

(2013) 06 GUJ CK 0038
In the Gujarat High Court

Case No : Special Civil Application No. 15690 of 2011

Lilaben Digambar Navre

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Citation : (2014) LabIC 666

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

Bench : Single Bench

Advocate : Vidhi J. Bhatt and Shalin Mehta, for the Appellant; Ronal Raval, A.G.P. and Niraj Ahsar, AGP, for the Respondent

Final Decision : Allowed

Judgement

C.L. Soni, J.—Both the petitions are filed by the widows whose late husbands served under Respondent Nos. 1 and 2. The challenge in both the petitions is against the reduction of pay-scales after the death of their husbands from Rs. 950-1500/- to Rs. 750-940/- with further prayer to refix the pay and pension.

2. The case of the petitioner in Special Civil Application No. 15690 of 2011 is that the late husband of the petitioner was working with Irrigation Department as daily wager helper from 1974. On 7.2.1981 he was appointed as a daily wager clerk in the office of the Superintending Engineer, irrigation Mechanical Division No. 2. Ukai. He was being paid a fixed pay of Rs. 950/- from 7.3.1986. On completion of 10 year of service from 7.3.1981, he was placed in the pay scales of Rs. 950-1500/- which was then revised under the Revision of Pay Rules, 1998 to Rs. 3050-4590 with effect from 1.1.1996. From 9.6.2004 he was transferred from the office of the Superintending Engineer. Irrigation Mechanical Division No. 2. Ukai to the office of Respondent No. 3 Deputy Executive Engineer, Irrigation Sub Division. Mahudha. Late husband of the petitioner retired on 31.7.2007 and the last pay drawn by him was Rs. 3950.00. He then expired on 22.1.2009. It is the further case of the petitioner that on 13.7.2009, the petitioner received a copy of letter addressed by the office of the Director of Pension and Provident

Fund, the Respondent No. 4 to the Executive Engineer. Shedhi Irrigation Department. Nadiad inquiring as to how late husband of the petitioner was fixed in the pay-scales of Rs. 950-1500 (3050-4590) though he had not cleared the SSC Examination. The Executive Engineer, Shedhi Irrigation Department. Nadiad then wrote letter dated 8.9.2009 to Respondent No. 4 stating that the retiral dues of the husband of the petitioner were still not paid to the petitioner and requested to Respondent No. 4 to take necessary action for making payment of the retiral dues to the petitioner. It is the further case of the petitioner that the Executive Engineer, Irrigation Department, Nadiad then wrote letter dated 31.12.2009 to Respondent No. 2 and asked him to provide document explaining how the petitioner's husband was fixed in the pay-scales of Rs. 950-1500. Copy of the said letter was forwarded to the petitioner as well. As further averred by the petitioner, Respondent No. 2 then passed office order dated Nil of 2010 (28.6.2010) refixing and reducing pay-scale of the husband of the petitioner from the Rs. 3050-4590 to Rs. 2550-3200. Said order revised erstwhile pay scales of her husband from Rs. 950-1500 to Rs. 750-940. It is the case of the petitioner that her husband was never intimated in his life time that his pay-scales was wrongly fixed from the year 1991. Respondent No. 2 has also not followed the principles of natural justice before refixing the pay-scales of the petitioner. It is further stated that such correction of the pay scales of the husband of the petitioner was after his death and after unreasonable long period of 20 years. Petitioner has also averred that the husband of the petitioner was granted benefit of the pay-scales of Rs. 950-1500 on completion of 10 years service as per the Government Resolution dated 17th October, 1988 and there was no mistake in fixing the pay of the petitioner in such pay-scales and therefore, recovery of Rs. 1,09,100/- sought by the respondent authorities from the petitioner about so called excess amount paid to the husband of the petitioner is not justified. The petitioner has made further grievance that the pay-scales of the husband of the petitioner was not revised as per 6th Pay Commission and even the family pension has yet not been received.

