

(2014) 02 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 6809 of 1999

Kulinchandra M. Dholakia

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 GLR 2009

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

Bench : Single Bench

Advocate : Biren A. Vaishnav and Arti H. Nanavati, Advocate for the Appellant;
Niraj Ashar, A.G.P. and D.C. Dave, Advocate for the Respondent

Judgement

C.L. Soni, J.—In this petition filed under Art. 226 of the Constitution of India, the petitioner has prayed for following reliefs in Para No. 5: "5(A) Allow this petition.

(B) Declare that the action of the respondents in not counting the service of the petitioner as qualifying service from 10-8-1961 to 15-12-1984 for the purpose of pension and other benefits, as illegal and unconstitutional.

(C) Declare that as per Government Resolution dated 17-12-1987 at Annexure-I, the service rendered by the petitioner as an Asstt. Professor and Professor in Birla Institute of Technology & Science at Pilani i.e. a period from 10-8-1961 to 15-12-1984 be considered as qualifying service for pension and other benefits.

(D) Direct the respondents to consider the service of the petitioner rendered at B.I.T.S. from 10-8-1961 to 15-12-1984 as qualifying service for the pension and accordingly direct them to revise the pension of the petitioner and pay to the petitioner the difference of arrears of pension."

The brief facts relevant for the purpose of deciding the petition are that the petitioner was appointed as Demonstrator on 25-9-1958 in M. S. University, where he continued upto 1961. On 10-8-1961 he joined Birla Institute of Technology and Science, Pilani (Rajasthan). Subsequently, the Birla Institute and

other two colleges were amalgamated and were declared as deemed University i.e. Birla Institute of Technology and Science. The petitioner then joined Birla Vishwakarma Mahavidyalaya at Vallabhvidyanagar, Gujarat, with effect from 17-12-1984 and retired as Principal from the said institution on 31-12-1992. The petitioner has averred that on 17-12-1987, the Government of Gujarat issued resolution introducing pension scheme for teaching and non-teaching staff of non-Government Engineering Colleges and Polytechnics. The Birla Vishwakarma Mahavidyalaya, Vallabhvidyanagar the respondent No. 4 is one of the institutes covered therein for the scheme of pension. The petitioner has further averred that after the petitioner joined the respondent No. 4, he was asked to deposit C.P.F. contribution to enable the State to include the petitioner in the pension scheme. The petitioner, therefore, deposited C.P.F. contribution received by him with interest in Sub-Treasury at Anand. Thereafter, the pension papers of the petitioner for his 34 years of service were prepared and the Director of Technical Education, after proper verification forwarded his pension papers to the Director of Pay and Pension-respondent No. 3. However, respondent No. 3 did not consider service of about 23 years for the period from 1961 to 1984 for the purpose of pension. The Director of Technical Education, therefore, passed an order for refund of the C.P.F. amount deposited by the petitioner. The petitioner accepted the said amount without prejudice to his rights to challenge the action of the respondent No. 3 in not considering his service from 1961 to 1984 for the purpose of pension. It is the case of the petitioner that as per Clause 8 of the Resolution dated 17-12-1987 services rendered by him prior to joining the respondent No. 4 institution is required to be considered for the purpose of pension and other benefits. 2. I have heard learned Advocates for the parties.

3. Learned Advocate Mr. Vaishnav appearing for the petitioner submitted that when the Government brought in the scheme of pension vide Resolution dated 17-12-1987 for teaching and non-teaching staff of Government Engineering Colleges and Polytechnics, the petitioner was in service of the respondent No. 4-Institution, which is covered by the said resolution and therefore, the petitioner stood governed by the pension scheme. Mr. Vaishnav submitted that by virtue of Clause 8 of the Resolution dated 17-12-1987, the services rendered by the petitioner from 1961 to 1984 before he joined the respondent No. 4-Institution, were required to be considered for the purpose of his pension. Mr. Vaishnav submitted on wrong interpretation of the Resolution dated 17-12-1987, the respondent No. 3-Director of Pay and Pension has decided to exclude the past services of the petitioner, whereby, the qualifying service for the purpose of pension put in by the petitioner prior to 1984 would stand excluded for the purpose of pension. Mr. Vaishnav submitted that once the petitioner was made to deposit his C.P.F. contribution for the past service and once such contribution was taken for the purpose of conferring pension benefits under scheme dated 17-12-1987, it was not open to the respondent No. 3 to exclude the past services of the petitioner. Mr. Vaishnav thus urged to allow the petition and grant the relief prayed for in the petition.

4. Learned A.G.P. Mr. Niraj Ashar on the other hand submitted that though the petitioner was covered under the scheme for pension introduced by the Government vide Resolution dated 17-12-1987 as employee of respondent No. 4-Institution, the petitioner would be entitled to pension benefits only for the services rendered by him after he joined the respondent No. 4-Institution. Learned A.G.P. Mr. Ashar submitted that Clause 8 of Resolution dated 17-12-1987 clearly provides for counting of services for pension rendered in the institutions or non-Government aided colleges, Universities etc. mentioned in the Resolution dated 17-12-1987. Mr. Ashar submitted that the institution, wherein, the petitioner put in his services prior to his joining the respondent No. 4-Institution is not covered by the Resolution dated 17-12-1987. Learned A.G.P. Mr. Niraj Ashar submitted that the respondent No. 3 has, therefore, on correct interpretation of the resolution dated 17-12-1987, decided to exclude the services rendered by the petitioner in the institution not covered under the Resolution dated 17-12-1987. He thus, urged to dismiss the petition.

5. Having heard learned Advocates for the parties and having perused Government Resolution dated 17-12-1987 at Annexure-I, it appears that though the petitioner could be said to have been governed by the scheme for the purpose of pension, however, the past services of the petitioner since not from the institutions covered under the resolution, the petitioner cannot be held entitled to pension for his past services. Clause 8 of the Resolution dated 17-12-1987 in unequivocal terms provides that all services either in one or more than one institution mentioned in Para No. 1 or in non-Government aided colleges, University, higher secondary schools, receiving grant-in-aid from the Government are to be taken into consideration for the purpose of pension. Thus, if no services are rendered by any employee including the past services in any of the institutions covered by the Resolution dated 17-12-1987 such services cannot be considered for the purpose of pension under Resolution dated 17-12-1987.

6. There is no dispute about the fact that the petitioner rendered his services from 1961 to 1984 in Birla Institute of Technology and Science, at Pilani in the State of Rajasthan. The institute at Pilani (Rajasthan) where the petitioner served for the aforesaid period is not covered in the Resolution dated 17-12-1984. Therefore, for counting the length of services for pension, the respondent No. 3 has rightly excluded the services rendered by the petitioner in the said institution before 1984.

7. In above view of the matter, I find no error in the action of the respondent No. 3 in not considering the services rendered by me petitioner in the institute at Pilani not covered by the Resolution dated 17-12-1987 for the purpose of pension. The petitioner, therefore, cannot be given any relief prayed by him in the present petition. For the reasons stated above, the petition is dismissed.