs. 500/- per month from the monthly pension for one year which cannot be accepted by the appellant. The respondents for one or the other reasons, delayed the case of the appellant and he has not been given the higher grade scale and increments. She argued that a close perusal of the Confidential Reports shows that the remarks are not adverse remarks. She submitted that the respondent ought to have considered the Confidential Reports for the year 1991 to 1995 for evaluation and considered grant of higher grade scale. The learned counsel thus prays to quash and set aside the impugned order dated 19.7.2012 passed by the learned Single Judge in Special Civil Application No. 7601 of 2012.

3. We have carefully considered the above submissions made by the learned

counsel for the appellant. It appears that the appellant had applied for first higher grade scale on 22.12.1997 and the said claim was rejected by Jt. Director of Agriculture, Rajkot on 8.5.1999. Instead of challenging the said decision before the higher forum, the appellant had represented his case before respondent No. 2 i.e. Jt. Director of Agriculture, Rajkot. In response to the same, again respondent No. 2 had not accepted the representation and the appellant had challenged the same by way of Appeal. As the appellant had not challenged the decision dated 8.5.1999, the same became final. Under the circumstances, when the appellant had preferred the first Special Civil Application No. 1252 of 2009, he should have incorporated all the reliefs to be claimed in the same including the first higher grade pay scale. According to the learned counsel for the appellant, the appellant had not incorporated the said issue in the earlier petition. On a specific query whether copy of the earlier petition is produced in this appeal, learned counsel for the appellant replied that she has not produced the same. Thus the period of three years to be counted is in fact from the first decision of rejection of the Special Civil Application on 8.5.1999 and not on 14.7.2009 as submitted by the learned counsel for the appellant. Under the circumstances, in our considered view, we do not find any illegality or infirmity in the order dated 19.7.2012 passed by the learned Single Judge in Special Civil Application No. 7601 of 2012 and thus there is no substance in this Letters Patent Appeal. In the result, this appeal fails and it is accordingly dismissed at the admission stage.