3. The case of the petitioner in Special Civil Application No. 117 of 2012 is that her late husband joined the service of the respondents as semi skilled worker on 21.3.1975 and vide Circular dated 29.8.1991 issued by Respondent No. 2, late husband of the petitioner was made permanent semi skilled work charge helper with effect from 21.3.1990. He was fixed in the running pay-scales of Rs. 750-940. His retirement age was determined to be of 60 years and he was made eligible to receive pension and gratuity. Circular dated 29.8.1991 was issued by Respondent No. 2 making the late husband of the petitioner permanent semi skilled helper on the basis of the Government Resolution dated 17th October, 1988. On 30.11.1991. Respondent No. 2 revised circular dated 29.3.1991 and refixed the pay of the late husband of the petitioner in the pay-scales of Rs. 950-1500. It is stated that the pay of the deceased husband of the petitioner in the month of November, 2009 was Rs. 11,293.00. He then expired on 21.12.2009. As further averred by the petitioner, Respondent No. 3 Director of

Pension and Provident Fund wrote letter dated 3.3.2010 to Respondent No. 2 raising few queries pertaining to the late husband of the petitioner and stated that if the late husband of the petitioner had not cleared Second Class Wireman's examination, he should be fixed in the pay-scales of Rs. 750-940 instead of Rs. 950-1500. It is further averred that after the death of the husband of the petitioner, the petitioner did not receive full insurance amount when paid but thereafter, when she was expecting family pension, she was shocked to receive office order dated 4.10.2011 passed by Respondent No. 2 stating that the late husband of the petitioner was wrongly given the pay-scales of Rs. 950-1400 and his pay is refixed in the pay-scales of Rs. 750-940 with effect from 21.3.1990 and the corresponding pay-scales of Rs. 2500-3200 from 1.1.1996 on the ground that her husband had not cleared 2nd Class Wireman's Examination. In the said order, it was also stated that the excess amount paid to the late husband of the petitioner was to be recovered, it is the further case of the petitioner that such order and action taken by the respondents is not only after unreasonable long period of 20 years but the same is without following principles of natural justice and after the death of her husband.

4. The respondents have opposed both the petitions by filing affidavit in reply. In both the petitions, stand taken by the respondent authorities is that the pay-scales of Rs. 950-1500 given to the late husbands of the petitioners was under mistake, against their entitlement and contrary to the Circular of the Government and order reducing the pay-scales is passed to correct the mistake. It is also stated that the Government is not desirous to recover the excess amount paid to the late husbands of the petitioners.

5. I have heard learned advocates for the parties. Learned Senior Advocate Mr. Shalin N. Mehta with Ms. Vidhi J. Bhatt appearing for petitioners in both the petitions submitted that the pay-scales of Rs. 950-1500 given to the husbands of the petitioners was as per their entitlement. Mr. Mehta submitted that there was specific order passed for giving them benefit of the pay-scales of Rs. 950-1500 on their completion of minimum ten years of service and under such orders, late husbands of the petitioners drew the pay in the pay-scales of Rs. 950-1500 and also in the revised pay-scale. Mr. Mehta submitted that it is not correct to say that there was mistake in fixing the pay of the late husbands of the petitioners in the pay scales of Rs. 950-1500. Learned Senior Advocate Mr. Mehta further submitted that in any case, it is not open to the respondents to reduce the pay-scale after unreasonable period of more than 20 years, that too after death of the husbands of the petitioners. Mr. Mehta submitted that the orders reducing the pay-scale are since passed in violation of the principles of natural justice, same are nullity and the same cannot be enforced against the widows of the deceased employees. Mr. Mehta thus urged to allow the petitions and quash and set aside orders reducing the pay scale of late husbands of the petitioners and to direct the respondents to give benefits of pension and family pension as well as other retiral benefits including benefit of revised pension on the basis of the pay-scale of Rs. 950-1500 to the petitioners.

