
(2011) 02 GUJ CK 0195

In the Gujarat High Court

Case No : Special Civil Application No. 13902 of 2010

Hasmukhbhai Shantilal Mehta

APPELLANT

Vs

President/Secretary and Others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 GLR 1079

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Hemang R. Rawal, for the Appellant; Maulik G. Nanavati, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Maulik G. Nanavati, learned Assistant Government Pleader, waives service of notice of Rule for Respondent No. 3. Notices have been served upon Respondent Nos. 1 and 2, but none appears on their behalf.

2. By way of the present petition under Article 226 of the Constitution of India, the Petitioner assails the impugned judgment of the Gujarat Secondary Education Tribunal ("the Tribunal" for short) dated 9-7-2010, rendered in Application No. 24 of 2009, whereby the said Application of the Petitioner has been rejected on the ground of delay.

3. Briefly stated, the facts of the case are that the Petitioner was initially appointed in the Sayaji High School, Vadodara on 3-9-1964, where he worked upto 13-5-1965. After prosecuting further studies, the Petitioner was appointed as Assistant Teacher at Sardar Vallabhbhai Vidyalaya, Vadodara on 3-7-1967, and he worked at that place upto 9-6-1968. The Petitioner, thereafter, acquired the qualification of B. Ed, and was appointed as Part-time Teacher in the School run by Respondent No. 1. With effect from 15-6-1970, the Petitioner was

appointed as Full-time Teacher, and ever since then, he has been working in the said School. The case of the Petitioner is that he was given the pay-scale of Rs. 440-750 in the year 1973 and the relevant entry regarding pay fixation was made in his Service Book. However, the Petitioner was not given Selection Grade on completion of 15 years of service. He, therefore, filed Application No. 801 of 1987 before the Tribunal, which was allowed and the relevant entry regarding the grant of Selection Grade of Rs. 500-900 with effect from 13-1-1981 with one additional increment was made in the Service Book of the Petitioner. Consequent upon the revision of pay-scales, the pay of the Petitioner was fixed in the scale of Rs. 2000- 3500 with effect from 23-2-1989 (at Rs. 2,375). The Petitioner was appointed as Principal on 23-2-1989 and, thereafter, there was a further revision in pay-scales pursuant to the recommendations of the 5th Pay Commission. Accordingly, the pay of the Petitioner was fixed in the scale of 6500-10,500. The grievance of the Petitioner is that as per the Government Resolutions dated 27-10-1977 and 5-1-1965, he was entitled to one additional increment from the date of his promotion as Principal, which has not been granted to him. Aggrieved thereby, the Petitioner filed the above-mentioned application in the Tribunal, which has been rejected on the ground of delay, by the impugned order.

4. Mr. Hemang R. Rawal, learned Advocate for the Petitioner has submitted that the decision of the Tribunal in dismissing the application of the Petitioner on the ground of delay is erroneous, inasmuch as the Tribunal has not considered the aspect that the Petitioner is agitating for grant of an additional increment which would have a direct bearing on his salary. As the said cause of action is financial, it accrues from month to month, therefore, the Tribunal could not have rejected the application on the ground of delay, as the cause would still survive. In support of the above submissions, the learned Advocate for the Petitioner has relied upon the following judgments:

- (a) State of Madhya Pradesh and Others Vs. Yogendra Shrivastava,
- (b) M.R. Gupta Vs. Union of India and others,
- (c) Union of India v. Tarsem Singh, 2008 (8) SCC 648

5. Mr. Maulik G. Nanavati, learned Assistant Government Pleader has submitted that in view of the principles of law enunciated in judgments rendered by the Supreme Court, this Court may pass appropriate orders. However, the learned Assistant Government Pleader has contented that in case the Court is inclined to accept the plea made by the Petitioner, the claim for recovery of the arrears of the increment may be restricted to a reasonable period of time.

6. At this stage, it would be fruitful to look into the legal position regarding whether the cause of the Petitioner, being one for grant of arrears of an additional increment, would be hit by delay and laches.

