

(2017) 09 GUJ CK 0022
In the Gujarat High Court
Case No : 18235 of 2005

**K C MEHTA SINCE DECEASED THROUGH HIS ? HEIR AND LEGAL
REPRESENTATIVE Vs STATE OF GUJARAT & ORS.**

Date of Decision : 12-09-2017

Acts Referred:

Citation : (2017) 09 GUJ CK 0022

Hon'ble Judges : A.S.Supehia

Bench : Single Bench

Advocate : VAIBHAV A VYAS, RUTVIJ OZA, DG SHUKLA

Judgement

(1) By way of present writ petition, the petitioner (since deceased), through his legal heir/wife, has prayed for quashing and setting aside the impugned order dated 29.08.2005, inflicting the punishment of cut in pension of Rs.1,000/- for 10 years on the petitioner

(2) Brief facts of the case are as under:

(3) The deceased petitioner completed educational qualification of Master of Science (Surgery) in 1968 from the Gujarat University. The petitioner joined service of the Government as Tutor in the year 1967. Thereafter the petitioner was selected by the Gujarat Public Service Commission (GPSC) for the post of Civil Surgeon (Class-I) in 1969. Subsequently, the petitioner was promoted as Deputy Director, Joint Director and lastly as Additional Director (Medical Services) in 1990 and on attaining the age of superannuation he retired on 30.11.1997.

(4) During the period from 11.12.1985 to 07.10.1989 the petitioner was posted as Director of the Central Medical Stores Organization. In the year 1988, for some alleged irregularities, the Government vide letter dated 15.07.1991 had sought for explanation of the petitioner on eight different points. Pursuant to the said letter, a detailed reply dated 24.02.1992

was submitted by the petitioner and he made his stand clear on each point. Thereafter, considering the aforesaid detailed reply/explanation, the petitioner

did not receive anything till his date of retirement. However, just on the date of retirement of the petitioner, i.e. 30.11.1997 (Sunday), a charge-sheet was served upon the petitioner for three points which were part of the aforesaid explanation asked for by the Government in the year 1991 and for which a detailed explanation/reply was already tendered by the petitioner at the relevant time. On the same day i.e. 30.11.1997 two more charge-sheets were issued to the petitioner for the alleged irregularities of the decade old posting. For the said subsequent two charge-sheets the Government has inflicted punishment of reduction in monthly pension of Rs.1,000/-, for one year and ten years, against which Special Civil Application No.6935 of 2005 (which is disposed vide judgment and order dated 25.08.2006) and Special Civil Application No.8258 of 2005 (which is pending as on date) have been filed.

(5) Against the aforesaid action of the Government of ordering/continuation of the

departmental inquiries vide order/ charge- sheets dated 30.11.1997, the petitioner approached this Court by way of Special Civil Application No.9004 of 1997, wherein vide order dated 01.02.1999 this Court directed to complete the departmental inquiry within a period of one year and while dismissing the said petition it was, inter alia, ordered that the same was done without prejudice to the rights and contentions of the parties.

(6) Thereafter, inquiry officer was appointed by the Government on 22.03.2000, who gave his report on 30.06.2001 to the Department, which was forwarded to the petitioner with some disagreement on 10.02.2003, to which the petitioner responded within few days. Thereafter, the impugned order dated 29.08.2005 is passed which has given rise to filing of the present petition.

(7) During pendency of the present petition, the petitioner-Dr. Kirit Mehta passed away on 23.03.2015 and, therefore, vide order dated 25.08.2005 passed Civil Application No.9522 of 2015 this Court permitted the legal heir/ wife of the deceased to be joined as party in place of her deceased husband.

(8) Learned advocate for the petitioner has contended that there have been number of irregularities and improprieties in initiation, continuation and the conclusion of the departmental inquiry, culminating into the punishment order dated 29.08.2005. He has stated that along with the impugned order dated 29.08.2005, advice of the GPSC dated 25.11.2004 has also been given to the petitioner and as per the Rules, the said advice was required to be taken into consideration by the disciplinary authority, which in fact has been taken into consideration by the disciplinary authority, while passing the punishment order, which is evident from the impugned order itself. He has submitted that the copy of the said advice of the GPSC was not supplied to the petitioner before passing the punishment order and such order is supplied to the petitioner along with the punishment order and thus, the petitioner is deprived of his right to make representation to disciplinary authority with regard to the said

advice of the GPSC and the said action of the respondent authorities is in gross violation of principles of natural justice and on this ground alone the impugned punishment can be interfered with by this Court.

(9) Learned advocate for the petitioner further contended that there has been inordinate and unexplained delay at all stages of the inquiry in question, which is prejudiced the defence of the petitioner and the same is therefore, arbitrary and against the settled position of law. He has submitted that in view of Government Circular dated 20.07.1993 in this regard, the delay in question is against the policy of the Government and on that count also the action of the Government is required to be held to be arbitrary.

(10) Learned advocate for the petitioner also contended that before issuing the punishment order there has been consultation with the GPSC and, therefore, the entire record would have been sent to GPSC. He has also raised a contention that there has been complete non- application of mind and mechanical approach on the part of the authorities of GPSC also. He has also submitted that for suggesting quantum of punishment also, one does not know what parameters are adopted by the GPSC and is thus, arbitrary and that aspect may be considered by this Court.

(11) Responding to the aforesaid contentions of Mr.Vyas, learned Assistant Government

Pleader Mr.Oza has submitted that the order of penalty passed by the state government cannot be said to be disproportionate. He has contended the advice of GPSC was supplied to the petitioner along with the penalty order, and the same would not make any difference if the same would have been supplied in advance. He has further stated that the departmental proceedings were conducted as per the statutory rules and if there is no violation of the same the penalty order cannot be interfered with. Learned advocate Mr.Shukla appearing for respondent No.3 has adopted the submissions advanced by learned AGP Mr.Oza.

(12) After hearing the learned counsel appearing on behalf of the respective parties and perusing the documents on record, the factual matrix of the case in hand will reveal the undisputed fact that the advice of G.P.S.C. was not served in advance to the petitioner before passing the penalty order. In the affidavit-in-reply filed by Respondent no.1, it is averred that the entire record of the departmental proceedings was sent to the GPSC and after perusing the same the GPSC gave the opinion to inflict the punishment of cut in pension

of Rs.1,000/- for 10 years on the petitioner. The Supreme Court in the case of Union of India Vs. S.K.Kapoor, reported in (2011) 4 S.C.C. 589 has held thus:

"There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee.

However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice."

In the present case, the advice of the GPSC is served to the petitioner along with the punishment order which is not in consonance with the observations made by the Supreme Court. The same has to be supplied in advance if it is relied for imposing the punishment. Thus, the impugned order cannot be sustained as the same is in violation of the law laid down by the Apex Court in the judgement of S.K.Kapoor (supra). This court is not oblivious of the law that if penalty or punishment is set aside due to technical defect then in that case the entire matter is to be remanded to the disciplinary proceedings from the stage of defect. In the present case, no useful purpose will be served in remanding the matter to the disciplinary authority as the petitioner- delinquent has expired.

(13) In view of the abovementioned lacuna in the departmental proceedings, the petition deserves to be allowed. The impugned order of punishment dated 29.08.12005 is quashed and set aside. The respondents are directed to refund the amount deducted from the pension of her deceased husband and further revise the family pension accordingly within a period of two months from the date of receipt of the copy of the judgement. RULE made absolute.