6. As against the above arguments, learned Assistant Government Pleader Mr. Ronak Raval appearing for respondent authorities in Special Civil Application No. 15690 of 2011 and learned Assistant Government Pleader Mr. Niraj Ashar appearing for respondent authorities in Special CUI Application No. 117 of 2012 submitted that the pay scale of Rs. 950-1500/- paid to the late husbands of the petitioners was on account of mistake and such mistake when was noticed, it was decided to immediately correct it. Learned AGPs submitted that there is no bar in correcting the mistake of giving wrong pay-scale at any point of time because no employee can be permitted to take undue advantage of the wrong pay-scale. Learned AGPs submitted that the husbands of the petitioners were employed as daily wagers and therefore, could not be made entitled to the pay-scale of Rs. 950-1500 simply because they had completed more than ten years of service. They further submitted that the pay scale of Rs. 950-1500/- was meant for the qualified employees whereas the husbands of the petitioners were lacking in qualification and therefore, they were wrongly given the benefit of the pay-scale of Rs. 950-1500/-. Learned AGPs further submitted that such mistake came to be noticed only after the death of the husbands of the petitioners and, therefore decision could be taken to reduce their pay scales after their death, however, simply because the pay-scales are sought to be corrected after their death is no ground to say that the order of correcting the pay scale is illegally passed. Learned AGPs submitted that since the mistake of giving wrong pay scale to the husbands of the petitioner is being corrected after death of the husbands of the petitioners, the Government has taken conscious decision of not recovering the excess amount paid to them. However, at the same time, the petitioners could not be continued with the benefit of wrong pay scale, learned AGPs thus urged to dismiss the petitions.

7. Having heard the learned advocates for the parties and having perused the record of the petitions, it appears that there is no dispute about the fact that the late husbands of the petitioners were granted benefit of pay-scale of Rs. 950-1500 on account of their completing ten years of service by specific order passed in that regard. Such pay-scales were granted to them in the year 1991. They continued to draw such pay scale till the end of their period. Unfortunately both of them expired in the year 2009.

8. There is also no dispute about the fact that the decision/order reducing the pay scale of the petitioners from Rs. 950-1500 to Rs. 750-940 is without following principles of natural justice. Such orders are therefore, nullity in the eye of law.

9. By the impugned decision/order, benefits of pay-scale conferred upon the late husbands of the petitioners before about 20 years have been withdrawn and recovery of excess amount paid right from the year 1991 is ordered. Such decision/order is being enforced against the petitioners who are the widows of the deceased employees.

10. Though it is open to the State to correct its mistake of wrong pay-scale and

no employee as a matter of right can claim to continue with the wrong pay-scale, however every State action, must pass through the test of reasonableness as envisaged by Article 14 of the Constitution of India. If the State when faced with any action initiated by its employee or any citizen expects him to be vigilant enough to take action within reasonable time, the State is also expected to take action against its employees or the citizens within the reasonable span of time which may not be as expected from a citizen or an employee. The State is also under obligation to follow the principles of natural justice while taking any action entailing evil consequences against its employee or a citizen. The reasonableness of the action as regards time period can be decided on the facts of each case.

11. Present is a case where the State has allowed its employees, late husbands of the petitioners to draw their salary in so called wrong pay-scale for nearly 20 years. After their death, the State authorities realized that they were permitted to draw the wrong pay-scale. The State has thus taken impugned decision reducing their pay-scale. Such action of the State after nearly 20 long years that too after the death of the employees cannot be said to be within reasonable span of time. Such belated action on the part of the State in the facts of the case thus cannot stand scrutiny of Article 14 of the Constitution of India.