7. In State of Madhya Pradesh v. Yogendra Shrivastava (supra) it is held that:

14. The Appellants contended that the claims were, therefore, barred by

limitation. It was pointed out that the Respondents were paid N.P.A. at a fixed rate as stipulated in the appointment orders and N.P.A. was increased only when it was revised by Government orders from time to time; that Respondents accepted such N.P.A. without protest; and that therefore, they cannot, after periods varying from 5 to 15 years, challenge the fixation of N.P.A. or contend that they are entitled to N.P.A. at a higher rate, that is 25% of their pay. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though, the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore, the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See: M.R. Gupta Vs. Union of India and others, and Union of India v. Tarsem Singh, 2008 (8) SCC 648] Conclusion:

8. In M.R. Gupta v. Union of India (supra), the Appellant therein had filed an application before the Central Administrative Tribunal after 11 years for proper fixation of pay as on the date of his joining the Railway Service. The Supreme Court held as under:

5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The Appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the Appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the Appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the Appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay

fixation the application cannot be treated as time-barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the Appellant's claim as "one time action", meaning thereby, that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See: *Tliota China Subba Rao v. Mauapalli Raju*, AIR 1950 FC 1).

9. In *Union of India v. Tarsem Singh* (supra), taking the same view, the Supreme Court has held, after discussing the relevant judgments on this point, that:

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/ successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

10. Admittedly, the Petitioner filed the application before the Tribunal after 10 years. The Tribunal has, in Paragraph 5 of its judgment and order, accepted on merits, that the case of the Petitioner (and others before it) is covered in his favour by its own judgment in Anr. matter. However, it has proceeded to reject the application of the Petitioner solely on the ground that there is a delay of 10 years. According to the Tribunal, though no prescribed period of limitation is provided for in the Act under which the Tribunal is constituted, or by any Rules or

Regulations applicable to it, public policy demands that a litigant should approach the said forum within a reasonable time.

11. The Court may now examine the above-stated reasons given by the Tribunal, in the light of the settled legal position emerging from the above- quoted judgments of the Apex Court.

12. From the position of law as enunciated by the Supreme Court, as above, it is clear that though the Petitioner has approached the Tribunal after 10 years, his claim would fall in the Exception to the principle of delay and laches, as it relates to a continuing wrong. The only grievance of the Petitioner is that he has not been granted the additional increment with effect from the date on which he was promoted as Principal. This, therefore, gives him a cause of action every time he is paid salary, making it a recurring cause of action, renewed from month to month. As no right of any third party is involved or affected, the ground of delay could not have been pressed into service by the Tribunal and the application could not have been rejected on this ground, though on merits, the Tribunal has stated that the case of the Petitioner is covered by its own judgment in Application No. 243 of 2006 decided on 13-5-2010, in his favour.

13. Considering that the cause pleaded by the Petitioner involves recurring monetary benefits, it would not be hit by delay and laches, though such delay can be taken into consideration while granting arrears of the financial benefit, by limiting the said benefit to a reasonable period of time. In the considered view of this Court, the Tribunal has committed an error by entering into the arena of "public policy", while rejecting the application of the Petitioner. The Tribunal has granted the benefit claimed by the Petitioner to other applicants before it by the very same judgment and has also agreed that, on merits the Petitioner is entitled to the same. As the rejection of the application on the ground of delay is erroneous, resultantly, the claim of the Petitioner ought to be granted.

14. For the aforestated reasons, as the impugned judgment of the Tribunal is not in consonance with settled principles of law, as enunciated by the Supreme Court, the said judgment qua the Petitioner only, is hereby quashed and set aside. The Respondents are directed to grant the benefit of one additional increment to the Petitioner. However, it is clarified that the arrears of the amount so payable to the Petitioner, insofar as it affects his pensionary benefits, shall be restricted to a period of three years from the date of filing the Application before the Tribunal.

15. The petition is partly allowed, in the above terms. Rule is made absolute, to the above extent. There shall be no orders as to costs.