
(1992) 03 GUJ CK 0005
In the Gujarat High Court

Modi Ramsingbhai Madhavbhai

APPELLANT

Vs

Bhabhar Nagar Panchayat and Another

RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 24, 325

Citation : (1992) 2 GLR 1140

Hon'ble Judges : N.J. Pandya, J

Bench : Single Bench

Judgement

N.J. Pandya, J.—The petitioner was originally employed with respondent No. 1-Panchayat as an Engine Driver. At the relevant time, respondent No. 1-Panchayat was being governed by the then Bombay Village Panchayat Act, 1958 which came to be substituted by the Gujarat Panchayat Act, 1961. Section 325 of the 1961 Act, will therefore, govern the case of the petitioner and for that a reference may be made to Clause (X) of Sub-section (2) of Section 325 which reads as under:

(x) the Secretaries, all Officers and servants in the employ of the old village Panchayats immediately before the said date shall be Secretaries, Officers and servants of the New Gram Panchayats and shall until other provision is made in accordance with the provisions of this Act, receive the Salaries and allowances and be subject to the conditions of service to which they were entitled or subject on such date:

Provided that it shall be competent to the State Government after giving a Secretary such notice as is required to be given by the terms of his employment, to discontinue his services if in the opinion of the Government he is not necessary or suitable to the requirements of the Panchayat service; and every Secretary whose services are so discontinued shall be entitled to such leave, pension, provident fund, gratuity, other rights and privileges as he would have been entitled to take or receive on being invalided out of service if he had continued in the employ of the Panchayat or Panchayats after the said date.

2. The petition has been filed with a prayer that the petitioner may be paid pension, gratuity and other retirement benefits which were due to him right from the date of his retirement which happens to be 23rd July, 1987. Ordinarily, he being a Panchayat employee there would have been no question of fastening any liability on State of Gujarat-respondent No. 2. However, at about the time when the petition came to be filed there was already a decision of this Court reported in AIR 1977 Guj 76 (Ramanlal Keshavlal Soni v. State of Gujarat) which came to be confirmed by the Supreme Court as per the decision reported in State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, . The position, therefore, is that all the employees of a given Panchayat will become State Government Employees irrespective of their original position. This being a 1983 decision, one would have expected the respondents to gracefully submit to it and entertain the legitimate request of the petitioner for pensionary and other retirement benefits. Unfortunately, the matter has been dragged on till today.

3. So far as respondent No. 1-Panchayat is concerned, by an affidavit in reply, they have come out with a disarming plea which is to the effect that if at all there be any liability it shall be that of respondent No. 2-State. It seems that respondent No. 1 is at least aware of the aforesaid two judgments. More or less a similar question had arisen in Special Civil Application No. 731 of 1989 dealt with by Justice R.C. Mankad as he then was, on 2-8-1991. No. doubt, as rightly pointed out by learned A.G.P. Mr. Pujari, it was a matter of family pension but the question required to be considered in that case was, the status of the panchayat employees and whether Government can be held responsible for any such payment or not. Needless to say, referring to the aforesaid Supreme Court decision, the matter has been decided in favour of the petitioner of that case.

4. Without elaborating the point further, therefore, I will follow this judgment as well as the line of reasoning adopted by Justice R.C. Mankad in the aforesaid Special Civil Application and accordingly, hold that the petitioner is entitled to get pensionary and other retirement benefits. In the prayer clause there is a specific prayer for interest also. Ordinarily, one may not have considered this aspect but for the settled legal position. In spite of the fact that this claim is strongly opposed by the other side, the resultant cost of the petitioner will have to be taken care of, which is the course taken in Civil Application No. 731 of 1989 also by Justice R.C. Mankad.

5. Section 24 of the Gujarat Panchayats Act, 1961, as rightly pointed out by Mr. Pujari provides that pay and allowances and other benefits available to an Officer or a servant of Panchayat Service serving for the time being under any Panchayat, shall be met by that Panchayat from its own fund. In view of the aforesaid Supreme Court judgment, this position has radically altered and this submission, in my opinion, is not available to respondent No. 2. So far as the other submission made by Mr. Pujari is concerned, it is with reference to Rule 5 of Gujarat Panchayat (Pension) Rules, 1976 which indicates that if option is once exercised, that become final. However, it is not the controversy put forth by the

petitioner, nor respondent No. 1 has come out with any such case.

6. Accordingly, the petition is allowed. The respondents are directed to pay pension, gratuity and other retirement benefits, if any, under the relevant rules that might have been modified from time to time and pay to the petitioner the arrears thereof on the basis of the computation to be done within two months from the date of receipt of the writ. The petitioner shall also be entitled to 12% interest on the arrears amount so computed from the date it became due till the actual payment to the petitioner. The respondents are further directed to pay to the petitioner minimum amount of pension payable, according to the cadre in which he was working with effect from 1st April, 1992, regularly on or before 7th of every calendar month. This amount shall be subject to the adjustment, if any, that may be worked out on the basis of the aforesaid direction as regards computation.

It is clarified that the primary obligation to pay the pension and other benefits to the petitioner as aforesaid, shall be of respondent No. 1-Panchayat and in case it fails to do so, it will be open to the petitioner to recover the same from the State Government. It is further clarified that the liability to pay pension and other benefits to the petitioner, as aforesaid shall be joint and several of both the respondents. Rule is made absolute. The respondents shall pay Rs. 500/- to the petitioner towards costs.