

(2022) 09 GUJ CK 0049

In the Gujarat High Court

Case No : R/Special Civil Application No. 10150 Of 2019

Natvarlal Manilal Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2022) 09 GUJ CK 0049

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : ?Mamta R Vyas, Soaham Joshi, Falguni D Upadhyaya

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. RULE returnable forthwith. Mr.Soaham Joshi learned AGP waives service of notice of Rule on behalf of the respondent State and Mr.Dhruv Thakkar learned advocate for Ms.Falguni Upadhyaya learned advocate waives service of notice of Rule on behalf of the respondent No.3.

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 petitioner has mainly prayed for the following reliefs:

"12(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the Resp. No.1 & 2 to extend the benefit in the pay scale of Rs.4500-6300 with effect from 01/01/1986 to 31/12/1995 and the pay scale of Rs. 16400-20000 with effect from 01/01/1996 to the petitioner till he retired and further be pleased to direct the Resp. No. 1 & 2 to pay the arrears with interest.

12(B) Your Lordships may be pleased to issue a writ of mandamus or any other

appropriate writ, order or direction directing the Resp. No.1 & 2 to refix the pension and other retiral benefits as per the revised pay scales and further be pleased to direct the respondents to pay the arrears of revised pension with interest;”

4. Facts in brief would indicate that the petitioner was working as a Principal of Shri N.M.College of Pharmacy, Khambhat from 07.10.1983 to 26.07.1991. The post of Principal was sanctioned by the Director of Drugs Control Administration, Gujarat State, vide order dated 18.02.1977. The petitioner joined as a Principal of the B.M.Shah College of Pharmacy i.e. the respondent no.3 on 27.07.1991 and voluntarily retired on 01.01.2005. That post was also sanctioned by the Government. It is the case of the petitioner that he was entitled to a pay scale of Rs.4500-6300/- during 01.01.1986 to 31.12.1995 and Rs.16,400-20,000/- from 01.01.1996 to 31.12.2004. The prayer in the petition is accordingly for the pay scales as referred to in the prayer.

5. Ms.Vyas learned counsel for the petitioner would submit that a representation was made by eight Principals, of which, one was the petitioner and one was Sureshbhai S. Trivedi. As a result of not granting of the pay scales, Sureshbhai S. Trivedi approached the Tribunal by preferring Application No.20 of 2003 which was allowed on 07.10.2009. Challenge to the order of the Tribunal was made by the State by filing Special Civil Application No.7422 of 2012 which was dismissed on 16.07.2015. By virtue of the order so passed, the respondent therein was granted the pay scales as prayed for by the present petitioner. Challenge to the order by the State in Letters Patent Appeal No.730 of 2016 failed inasmuch as the appeal was dismissed on 07.07.2014. The petitioner therefore is entitled to such reliefs as was granted to the respondent in Special Civil Application No.7422 of 2012.

6. Mr.Soaham Joshi learned AGP would submit that the petition is grossly belated inasmuch as after the petitioner retired voluntarily in the year 2005, he has not taken up the issue with the authorities for granting him the benefit of the pay scale. Even a representee has represented the Tribunal in the year 2003 by filing an application which was decided in October 2009. More than 14 years after the retirement, the petitioner has filed the present petition claiming the reliefs similar to that of the respondents in Special Civil Application No.7422 of 2012.

7. Perusal of the order passed by this Court in Special Civil Application No.7422 of 2012 dated 16.07.2015 would indicate that the Court after considering the resolution of the State dated 06.04.1993, observed that on the strength of the said resolution, the common pay scale of Rs.4500-6300/- was granted for the post of Principal of all the Government and Non-Government Polytechnics. The Court further considering the order of the Tribunal found that from the material available on record, the order of the Tribunal granting the respondent therein the pay scale of Rs.4500-6300/- cannot be faulted. Paragraph nos.41 to 57 of the order of the coordinate bench of this Court read as under:

"41. The following is discernible from the materials on the record.

