
(1993) 06 GUJ CK 0006
In the Gujarat High Court

J.I. Desai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-06-1993

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 189B
Constitution of India, 1950 — Article 226

Citation : (1993) 2 GLR 1225

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

K.J. Vaidya, J.—J.I. Desai, by this writ petition under Article 226 of the Constitution of India, has moved This Court inter alia praying for (1) quashing and setting aside the impugned Charge Memo dated 1-1-1979 and for dropping the belated proceedings initiated against him after the lapse of about 8 to 9 years, (2) to direct the respondents to (i) finalise the pension papers at the earliest, (ii) give him T.I. and other allowances including medical allowances issued from time to time by the Government, and (iii) make payment of pension and gratuity amount, and the arrears of other outstanding allowances admissible to the petitioner with interest forthwith, as prayed for, etc. etc.

2. According to the petitioner, he was initially recruited in Government service as a Clerk with effect from 15-12-1948, in the Office of the Director of Civil Supplies, Junagadh State and had worked in the said position upto August, 1968. During the period in between August, 1968 to 1972, the petitioner was dealing with Revenue and Tenancy matters under the supervision of Deputy Mamlatdar (Revenue) and Mamlatdar Vanthli Tahika. In the year 1975, he was promoted as Deputy Mamlatdar in the Office of the Collector at Junagadh, and ultimately, retired from the said post w.e.f 1-4-1979. It is further the case of petitioner that the Government issued a Circular dated 21-2-1970 in respect of the enforcement of the judgment of Supreme Court regarding cash annuity payable to Barkhalidars of Saurashtra. During his tenure, payment of less paid cash-annuity was made in accordance with the orders of the Supreme Court vide Government

Circular, as referred to above. This payment was to be made to all concerned during the period of 10 days, i.e., from 21-3-1970 to 31-3-1970, as instructed by the higher authorities. The mathematical calculations and statements of such beneficiary were to be prepared by all the Taluka staff, which were checked and verified by his immediate supervisory Officers, viz., Aval Karkun. i.e., Deputy Mamlatdar, and Taluka Mamlatdar. After their checking and satisfaction, the amount worked out was to be paid to each Card-holder which was finally checked and verified by the Assistant Collector, Junagadh and as a token thereof, he used to put his signature on each card. Further, as the payment was to be made within the short period of 10 days, there was every likelihood or scope of over-payment being made and since this aspect was very much present in the mind of Collector, he had also ordered to take undertaking and surety from each beneficiary for the recovery of over payment, if any, done through oversight or mistake. Accordingly, undertaking and surety from each beneficiary were obtained and kept with the records of the Vantli Taluka. After the payment, was made, on audit being carried out, it came to the notice of higher authorities that over payment was made and accordingly, the amount of the same was ordered to be recovered from the concerned Barkhalidars. Further according to the petitioner, the calculations made by him were checked and verified by the higher authorities and paid to the concerned Barkhalidars, under their instructions only. Now, despite this clear position and instructions contained in the Government Circular dated 21-2-1970, the petitioner quite surprisingly came to be served with a Charge Memo dated 1-1-1979 on eve of his retirement, causing lot of harassment and inconvenience for no fault of him!! Further, according to the petitioner, the alleged incident occurred as far back as in the year 1970, and the Notice dated 2-6-1976 regarding the same, was served upon him calling upon him to render explanation in the matter of over payment. A copy of the reply was also submitted by the petitioner on 21-6-1976, which is produced at Annexure "B". Thereafter, again after 1 1/2 years, another Notice dated 6-1-1978 was served upon the petitioner calling for explanation on the basis of previous notice. This was also replied to by the petitioner on 8-5-1978, as could be seen from Annexures "C" and "D" annexed to the petition. On reaching the superannuation age on 1-4-1979, the petitioner was to retire and at that point of time, the Charge Memo dated 1-1-1979 was served upon him. A true copy of the said Charge Memo alongwith its reply is annexed and marked Annexures "E" and "F" to the petition. In response to the petitioner's reply dated 14-2-1979, he was personally heard on 10-3-1979 in the matter, i.e., just 10 days before his retirement. According to the petitioner, since no decision was taken for as many as 5 years, he was constrained to move This Court for quashing and setting aside the Charge Memo and for finalisation of the pension papers. Under the circumstances, the grievance voiced by the petitioner is to the effect that more than 5 long years have elapsed after he submitted his reply in response to the Charge Memo dated 1-1-1979, his pension papers have not yet been finalised with the result that he at the age of 73 been financially hard pressed, making his day-to day living quite difficult because of the soaring prices.

