

(2016) 02 GUJ CK 0218

In the Gujarat High Court

Case No : Special Civil Application No. 5267 of 2015

Jayprakash Rameshchandra Thaker

APPELLANT

Vs

Commissioner of Schools and Others

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 02 GUJ CK 0218

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

Bench : Single Bench

Advocate : Mamta R. Vyas, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—1. By this writ application under Article 226 of the Constitution of India, the petitioner, a retired teacher of a Government Primary School, has prayed for the following reliefs;

"(A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the order dtd. 13.2.2015 passed by the Secondary Education Tribunal in New Application No. 419/2014 (Old No. 105/2013) and further be pleased to direct the respondents to consider the period from 5.7.2005 to 30.4.2008 as continuous service as per the earlier order of the Tribunal and also direct the respondents to make necessary entries in the Service Book and to pay all the benefits with interest;

(B) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction directing the respondent authorities to approve the 2nd Higher Grade to the petitioner after completion of 11 years with effect from 20.12.2008 (20.12.1997 to 20.12.2008) and pay all the consequential benefits to the petitioner with interest;

(C) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction directing the respondent authorities to fix the

salary considering the continuous service of the petitioner as per the compromise and as per the judgment of the Tribunal for the period from 5.7.2005 to 30.4.2008 and direct the respondents to revise the pay as per the Sixth Pay Commission and to pay arrears of revised pay with all consequential benefits with interest.

(D) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction directing the respondents to fix the regular pension considering all earlier prayers and to pay the differences of provisional pension and regular pension with interest.

(E) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction directing the respondents to pay the gratuity, leave encashment and all other retiral benefits forthwith with interest counting his services as continuous for the period from 5.7.2005 to 30.4.2008.

(F) Pending admission, hearing and final disposal of this Writ Petition, Your Lordships may be pleased to stay the order dtd. 13.2.2015 passed by the Secondary Education Tribunal in New Application No. 419/2014 (Old No. 105/2013) and further be pleased to direct the respondents to refix the pension of the petitioner and to pay to hi the gratuity, leave encashment and other consequential benefits on that basis, forthwith.

(G) Be pleased to pass such other and further relief as may be deemed just and proper by Your Lordships in the facts and circumstances of the case."

2. The facts of this case may be summarized as under;

2.1 The petitioner was appointed as an Assistant Teacher on 20th September, 1982 in the Sardar Patel Vinay Mandir, Mehlool, Taluka: Nadiad. He worked in the said school up to 19.12.1997. Thereafter, he came to be appointed as the Principal in the respondent No. 4-school on 20th December, 1997. The management dismissed him from the service vide order dated 4th July, 2005. The dismissal was challenged by the petitioner before the Gujarat Secondary Education Tribunal at Ahmedabad by way of an Application No. 194 of 2005.

2.2 During the pendency of the proceedings before the Tribunal, a settlement was arrived at between all the parties concerned. The settlement was reduced into writing duly signed by the petitioner, the authorized signatory on behalf of the school and the District Education Officer. The free English translation of the compromise purshish is as under;

"The amicable settlement arrived between the applicant and the opponent School Board on the issue in this application is as here below,

(1) The Applicant Mr. J.R. Thaker was ordered to be dismissed in service vide order dated 4.7.2005 from the post of Principal, Shri Mahatma Gandhi Vidhyalaya, Bhalod, the same is withdrawn by the School Board with effect from 4.7.2005. And the applicant Mr. Thaker is taken back in service from 1.5.2008,

and the period of his dismissal will be considered continuous service on the basis of the sanctity of the services he is continued as Principal in the School. And in this regard the dismissal orders are cancelled by the School Board in their meeting held on 6.4.2008 vide resolution No. 2. Copy of the resolution is enclosed herewith.

(2) The applicant Mr. J.R. Thaker will not make any rights and claims qua the salary for the period from July 2005 that is from the date of orders of dismissal dated 4.7.2005 below this settlement till the date of joining duties before the Department or the School Board.

(3) The orders dated 4.7.2005 dismissing Mr. Thaker are cancelled thus the sanctity of his services re to be considered for all purposes.

(4) Mr. Thaker will be considered continuous in service in the School Board conducted School as Principal as per the rules, and in this regard the sanctity of his services will be maintained and from the date of joining he will be paid his salary regularly below the Direct Salary Scheme, and the parties have to act accordingly.

(5) The amicable settlement as above is made between the parties in the interest of the school education. The same is acceptable and binding upon the parties. And will be. Be pleased to dispose of the application by the applicant in view of the above.

----- District Education Officer

----- Jayprakash R. Thaker.

The consent is given such that there should not be any financial responsibilities of the government arising and subject to audit.

Sd./illegible Bhupendrabhai K. Bhatt Chairman, Shri Vidhya Vinod Mandal, Bhalod.