42. The AICTE vide its Notification dated 30th December, 1999 recommended the revision of the pay scales of the Principals of the diploma level technical institutions according to the appendix B attached to the said Notification. The recruitment rules of the Principal of polytechnic level technical pharmacy institute provided as under:-

43. Post-Graduate Degree in Engineering Technology or in the related faculty (First Class at the Graduation or Post-Graduation level) and Experience of 15 years in the Education field wherefrom 5 years experience as the Head of Department or equivalent post. Or Degree or Ph.D. and 10 years Experience of Education (in the related education field) wherefrom 3 years experience as the Head of the Department or the equivalent thereof. The Board of Technical Education vide its letter No. DTE Pharmacy Diplo RR 2004 Gh-11 30996, dated 28-06-04, has made requisition for amendment in the aforementioned Recruitment Rules. Copy of the said requisition is enclosed herewith.

44. The Pay Scales of the Teachers of the Diploma Pharmacy was made as per the Government of Gujarat Resolution dated 16-4-1991 (page No.79 to 88) and accordingly the Pay Scale of the Principal of Diploma Pharmacy was fixed at Rs.3700-5700 with Special Pay of Rs.200 p.m. (Page No.88). Apart from this in the preamble of this very same Resolution (Page No.79) in the Paragraph No.2(Line No.1 to 7) it is clarified that the Government and Grant-in-Aid Diploma Pharmacy College of the State are granted Pay Scales of the A.I.C.T.E. and w.e.f. dt. 1-1-86 they are considered to be equivalent to the Polytechnic. It is pertinent to note here that, by virtue of this Resolution the Pay Scales of Diploma Pharmacy was considered to be equivalent to the Principal of B-Grad Polytechnic.

45. Thereafter, vide Notification of the Education Department, No.GH SH 34 PHM 1393 3570 97 GH, dt.22-10-1997, the Government of Gujarat had finalized the Recruitment Rules for Principals of the Government Diploma Pharmacy College. (Page No.89-92). Accordingly, the educational qualification was prescribed to be Post-graduation Degree with First Class in the faculty of Pharmacy and Education or Industrial Experience of 12 years wherefrom experience of 5 years as the Head of Department of Diploma Pharmacy or its equivalent. Similarly the Recruitment Rules for the recruitment of Principals of Government Polytechnic Colleges were prescribed vide the Notification No.GH SS 5 SCP 1391 657 98 GH, dt. 30-4-98, (Page No.93-94). Accordingly the Education qualification was prescribed to be Post- graduation Degree with First Class in the faculty of Engineering or its equivalent and educational or Industrial Experience of 10 years wherefrom experience of 5 years experience of the Administrative work of the relevant responsible Post. It is pertinent to note here that the Post of the Principals of the Polytechnic experience of five years need not essentially be as the Head of Department. Further, for them the total education experience is also prescribed to be 10 years only, Whereas the experience for the Principals of Diploma Pharmacy is prescribed for 12 years. Meaning thereby that Higher Pay

Scale for lesser qualification.

46. Thereafter the Pay Scales of the Principals of the Government and Non-Government Polytechnic were revised vide the Government of Gujarat Resolution no.6-4-93.(Page No.95-97). Accordingly in pursuance thereto, instead of prescribing different Pay Scales for the Principals of A-Grade Polytechnic and B-Grade Polytechnic it was resolved to give one single and same Pay Scale of Rs.4500-6300 to the Principals of all the Polytechnics of the entire State w.e.f.1-1-86. The Principals of the Diploma Pharmacy were left out from being included in the said Resolution dated 6-4-93. Consequently the Principals of the Diploma Pharmacy continued in the Pay Scale of Rs.3700-6700 with the Special Pay of Rs.200. Whereas the Pay Scales of the Principal of the Polytechnic was revised to Rs.4500-6300. The

Pharmacy council of India vide its letters dt. 13.11.96 (Page No.97-100), 24-12-96(Page No.101-102), 19-2-97 (Page No.103), 6-3-97 (Page No.106) and 29-5-98 (Page No.107-108) recommended to revise the Pay Scales of Principals of Diploma Pharmacy to Rs.4500-6300.

