

(2014) 03 GUJ CK 0058

In the Gujarat High Court

Case No : Special Civil Application No. 8606 of 2013

Kodarbhai Veerabha Katara

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 114, 190, 498A, 504

Citation : (2014) 3 GLR 1902

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Hiren M. Modi, Advocate for the Appellant; Ronak Raval, A.G.P, Advocate for the Respondent

Judgement

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C.L. Soni, J.—The petitioner, who retired as Deputy Superintendent of Police (Dy. S.P.) on 30-6-2012 on reaching the age of superannuation, has filed this petition under Art. 226/ 227 of the Constitution of India to hold the action of the respondents in withholding his pension and gratuity as illegal and arbitrary and to direct the respondents to release him regular pension and gratuity. The petitioner has averred that in the order dated 30-6-2012, permitting him to retire, it is stated that "C" Summary proposal in respect of criminal complaint under Secs. 498A and 114 of the Indian Penal Code registered at Amreli City Police Station being C.R. No. I-36 of 2011 is pending in the Court and that inquiry against the petitioner for not accepting the investigation of one criminal complaint being C.R. No. I-56 of 2011 is going on. It is the case of the petitioner that by the aforesaid order, the petitioner was retired on the condition that the above said case and inquiry shall continue against the petitioner.

2. The petitioner has further averred that in the complaint under Sec. 498A filed by one Rekhaben against accused Naranbhai Rathva alleged to be her husband, the petitioner is arraigned as accused as he did not make an investigation as

regards allegation of harassment to complainant. The petitioner is otherwise not concerned with the offences under Sec. 498A of the Indian Penal Code. As regards the inquiry of not accepting the investigation for C.R. No. I-56 of 2011, the petitioner has averred that the petitioner had taken over the investigation on 5-11-2011 and all steps necessary, were taken for such investigation. The petitioner has contended in the petition that as on the date of retirement of the petitioner, since no departmental proceedings nor any judicial proceedings was pending against the petitioner, the respondents were not justified in not releasing pension and gratuity of the petitioner.

3. No affidavit-in-reply to oppose the petition is filed.

4. Learned Advocate Mr. Hiren Modi for the petitioner submitted that as regards the complaint under Sec. 498A lodged by one Rekhaben, the general allegations are made that the police officers were not co-operating in taking action. However, there is no allegation as regards giving cruel treatment to the complainant by the petitioner. Mr. Modi submitted that in fact, in respect of the said complaint, the C-Summary report was filed, which has been pending. Therefore, as on the date of the retirement of the petitioner, no judicial proceedings could be said to be instituted and pending.

5. Mr. Modi submitted that as regards the second item of not taking investigation by the petitioner in respect of C.R. No. I-56 of 2011, the petitioner was not served with any charge-sheet for departmental inquiry on or before the date of retirement of the petitioner. Mr. Modi submitted that the petitioner was served with only show-cause notice dated 26-6-2012, calling upon the petitioner as to why departmental inquiry against the petitioner should not be instituted for not obeying the instructions of the concerned authority for taking up the investigation and thereby showing negligence towards the duty as a police officer. Mr. Modi submitted that in fact, much before the above said show-cause notice served to the petitioner, the petitioner had already investigated into the allegations of the complaint being C.R. No. I-56 of 2011. Mr. Modi thus, submitted that as on the date of retirement of the petitioner, since, neither any departmental proceedings nor any judicial proceedings was pending and the respondents could not have withheld the pension and gratuity of the petitioner. He, thus, urged to allow the petition.

6. Learned A.G.P. Mr. Ronak Raval appearing for the respondents submitted that in respect of the offences of Sec. 498A, no final order on the C-Summary was passed by the Court till the petitioner retired from service. Mr. Raval submitted that in such circumstances, it could be said that criminal proceedings were pending against the petitioner, when the petitioner was retired. Mr. Raval submitted that even as regards the allegation of not accepting the investigation in respect of the complaint being C.R. No. I-56 of 2011, the petitioner was already served with the show-cause notice before the retirement of the petitioner to hold the departmental inquiry against him. Mr. Raval submitted that when the petitioner was retired vide order dated 30-6-2012 at Annexure-A, it was clearly

stated in the said order that the Criminal complaint under Sec. 498A of the Indian Penal Code and the inquiry against him as regards not accepting the investigation against the complaint being C.R. No. I-56 of 2011 shall continue and the petitioner shall be bound by the result of the Criminal case and the inquiry initiated against him and on such condition, the petitioner was permitted to retire. Mr. Raval, thus, submitted that in view of above provisions made in the order dated 30-6-2012 for retirement of the petitioner, it cannot be said that the respondents were not justified in not releasing the regular pension and gratuity of the petitioner. Mr. Raval submitted that the petitioner has already been released provisional pension, and therefore, it cannot be said that the action of the respondents in not releasing the regular pension and gratuity of the petitioner was in any way arbitrary or unreasonable. Mr. Raval, thus, urged to dismiss the petition.