2.3 In view of the settlement arrived at and recorded by the Tribunal, the Application No. 194 of 2005 was disposed of vide order dated 30th April, 2008, which reads as under;

"1. This compromise pursis is presented by L.A. Mr. J.A. Trivedi for the applicant. Applicant and the president of trust Shri Bhupendrabhai K. Bhatt are present and have stated that this compromise is acceptable to both of them. D.E.O's signature is also obtained. L.A. Mr. C.H. Shah for the management is present. L.G.P. is also present.

2. In the above circumstances, this application is disposed of in terms of the settlement. Parties shall abide by the same. No order as to costs."

2.4 It appears that on attaining superannuation, the authorities misconstrued the terms of the settlement, as a result, there has been determination of the erroneous retiral benefits. In fact, I am told that as such, no retiral benefits have

been sanctioned except the provisional pension.

2.5 In effect what has been done by the authorities is that the reinstatement of the petitioner in service in the year 2008 has been considered as a fresh appointment and the length of service for the purpose of retiral benefits has been calculated between 2008 and 2013. The earlier years of service have been ignored.

2.6 The matter was carried before the Tribunal. The Tribunal looked into the settlement and has reached to the conclusion, which is impugned before me, that the period between 2005 and 2008 should not be considered as notional or no continuity of service was required to be given according to the settlement.

3. The resultant effect would be that the period of service between 1982 and 2005 has gone in vain and the only period of service calculated for the purpose of retiral benefits as stated above is between 2008 and 2013. The terms of the settlement which are quoted above are plain, clear and unambiguous. The District Education Officer is a party to the settlement. I don't understand, from what angle, the terms of the settlement are being understood or construed as if the reinstatement was to be treated as a fresh appointment. Clause(3) of the settlement is very clear. I again quote at the cost of repetition.

"(3) The orders dated 4.7.2005 dismissing Mr. Thaker are cancelled thus the sanctity of his services are to be considered for all purposes."

4. If the Government had any objection in that regard, the same should have been raised at the relevant point of time. After a period of almost six years, the issue, for no reason, has been raised.

5. On behalf of the respondent No. 2, an affidavit-in-reply has been filed, inter alia, stating as under;

"It is submitted that the petitioner was initially appointed as Asst. Teacher on 20.09.1982 at Sardar Patel Vinay Mandir, Mehlol, Ta. Nadiad and worked there up to 19.12.1997. He was thereafter appointed as Principal in Mahatma Gandhi Vidhyalaya, the respondent No. 4 herein on 20.12.1997.

The petitioner was dismissed from service by the respondent No. 4 vide order dated 04.07.2005. Such dismissal was challenged by the petitioner before the respondent No. 5 vide application No. 194 of 2005. During the pendency of the said application, a compromise was arrived at between the respondent No. 4 and the petitioner. Such compromise was codified and placed before the respondent No. 5 by way of a pursis (refer page 58-59). Such pursis was affirmed and acknowledged by the answering respondent. It shall be relevant to take note that the said compromise was conditional and was accepted in terms of the conditions laid in the said pursis. The relevant amongst such conditions was the condition which required the petitioner to stake no claim in regard the monetary benefits more particularly of salary etc. for the period during which the petitioner remained as dismissed i.e. 05.07.2005 to 01.05.2008. It was also made clear

vide the pursis that the petitioner shall be paid his salary while taking into the consideration the date on which he assumes charged. Most importantly, the answering respondent while acknowledging and affirming the compromise pursis had specified that the State Government shall assume no financial liability on account of the compromise entered into. It was further specified that the acknowledgement and affirmation of the answering respondent to the compromise pursis was subject to audit objection.

It is submitted that pursuant to the aforesaid pursis, the petitioner resumed his service and is now known to have superannuated. It is submitted that in the interregnum period i.e. before his superannuation, disputes with regards to release of the petitioner salary arose which became subject matter of challenge before the respondent No. 5 as evident from orders annexed with the present petition were decided in favour of the petitioner.

It is however submitted that the petitioner later perpetrated a volte-face and preferred an application being new Appeal No. 419 of 2014 before the respondent No. 5 seeking directions to regularize his period during which he had remained as dismissed and also sought monitory benefits arising there from. It is this application which has been decided against the petitioner vide order impugned while relying upon the terms of compromise pursis.

It is submitted that as such the petitioner while seeking primarily a writ of certiorari has raised no grounds as would be warranted for invoking the writ-jurisdiction of this Hon''ble Court. It is most respectfully submitted that a writ court through a "writ of certiorari" would exercise supervision over an inferior court, judicial, quasi judicial authority. Such supervision would comprise within itself over-looking (1) area of inferior jurisdiction, its qualifications and conditions of its exercise and (2) observance of law in the course of the exercise of inferior jurisdiction. (Refer , AIR 2003 SC 3044, Suryadev Rai v. Ramchander Rai).

