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**(2015) 08 GUJ CK 0042**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 4861 of 2014**

Jashvantkumar Jayantilal Sanghavi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision : 06-08-2015**

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 19, 21, 226

**Citation : (2015) 08 GUJ CK 0042**

**Hon'ble Judges : J.B. Pardiwala, J**

**Bench : Single Bench**

**Advocate : Hasit H. Joshi, for the Appellant**

**Final Decision : Partly Allowed**

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## **Judgement**

J.B. Pardiwala, J—Rule. Ms. Shruti Pathak, the learned AGP waives service of notice of rule for and on behalf of the respondents Nos. 1, 2, 4 and 5. Mrs. Krishna Rawal, the learned Advocate waives service of notice of rule for and on behalf of the respondent No. 3.

2. By this writ-application under Article 226 of the Constitution of India, the petitioner, a retired employee of the Dhandhuka Nagar Palika has prayed for the following reliefs:-

"(A) Be pleased to allow this petition.

(B) Be pleased to direct the respondents immediately pay the interest to the present petitioner at the rate of 12% per annum on the amount of arrears of pension and gratuity etc. of Rs. 3,90,991.79 paise which came to be credited in his account from the date of his retirement 31.10.2000 till the date of actual payment thereof and also consider the case of the present petitioner for higher grade as per resolution of the State Government dated 16.08.1994 considering the entry of the petitioner in service on 22.12.1967.

(C) Be pleased to grant interim relief in terms of para B in the larger interest of

justice pending admission, hearing and final disposal of this petition.

(D) Be pleased to grant such other and further relief/s that may be deemed fit and proper in the facts and circumstances of the case;

3. The case of the petitioner may be summarised as under:-

3.1 The petitioner was appointed as the Family Planning Worker, vide order dated 22.12.1967, passed by the Dhandhuka Nagar Panchayat. The Nagar Panchayat thereafter got converted into a Nagar Palika. The petitioner retired as an employee of the Dhandhuka Nagar Palika on 31st October, 2000. After his retirement, his pension was not sanctioned along with the other retiral benefits. In such circumstances, he had to come before this Court by way of a Special Civil Application No. 19551 of 2006. The said SCA No. 19551 of 2006 was disposed of by an order dated 2.5.2013. The order reads thus:-

"1. Heard learned advocate Mr. Hasit H. Joshi for the petitioner and learned Assistant Government Pleader Mr. Manan Maheta for respondent Nos. 1, 2, 3 and 5. Learned advocate Mrs. Krishna G. Rawal appears for the respondent Municipality.

2. The petitioner has filed this petition under Article 226 of the Constitution of India for following relief:-

6(B) Direct Respondents to immediately finalize pension case of petitioner and pay him all arrears of his pension from 1.11.2000 till this date with interest at the rate of 9% per annum from the date of retirement of petitioner till this date along with other terminal benefits which have not been paid to him and to continue duly revised pension from time to time regularly every month in the interest of justice.

3. When the petition is taken up for hearing, it is pointed out that the Government has now sanctioned the pension case of the petitioner, as per which the petitioner has also been getting pension. Learned Assistant Government Pleader places on record xerox copy of the order sanctioning pension of the petitioner.

4. In view of the order passed by the Government sanctioning pension of the petitioner, first part of the prayer to direct the respondents to finalize the pension case of the petitioner and pay him arrears of pension would not survive. However, as regards prayer for interest at the rate of 9% per annum on delayed payment of pension from 1.11.2000 till the date of payment of retiral benefits, learned advocate Mr. Joshi for the petitioner states that the petitioner has already filed separate petition, being Special Civil Application No. 8807 of 2007, claiming interest after pension of the petitioner was sanctioned. He states that in the said petition, the Court directed the petitioner to make representation, which the petitioner has made to the concerned authorities but no decision is taken so far on the representation.

5. In view of the above, the issue about entitlement to interest claimed by the petitioner in the petition is not required to be gone into. It will be open to the petitioner to pursue his remedy for interest on delayed payment of pension and other retiral benefits.