7. Having heard learned Advocates for the parties and having perused the record of the case, it appears that in the complaint at Annexure-F under Secs. 498A, 504 and 114 of the Indian Penal Code, the petitioner is joined as accused No. 4 as he and other police officers were alleged to have not co-operated in taking action in respect of allegations of cruelty to the complainant by accused No. 1. It further appears that in connection with the said complaint, police submitted C-Summary report on the ground that the complainant had not provided any proof of her marriage with the accused No. 1 and in absence of any proof about the complainant's staying with accused No. 1 as wife, no offence could be said to have been made out. This report was submitted on 31-1-2012. Learned A.G.P. Mr. Raval pointed out that the said report has been pending in the Court.

8. So far as the second item referred in the order dated 30-6-2012 at Annexure-A permitting the petitioner to retire, there is no dispute about the fact that the petitioner was served with a notice dated 26-6-2012 placed at Annexure-C calling upon the petitioner to explain why departmental inquiry should not be initiated against the petitioner for not obeying the instructions of the concerned authority for taking on the investigation of the complaint being C.R. No. I-56 of 2011 and thereby showing negligence towards the duty as a police officer. Though the petitioner has stated that he had taken over such investigation w.e.f. 5-11-2011, but even if the conduct before 5-11-2011 was to be considered then also, as on the date of the retirement of the petitioner, no charge-sheet for the allegations contained in the show-cause notice was served to the petitioner.

9. For the purpose of withholding of the pension, when departmental and judicial proceedings to be deemed instituted are explained in sub-rule (5) of Rule 24 of Gujarat Civil Services (Pension) Rules, 2002 ("the Rules" for short). Sub-rule (5) reads as under:

"(5) For the purpose of this rule--

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government employee or

pensioner, or if the Government employee has been placed under suspension from an earlier date, on such date, and

(b) judicial proceedings shall be deemed to be instituted-

(i) in case of criminal proceedings, on the date on which the complaint or report is made by a police officer of which the Magistrate takes cognizance, and

(ii) in case of civil proceedings, on the date of presenting the plaint in the Court."

10. From clause (a) of sub-rule (5) of Rule 24, it appears that the departmental proceedings could be said to be instituted only on the date on which the statement of the charges is issued to the Government employee or if the Government employee was placed under suspension from the earlier date on such date. It is not the case of the respondents that the petitioner was placed under suspension at any point of time and there is no dispute that the petitioner has still not been issued the statement of the charges (the charge-sheet). Therefore, the day on which the petitioner retired, no departmental proceedings could be said to have been instituted and pending against the petitioner. Then remains the question as to whether lodging of F.I.R. (complaint) under Sec. 498A of the Indian Penal Code, could be said to be judicial proceedings instituted and pending on or before the date when the petitioner was retired.

11. From clause (b) of sub-rule (5) of Rule 24 of the Rules, it appears that the judicial proceedings could be said to be instituted in respect of criminal proceedings on the date when the complaint or report by the police officer is made on which the Magistrate takes cognizance. If there is no complaint before learned Magistrate or no report by the police officer for the F.I.R. (complaint) made to it on which learned Magistrate has taken cognizance, it cannot be said that the judicial proceedings is instituted. Thus, both the requirements i.e. making of complaint before the Magistrate or making of report by the police as well as taking of cognizance by the learned Magistrate on such complaint or the report of the police should be satisfied before treating any criminal proceedings judicial proceedings instituted. It appears that there was no direct complaint to the Court of learned Magistrate, but F.I.R. was lodged by one Rekhaben Vaghela with Amreli Police Station on 10-2-2011 under Secs. 498A, 504 and 114 of Indian Penal Code. In respect of such F.I.R., police submitted its C-Summary report on 31-1-2012. From page No. 30 it appears that on such report learned Chief Judicial Magistrate, Amreli passed order dated 19-3-2012, for taking the C-Summary on register and issue notice to the complainant for hearing on 22-5-2012. As pointed out by learned A.G.P. Shri Raval, the C-Summary report was pending at the above said stage when the petitioner retired and has continued to remain pending thereafter. Thus, it cannot be said that learned Magistrate has taken cognizance of the complaint under Secs. 498A, 504 and 114 of the Indian Penal Code. It, therefore, cannot be said that when the petitioner was retired on 30-6-2012, judicial proceedings were instituted against the petitioner.

12. In the case of Dr. Mrs. Nupur Talwar Vs. C.B.I., Delhi and Another, , Hon''ble Supreme Court has held and observed in Paras 16 and 17 as under:

"16. Section 190 of the Code lays down the conditions which are requisite for the initiation of a criminal proceeding. At this stage the Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the Investigating Officer and he is competent to exercise his discretion irrespective of the views expressed by the police in its report and may prima facie find out whether an offence has been made out or not.

17. The taking of cognizance means the point in time when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed. At the stage of taking of cognizance of offence, the Court has only to see whether prima facie there are reasons for issuing the process and whether the ingredients of the offence are there on record."

13. In view of the above, the respondents were not justified in withholding the pension and other retirement benefits of the petitioner by relying on the Rule 24 of the Rules. The respondents having unauthorisedly and illegally withheld the pension and gratuity of the petitioner, the petition is required to be allowed. For the reasons stated above, the petition is allowed. The petitioner is held entitled to pension, gratuity and other retirement benefits on and from the date of his retirement i.e. from 30-6-2012. The respondents are, therefore, directed to release the pension, gratuity and other retirement benefits of the petitioner within 3 months from the date of the receipt of this order. Rule made absolute.