(2013) 07 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 7089 of 2008

Mayaben S. Desai APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) LabIC 4604

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

Bench : Single Bench

Advocate : Harshal N. Pandya, for the Appellant; Neeraj Ashar, Asstt. Govt. Pleader and Biren A. Vaishnav, for the Respondent

Judgement

C.L. Soni, J.—The petitioner has made following prayers in prayer Clauses 6(A), (B) and (C) in this petition filed under Article 226 of the Constitution of India:

(A) declare and hold that the petitioner is entitled to receive pension and other retirement dues for the period from 13.6.1968 till the date of her retirement i.e. 31.10.2003, and

(B) further be pleased to direct the respondent authorities to finalise the pension case of the petitioner accordingly, and make payment of pension and other retirement benefits to the petitioner, and

(C) direct the authorities to pay interest on the delayed payment of the retirement dues of the petitioner at the rate which the Honourable Court may consider as just and proper in the facts and circumstances of the case.

The case of the petitioner is that the petitioner was appointed as Assistant Teacher in Sarva Vidyamandir at Rankuva, which was a non-Government grand-in-aid school on 13.6.1968, where she worked till 15.6.1969 and thereafter, there was break in service for the period from 16.6.1969 to 14.6.1970 on account of training undertaken by the petitioner but, the said break was regularized by the competent authority. It is the case of the petitioner that twice, the petitioner changed the non-Government grant-in-aid school without any break and lastly, the petitioner joined Shardayatan High School as Principal with effect from 3.12.1993, which is a school run by Respondent No. 6 Education Society. The petitioner served in the said school till the date of her retirement, i.e. 31.10.2003. The petitioner has further averred in the petition that pension papers of the petitioner were sent to the District Education Officer, Surat. However, the same were returned with certain queries to the school. The main objection raised by the District Education Officer was that the service rendered by the petitioner in the last school, i.e. from 3.12.1993 to 31.10.2003, could not be considered as pensionable service in view of the resolution dated 23.1.2007. The petitioner has challenged such action of the respondent authorities in not considering her service for the above-said period as pensionable service.

2. The petition is opposed by filing affidavit-in-reply on behalf of Respondent No. 4 taking the stand that the petitioner joined the service in the above-said school under Respondent No. 6 on 3.12.1993 when resolution of the Government dated 28.9.1992 was in vogue as per which the pension benefit was discontinued to the teachers of non-grantable school. The said resolution was further clarified by subsequent resolution dated 23.1.2007, as per which, the employees serving in private non-grant-in-aid school on or after June, 1992 would not be entitled to the benefit of pension. It is further stated that the said Government Resolution clearly provides that employees serving in the school, which was permitted to be opened on the condition of not claiming grant on or after June, 1992, would not be entitled to pension. Such resolution since of a clarificatory in nature, would relate back to the date of the original Government Resolution. It is further stated that pension of the petitioner has been fixed at Rs. 1275/- per month and amount of gratuity of Rs. 57,725/- has also been determined and the present petition is confined to pension and other retiral benefits for the period from 3.10.1993 to 31.10.2003.

3. I have heard learned advocates for the parties.

4. Learned advocate Ms. Harshal N. Pandya for the petitioner submitted that the petitioner has been denied pension benefit for the services rendered by the petitioner from 3-12-1993 to 31-10-2003 on wrong interpretation of the resolution of the Education Department, State of Gujarat dated 28.9.1992. Ms. Pandya submitted that reliance placed on the resolution dated 23.1.2007 issued by the Government which clarified the resolution dated 28.9.1992 is also on misconception as the said resolution has not taken away the effect of the resolution dated 28.9.1992, which specifically provided for grant of pension benefit to the employees of non-grantable school recognized and registered before June, 1992. Ms. Pandya submitted that undisputably, the school run by Respondent No. 6 wherefrom the petitioner retired, was recognized and registered before June, 1992 and has not been claiming grant from the Government and therefore, by virtue of the said resolution, the service rendered by the present petitioner in the said school is required to be considered as

pensionable service.

4.1. Learned Advocate Ms. Pandya submitted that the school in which the petitioner served lastly run by Respondent No. 6 in fact is a grantable school but it is not claiming grant from the State Government and therefore, the said school could not be said to be non-grant-able school and for the said reason, the petitioner could not be rendered dis-entitled for pension benefit for the service rendered by the petitioner in the said school. Ms. Pandya submitted that the petitioner was a permanent and regular teacher of the school and having served in the said school from the year 1993 to the date of retirement, become entitled to have considered the said service for the pension benefits even though the State Government had discontinued the pension benefit for the teachers of non-grantable school registered after June, 1992. She thus urged to allow the petition.

5. As against the above arguments, learned Assistant Government Pleader Mr. Neeraj Ashar submitted that the school in which the petitioner served lastly was granted recognition on condition that it would not claim any grant from the Government and therefore, for all purposes, the said school was non-grantable. Mr. Ashar submitted that the petitioner was appointed in the said school with effect from 3.12.1993, i.e. after the date of the Government Resolution dated 28.9.1992, and therefore, the petitioner in no circumstances could be entitled to pension benefit for the service rendered by her in such school as on and from June, 1992, pension benefit to the employees of non-grantable school has been stopped. Mr. Ashar submitted that by subsequent resolution dated 23.1.2007 at Annexure-B, the Government has further clarified the earlier resolution dated 28.9.1992 and it is clearly provided that the teachers joined after June, 1992 in the school registered before June, 1992 are not entitled to pension benefit. He, therefore, submitted that Respondent No. 4-District Education Officer has not committed any mistake in interpreting two resolutions of the Government and in rejecting the claim of the petitioner for pension for the services rendered by the petitioner after 1993 in the school run by Respondent No. 6.