6. With the above observations, the petition is required to be disposed of. Hence, the petition stands disposed of. Rule is discharged. No costs. "

4. It appears that the petitioner had also filed SCA No. 8807 of 2007. The reference of the same could be found in the order of this Court referred to above. The SCA No. 8807 of 2007 was disposed of vide order dated 3.4.2007. The order reads thus:-

"Heard the learned advocate Mr. H.H. Joshi on behalf of the petitioner, learned AGP Mr. Kalpesh Pandit appearing for respondent.

In pursuance to the Court direction, petitioner has received the amount of pension and gratuity from the respondent. From the aforesaid amount, the contribution of CPF has been deducted by the respondent. The amount of pension and gratuity was not paid by the respondent for period of seven years, but because of direction issued by this Court, it was paid to the petitioner by the respondent. Now petitioner filed petition for claiming the interest upon delayed payment as well as claiming for the higher grade which has not been paid to the petitioner.

Therefore, in light of the aforesaid claim of the petitioner, it is directed to the respondent to consider the case of the petitioner for the interest of delayed payment of pension and gratuity as per the Government Resolution and also consider the case of the petitioner, whether he was entitled for the benefit of higher grade as per the Government Resolution dated 16/8/1994 or not and make it clear whether contribution of CPF of the petitioner has been deducted from the pension/gratuity or not and then to pass appropriate reasoned order in accordance with law within a period of three months from the date of receiving the copy of this order and communicate the decision immediately to the petitioner.

In view of the above observations and directions, present petition is disposed of without expressing any opinion on merits.

However, in case if ultimate decision is adverse to the petitioner, it is open for the petitioner, to challenge the same before appropriate forum in accordance with law.

Direct service is permitted."

5. It appears that against the order dated 2.3.2007 passed in the SCA No. 19551 of 2006, a Letters Patent Appeal No. 259 of 2008 was also preferred. The same was disposed of vide order dated 10.3.2008. The order reads thus:-

"Heard the learned advocates.

Both these Appeals arise from the orders made on above Special Civil Application No. 19551/2006. By order dated 2nd March, 2007 made by the learned Single Judge, the appellants-State Government was directed to process the pension papers of the writ petitioner, the respondent No. 1 herein. Pursuant to the said order, the pension case of the respondent was processed and pension payment order was made. In view of the said pension payment order, by order dated 8th March, 2007 the petition was disposed of as the cause of action did not survive.

It appears that the real matter at issue, whether the respondent No. 1 was the servant of the State Government or the respondent Dhandhuka Municipality was not decided. The question whether the service of the respondent No. 1 was pensionable or not was also not examined.

In above view of the matter, with the consent of the learned advocates, we allow the above Letters Patent Appeal No. 259/2008. The order dated 8th March, 2007 made by the learned Single Judge is quashed and set-aside. The Special Civil Application No. 19551/2006 is remanded to the learned Single Judge for hearing and decision afresh on condition that the appellants-State Government will file its counter-affidavit within one month from today.

We do not entertain the challenge to the order dated 7th February, 2007 as the same has been complied with and is exhausted. We, however, make it clear that the pension received by the respondent No. 1 under order dated 7th February, 2007 will be ad-hoc and subject to the result of the writ petition.

Both these Appeals and the Civil Application stand disposed of in the above terms. Registry will maintain copy of this order in each Appeal."

6. The SCA No. 19551 of 2006 being remitted to the learned Single Judge, the order dated 2.5.2013 referred to above was passed disposing of the writ-application. It appears that after the disposal of the SCA No. 19551 of 2006 on 2.5.2013, the petitioner had to come again to this Court by way of SCA No. 11634 of 2013. The said writ-application was disposed of vide order dated 24.7.2013, which reads thus:-

"Heard Mr. Hasit H. Joshi, learned advocate for the petitioner, and Mr. D.M. Devnani, learned Assistant Government Pleader appears on advance copy for respondent Nos. 1 and 2.

