

(2014) 02 GUJ CK 0050

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1096 of 2006 in Special Civil Application No. 6878 of 1996

Nathuji S. Verol and Others

APPELLANT

Vs

State of Gujarat and 1 Another

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Citation : (2014) 02 GUJ CK 0050

Hon'ble Judges : K.S. Jhaveri, J;A.G. Uraizee, J

Bench : Division Bench

Advocate : I.S. Supehia, Nos. 1-29, for the Appellant; Amita Shah AGP for the Respondent No. 1, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—By way of present appeal under Clause 15 of the Letters Patent, the appellants have challenged the legality and validity of the order dated 08.03.2006 passed by the learned Single Judge while dealing with Special Civil Application No. 6878 of 1996, whereby the learned Single Judge rejected the prayer made in the writ petition. Brief facts of the present appeal are that the appellants were working as Live Stock Inspectors under the Director of Animal Husbandry, Government of Gujarat. The appellants were in the pay scale of Rs. 1200-2040 and were given the benefit of higher grade scale in view of the Government Resolution dated 5/7/1991. This resolution was subsequently modified by the resolution dated 16/8/1994 and the 2nd and 3rd higher grade scales given to the appellant was cancelled and recovery of excess amount was ordered in 1994 and the same was recovered from the amount of provident fund. The petition, challenging the above action of the opponents has been rejected, hence this appeal.

2. The grievance of the appellants are that by resolution dated 5/7/1991, the State Government formulated a scheme to obviate the difficulties of the employees who were stagnating without promotional avenues and availability of

posts in higher cadres. Certain benefits of giving higher pay scales after 9, 18 and 27 years however, resolution dated 5/7/1991 came to be replaced by another resolution dated 16/8/1994. On account of introduction of the resolution dated 16/8/1994, there was a necessity to adjust over payments already made by implementing the provisions contained in the resolution dated 5/7/1991 in favour of the employees. Such excess payments was recovered by the Government from the provident fund lying with the Government. The appellant has objected to the said action taken by the government and sought setting aside of the recovery made.

3. Learned advocate Mr. Supehia on behalf of the appellants states that before withdrawing the benefit granted to the appellants, the appellants were not given opportunity of representation or of hearing. He states that it is not true that under the Resolution dated 16/8/1994 the appellants are not entitled to the benefit of higher pay scale. He further states that in any view of the matter, the recovery could not have been made from the Provident Fund accounts of the appellants.

4. Learned AGP Ms. Shah supports the order of the learned Single Judge and states that the order passed by the learned Single Judge is just and adequate and no interference would require by this Court.

5. We have heard learned counsel appearing for the respective parties at length and in great detail. We has also perused the order passed by the learned Single Judge. While considering the contentions raised by the appellants, the learned Single Judge has made following observations in para 14:

14. Learned advocate for the petitioner, as noted earlier, also urged that in any view of the matter, such recovery could not have been effected from the provident fund accounts of the petitioners that too without hearing them. With respect to the legal contention, there cannot be much dispute. The fact, however, remains that the recoveries have been effected long back. The petitioners have received higher pay scales under the resolution dated 16.8.94 though somewhat belatedly compared to what they would have received had the resolution dated 5.7.91 not been withdrawn by the Government. Thus the petitioners have all throughout received the benefits under the resolution dated 16.8.94. They have thus received benefits of higher pay-scales of posts on which they are not promoted. In absence of resolution dated 5.7.91 and 16.8.94, the petitioners would have stagnated in their base cadres without any promotion or promotional scales. In that view of the matter, in the facts of the present case, would it be justified to put back the clock and ask the Government to refund the amounts recovered from provident fund accounts of the petitioners and then permit the Government to effect the very same recovery from some other source of amounts payable to the petitioners ? In my view, it would only be an arithmetical adjustment from one head to another. Ordinarily, the petitioners are justified in complaining about the recoveries made from the provident fund accounts without their consent. However, I have not found the recovery of excess payment made

illegal. It would, therefore, be a case where after restoring the status quo ante, permit the Government to recover the very same amount from other head paid or payable to the petitioners. For such cosmetic purpose, I do not find it necessary or appropriate to strike down the Government action. Additionally, in case of petitioner in Special Civil Application No. 5164 of 1997, he had given specific undertaking to abide by the terms and conditions contained in the resolution dated 16.8.94. The said petitioner had approached this Court and was assured that for fixation of his pension, effect of resolution dated 16.8.94 would be granted. The said petitioner, therefore, cannot turn around and now complain about the recovery made.

6. Considering the facts and circumstances of the case, we are of the opinion that the ends of justice will be served by confirming the order of learned Single Judge with a direction to the respondent State authority to pay lump sum compensation to each of the appellant to the tune of Rs. 500/- because they could have got the interest towards the interest accrued in favour of them. Therefore, the appeal is partly allowed.