

(1989) 11 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 1185 of 1987

Mansukhlal P. Unadkar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Citation : (1990) 1 GLR 621

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

1. The petitioner who has retired from Government service on 1st June, 1983 has been paid pension only in February, 1988 and that too under the interim orders of the Court. The petitioner claims that he should be paid interest at the rate of 12% on the delayed payment of pension relying on the judgment of the Supreme Court in the case of O.P. Gupta Vs. Union of India (UOI) and Others, of that judgment reads as follows (p. 464) :

"Normally, this Court, as settled practice, has been making direction for payment of interest at 12% on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case."

2. On behalf of the Government, Miss. Doshit submitted that the delay is not due to any fault on the part of the Government; there was a query raised by the Accountant General, respondent No. 4 and the petitioner had produced the certificate of last pay drawn very late and there was some period of absence which was not regularised and settled and therefore the delay has taken place and as soon as the Accountant General accorded the sanction, State Government has immediately made payment. Even though there may be some dispute about the actual amount of pension to be decided finally, there cannot be any dispute that the petitioner was entitled to pension and dues of pensionary benefits. Even though there may be some uncertainty about the last pay drawn in July, 1983 or in January, 1982, there is no dispute that till 31st March, 1981, the petitioner was in service and on 1st April, 1981 he was sent on deputation to the Municipal

Corporation and he was repatriated on 1st July, 1982. From 1st July, 1982 to 13th January, 1983, the pensioner states that he remained without any posting and the respondent has pointed out that the petitioner was given posting orders in September and December 1982 and the petitioner did not report for duty. Even after joining on 13th January, 1983 the petitioner had remained absent for most of the period and that absence has also to be considered and regularised so as to work out the last pay drawn and until that was done, according to the respondents, pension could not be calculated and paid earlier.

3. There is no satisfactory explanation for such a long delay of four years. Moreover, the reasons for delay do not justify delay in payment of the whole pension. If there was difficulty in final calculation, atleast part of the pension could have been released on an ad hoc or provisional basis and there was no justification whatsoever for withholding or delaying the payment of the entire amount for a long period of four years. There is no dispute that the petitioner retired in July 1983 and the pension had become due to him and that he did not receive that pension till February, 1988. During this period, the amount that was payable to the petitioner has remained with the State and therefore the respondent-State cannot escape from the liability to make payment of interest on the said amount. Since the petitioner retired from July 1983, a reasonable period of six months can be excluded, but from January 1, 1984 till December 31, 1987, the petitioner must be paid interest at the rate of 12% per annum on the amounts of pension paid late. The petitioner has been deprived of the benefit of this amount and the respondent - State has retained this amount and therefore it would be just an equitable to direct the respondent-State to pay the interest at the rate of 12% per annum on the commuted pension and gratuity and on monthly amounts of pension from January 1, 1984.

4. As regards other claims mentioned in para 5 of the petitioner's affidavit dated July 2, 1981, the respondent has satisfactorily explained as to why the petitioner is not entitled to such claims. The petitioner was repatriated on July 1, 1982 and even though he claims that he was not given posting orders till January 13, 1983, it is clear from the affidavit-in-reply that he was given posting orders and he had not joined and therefore he is not entitled to the same. That period of absence has been regularised as half pay leave. The petitioner has not shown as to which increment should be taken into consideration for fixation of pension and gratuity. The period from January 13, 1983 to June 30, 1983 is also such during which the petitioner has remained absent and that absence has been regularised and he has been paid half pay salary.

5. Accordingly, the petition is partly allowed by directing the respondent-State to pay interest at the rate of 12% per annum from January 1, 1984 to January 31, 1988 on the amount of pensionary benefits as mentioned hereinabove. The respondent shall pay the costs of the petitioner. The respondent-State is also directed to make payment within four months from today.

6. Rule made absolute accordingly.