

(2022) 10 GUJ CK 0105

In the Gujarat High Court

Case No : R/Special Civil Application No. 1052 Of 2020

Mayurdhvajsinh Gunvantsinh Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 19-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Civil Services (Pension) Rules, 2002 — Rule 25

Citation : (2022) 10 GUJ CK 0105

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Hashim Qureshi, Ekrama H Qureshi, Utkarsh Sharma

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. RULE returnable forthwith. Mr.Utkarsh Sharma learned AGP waives service of notice of Rule on behalf of the respondent State.

2. With the consent of learned advocates for the respective parties, the petition is taken up for final hearing.

3. By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed to direct the respondents to consider the ad-hoc tenure of service of the petitioners as continuous for all purposes by clubbing that period with the period post the selection of the petitioners by the GPSC for the purposes of pay, leave, pension and other consequential service benefits and grant of pay protection.

4. It is the case of the petitioners that they are working as Lecturers, Class-2 in the Government Polytechnic Colleges. Initially, they were appointed on ad-hoc basis in the year 2008-2009.

After some time, they were regularly selected in the years 2015-16 after having

successfully undergone the selection process through the GPSC. The prayers are therefore in that context.

5. Mr.Ekrama Qureshi learned counsel for the petitioners would rely on an order passed by this Court in Special Civil Application No.6312 of 2021 and allied matters, wherein, a similar issue was considered by this Court. The Court relying on a decision rendered in Special Civil Application No.6907 of 2021 held as under:

"5. This Court in Special Civil Application No.6907 of 2021, had considered the issue of clubbing ad-hoc services together with regular services post selection after undergoing the GPSC examinations and also with regard to the question of recovery and entitlement of AGP of Rs.7000/-. The order dated 04.04.2022 reads as under:

"1 By an order dated 02.03.2022, the grievances raised by the petitioner were set out.

The order dated 02.03.2022 reads as under:

"1 Three fold grievances have been raised by the petitioner in the present petition.

2 Firstly, the petitioner has challenged the order dated 01.04.2021 by which, the benefits of the 6th Pay Commission with effect from 01.01.2006 to 10.05.2009 are sought to be recovered on the ground that the petitioner was not eligible to the same.

3 Mr.Ketan Dave, learned advocate for the petitioner, would submit that the petitioner's initial appointment on ad-hoc basis was in a pay scale, there was no break in service inasmuch as, on being appointed on an ad-hoc Lecturer she continued to served on ad-hoc basis from 12.04.1993 to 10.05.2009 without a break. She joined the Degree College on 11.05.2009. In the order of recovery, reliance is placed on the communications dated 19.03.2015 (page 80) and 18.07.2020 (page 81).

4 This Court by an order dated 23.04.2021 has granted ad-interim relief against the recovery. Mr.Dave, learned advocate for the petitioner would submit that in addition to the petitioner being entitled to the pay-scale on merits, the order of recovery was made 12 years after the fixation was approved by the Examiner of Local Funds as is evident from (pg.32) dated 27.5.2011. The pay scale was verified as is evident from Annexure-'E' (pg32).

5 The second grievance of the petitioner is that she is entitled to the AGP of Rs.7,000/-with effect from 11.5.2014 and an order has been issued on 3.6.2019, but the same is not being implemented. The third grievance is of treating the period of past service as an ad-hoc Lecturer from 12.4.1993 to 10.5.2009 as continuous for all purposes, since the petitioner has been regularized without any brake in service from 11.5.2009. He would rely on an interim order dated 27.10.2021 passed in Special Civil Application No. 6312 of 2021 and allied

matters.

6 Prima facie, as far as recovery is concerned, irrespective of whether the petitioner was entitled to the scale on merits, it is sought to be recovered after 12 years. The mistake cannot be corrected after more than three years as by the decision of the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Limited vs. BPL Mobile Cellular Ltd reported in 2008 (13) SCC 597. Moreover, even as held by the Hon'ble Supreme Court in the case of State of Punjab vs. Rafiq Masih(white washer)., reported in 2015 (4) SCC 334., the recovery cannot be made.

As far as the implementation of the order dated 03.06.2019 granting the AGP of Rs.7,000/- and the benefits of continuity of service for the past period from 12.4.1993 to 10.5.2009 is concerned, the State shall take appropriate stand and file a reply on, or before, 16.03.2021.

Stand over to 17.03.2021."

2 The facts in brief are as under:

2.1 The petitioner possesses educational qualification of M.E (Chemical Engineering). She is serving as an Assistant Professor in Chemical Engineering at L.D.College of Engineering, Ahmedabad, on permanent basis.