47. Thereafter, as per recommendation of the A.I.C.T.E. dt. 30-12-99 Pay Scales of the Principals of the Polytechnic and Diploma Pharmacy was suggested at Rs.16400-20000 and the Pay Scales of the Head of Department of the Polytechnic and Diploma Pharmacy was suggested at Rs.12800-18300. Further the Pharmacy Council of India, New Delhi, vide its letter dated 7-6-2000 by accepting the Resolution of the A.I.C.T.E. dated 30-12-99 in toto directed the Principals of the Diploma Pharmacy Institutions and the concerned Officers to pay the Revised Pay Scales with immediate effect (Page No.109-126). The Pharmacy Council of India, New Delhi, vide its letters dated 22-11-2000 and the letter dated 18-1-2000 gave specific instructions to pay the Revised Pay Scale of Rs.16400-2000 to the Principals of Diploma Pharmacy as recommended by the A.I.C.T.E. vide its dated 30-12-99.

48. Finally on 20-6-2001 the Government of Gujarat by accepting the Pay Scales recommended by the A.I.C.T.E. revised the Pay Scales of the Lecturer Teachers of the Diploma level Technical Institutions of the State. However the Principals of the Diploma Pharmacy were left out and were not included in the said Resolution of the Government of Gujarat dt. 6-4- 93 and due to that mistake the Principals of the Diploma Pharmacy were given the Revised Pay Scale of Rs.12000-18300 instead of the Pay Scale of Rs.16400-20000.

49. The Principals of the Polytechnics of the Gujarat State although selected vide the Recruitment Rules prescribing lesser Educational qualification yet are drawing a higher Pay Scale. Whereas the Principals of the Diploma Pharmacy Colleges though selected vide the Recruitment Rules prescribing higher Educational qualifications are drawing lesser Pay Scale.

50. The State Government accepted the pay scale and service conditions mentioned in the Notification of the AICTE dated 30th December, 1999 and

passed a Resolution dated 20th June, 2001 for the diploma level technical pharmacy institutes of the State. Accordingly, the Principals of the polytechnic institutes in the State started receiving the revised pay scale. The Principals of the diploma pharmacy colleges were not given the benefit of the said pay scale. It appears that the requisition for the amendment in the recruitment rules of Principals of the polytechnic had already been sent to the State Government vide letter dated 16th June, 2004. Although there was no amendment in the recruitment rules yet the Principals of the polytechnic institutes were given the benefit of the new pay scale i.e. Rs.16,400-20,000/- according to the Government Resolution dated 20 th June, 2001 without any objection. Although the requisition of the Principal of polytechnic pharmacy colleges of the State was pending for the grant of the new pay scale on the basis of the same Resolution yet the same was ignored and the Director of the Technical Education Gujarat State was asked to clarify how could the requisition for the grant of the said pay scale be granted without making any amendments in the recruitment rules as recommended by the AICTE. It appears that the Director of the Technical Education informed the State Government that its stance was quite irrational.

51. Before 1st January, 1986, the pay scale of the Head of the Department of Diploma Pharmacy or the Polytechnic Department was Rs.1100-1600/-. The pay scale of the Principals of B grade polytechnic was Rs.1300-1700/-. The pay scale of the Principal of A grade polytechnic was Rs.1600-2000/-, whereas, the pay scale of the Principals of Diploma Pharmacy College was Rs.1300-1700/-.

52. The recommendation for revision of pay scale of the teachers of all the technical institutions situated in India was made by the All India Council for Technical Education, New Delhi, vide its letter dated 20th September, 1989. According to the said recommendation the new pay scale for the Head of the Department was recommended to be Rs.4500-6300/-. In the said recruitment rules for the Head of the Department and the recruitment rules for the Principal the education qualifications and experience prescribed were the same for both the posts.