6. Having considered the rival submissions made by the learned advocates for the parties, it appears that the Government decided not to grant pension benefits to the teachers appointed in the schools given recognition after June, 1992 on the condition of not claiming grant from the Government. It appears that earlier, there was already a resolution dated 5.2.1980 providing for grant of pension benefit to the teachers of non-grantable school. But, then it was discontinued by resolution dated 28.9.1992 providing that the teachers appointed in the schools given recognition after June, 1992 on condition of not claiming grant from Government shall not be entitled to pension benefits. Therefore, the teachers who were appointed in non-grantable schools which were recognized prior to June, 1992, were entitled pension benefits. There is no dispute about the fact that the school wherefrom the petitioner retired was recognized prior to June, 1992 on condition of not claiming grant from Government. In the resolution dated 28.9.1992, at Annexure-R-II, it is nowhere provided that the teachers

appointed after 1992 in such schools shall not be entitled to pension benefits. The above was the clear position emerging from the said resolution dated 28.9.1992 till the petitioner retired on 31.10.2003.

7. However, pension case of the petitioner remained undecided till the Government issued another resolution dated 23.1.2007, which is termed as Clarificatory Resolution, Clause (3) thereof has provided clarification to the effect that the teachers joined the service after June, 1992 in the school which was granted recognition though prior to June, 1992 on the condition of not claiming grant, shall not be entitled to pension. Relying on such resolution at Annexure-B, the District Education Officer has by his decision dated 30.8.2007 decided not to consider the service of the petitioner rendered for the period from 3.12.1993 to 31.10.2003 in the school run by Respondent No. 6 as pensionable service and directed the school to present pension papers of the petitioner after deducting service for the aforesaid period.

8. It is required to be noted that resolution dated 23.1.2007 at Annexure-B is not in substitution of the earlier resolution dated 28.9.1992 but is a kind of clarificatory resolution. Such resolution issued for clarifying any earlier resolution cannot take away the substantive rights acquired by any person under such earlier resolution. In fact, resolution dated 23.1.2007 has done nothing more than interpreting the earlier resolution in the name of clarification. Therefore, the rights of the petitioner to get pension for the service rendered by her after 19(sic) in the school run by Respondent No. 6 are to be decided on the basis of the earlier resolution dated 28.9.1992. Since earlier resolution clearly provided that only those teachers of non-Government secondary schools recognized after June, 1992 on condition of not claiming grant shall not be entitled to pension benefits and since the petitioner rendered her service in the school recognized prior to June, 1992, the petitioner would be entitled to have her service rendered in the school under Respondent No. 6 for the purpose of pension. It is nowhere provided in the resolution dated 28.9.1992 that the teachers who joined such above schools after June, 1992 shall not be entitled to pension benefits on the basis of such service.

9. In fact, this Court has decided such issue vide order dated 18-11-2002 passed in Special Civil Application No. 4987 of 2002 relied on by learned Advocate for the petitioner, wherefrom following observations are quoted:--

Be it noted that indisputably the petitioner has served as a secondary school teacher/principal continuously from 14th June, 1965 till 31st October, 1999 without any break. The Government Resolution dated 1st March, 1974 is an amendment to the earlier Government Resolution dated 31st December, 1971. A bare perusal of the said Resolution dated 1st March, 1974 discloses the Government''s intention to count all services of teachers of Non-Government Grant-in-Aid Schools as pensionable service irrespective of the resignation/ termination of service provided there are not more than six breaks in the service, not more than four of which should be due to resignation. Hence, it is evident that even in case a secondary school teacher resigns from one Grant-in-Aid School and joins another Grant-in-Aid School, services rendered in both such schools shall be considered pensionable. Even in respect of Non-Grant-in-Aid Schools the Government has resolved under its Resolution dated 5th February, 1980 that teachers serving in such Non-Grant-in-Aid Secondary Schools shall be entitled to the pensionary benefits provided the concerned school deposits its contribution to the Contributory Provident Fund or the Pension Fund with the State Government. The said facility has been discontinued under the Government Resolution dated 28th September, 1992 in respect of those Non-Grant-in-Aid Schools which have been recognized in the month of June, 1992 or thereafter. Obviously, the Respondent No. 7 School has been recognized long before June, 1992. The teachers serving in the said school, therefore, cannot be denied pensionary benefits under the aforesaid Government Resolution dated 28th September, 1992.

10. In light of the above and on true construction of the resolution dated 28.9.1992, the service rendered by the petitioner from 3.12.1993 to 31.10.2003 in the school run by Respondent No. 6 is required to be considered as pensionable service by the respondents. For the reasons stated above, the petition is allowed. It is held and declared that the service rendered by the petitioner from 3.12.1993 to 31.10.2003 in the school, named Shardayatan High School, run by Respondent No. 6, is pensionable service. The respondents are directed to consider the above service period of the petitioner as pensionable service with her earlier service for pension and other retired benefits. The respondents shall workout and pay pension and other retiral benefits with all other consequential benefits by considering the service of the petitioner for the aforesaid period as pensionable service within a period of THREE MONTHS from the date of receipt of this order.

Rule is made absolute accordingly.

