

(2003) 09 GUJ CK 0039

In the Gujarat High Court

Case No : Letters Patent Appeal No 131 of 2003 in Special Civil Application No. 14276 of 1993

Gujarat Housing Board

APPELLANT

Vs

Ramanbhai Nagarji Nayak Decd. thro" Lrs.

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Gujarat Housing Board (Pension and other Retirement Benefits) Regulation, 1992 — Regulation 2, 2.2
Gujarat Housing Board Act, 1961 — Section 74

Citation : (2003) 09 GUJ CK 0039

Hon'ble Judges : R.R. Tripathi, J;B.J. Shethna, J

Bench : Division Bench

Advocate : H.S. Munshaw, for the Appellant; Manish A Pandya and T.R. Mishra, for Respondent No. 1/1-1/3, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The appellant-Gujarat Housing Board has challenged in this appeal the judgement and order dated 31.7.2001 passed by the learned Single Judge of this Court (Coram: Kundan Singh, J.) in Special Civil Application NO.14276 of 1993, whereby the learned Single Judge allowed the writ petition filed by the respondent-petitioner and held that the petitioner is entitled to the pensionary and retrial benefits. Accordingly, respondent no.1-Board is directed to obtain option from the petitioner in the prescribed form in order to apply Regulation, 1992 and fix and settle the pensionary benefits to be given to the petitioner in accordance with law as expeditiously as possible, preferably within three months from the date of receipt of the certified copy of the order.

2. Respondent no.1 herein has joined the services of appellant-Board as Work Charge "Mistry" on 1.7.1964. Thereafter, he was promoted to the post of Work Charge Assistant on 20.7.1990 and he retired from service on 1.6.1991 after putting in about 27 years of service.

3. The pension scheme was introduced by the appellant-Board for its employees on 13.7.1992 with retrospective effect from 1.4.1990. Prior to introduction of the pension scheme, the employees of the appellant-Board were eligible for retiral benefits as per the Contributory Provident Fund Scheme (for short "CPF Scheme"). After retirement respondent no.1-petitioner was paid pensionary benefits, i.e. Rs. 52,248/-, towards Provident Fund; Rs. 10,872/-, towards gratuity; and Rs.4,026/-, as family pension. The Provident Fund amount includes contribution of the appellant-Board along with the contribution of the respondent-petitioner. The respondent-Board has introduced pension scheme in exercise of powers u/s 74 of the Gujarat Housing Board Act, 1961 with previous sanction of the State Government. The employees who were in service on or after 1.4.1990 were eligible for pension scheme. Under the Pension Rules, the employees of the appellant-Board were required to file option and give undertaking to return the entire benefits they have taken from the Board. The Board was required to inform the employees to tender their option on or before 30.8.1992.

4. In exercise of powers conferred under clause (C) of section 74 of the Gujarat Housing Board Act, 1961 (for short "the Act") and with the previous sanction of the State Government the Board made Regulations in 1992 known as "Gujarat Housing Board (Pension and other Retirement Benefits) Regulation, 1992 (for short "Regulations") which came into force with effect from 1.4.1990. As per Regulation 2(ii) of the Regulations it will also apply to those of the existing employees who were in service as on 1.4.1990. It may be stated that no distinction was made while framing Regulations of the Board for its employees. Nowhere it is stated in the said Regulations that the Regulations would apply only to those regular employees but not for work charge employees.

5. Unfortunately, the Board did not inform about the Regulations and the subsequent Government Resolution dated 13.7.1992 (Annexure "B" to the main writ petition) to its work charge employees and not given any options to them as required under the Regulations.

6. The respondent no.1-original petitioner, therefore, wrote a letter dated 13.9.1993 to the Commissioner of the appellant-Board stating that he was also entitled to retirement benefits as per the Regulations (annexed at Annexure "A" to the main writ petition). No such option was taken from him by any officer of the appellant-Board. Thereupon, the appellant-Board informed respondent no.1-petitioner that the matter was under active consideration before the State Government and till decision is taken by the State Government in the matter no final decision can be taken by them.

7. It is not in dispute that when the petitioner was granted his retiral benefits as per the scheme prevailing at the relevant point of time, the Board had already framed the Regulations under which the case of the respondent no.1-petitioner was covered.