12. Learned Senior Advocate Mr. Shalin Mehta argued that the pay-scales granted to both the deceased employees was on the basis of the conscious decision and by specific order in their favour and cannot be said by mistake. Learned Senior Advocate Mr. Mehta submitted that the pay-scales since were granted to the deceased employees on completion of 10 years of service, deceased employees could not be said to have got pay-scale of Rs. 950-1500 without qualification for their posts. Such contention of Mr. Mehta though appears to be well founded but even if the stand of the respondent authority is accepted that the deceased employees were not entitled to such pay-scale, it is not open to the respondent authorities now to reduce the pay-scale of deceased employees at very belated stage.

13. Even otherwise, the impugned actions/orders reducing the pay-scale of the deceased employees since passed without following principles of natural justice are nullity and therefore, cannot be acted upon. In ordinary circumstances, when the Court finds that the decision/order is in violation of the principles of natural justice, the Court might permit the concerned authority to pass fresh order after hearing the affected persons. However, in the present case, such course is now not open to be followed in absence of the deceased employees whose pay scale is reduced. Though learned AGPs have suggested that the petitioners could be heard but the Court is of the view that the hearing is not a gossip formality. It has to be effective and it could be effective only if such hearing is given to the person against whom the order is to be passed. The State Authority cannot say that the hearing could still be given to the heirs of such affected persons or to his near relative. When a person against whom any order is to be passed is entitled to be heard, it is for him to decide what to say in his defence. He may have many

material contentions and ideas in his mind to present before the authority. It is not possible to implant dead man's thoughts, ideas, defences etc. in the mind of his heir, relative or friend to complete the procedure of hearing.

14. Thus the petitioners who are widows of the deceased employees cannot be expected to present the case on behalf of the deceased employees. Therefore, now it is of no use to permit the State to rectify its order by giving hearing to the widows of the deceased employees. They are otherwise faced with the hard days of life and adverse situation in the society on account of death of their husbands. They cannot be further made to face the vigour of hearing against the mighty State.

15. In view of the above facts and circumstances of the case, the impugned decisions/orders since would remain as nullity, cannot be enforced against the petitioners. In the case of Nawabkhan Abbaskhan Vs. The State of Gujarat, Hon'ble the Supreme Court observed in paragraphs 14 and 20 as under:

14. Where hearing is obligated by a statute which affects the fundamental right of a citizen, the duty to give the hearing sounds in constitutional requirement and failure to comply with such a duty is fatal. May be that in ordinary legislation or at common law a Tribunal, having jurisdiction and failing to hear the parties may commit an illegality which may render the proceedings voidable when a direct attack is made thereon by way of appeal, revision or review, but nullity is the consequence of unconstitutionality and so without going into the larger issue and its plural divisions, we may roundly conclude that the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void and ab initio of no legal efficacy. The duty to hear manacles his jurisdictional exercise and any act is in its inception, void except when the alternative is a travesty of conditions laid down in regard to hearing. May be this is a radical approach, but the alternative is a travesty of constitutional guarantees, which leads to the conclusion of post-legitimated disobedience of initially unconstitutional orders. On the other hand law and order will be in jeopardy if the doctrine of discretion to disobey invalid orders were to prevail.

20. We express no final opinion on the many wide-ranging problems in public law of illegal orders and violations thereof by citizens grave though some of them may be. But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings. An order is null and void if the statute clothing the administrative tribunal with power conditions it with the obligation to hear, expressly or by implication. Beyond doubt, an order which infringes a fundamental freedom passed in violation of the audi alteram partem rule is a nullity. When a competent Courts holds such official act or order invalid, or sets it aside, it operates from nativity, i.e. the impugned act or order was never valid.

16. In light of above, the petitions are allowed. The impugned decisions/orders

are quashed and set aside. The pay-scale of Rs. 950-1500/- with consequential revised pay-scales are ordered to be restored with all consequential benefits. The respondents are directed to work out and pay all consequential benefits including pension, revised pension and family pension to the petitioners on the basis of pay-scale of Rs. 950-1500/- and revised pay scale within three months from the date of receipt of this order. Rule is made absolute accordingly in both the petitions.