2.2 The petitioner was initially appointed on a vacant post of lecturer in the government engineering college on an adhoc basis by an order dated 31.03.1993. She was so appointed in the payscale of Rs.2,200-4,000/- She joined her services on 12.04.1993. On being regularly selected by the Gujarat Public Service Commission (for short "the GPSC"), for the post of lecturer in Chemical Engineering in the revised payscale of Rs.8,000-13,500/-, she was given posting at L.D.College of Engineering, Ahmedabad, vide order dated 08.05.2009. She joined her services at L.D.Engineering College on 11.5.2009. She was made permanent on completion of two years' probation with effect from 26.05.2011 vide order dated 22.02.2012.

2.3 During the course of her services on an adhoc basis, she was redesignated as Assistant Professor and the earlier payscale of Rs.2,200-4,000/- was revised to Rs.8,000-13,500/- and further revised to the pay band of Rs.15,600-39,100/- in grade pay of Rs.6,000/- with effect from 01.01.2006. As an adhoc lecturer, she was granted all benefits like the benefits of the 5th Pay Commission, the 6th Pay Commission, increments and other allowances like leave, LTC etc. The benefits of the 6th Pay Commission was granted to the petitioner after verification and approval by the Finance Department on 27.05.2011.

3 Mr.Ketan Dave, learned counsel for the petitioner, has challenged the order of recovery dated 01.04.2021 by which the college issued an order of recovery of salary for the period from 01.01.2006 to 10.05.2009. The case of the college is that during the petitioner's service on adhoc basis, the petitioner was not entitled to the benefits of the 6th Pay Commission, hence the recovery.

3.1 Mr.Dave, learned counsel for the petitioner, would submit that in the order of recovery, reference has been made to a communication dated 19.03.2015 which indicates that adhoc lecturers are not entitled to the benefits of the 6th Pay Commission. He would submit that the communication dated 19.03.2015 is a subject matter of Special Civil Application No.6549 of 2015, wherein the same has been stayed.

3.2 Mr.Dave, learned counsel for the petitioner, would submit that even the reference to the communication dated 16.08.2019 and letter dated 18.07.2020 which are referred to in the impugned order of recovery indicated that recovery proceedings are initiated against the lecturers to whom the benefits of the 6th Pay Commission were granted without the approval of the State and who have not initiated any legal proceedings.

3.3 Mr.Ketan Dave, learned counsel for the petitioner, would submit that once it was clear that the Accounts Department had verified the pay of the petitioner, as is evident from Annexure -'E' dated 27.05.2011 under the provisions of the Gujarat Civil Services (Revision of Pay) Rules, the recovery was misconceived. The second issue raised in the petition was with regard to non implementation of the AGP of Rs.7,000/- with effect from 11.05.2014. Mr.Dave, learned advocate, would submit that though the order has been issued on 03.06.2019, the same is not being implemented. The third issue raised by the petitioner is with regard to her services as an adhoc lecturer from 12.04.1993 to 10.05.2009, which is without break is not being treated as continuous for all purposes.

3.4 Mr.Dave, learned counsel for the petitioner, would rely on an interim order dated 27.10.2021 passed in Special Civil Application No.6312 of 2021. Mr.Dave, learned counsel, would also rely on the Government Resolution dated 24.04.1993 passed by the General Administrative Department of the State of Gujarat which provided for counting of services rendered on an adhoc basis by lecturers who were subsequently selected for regular appointment through the GPSC. Relying on para 2(a) and 2(b), Mr.Dave, learned counsel, would submit that a resolution was specifically passed that those employees who were initially appointed on adhoc basis and then were subsequently selected through the GPSC selection, if there is no break in service rendered during adhoc period, the same should be treated as continuous for all purposes. Mr.Dave, learned counsel, would also rely for the same purpose on the Government Resolution dated 03.07.1998.

3.5 Mr.Dave, learned counsel for the petitioner, laid a special emphasis on the Government Resolution dated 03.08.2011. He would submit that this resolution was passed regularizing past adhoc services rendered by 111 lecturers in Government Colleges. He would submit that if the contents of the resolution are read, they would indicate that even where the GPSC had objection to the regularization of such services, the State had despite such objection observed that such services of 111 lecturers ought to be regularized. Mr.Dave, learned counsel, would submit by relying on an order dated 30.01.2006 in the case of one Ms.Shweta P. Dave, who in the same college, namely, the L.D. Engineering

College, Ahmedabad, was working on an adhoc basis and her past services were regularized for the purposes of clubbing it with the subsequent regular service. Reliance was also placed on an order dated 15.03.2001 in the case of one Shrimati Asha M. Joshi, who was an Assistant Professor in the L.D.Engineering College, who got the benefits of continuity of adhoc service rendered prior to her GPSC selection. Reliance was placed on the decision of the Co-ordinate Bench of this Court in Special Civil Application No. 20185 of 2018 and Special Civil Application No. 19042 of 2017 and the provisions of Rule 25 of the Gujarat Civil Services (Pension) Rules, where adhoc services were not considered for the purposes of pension. He would further submit that the relief as prayed for be granted.

