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**(2013) 02 GUJ CK 0088**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 12335 of 2004**

Hansaben B. Upadhyay

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision : 28-02-2013**

**Acts Referred:**

**Citation : (2013) LabIC 3256**

**Hon'ble Judges : Paresh Upadhyay, J**

**Bench : Single Bench**

**Advocate : J.D. Ajmera, for the Appellant; Neeraj Soni, A.G.P. and R.A. Mishra, for the Respondent**

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## **Judgement**

Paresh Upadhyay, J.—Heard Mr. J.D. Ajmera, learned Advocate for the petitioner, Mr. Neeraj Soni, learned Assistant Government Pleader for the Respondent Nos. 1 and 2 - State Authorities and Mr. R.A. Mishra, learned Advocate for Respondent No. 3. Respondent No. 4 is served. Learned Advocate for the petitioner has stated that the petitioner had joined the service as a trained teacher with respondent No. 4 school on 01.06.1972. It is stated that in the year 1999, the petitioner had completed about 27 years of service and she opted for voluntary retirement. The request of the petitioner to permit her to retire voluntarily was duly accepted by the Competent Authority. It is submitted that at the relevant time, there was no pension scheme in force, covering employees of the schools where the petitioner was serving and therefore the petitioner was not entitled to claim pension. It is stated that, subsequently, Government extended the benefit of pension even to the teachers of Grant-in-aid Private Recognized Primary Schools vide Government Resolution dated 06.04.2002. It is with retrospective effect from 01.01.1997 and therefore, the petitioner was entitled to claim pension, which is claimed by the petitioner which is denied by the respondent authorities and therefore she has filed this petition. Learned Advocate for the petitioner has relied on the decision of this Court dated 14.03.2006 in Special Civil Application No. 7109 of 2005 and consequential instructions issued by the

Government in the form of Government Resolution dated 13.07.2006. Learned Advocate for the petitioner has taken the Court through the documents, including the extract of the service book of the petitioner which is on record. It is contended that, in view of this material, the denial by the respondent authorities is illegal and arbitrary and respondents be directed to pay pension to the petitioner.

2. Learned Assistant Government Pleader Mr. Neeraj Soni on behalf of the Authorities of the Government has vehemently contended that the petitioner is not entitled to pension and the denial by the respondent authorities is just and proper and no interference be made by this Court. Learned Assistant Government Pleader has also referred to and relied upon two affidavits in replies dated 26.09.2005 and 06.02.2013 filed by the authorities to contest this petition.

3. Learned advocate Mr. R.A. Mishra has referred to the affidavit in reply filed on behalf of Respondent No. 3 authority.

4. Having heard learned counsel for the respective parties and having perused the material on record, the facts which emerge are as under:--

4.1 The petitioner had joined the service as a trained teacher with respondent No. 4 school, on 01.06.1972.

4.2 In the year 1999, the petitioner had completed about 27 years of service and she opted for voluntary retirement.

4.3 The said voluntary retirement is duly accepted by the Competent Authority with effect from 30.06.1999. This aspect is additionally supported by the affidavit filed on behalf of respondent No. 3.

4.4 There is also an entry in the service book of the petitioner in this regard, which is duly endorsed by the District Education Officer.

4.5 The pay of the petitioner at the time of voluntary retirement i.e. as on 30.06.1999 was Rs. 6550/-. This is so recorded in the service book and is duly approved by the District Education Officer.

4.6 At the relevant time i.e. in the year 1999, there was no pension scheme in force, covering employees like the petitioner.

4.7 Subsequently, Government extended the benefit of pension even to the teachers of Grant-in-aid Private Recognized Primary Schools vide Government Resolution dated 06.04.2002. It is applied with retrospective effect from 01.01.1997. The said resolution is on record as Annexure-C.

4.8 As per Rules of the Government, an employee who has put in more than twenty years of service is entitled to opt for voluntary retirement. The reading of the said GR dated 06.04.2002 does not make any distinction between superannuation retirement and voluntary retirement.

4.9 Under these circumstances, no discrimination could have been made on the

ground of superannuation retirement or voluntary retirement and by the plain reading of the said resolution, the petitioner could be said to have been entitled for pension.

4.10 The petitioner asked for pension.

4.11 The Authorities denied it saying that the Government Resolution dated 06.04.2002 does not cover the cases of employees who have opted for voluntary retirement after 01.01.1997 but before the date of issuance of Government Resolution i.e. 06.04.2002. Thus, from the authorities' view point, though the scheme of pension was applied by the Government with retrospective effect of 01.01.1997, those who had voluntarily retired between 01.01.1997 to 06.04.2002, they were not entitled to claim pension.

4.12 In this petition also, affidavit in reply is filed on behalf of the authorities dated 26.09.2005, through the Officer of Directorate of Primary Education, Gujarat State, wherein specific stand has been taken that, those who have voluntarily retired between 01.01.1997 and 06.04.2002 are not eligible for pension and since the voluntary retirement of the petitioner is in the year 1999, the petitioner is not entitled to pension. In support this affidavit, even the written clarification of the government dated 10.02.2004 is also placed on record, by annexing the same with the said affidavit in reply.