Relying upon the order dated 02.05.2013 passed by this Court in Special Civil Application No. 19551 of 2006, learned advocate for the petitioner has pointed out that as observed in Paragraph No. 4 thereof, the petitioner has filed an application before the Chief Officer of respondent No. 3-Nagarpalika dated 24.06.2013 (at ANNEXURE-U) (Page 57), which is pending for adjudication.

In view of the aforesaid facts, respondent No. 3-Nagarpalika is directed to decide the aforesaid application as expeditiously as possible, preferably within a period of 03 (three) months from the date of receipt of this order, in accordance with law.

It is further made clear that this Court has not opined anything on merits and the aforesaid application shall be decided by respondent No. 3-Nagarpalika without being influenced by this order.

As this order is passed without notice, the petitioner shall serve copy of this order to respondent No. 3-Nagarpalika.

Disposed of at this stage. There shall be no order as to costs."

7. It appears that so far as the issue whether the petitioner is entitled to draw the pension after his retirement as an employee of the Dhandhuka Nagar Palika has attained finality. The State Government has sanctioned the pension and he is receiving the same. It appears that the other retiral benefits like gratuity etc. have also been paid. The question now is regarding the interest on the delayed payment. According to the petitioner, he should have started receiving the pension from the year 2000 itself i.e. 1.11.2000. It also appears from the order dated 22.2.2007 passed by the Assistant Inspector, Local Fund Department, Ahmedabad that the pension which came to be sanctioned on 26.2.2007 was paid with the arrears accumulated from 1.11.2000. It also appears from the order dated 27.2.2007 that an amount of Rs. 1,06,787/- was paid towards the gratuity. Thus, the petitioner is claiming interest on the amount of pension and other retiral benefits paid to him at a belated stage i.e. on 1.11.2007 almost after seven years from the date of his superannuation. It is also his grievance that all through out during his employment, he was not given the benefit of the higher pay-scale on completion of 9, 18 and 27 years of service. It is his case that such benefit should be granted to him with interest.

8. It appears from the materials on record that an amount of Rs. 3,90,991.79 was credited in the account of the petitioner on 5.3.2007 towards the arrears of pension and gratuity. It also appears that the petitioner, through his Advocate had issued various notices to the Dhandhuka Nagar Palika for grant of the benefit of the higher pay-scale in accordance with the G.R dated 16th August, 1994 and also for payment of the amount of interest on the delayed payment of the retiral benefits. The Nagar Palika made its stance very clear that the petitioner is not entitled to receive pension from the Nagar Palika as the petitioner was not the employee of the Municipality, but he was appointed by the Municipality under the Scheme of the State Government. The salary and the other benefits were sanctioned and paid by the Health Department of the State Government. It is the stance of the Nagar Palika that the pension has also been sanctioned by the State Government. It is the case of the Nagar Palika that if the petitioner has any grievance as regards the grant of any higher pay-scale or interest on the delayed payment, then it is for the State Government to look into the same.

9. An affidavit-in-reply has also been filed on behalf of the respondent No. 3 duly affirmed by the Chief Officer of the Nagar Palika. There is no reply filed by the State-respondents.

10. Having heard the learned counsel appearing for the parties and having gone

through the materials on record, two questions fall for my consideration (i) whether the petitioner is entitled to receive any amount towards the interest for the delayed payment of his retiral benefits and (ii) whether the petitioner was wrongly denied the benefit of the higher pay-scale in accordance with the Government Resolution of the year 1994.

11. I may also quote with profit a decision of the Supreme Court in the case of S.K. Dua Vs. State of Haryana and Another, AIR 2008 SC 1077 : (2008) 1 CLT 701 : (2008) 116 FLR 636 : (2008) 1 JT 331 : (2008) 1 SCALE 284 : (2008) 3 SCC 44 : (2008) 1 SCC(L&S) 563 : (2008) 3 SLJ 104 : (2008) AIRSCW 689 : (2008) 1 Supreme 95 . The observations of the Supreme Court in para No. 11 are as under:-

"The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

12. Here, there is no statutory rule occupying the field for payment of any interest relying on which, the members of the Federation can claim the benefit of interest on the delayed payment of their retiral dues. The Supreme Court in the case of S.K. Dua (supra) held that in the absence of statutory rule, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution. Following the said decision of the Supreme Court, this Court has no hesitation to hold that the claim of interest on the delayed payment of retiral dues is the fundamental right of the petitioners which they can enforce in the writ jurisdiction of this Court.