4 Mr.Kurven Desai, learned Assistant Government Pleader for the State would submit as under:

4.1 Drawing the Court's attention to the affidavit-in-reply, he would submit that as far as the recovery of the benefits of the 6th Pay Commission are concerned, since the payment was done erroneously inasmuch as, as per the Government Resolution dated 27.02.2009, the petitioner could not have been granted the benefits of the 6th Pay Commission, the same are sought to be recovered. Drawing the attention of the Court to the Notification dated 27.02.2009, he would submit that it is a specific condition in the Gujarat Civil Services (Revision of Pay) Rules, 2009, that they shall not apply to persons not in whole time employment. Since the petitioner had rendered adhoc services from 1993 to 2009, the benefits of the 6th Pay Commission could not have been given. The department is taking steps to rectify the mistake, and therefore, the order of recovery is just and proper.

4.2 As far as the implementation of the order of AGP of Rs.7,000/- is concerned, Mr.Kurven Desai, learned AGP, would submit that the proposal for implementation and for consideration of AGP of Rs.7,000/- is pending before the authorities and an appropriate decision will be taken by the Committee.

4.3 With regard to the benefit of seeking continuity of service, Shri Kurven Desai, learned AGP, would submit that seeking continuity of service is not an enforceable right vested in the present petitioner. He would submit that the petitioner cannot get such benefit because the Gujarat Public Service Commission has decided in the negative to extend the benefit of continuity of service of adhoc services. Reliance is placed on the communication dated 11.02.2019 and 22.01.2020. Drawing the Court's attention to these communications, Mr.Desai, learned AGP, would submit that it is in context of a decision rendered by a Division Bench in Letters Patent Appeal No. 485 of 2002. The understanding of the GPSC is that the Division Bench had deprecated the practice of the government in continuing adhoc lecturers on a long term basis without they undergoing a regular recruitment process, and therefore, it was decided that such candidates may not be given the benefit of continuity.

4.4 Mr.Kurven Desai, learned AGP, relied on a decision as far as recovery is concerned in the case of High Court of Punjab & Haryana vs. Jagdev Singh., reported in (2016) 14 SCC 267., to submit that once the petitioner had given an undertaking, she cannot now turn around and challenge the orders of recovery.

4.5 In rejoinder to this, Mr.Dave, learned counsel for the petitioner, would submit that the communications of the GPSC are read out of context. The Division Bench in the Letters Patent Appeal was dealing with the right of the adhoc lecturers being continued in service and it was in this context that the communication of the GPSC has to be read. It is undisputed that by the resolution of 03.08.2011, lecturers like the petitioner who had continued to be in adhoc service without any break got the benefit of continuity of their past services. The stand of the department therefore is misconceived.

5 Considering the submissions made by the learned advocates, as far as the first issue with regard to the legality of the recovery order dated 01.04.2021 is concerned, perusal of the impugned order indicates that reference is made to a communication dated 19.03.2015, letter dated 16.08.2019 and letter dated 18.07.2020. As far as the communication dated 19.03.2015 is concerned, the same has been stayed by this Court vide order dated 15.04.2015 in Special Civil Application No. 6549 of 2015. The other communications of 2019 and 2020 indicated that recovery proceedings are to be initiated in respect of those lecturers to whom the benefits of the 6th Pay Commission had been granted without approval of the State Government. Such lecturers have not initiated any legal proceedings in the Court of Law. What is evident on reading the order of recovery is that it seeks to recover the benefits granted to the petitioner of the 6th Pay Commission which the petitioner has earned for having worked for a period from 01.01.2006 to 2009. Independent of the communications referred to in the impugned order, even if the stand of the respondents is accepted that they were paid erroneously for which reliance has been placed on a communication dated 20.07.2019 and February 2015, what is evident is that, in case of the petitioner the payscales were granted and the same was verified by the verification authorities as is evident from the pay verification communication dated 27.05.2011 (Annexure'E', page 32 of the petition). Therefore, apart from the recovery being grossly belated and initiated after more than 12 years after the petitioner had secured such benefits, even if it is a mistake, the same cannot be corrected after such a long time. The order, therefore, on this count also needs to be quashed and set aside. The judgement in the case of Bharat Sanchar Nigam Limited vs. BPL Cellular Ltd., is not applicable as discussed hereinabove. That apart, even as per the Hon'ble Supreme Court in the case of State of Punjab vs. Rafiq Masih (White washer)., reported in 2015 (4) SCC 334., this is a case where recovery cannot be made.