3. Mr. S.B. Nanavati, the learned Advocate appearing for the petitioner submitted that this is a gross case wherein the Charge-sheet dated 1-1-1979 has been sought to be issued against the petitioner for the alleged over payment of annuity in the year 1969 with a view to illegally harass him in the last years of his life! Mr. Nanavati further submitted that the facts and circumstances disclosed in para-2 above clearly go to show that prima facie there is nothing on the basis of which even remotely the petitioner can be saddled with the alleged liability of over payment. Mr. Nanavati further submitted that the petitioner was issued a Charge Memo dated 1-1-1979 to which he had also submitted reply on 14-2-1979. Not only that but he was also personally heard by the concerned authorities on 10-3-1979, just 10 days prior to his retirement, and yet, the entire proceedings were as if kept in cold storage without being acted upon, so much so that the same ultimately hampered the finalisation of the Pension papers and the consequential retirement benefits. Mr. Nanavati further submitted that in such a stale matter of 1968 1969, with protracted proceedings right from 1979 in total state of indecisiveness on the part of concerned authorities to obstruct the retirement benefits is nothing but hitting below the belt of petitioner in these hard days of economic crisis. It is under these circumstances that Mr. Nanavati urged that the Charge-sheet dated 1-1-1979 deserves to be quashed and set aside. Mr. Nanavati lastly submitted that this is a case wherein for no fault of the petitioner, his retirement and incidental benefits have been withheld to his greatest prejudice, and in that view of the matter, while allowing this petition, the respondents be directed to pay the same with interest. 15% p.a. In support of this contention, Mr. Nanavati has relied upon decision of This Court (Coram: N.J. Pandya, J.) rendered in Special Civil Application No. 3423 of 1987 decided on 4-2-1991.

3.1. As against the above, Miss Rekha Doshit, the learned A.G.P. submitted that the contentions raised by the learned Advocate for the petitioner have no substance, and therefore, the Charge-sheet issued in the year 1984, on the line of the one issued on 1-1-1979, should not be quashed. In support of this, the learned A.G.P. has relied upon reply Affidavit filed by the respondents. The learned A.G.P. further submitted that the contentions raised on behalf of the petitioner at the most reflects the defence version of the petitioner which cannot be straightway taken into consideration by This Court in its extra-ordinary jurisdiction under Article 226 of the Constitution of India. In fact, the learned A.G.P. submitted that it would be quite open to the petitioner to raise the above defence contention before the appropriate authorities and get the benefits thereof, if any, if he successfully satisfies it. The learned A.G.P. thereafter invited attention of This Court to para-5 of the reply-affidavit filed by Mr. V.R. Yadav, Under Secretary to the Government, Revenue Department, wherein it has been stated that before any inquiry pursuant to the Charge-sheet issued on 1-1-1979 could be proceeded any further, the petitioner retired from the services on reaching superannuation on 1-4-1979, and accordingly, since the petitioner could not be visited with any of the punishments enumerated in Rule 6 of the Gujarat

Civil Services (Discipline & Appeal) Rules, it was decided to issue fresh show cause notice which ultimately came to be issued on 20-2-1984 calling upon the petitioner to show cause as to why the sum of Rs. 7,537/- (sum equivalent to the amount of death cum-retirement gratuity payable to him) should not be recovered and pension be not reduced by 10%! The learned A.G.R under the circumstances submitted that it was only because of the peculiar circumstances that the Charge Memo issued on 1-1-1979 could not be proceeded with, and therefore, it cannot be said that it has prejudiced the petitioner in any way. In support of this contention, the learned A.G.R has relied upon decision of the Supreme Court rendered in case of Union of India and others Vs. A.N. Saxena, wherein, in substance and effect, it has been held that once the disciplinary proceedings starts, it cannot be stayed. The learned A.G.R in the alternative further submitted that in case, This Court was inclined to allow this petition, then in that case, the petitioner should not be awarded interest on the withheld amount of gratuity and pension. Making good this submission, the learned A.G.R further submitted that it is undisputed that on 1-4-1979, when the petitioner retired from his services an inquiry was pending. The charge against the petitioner in the said pending inquiry is that because of his negligence, Government has suffered loss of Rs. 7,537/- and as against that Rs. 7,000/- have been withheld. The learned A.G.R further submitted that Government has power to withhold the gratuity when there is an inquiry pending under Rule 189B. In this view of the matter, when the Government bonafidely exercised its power under Rule 189B and if pursuant to that, if it withheld sum of Rs. 7000/- against the loss suffered by it to the extent of Rs. 7,537/- the said withholding of the amount is not such which warrant awarding of interest on that.

4. Having heard the learned Advocate appearing for the respective parties, at the very outset, it may be stated that the submissions made by Mr. Nanavati have considerable force, and accordingly, the same deserve to be accepted. While deciding this matter, This Court cannot be oblivious to certain most glaring and tell-tale facts surfacing on the record, such as (i) the alleged incident is of the year 1970, (ii) the petitioner was merely a Junior Clerk, working under the hierarchy of responsible Officers like Deputy Mamlatdar, Mamlatdar, Deputy Collector, Collector respectively, (iii) the amount involved was not only comparatively small but in the event of over payment, bonds and sureties were also taken from the concerned beneficiaries for the recovery of the same, and there is nothing to indicate whether recovery was affected or not. If not, why not? (iv) undisputedly, despite the fact that higher-ups in the administrative hierarchy who are equally accountable for the alleged over payment of annuities, they have not been touched at all and yet quite surprisingly, only the petitioner, a petty Junior Clerk at the relevant time, has been singled out by crowning him with the entire financial liability even though the calculations made by him were checked and rechecked by the superiors, (v) that the allegations against the petitioner appears to be on face of it quite improbable, (vi) not only that but after such an unreasonable length of time, to permit further inquiry into the