It is submitted that as would be apparent no grounds satisfying the aforesaid pre-requisites exercise of jurisdiction and/or observance of law have been raised in the present petition. A cursory perusal of the grounds raised in the petition would yield that there is no contention with regards non-observance of law and/or jurisdiction as also the exercise of jurisdiction and taken by the respondent No. 5. Under the circumstances, it would only be safe to infer that the petition is liable for being dismissed for want of sufficiency of legally maintainable grounds. At this juncture, it shall be relevant to take note that the respondent No. 5 has undertaken a judicious exercise of adjudicating the challenge raised before the same. As such, there are no infirmities in the order impugned and that the same has passed after taking into consideration events and circumstances which contributed to the reinstatement of the petitioner.

It is submitted that the grievance of the petitioner would be unsustainable for the reason that the same would be contrary to the terms of the pursis of the compromise which resulted into the reinstatement of the petitioner which forms

to be the basis of any right which the petitioner may claim subsequently more particularly that which was sought to be enforced before the respondent No. 5 vide new Appeal No. 419 of 2015 in which the order impugned has been delivered. It is further submitted that the pensionary benefits of the petitioner have been fixed in terms of the settlement pursis named hereinabove. True it may be that the petitioner is paid a provisional pension however such nomenclature of the pension is only on account of the pendency of litigation instituted by the petitioner vide new Appeal No. 419 of 2015. A copy of the documents substantiating the fact of the petitioner being in receipt of benefits of superannuation are annexed hereto and marked as ANNEXURE-R1.

It is therefore submitted that the present petition is bereft of merits and therefore no interference as prayed for by the petitioner in the present petition be afforded.

On the facts mentioned herein above and on the grounds stated in the preceding paras as also arguments made at the time of hearing of the present petition, it is submitted that the present petitioner of the petition does not deserve the consideration of this Hon"ble Court and the same requires to be dismissed in limine."

6. The Tribunal, while passing the impugned order, observed in para-7 as under:--

"7. In this settlement purshis all the parties have agreed to take the applicant back in service as Principal. It is agreed that the applicant Mr. Thaker will not make any rights and claims of salary for the period of absence before the department or the School Board. The period of absence will be considered for the sanctity of his services and for all other purposes, such mention is made. It is alleged that his regular salary will be paid below the Direct Salary Scheme, and on this issue the District Education Officer has stated that, "The consent is given such that there should not be any financial responsibilities of the government arising and subject to audit." That is the District Education Officer has accepted this settlement on condition that there should not be any financial responsibilities arising on the part of the government. Now when the applicant has made representation to consider his absence period as notional presence, thus such demand is contrary to the Standing Instructions or the Rules moreover it is also contrary to the consent given by the District Education Officer. Because by considering notional presence additional increment will be required to be paid, and in this manner in the pension higher amount will have to be paid and higher grade will have to be given, in view of all these facts would definitely raise the financial responsibilities and the settlement is made on condition not to raise any financial responsibilities. At the relevant time the applicant was dismissed. The orders of dismissal were in force during his absence, the said orders were later on examined on merits and also not set aside by any court, thus, the issue of considering services during the said period as full or notional presence period is not consistent with law or rules, but he is taken back into service with a view to find way in one situation. Against which he has waived the salary for this period

which was as such also not entitled to him, because the orders of dismissal are not cancelled. The orders of dismissal are not duly set aside by the orders of the court or any Forum legally. Also, by considering leave without pay the sanctity of his services are maintained. Because, instead of his services without pay if he is considered absent from duties then there would be break in his services arising, and from 1.5.2008 his fresh services will have to be considered and he will be required to be placed in the minimum wages whereas this situation is avoided by way of this settlement, that is by considering the absence in service as without pay leave the rules are followed. The conditions of the settlement are followed, and the interest of the applicant is also maintained, and the condition on which the District Education Officer had accepted the settlement the said condition is also followed. By granting notional increment or by considering absence as notional presence there is financial responsibilities arising on the government in view of the higher pay scale, pension and increment, thus the District Education Officer has adhered to the consent and the conditions imposed by him, that is the settlement is considered followed, and the relief prayed for by the applicant is not entitled to be granted because the applicant is unable to establish that by the action of the District Education Officer there is any illegality or anything against rules and also he is unable to establish that the conditions of the settlement are breached, thus the relief sought by him is not entitled to him thus the following orders are passed."

7. I am of the view that the Tribunal committed an error in passing the impugned order;

8. In the result, this application succeeds and is allowed. The impugned order is hereby quashed. The period of service between 2005 and 2008 shall be considered as notional. The petitioner is entitled to continuity in service.

9. In view of the above, the respondent No. 4- Management of the School, shall prepare a fresh proposal as regards the retiral benefits which the petitioner is entitled to under the Rules and the Regulations, and forward the same to the concerned authority within a period of three weeks from the date of receipt of the writ of the order. The authority concerned, on receipt of the proposal from the respondent No. 4, shall process the same and pass appropriate orders and disburse the retiral benefits in accordance with the Rules and the Regulations within a period of four weeks thereafter.

10. Rule is made absolute to the aforesaid extent.

Direct service is permitted.