4.13 This petition remained pending at that stage of pleadings, with the above referred stand of the Government.

4.14 In the meantime, in a separate petition, said question came to be decided by this Court. Reference in this regard can be made to the judgment dated 14.03.2006 in Special Civil Application No. 7109 of 2005. Para 6 of the said judgment reads thus:--

6. The Government made applicable the pension scheme by Resolution dated 06.04.2002 giving it a limited retrospective effect of 01.01.1997. All employees who are in service on 01.01.1997, but retired thereafter were given option to switch over to pension scheme. In the Resolution dated 06.04.2002 the Government has used the word "retired". No distinction has been made between those who retired on crossing the age of superannuation and those who retired on voluntary retirement basis. The distinction as is sought to be made by the respondents through the affidavit-in-reply is not born out from the Resolution. Once the employee is permitted to proceed on voluntary retirement, unless there is specific reason treating the employee differently from one who is retired on superannuation, there is no possibility to treat the two separately.

4.15 Thus, in view of the above judgment of this court, the stand taken by the authorities in this petition in the affidavit-in-reply dated 26.09.2005, as referred above, stood negated and the authorities, on their own, should have granted pension to the petitioner, which they did not do.

4.16 The Government in right spirit, with a view to remove any ambiguity in

implementing the said judgment, issued consequential Government Resolution dated 13.07.2006, giving instructions on the lines of the directions contained in the above referred judgment dated 14.03.2006, by giving specific reference to the above referred judgment of this Court in Special Civil Application No. 7109 of 2005.

4.17 On the face of this, the authorities should not have waited any more for the order by this Court in favour of the petitioner, since the stand taken in the affidavit-in-reply to contest this petition got further negated by the instructions of the Government itself. Still the authorities sat tight over the issue for years.

5. In above factual background, when this petition was listed for hearing before this Court on 10.01.2013, following order Was passed-

Learned counsel for the petitioner Mr. Ajmera has stated that the point involved in the petition is already concluded by the decision of this Court dated 14.03.2006 in Special Civil Application No. 7109 of 2005. It is further indicated that pursuant to the said decision of this Court, Government has also issued resolution on 13.07.2006. Under these circumstances, according to him, the issue need not be adjudicated any further and the reliefs as prayed for by the petitioner need to be granted in terms of earlier decision as well as Government Resolution.

Learned AGP Mr. Soni requests for time to respond to this.

List the matter on 22.01.2013.

6. In above factual background, the authorities of the Government had to only explain the delay of these many years in sanctioning pension to the petitioner, on the face of the stand in the affidavit-in-reply dated 26.09.2005, read with Government Resolution dated 13.07.2006. At this stage, now altogether new defense is manufactured by the Authorities and one more affidavit is filed dated 06.02.2013. By the said affidavit, which is sworn by one Mr. Manoj T. Shah, Deputy Secretary, without condemning, even without referring the earlier affidavit-in-reply dated 26.09.2005 filed on behalf of the authorities whereby it was stated that since the voluntary retirement of the petitioner is between 01.01.1997 and 06.04.2002 therefore she is not entitled for pension, now it is sought to be contended that it was not the voluntary retirement at all, but it was the resignation of the petitioner and therefore she is not entitled to pension.

7.1 At this stage, prima facie, I find that this improvement in the stand of the authorities, is less the contest by the Government, more an attempt by the deponent of the affidavit-in-reply dated 06.02.2013, to frustrate the claim of the petitioner, and also to obstruct the administration of justice, which needs to be viewed seriously, however before arriving at any conclusion, let the merits of even this contention be gone into first, and if it is found that the stand in this affidavit dated 06.02.2013 is justified on merits, let Government be not fasten with avoidable financial liability.