8. After writing to respondent no.1-appellant that the matter is under active

consideration before the State Government, the Board did not take any action in the matter, therefore, regarding such inaction of the appellant, the petitioner-respondent no.1 approached this Court by way of writ petition, i.e. Special Civil Application No. 14276 of 1993 and prayed that the Board be directed to obtain option from the petitioner in the prescribed form under the Regulations and confer retiral benefits to him, at the earliest. The said petition of 1993 filed by respondent no. 1-petitioner ultimately came to be allowed by the learned Single Judge of this Court on 31.7.2001 and the Board was directed to obtain option from the petitioner in the prescribed form under Regulation, 1992 and to fix and settle pensionary benefits to be given to the petitioner in accordance with law within three months from the date of receipt of the order. Unfortunately, no such benefits are extended to respondent no. 1-petitioner so far, though more than a period of two years has passed after the learned Single Judge allowed the petition filed by respondent no. 1-petitioner, because of pendency of this Letters Patent Appeal.

9. Learned counsel, Shri Munshaw, for the appellant-Board vehemently submitted that the pension scheme is applicable to regular employees of the Housing Board, and respondent no.1-original petitioner being work charge employee was not entitled to get pensionary benefits under the said scheme as the State Government has not given sanction so far for the work charge employees. The Regulation at Annexure "A" passed by the appellant-Board itself shows that no distinction was drawn by the Board for its regular and work charge employees. As per Regulation 2.2 the said Regulations apply to all those existing employees who were in service of the Board on 1.4.1990 and thereafter.

10. Under the circumstances the learned Single Judge has rightly observed that the pensionary benefits were extended to the employees of the Board with effect from 1.4.1990 and the petitioner had retired from service on 1.6.1991. Therefore, in absence of any distinction drawn by the Board while framing Regulations excluding its work charge employees the Board cannot deny the benefit of pensionary scheme to its work charge employees.

11. It was not open to the Board to discriminate its work charge employees while introducing pension scheme for its regular employees. If there was no such distinction introduced while framing Regulations then it would have been held to be discriminatory and arbitrary under Article 14 of the Constitution of India. Perhaps, keeping in mind this only, the Board while framing its Regulations has not made any distinction about its work charge employees and it is made clear under the Regulations that the said Regulations would be applicable to all its employees who are with the Board on or after 1.4.1990. Shri Munshaw, learned counsel for the appellant-Board, however, tried to submit that there would be heavy burden on the appellant-Board if such pensionary benefits are extended to its work charge employees who are not regular employees because they were employees in the service of the appellant Board considering the exigencies of work. It is unfortunate that such type of arguments come from the learned

counsel for the appellant-Board. A person who continuously worked for nearly 27 years with the appellant-Board and during that period, also promoted, is sought to be denied pensionary benefits on the ground that he was a work charge employee and not a regular employee. This is a benevolent scheme introduced by the Board itself, for the welfare of its employees, therefore, it would not lie good in the mouth of the Board now to submit before the Court that such benefits cannot be given its work charge employees.

12. One more submission was tried to be made by learned counsel Shri Munshaw for the appellant-Board that respondent no.1-petitioner cannot get double benefit; one of old CPF Scheme and another of new pensionary scheme. There is no question of getting double benefit by respondent no.1-petitioner. In fact, he opted for pensionary benefit scheme. Therefore, there is no question of respondent no.1-petitioner getting double benefit under the new scheme. In fact the learned Single Judge has also made clear while passing operative part of the order that he would be entitled to option under the pensionary scheme and accordingly the Board should have extended the benefit to respondent no.1-petitioner by now, because there was no interim order passed in this appeal. It seems that because of pendency of the appeal, the Board has granted stay to itself against the order passed by the learned Single Judge and not implemented the order passed by the learned Single Judge which is most unfortunate.

13. In view of the above discussion we do not find any substance or merit in this appeal. Accordingly, the Letters Patent Appeal is hereby dismissed with cost.

14. The learned Single Judge allowed the writ petition, Special Civil Application No. 14276 of 1993 filed by respondent no.1-petitioner way back on 31.7.2001 and directed the appellant-Board to comply with his order within three months from the date of receipt of the certified copy of the order. But the same is not complied with so far. In that view of the matter we direct the appellant-Board to comply with the order passed by the learned Single Judge of this Court on 31.7.2001, as early as possible, but not later than 31.10.2003.