13. When interest is awarded by the Court, our normal feeling is that it is so awarded by way of penalty or punishment. But interest in all cases is not granted by way of penalty or punishment. In this regard, reference may be made to the decision of the Supreme Court in the case of Alok Shanker Pandey Vs. Union of India (UOI) and Others, AIR 2007 SC 1198 : (2007) 1 CompLJ 382 : (2007) 2 CPJ 3 : (2007) 4 JT 248 : (2007) 3 SCALE 190 : (2007) 3 SCC 545 : (2007) 74

SCL 198 : (2007) 2 SCR 737 : (2007) AIRSCW 1233 : (2007) 2 Supreme 249 , wherein the concept of grant of interest has been explained in the following manner:-

"It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say ten years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B ten years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal but also interest thereon to B."

14. The above-noted decision of the Supreme Court makes it clear that the claim of interest on the delayed payment of retiral dues or any other dues, to which an employee is otherwise entitled to, flows from the fundamental rights guaranteed under the Constitution. The claim for interest cannot be held to be a stale claim as a right to claim interest. All delayed payments of the legitimate dues accrue due to the continuing wrong committed by the State-respondent for withholding the payment of the employees of the retiral dues, causing continuous injury to the petitioners until such payment is made.

15. Apparently, therefore, the delay in payment of Higher Pay Scale earned by the retired teachers by the State is without any authority of law. It has been caused only due to their own conjectures and surmises and for non statutory alleged practice and bottleneck created thereby. This kind of practice perhaps is observed to harass poor retired employees. In the absence of any other valid reason shown by the learned counsel for the State, this Court is justified to infer as above. Such approach cannot be approved or condoned but deserves to be condemned in the strongest words.

16. A system controlled by the bureaucrats can create wrangles to device something which is formulated by the policy makers for the benefit of the citizen is writ large from this case. A beneficial scheme made for social welfare of the employees, can be twisted by the system creating a nightmare for the retired employees, as is quite evident. Something due today may not be available to a person right in time. It is like a person starving today is assured food to be provided after a month or two, by which time, he may die of hunger or the foodstuff itself may rot. If this is not unconstitutional then what else can be.

17. Withholding of pension and other retiral benefits including the legitimate dues under a particular scheme of the retired employees for years together is not only illegal and arbitrary but a sin, if not an offence, since no law has declared so. The officials, who are still in service and are instrumental in such delay, causing harassment to the retired employees, must however feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the

concept of the social and economic justice which is one of the founding pillars of our Constitution.

18. In our system, the Constitution is supreme, but the real power vest in the people of India. The Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in particular when the person subject to harassment is his own employee.

19. Regarding the harassment to a common man referring to the observations of Lord Hailsham in *Cassell & Co. Ltd. v. Broome*, 1972 AC 1027 and *Lucknow Development Authority Vs. M.K. Gupta*, AIR 1994 SC 787 : (1994) 80 CompCas 714 : (1994) 1 CompLJ 1 : (1993) 6 JT 307 : (1993) 4 SCALE 370 : (1994) 1 SCC 243 : (1993) 3 SCR 615 Supp , held as under:-

"An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law... A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it... Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. (para 10)"

20. The above observations as such have been reiterated in *Ghaziabad Development Authority Vs. Balbir Singh*, AIR 2004 SC 2141 : (2004) 121 CompCas 409 : (2004) 3 CompLJ 159 : (2004) 2 CPJ 12 : (2004) 2 CTC 535 : (2004) 5 JT 17 : (2004) 3 SCALE 671 : (2004) 5 SCC 65 : (2004) 3 SCR 68 : (2004) AIRSCW 2362 : (2004) 5 Supreme 51 .