53. In the recruitment rules of the Principal one sentence was added that administration experience of the relevant responsible posts is essential. By accepting such recommendations, the Government of Gujrat vide its Resolution dated 21 st February, 1991 revised the pay scale of the teachers of polytechnic. The pay scale of the Head of the Department of Polytechnic was revised to 3700-5700, pay scale of the Principal of A grade polytechnic was fixed at Rs.4500-6300/-.

54. In the very same Resolution by prescribing the education qualification for the Principal of the B Grade polytechnic, similar qualification that of the Head of the Department, the educational or the industrial experience of 12 years was mandatory whereas the experience of five years was considered for appointment to the Head of the Department in polytechnic or its equivalent.

55. I may now straight way refer to a letter addressed by the Director of Technical Education, Gujarat State dated 19th May, 2003 a portion of which reads as under:-

1. On the day dated 1-1-96 all these Principals did not existed in the Pay Scale Rs.4500-6300 but were in the Pay Scale of Rs.3700-5700.

2. On the day dated 1- 1-86 Pay Scale for the Cadre of Principals of the Degree Pharmacy was Rs.6300-200-7300 (Resolution of the Education Department No.TEM- 1088-827-Dh, Dt.18-889). The Pay Scale for the Cadre of the Principal of the Diploma Pharmacy as on 1-1-86, was Rs.3700-5700 (with Special Pay of Rs.200) as per the Education Department Resolution No. TEM-1089-C-860-Dh, dated 21-2-91.

Thus as stated above the Pay Scale of Rs.3700-5700 prescribed for the Principals of Diploma Pharmacy was under the Welfare Department and the said Department had implemented Revision of Pay Dt. 1-1- 86 by passing the Resolution No.PHM-1089-1062-JH, Dt.11-4-91 (Copy enclosed), whereby the Pay Scale for the Cadre of Principals of the Diploma Pharmacy was fixed at Rs.3700-5700. Thus instead of 1300-2700 (as per Desai Pay Commission) as per Revision of Pay the abovementioned Principals were given the revised Pay Scale of 3700-5300 from dt. 1-1-86. Thus, in this Resolution any such classification as the Class A Polytechnic and Class B, as it was provided in the earlier Resolution dated 21.2.1991, was not suggested for the Cadre of Principal of Engineering Faculty. Thus taking into consideration the analogous Pay Scales (Engineering Pharmacy) these Principals were considered to be equivalent to the cadre of Class B in the Engineering cadre having the Pay Scale of Rs.3700-5700.

Thus, as per Resolution of the Education Department No.SCT-1099-1887- Dh, dated 20-6-91, regarding implementation of Revision of Pay dt. 1-1-91 as per recommendation of the A.I.C.T.E. , New Delhi, as per scale revision for the Pay Scale of Rs.3700-5700 the recommended corresponding Pay Scale of Rs.12000-18300 is given to these Principals. (Where the Cadre of Principals is not mentioned) but for the Principals of Diploma Engineering / Pharmacy against the existing Pay Scale of Rs.4500- 6300 the Pay Scale of 16400-20000 is suggested. Which is demanded by the concerned as per the relevant cadre (Copy is enclosed) wherein there is no mention regarding Class A and Class B Institution. Because of the reason that the Education Department, vide its Resolution dated 6-4-93, has deleted the distinction between Principals of Class A and Class B Polytechnic and had granted same Pay Scale of Rs.4500-6300 to all the Principals and as the Principals of Diploma Pharmacy were not included therein therefore they continued to be in the Pay Scale of Rs.3700-5700. The Pay Scale of Rs.12000-18000 given to the Principals of Diploma Pharmacy from dated 1- 1-86 is for Head of the Department / Training and the Officer on Deputation and Lecturer selection Grade and does not included the cadre of Principal.