7.2 In this regard, it needs to be ascertained first, as to whether, the petitioner had tendered resignation or she had opted for voluntary retirement at the relevant time. In this regard, some of the facts which are already recorded above needs to be recorded again. The said voluntary retirement was duly accepted by the Competent Authority with effect from 30.06.1999, which is supported by the affidavit-in-reply dated 11.1.2004, filed on behalf of the said competent authority who is respondent No. 3, in this petition. Further, there is also an entry in the service book of the petitioner in this regard, which is duly endorsed by the District Education Officer. Further, the service book also records that the pay of the petitioner at the time of her voluntary retirement i.e. as on 30.06.1999, was Rs. 6550/-. Even this entry is also duly approved by the District Education Officer. At this stage, learned Assistant Government Pleader Mr. Soni has pointed out that all the entries which are placed on record are not approved by the District Education Officer. Specific reference is made to page Nos. 57 and 58 of the paper book. When confronted, that the endorsement by the District Education Officer is very much there on page Nos. 52, 53, 54, 55, 56, 59 and 60 and the relevant entries with regard to voluntary retirement of the petitioner is on page Nos. 59 and 60, learned Assistant Government Pleader does not have any answer. Further, these are the documents approved by the competent authorities and they are contemporaneous documents. It is not even the case of the deponent of the affidavit-in-reply dated 06.02.2013 that those documents are forged documents or that there was connivance of the officer of the rank of District Education Officer with the petitioner at the relevant time, when even the Government Resolution dated 06.04.2002 was not there. Further, even the annexure with the said affidavit-in-reply dated 06.02.2013, i.e. letter of respondent No. 4, addressed to respondent No. 3 also clearly reveals that the petitioner had opted for voluntary retirement, which was requested to be accepted. As already recorded above, affidavit-in-reply is filed on behalf of Respondent No. 3 in this petition, stating that the petitioner had voluntarily retired on 30.06.1999 and the same was approved by respondent No. 3. Even the letter of the Government dated 10.02.2004, which is specifically with regard to the petitioner herself and which is on record as an annexure to the affidavit-in-reply dated 26.09.2005, in terms, states that the petitioner had opted for voluntary retirement but since it was between 01.01.1997 to 06.04.2002, only on that count the petitioner was not entitled to pension at the relevant time. It is recorded that learned Assistant Government Pleader has, by referring to the letter dated 26.07.1999, contended that it is not that there is no basis to take the stand which is contained in the affidavit-in-reply dated 06.02.2013. In my view, the said letter, which is a cyclostyled proforma prevailing at the relevant time, cannot be read in isolation and has to be read conjointly with other contemporaneous record. Taking into consideration the above referred overwhelming material, which is on record, I find that, it is not only the case of the petitioner that she had opted the voluntary retirement in the year 1999, but it has been the case of the Government as well, all throughout, that the petitioner had opted voluntary retirement. In my view, the stand taken in the

affidavit-in-reply dated 06.02.2013 cannot be, and is not the stand of the Government. It is the stand of the deponent of the said affidavit in his personal capacity and it is inconsistent with the record, it is also inconsistent with the affidavit-in-reply dated 26.09.2005 which was already on record of this Court and there is not even a whisper in the affidavit-in-reply dated 06.02.2013 to the said earlier affidavit-in-reply dated 26.09.2005. Therefore, I hold that the defense sought to be put forward through learned Assistant Government Pleader as contained in affidavit-in-reply dated 06.02.2013 is a manufactured stand of the deponent of the said affidavit and it needs to be rejected. For these reasons, I hold that the improvement in the stand of the authorities, as contained in the affidavit-in-reply dated 06.02.2013, is less the contest by the Government, more an attempt by the deponent of the said affidavit-in-reply to frustrate the claim of the petitioner, and it can also be termed as an attempt to obstruct the administration of justice, which needs to be viewed seriously. In this regard, appropriate observations are made in this judgment subsequently.

8. Reverting back to the relief claimed by the petitioner, I find and hold that the claim of the petitioner is covered by the judgment of this Court in Special Civil Application No. 7109 of 2005 dated 14.03.2006, read with consequential Government Resolution dated 13.07.2006. The petition also needs to be allowed in view of the specific stand of the authorities as contained in the affidavit-in-reply dated 26.09.2005 and the letter of the Government dated 10.02.2004 annexed with the said affidavit-in-reply. Therefore, the petition needs to be allowed and respondents are required to be directed to pay pension and other retirement dues to the petitioner, considering 30.06.1999 as the date of her voluntary retirement.

9. In view of, the prima facie observations of para: 8.1 above, and the observations and findings recorded in para 8.2 above, exemplary cost can be awarded against the authorities, which can be permitted to be recovered from the erring officer, and further, even proceedings can be directed to be initiated against the deponent of the affidavit-in-reply dated 06.02.2013, for filing a false affidavit, with an attempt to obstruct the administration of justice and also with a view to obtain a favourable order from this Court. However, in my judgment, such a serious mischief would not have been permitted by the highest authority of the department and therefore it is deemed proper, to first put these facts to the notice of the Principal Secretary of the Education Department and he is requested to look into the matter with all seriousness and in right perspective and take appropriate corrective measures. Since the issue of taking corrective measures as referred above is left to the wisdom and discretion of the Principal Secretary of the Education department, I deem it proper to pass no order as to cost in this petition.

10. For the reasons recorded above, this Court arrives at the judgment and passes order as under.

10.1 The petitioner is held to be entitled to claim pension and other retirement

dues from the respondents, considering 30.06.1999 as the date of her voluntary retirement.

10.2 Respondents are directed to calculate and pay the pension and other retirement dues to the petitioner, considering 30.06.1999 as the date of her voluntary retirement. Respondents are further directed that, this amount shall be paid to the petitioner, within a period of three months from today.

10.3 Principal Secretary of the Education Department is directed to take necessary steps, pursuant to the observations made in para 10 of this judgment, keeping in view the observations and findings recorded in paras 8.1 and 8.2 of this judgment.

Rule made absolute. In view of observations made in para 10 of this judgment, no order as to costs.