matter would be quite an exercise in futility, (vii) the petitioner by now is aged 73, and about 14 years have passed after his retirement on superannuation, (viii) last but not the least is the fact that after issuance of Notice dated 1-1-1979, just 3 months prior to his retirement, not only the petitioner has replied to it in writing, but has also made personal representations which have remained undecided for all these years. May be, the aforesaid aspects are the points which can be raised by way of defence at the time of inquiry, but at the same time, when the petitioner expressly raised the same, it could and should have been categorically controverted on the basis of record, if indeed what the petitioner stated on oath in the petition was not true. Thus, the fact remains that all the material facts asserted by the petitioner in the petition remain uncontroverted. Under such peculiar circumstances, to permit further inquiry in a case which even remotely has no prospects of any success would be total non-application of mind or a passive exercise of power by the High Court, mechanically permitting the authorities to proceed ahead with the proceedings. Such an attitude on the part of this Court would not only put premium on indolence on the part of the inquiry officer but same would equally be tantamount to an unjust harassment to the petitioner in his last days! Thus, despite such glaring tell-tale circumstances surfacing on the record, if the respondent is permitted to proceed with further inquiry, the same would be not only purely illegal and unjust, but the same would as well be quite atrocious. It is really strange that in such a stale and hopelessly weak case, the authorities conveniently hood-winking at other persons responsible, has thought it proper to single out the petitioner who was just a Junior Clerk at the relevant time.

5. Thus, taking into consideration the overall view of the facts and circumstances of the matter, it appears to this Court that the prayer of the petitioner for quashing and setting aside the impugned Charge Memo dated 1-1-1979, and the order of Charge; Memo dated 22-12-1984 deserves to be accepted ordering the respondents to drop the belated proceedings initiated against the petitioner after the lapse of about 8 to 9 years. It is indeed true, as observed by the Supreme Court that the departmental proceedings should not ordinarily be stayed, and indeed, there cannot be any dispute on this broad proposition of the law. However, before applying the decision of any Court, the concerned Court cannot be oblivious to the facts and circumstances of that particular case and mechanically apply the said decision irrespective of its overall expediency and applicability in the facts of that case.

6. That takes us to the last question as to whether the petitioner is entitled to any interest on the withheld amount of gratuity and pension. Now, undoubtedly it is true, as submitted by the learned A.G.P. that by virtue of Rule 189B of the Bombay Civil Services Rules, the Government was within its right to withhold the gratuity amount of Rs. 7,537/- and when that is the case, there cannot be any question of awarding pension thereto. But that is not the question here. The question is that though in response to the Charge-sheet issued on 1-1-1979, the petitioner submitted a written reply and was also personally heard on 10-3-1979,

the authorities remained in total state of indecisiveness for as many as 5 years which ultimately constrained the petitioner to approach This Court. Thus, the State cannot be permitted to take shelter behind Rule 189B of B.C.S.R. and deny consequential benefits and interest accrued on the withheld amount of gratuity and pension, which was definitely held up because of total indolence on the part of the concerned authorities. Therefore, to accept the arguments of the learned A.G.R on this point would be allowing the Government to take advantage of its own wrong. This can never be allowed. Had indeed the inquiry been over within reasonable time, after issuance of the Notice dated 1-1-1979, then in that case, awarding of interest being discretionary; depending upon the facts and circumstances of the case, and This Court would have perhaps thought it fit not to award the same, but that is not the case here. Thus, though This Court in principle agree with the submissions made by the learned A.G.R yet in the facts and circumstances of the case highlighted above, the petitioner deserves to be awarded interest on withheld gratuity amount of Rs. 7,000/-.

7. It is really unfortunate that the sizeable amount of public money from the Exchequer will have to be paid to the petitioner for no fault of public from whose taxes this amount comes. And in that view of the matter, it will be opera to the S fate Government to think over the issue and find out whether the public exchequer should be saddled with the liability because of some thoughtless action on the part of the concerned authorities as observed by This Court in a decision rendered in Special Civil Application No. 2063 of 1986 (Coram: K.J. Vaidya, J.) on 15-6-1993 Ramniklal G. Gohil v. D.S.P. Amreli.

8. In the result, this petition is allowed. The impugned Charge-sheet dated 1-1-1979 and the one issued pursuant thereto on 22-12-1984 is hereby quashed and set aside. The respondents are directed to pay the outstanding gratuity amount to the petitioner alongwith interest @ 6% p.a. Looking to the old age of the petitioner, the respondents are directed to pay up this amount as expeditiously as possible, preferably within three months from the date of receipt of the writ.

9. The petitioner being an old man of 73, and the question involved being that of finalisation of pension and gratuity papers, the Office is directed (i) to deliver certified copy of this judgment and order to the petitioner immediately, (ii) forward a copy of this judgment to the respondents immediately for appropriate action. Rule is made absolute with no orders as to the costs.