6 So far as the case of second grievance of the implementation of the order of granting of AGP of Rs.7,000/- is concerned, the grievance of the petitioner is that though the order is issued on 03.06.2019, the same is not being implemented.

As far as that grievance is concerned, a statement has been made in the affidavit-in-reply filed on behalf of the State that with respect to such grievance, a proposal for implementation and for consideration is pending and an appropriate decision will be taken by the Committee and the benefits of the same will be implemented thereafter.

6.1 Accordingly, as far as this grievance of AGP of Rs.7,000/- is concerned, the respondents are directed to consider and implement the decision within a period of ten weeks from the date of receipt of copy of this order.

7 The final grievance of the petitioner is with regard to considering the period of service as an adhoc lecturer from 12.04.1993 to 10.05.2009 as continuous for all purposes since the petitioner has been regularized without any break in service from 11.5.2009. What is evident from the circulars relied upon by the petitioner, especially the one at page 48 of the paper book dated 03.08.2011 is that despite the objections of the GPSC of not accepting the proposal, the government in exercise of its own powers regularized the services of 111 lecturers.

7.1 Mr.Dave, learned counsel for the petitioner, has in his submission and in the opinion of the Court rightly so relied on two orders in the case of one Smt.Shweta P. Dave, Asstt.Professor in L.D.Engineering College who by an order dated 30.01.2006 got the benefits of continuity of adhoc services rendered by her prior to the GPSC selection. So also is evident from the order dated 15.03.2001 in the matter of Smt.Asha M. Joshi, Asstt Professor, in the L.D.Engineering College, who also got the same benefit.

8 Reliance placed by the learned AGP Mr.Kurven Desai, on the communication dated 22.01.2020 in context of the Letters Patent Appeal No. 485 of 2002 is misconceived. The decision was in context of continuance of adhoc lecturers for indefinite periods and not filling in the posts through regular selection. It is in this context that the Division Bench had deprecated the practice of adhoc lecturers being continued and thereby resting a legitimate grievance and creating a hope in them that they will be absorbed. The Division Bench opined that such act of the executive of continuing them contrary to statutory rules is arbitrary.

9 Facts of this case would indicate that the petitioner right from her initial appointment and joining from 12.04.1993 to 10.05.2009 as an adhoc lecturer and thereafter from 11.5.2009 on regular selection has continued without break and there is no reason therefore that the past period should not be treated as continuous for all consequential benefits like salary, leave, the selection grade, pension etc.

10 Accordingly, the petition is allowed. The order of recovery dated 01.04.2021 passed by the 3rd respondent i.e. the Principal, L.D.Engineering College, Ahmedabad, is quashed and set aside. The respondents are directed to treat the adhoc services rendered by the petitioner from 12. 04.1993 to 10.05.2009 as continuous for all purposes like salary, leave, selection grade, pension etc.

10.1 As far as the benefit of the AGP of Rs.7,000/- is concerned, the same shall be implemented as stated hereinabove in para 6.1.

11 What is pointed out by Mr.Dave, learned advocate for the petitioner, is that the respondents have not released the increments due and payable to the petitioner as well as the installments of arrears and the benefits of the 7th Pay Commission which are otherwise released in favour of similarly situated Asstt. Professors. In view of the order above, the respondents are directed to release the increments due and payable and installments of arrears also to the petitioner within a period of ten weeks from the date of receipt of copy of this order.”

6. Accordingly, the petitions are allowed. The respondents are directed to consider the case of the petitioners from the date of their initial appointment for all purposes like salary, leave selection grade, pension etc. The orders of recovery passed in the respective petitions as observed in paragraph nos.6.1 of the order passed in Special Civil Application No. 6907 of 2021. Respondents are also directed to release increments due of payable to the petitioner as well as the installments of arrears and the benefits of the 7th Pay Commission which are otherwise released in favour of similarly situated Asstt. Professors within a period of ten weeks from the date of receipt of copy of this order.”

6. Accordingly, the petition is allowed. The respondents are directed to consider the case of the petitioners from the date of their initial appointment for all purposes like salary, leave selection grade, pension etc. Consequential revision of pay shall also be granted to the petitioners within a period of ten weeks from the date of receipt of copy of this order.

7. Rule is made absolute to the aforesaid extent. Direct service is permitted.