3. As mentioned above at (2) all these Principals were given the Pay Scale of

3700-5700 prescribed by the Resolution of the Department of Health dated 16-4-1991 and discussion regarding Pay Scale granted by the said Department for these Principals from dated 1-1-96, is made above in issue No.2.

As detailed above it is to inform that, until the year 1991 Pharmacy Education was under the Health Department therefore the procedure regarding their Pay Scale was done separately by that Department, whereas procedure regarding Engineering as being undertaken by this Board as per Resolution of the Education Department. Thereafter, as the Resolution of the Education Department, dated 20-6-2001, regarding implementation of revised Pay Scale as per Revision of Pay effective from dt. 1-5-1996, is applicable to the Cadre of Diploma Engineering/ Pharmacy institution therefore the concerned Principals have raised demand to give them the revised Pay Scale proposed for the Principals.

Details of the Diploma Institutions (Government and Grant-in-Aid) out of the total of 9 Institutions, at 03 three Institutions Courses of Degree/Diploma are run together therefore 03 Principals are getting Pay Scale of Degree, whereas out of the remaining 06 Diploma Institutions Post of the Principal was already filled up and it is vacant at 01 Institution Khambhat is lying vacant since prior to the year 1996. Thus this benefit will be availed by 05 Principals.

The standards of Educational qualification and Experience is the same for Diploma Engineering as well as Pharmacy, and as per recommendation of the A.I.C.T.E. the Pharmacy Council of India has also informed to grant proposed Pay Scale of Rs.4500-6300 to the Principals. Thus, by taking into consideration representation of the concerned beneficiaries (copy enclosed) necessary appropriate action may please be taken regarding grant the Pay Scale revised for the Cadre of Principals from dt.1-1-96. The representations received from the concerned persons and the reminders received pursuant to the earlier representations are enclosed herewith.

56. The explanation offered by the Director of Technical Education, Gujarat State referred to above makes the picture abundantly clear. After considering the aforesaid materials if the Tribunal passed the impugned order than in my view it committed no error not to speak of any error of law warranting any interference in exercise of my supervisory jurisdiction under Article 227 of the Constitution of India. No case worth the name is made out for issue of a writ of certiorari.

57. I must comment something regarding the manner in which the Government has handled this matter. The impugned order was passed in the year 2009. The Government failed to implement the order. The respondent No.1 was constrained to file an Execution Application before the Tribunal. After a period of almost three years the Government thought fit to file this present application. This Court had to pass orders directing the Government to deposit the amount with interest. After a long lapse of time and that to after filing extension application the requisite amount was deposited. This reflects on the over all functioning of the State Government."

8. The appeal arising from the order was also dismissed.

9. The petitioner is similarly situated and is therefore naturally entitled to the benefits that his colleague who was a co-representee as the petitioner secured by virtue of the order of this Court.

10. The State, particularly when the benefit is to be extended to the similarly situated employees especially when the petitioner too, was a representee before the State, as is observed by this Court while referring to four similarly situated Principals, ought to have been extended these benefits without the petitioner having approached this Court. That is the policy so professed by the State in principle in letter but not followed in spirit as is evident from the circular dated 22.08.2014.

11. Even otherwise, a retired employee similarly situated when extended such benefits, whatever a natural consequence of a revised pension which itself is a continuous cause of action as held by the Supreme Court in case of Shri M.L. Patil (Dead) Through Lrs v. The State of Goa and Anr reported in 2022 LiveLaw (SC) 537, will follow.

12. Accordingly, the petition is allowed in terms of the prayers made in para 12A and 12B. Respondents are directed to revise the pay scales of the petitioners, pension and other consequential benefits on the basis of this pay fixation. Arrears that the petitioner shall be entitled to together with revised pension shall be paid within a period of 12 weeks from the date of receipt of copy of this order.

13. Rule is made absolute accordingly.