

(2010) 09 GUJ CK 0172

In the Gujarat High Court

Case No : Letters Patent Appeal No. 2192 of 2010 in Special Civil Application No. 8627 of 2009 and Civil Application No. 11074 of 2010 in Letters Patent Appeal No. 2192 of 2010

Kishor Chimanlal Gaud

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 09 GUJ CK 0172

Hon'ble Judges : Bankim N. Mehta, J;A.L. Dave, J

Bench : Division Bench

Advocate : N.K. Majmudar, for the Appellant; N.J. Shah, AGP, for the Respondent

Judgement

A.L. Dave, J.—The appeal is admitted. Learned AGP Mr. N.J. Shah waives service of notice of admission of appeal for the respondents. Since narrow question of law is involved, the matter is taken up for final hearing on the request of the parties.

2. The appellant approached this Court with Special Civil Application No. 8627 of 2009 to challenge the order dated 24.4.2008 passed by the District Development Officer, Ahmedabad. The appellant-petitioner was granted higher grade pay scale earlier but as it resulted into financial loss, he requested for withdrawal of the same by cancelling the option exercised by the appellant-petitioner. The same was objected to by L.F. Audit on the ground that withdrawal of option was permissible only to those employees who had secured "C" grade. The appellant-petitioner did not fall in that category and, therefore, the said order was passed cancelling the withdrawal of option and fixing the pay scale de novo as per rules. On fixation of pay-scale, there is no dispute. The order also required a note to be made in the service book of the appellant and recovery of the excess amount paid to the appellant-petitioner.

3. The appellant-petitioner challenged the said order on the ground that no

audience was given to him before passing the order and the learned Single Judge relying on the decision of the Apex Court in the case of M.C. Mehta Vs. Union of India (UOI) and Others, dismissed the petition observing that the order is not required to be quashed and set aside in exercise of powers under Article 226 of the Constitution of India on the ground that the same is in breach of principles of natural justice. It is not always necessary for the Court to strike down the order merely because the order has been passed in breach of natural justice. No illegality in the order was indicated to the learned Single Judge.

4. Even in this appeal, the ground for challenge to the order is financial loss and breach of principles of natural justice, besides delay in passing of the order.

5. There is no challenge to the order granting benefit of the higher grade pay scale dated 1.6.1987 to the petitioner. It is also to be noted that the order is passed on the basis of objection by Local Fund Office. If that is considered, there is no inordinate delay.

6. We do not find any defect in the order dated 24.4.2008 impugned in the petition so far as it relates to cancellation of withdrawal of option exercised by the appellant-petitioner and restoration of his pay-scale. However, the order also speaks of making a note in the service book and recovery of excess amount paid.

7. In our opinion, the order of recovery is not sustainable. Whatever excess amount was paid to the appellant-petitioner was paid to him not out of any fraud or deceit on his part. The excess amount was paid to him through a mistake. In such a situation, such amount cannot be recovered. Reference can be made to a decision of the Apex Court in Babulal Jain Vs. State of M.P. and Others, Reference can also be had to an unreported decision of this Court in Letters Patent Appeal No. 578 of 2000 in Special Civil Application No. 2196 of 1999 dated 4.4.2001 where the Court observed that for the mistake committed by the employer, the employee cannot be penalised. Recovery of excess payment made to the employee for no fault on his part would be unjustified. In our view, therefore, this part of the order impugned in the petition ought to have been set aside by the learned Single Judge.

8. Under the circumstances, the appeal deserves to be partly allowed and is accordingly partly allowed. The order dated 10.9.2009 passed in Special Civil Application No. 8627 of 2009 is confirmed and the order of the District Development Officer, Ahmedabad dated 24.4.2008 is also confirmed to the extent that it relates to cancellation of withdrawal of option and refixation of pay-scale of the appellant-petitioner. The order of D.D.O. directing recovery of excess amount is set aside. The appeal to that extent is allowed. No costs.

9. Since the appeal is disposed of, the civil application also stands disposed of accordingly.