21. The Respondents being "State" under Article 12 of the Constitution of India, its officers are public functionaries. As observed above, under our Constitution, sovereignty vest in the people. Every limb of the constitutional machinery therefore is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that this Court should remind the respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large and in particular their ex-employees like the petitioners. The respondents have the support of entire machinery and various powers of the statute. An ordinary citizen or a common man is hardly equipped to match such might of State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the injury to society is far more grievous. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of,



sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match inaction in public oriented departments gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to the occasion otherwise the confidence of the common man would shake. It is the responsibility of the Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain arbitrary and arrogant, unlawful inaction or illegal exercise of power on the part of the public functionaries. (vide Abdul Kuddus Khan V. State of U.P. and Others, Civil Misc. Writ petition No. 22315 of 2008, decided on 22nd February, 2011).

22. In a democratic system governed by rule of law, the Government does not mean a lax Government. The public servants hold their offices in trust and are expected to perform with due diligence particularly so that their action or inaction may not cause any undue hardship and harassment to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the authorities to law.

23. In Common Cause A Registered Society Vs. Union of India and others, AIR 1996 SC 3538 : (1996) 8 JT 613 : (1997) 3 SCALE 21 : (1996) 7 SCALE 156 : (1996) 6 SCC 530 : (1996) 6 SCR 719 Supp : (1996) 2 UJ 802 , the Apex Court said:

"No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable" No public servant can arrogate in himself the power to act in a manner which is arbitrary."

24. In Shivsagar Tiwari Vs. Union of India (UOI) and Others, (1996) 8 AD 159 : (1996) 7 SCALE 643 : (1996) 6 SCC 558 : (1996) 7 SCR 478 Supp : (1997) 1 UJ 1 , the Apex Court has held:

"An arbitrary system indeed must always be corrupt one. There never was a man who thought he had no law but his own will who did not soon find that he had no end but his own profit."

25. IN Delhi Development Authority v. Skipper Construction and Anr., 1996 AIR (SC) 715, the Court held as follows:

"A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not meant to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless."

26. I am of the view that it took almost seven years for the State to sanction the pension. The petitioner had attained superannuation on 31.10.2000, whereas the pension was sanctioned on 26.2.2007. As noted above, an amount of Rs. 3,90,991.79 was credited in the account of the petitioner on 5.3.2007. In such circumstances, the petitioner is entitled to receive interest at the rate of 8% per annum for the period between 1.11.2000 and 4.3.2007. The State-respondent is directed to calculate the requisite amount towards interest at the rate of 8% per annum and make the payment to the petitioner within a period of six weeks from the date of receipt of the writ of the order.

27. In so far as the grant of the benefit of the higher grade in terms of the Resolution of the State Government dated 16th August, 1994 is concerned, nothing has been clarified in that regard by the State Government. It seems that the State Government has not applied its mind to this issue. The Government could have rejected the claim by passing a reasoned order as to why the petitioner was not entitled. However, there is nothing on record to indicate that such claim was considered by the State-respondents at any point of time. In such circumstances, the State-respondents are directed to look into the claim of the petitioner as regards the grant of the higher pay-scale according to its Resolution dated 16th August, 1994. The State-respondents are directed to pass a reasoned order in this regard and communicate the same to the petitioner. In the event if the Government takes the view that the petitioner was entitled to receive the higher pay-scale during his tenure of service, then the necessary calculation in that regard shall be made and he shall be paid the requisite amount with 8% interest. In such circumstances his pension will also have to be refixed accordingly. In short, this entire exercise shall be completed within a period of eight weeks from the date of receipt of the writ of the order.

28. I would like to remind the State-respondents that it has been almost 15 years that the petitioner has retired and is still not able to come out of the litigations. He is aged around 73. There shall be no laxity on the part of the State-respondents in looking into the matter in accordance with law. Any lapse or negligence in this regard shall be viewed very strictly. A government employee is expected to leave his retired life peacefully and is not supposed to live his retired life knocking the doors of the Government with begging bowl for his legitimate claims.

29. The petition is partly allowed. Rule is made absolute to the aforesaid extent.

After the order is pronounced Ms. Pathak, the learned AGP appearing for the

State-respondent prays for stay of the operation of the order pronounced today.  
In view of what has been stated above, the request is declined.