
(1996) 02 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 3317 of 1986

Natvarlal Maganlal Soni

APPELLANT

Vs

The Administrative Officer and Others

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Citation : (1996) 3 GLR 90

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard the Learned Counsels for the parties. Rule was issued in this case on 26-8-1986, and by way of interim order the respondent were directed to determine the amount of pension and other benefits payable to the petitioner before 13th October, 1986. That exercise has been undertaken and the pension has been fixed at Rs. 89/- per month. But the Learned Counsel for the petitioner stated that not a single pie has been paid to the petitioner till now.

2. The petitioner, who retired from the post of Primary Teacher on 30th November, 1985 filed this Writ Petition praying therein that directions be issued to the respondent to pay the difference of selection grade, gratuity, provident fund, insurance, leave salary from 21-4-1980 to 5-1-1983 and pension with interest at the rate of 18% per annum. The petitioner made grievance that while calculating the pension of the petitioner, the period from 9th March, 1967 to 21st April 1980 was not taken into account for the qualifying service. By not taking into consideration the aforesaid period of service, the pension has been fixed at Rs. 89 per month which is much lower than the amount which is actually should have been. The petitioner fell sick and he become bed-ridden, and as such he could not attend to his duties from 9-3-1967. In the month of April, 1974 he submitted application for joining the duties, but the respondents did not allow him to join. In the circumstances, after serving notice to the respondents the petitioner filed Civil Suit No. 1297 of 1976 in the City Civil Court at Ahmedabad. The suit was compromised and the Court has recorded the compromise, and on

the said basis the suit has been decided. A copy of the order of the City Civil Court has been produced by the petitioners at Annexure-A to the petition.

3. The respondents have not filed reply to the Writ Petition and as such the averments made in the petition stand uncontroverted. During the course of hearing it also emerged that the respondents have not disputed the fact the suit has been compromised and also about the correctness of the document Annexure-A. Learned Counsel for the petitioner contended that the compromise was arrived at between the parties wherein it was decided that the interregnum, i.e., from 1977 to 20th April, 1980, shall be treated as period of continuous service for all purposes such as family pension, gratuity and other retirement benefits, though for the said period the petitioners will not be entitled to wages. Despite the aforesaid compromise, Learned Counsel for the petitioner contended that the respondents have not honoured the same.

4. Looking to the facts of the case I consider it proper that the interest of justice will be served in case this Writ Petition is disposed of with the direction to the respondents that they shall consider the case of the petitioner afresh, taking into consideration the compromise entered into between the parties in the Civil Suit, and to determine the amount of pension, gratuity and other retirement benefits payable to the petitioner within a period of two months from the date of receipt of the Writ of this Court. The respondents are further directed to pay to the petitioner the amount of pension as determined within a period of one month thereafter. Whatever amount already paid to the petitioner shall be adjusted towards the dues payable to the petitioner. Acceptance of such amount shall not be considered to be waiver of any claim due to the petitioner, and the same shall be deemed to be received by him under protest. In case the respondent do not accept the claim of the petitioner, then they will pass a speaking order, subject to the aforesaid direction the petition stands disposed of. Rule discharged. No order as to costs.

5. Rule discharged.