

(2016) 02 GUJ CK 0097

In the Gujarat High Court

Case No : Special Civil Application No. 8552 of 2015

Natwarlal Vadilal Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2016) 02 GUJ CK 0097

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : Jayraj Chauhan and Mukund M. Desai, Advocate, for the Appellant; Manisha Lavkumar, G.P. and Rutvij Oza, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

V.M. Pancholi, J.—1. Rule. Ms. Manisha Lavkumar, Government Pleader, waives service of notice of Rule for the respondents.

2. By way of this petition, which is filed under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs:

"(a) To admit and allow this petition.

(b) To quash and set aside the respondent's action and inaction in not considering the case by passing appropriate orders declaring him to be entitled to receive pension and further be pleased to declare that the petitioner's recruitment and appointment as Principal with effect from 01.08.1991 is fresh recruitment therefore, he is entitled to pension as per the provisions in G.R. and further be pleased to direct the respondent to grant pension to the petitioner forthwith by considering the service rendered by him by issuing writ in the nature of mandamus or certiorari or any other appropriate writ, order or direction so deemed fit and proper.

(c) Your Lordships may be pleased to direct the respondent authorities to give

benefits of GPF scheme by transferring account of petitioner to GPF and further to give benefits of pension scheme under Resolution dated 15.10.1984 within 3 months from the date of order and further be pleased to direct the respondent authorities to start monthly pension immediately to serve the purpose of justice.

(d) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent to pay all pensionary benefits to the petitioner with 18% interest p.a. with effect from the date he retired.

(e) Pending admission, hearing and final disposal of this petition, the respondents be directed to fix ad-hoc pension of the petitioner and pay him regularly till disposal of this petition.

(f) Pending admission, hearing and final disposal of this petition, the respondents be directed to deposit all the retiral benefits/dues admissible as per law to the petitioner along with interest at the rate of 18% p.a. before the registry of this Hon"ble Court."

3. Heard learned advocate Mr. Jayraj Chauhan for learned advocate Mr. Mukund M. Desai for the petitioner and learned Government Pleader Ms. Manisha Lavkumar for the respondents.

4. The facts of the present case in nutshell are as under:

4.1. It is the case of the petitioner that the petitioner had initially joined the service as lecturer in the year 1966 with U.P. Arts and Smt. A.G. Panchal Arts and Commerce College at Pilvai. It is stated that for the above post, he made an application and after passing through the selection process and pursuant to Selection Committee's report, he was appointed as lecturer. Thereafter, in the year 1991, post of lecturer fell vacant at Uma Arts and Nathiba Commerce College, Gandhinagar and therefore necessary applications were invited by the University and after passing through the selection process, the petitioner was appointed on the post of lecturer at the said college on 03.06.1991. It is the case of the petitioner that since the post of Principal fell vacant, the petitioner, after undergoing due selection process, was appointed as such on 07.11.1998 and worked as Principal till 14.06.2002 and on 14.06.2002, he had applied for voluntary retirement, which was accepted by the authority concerned. Thus, after completing 36 years of uninterrupted service, the petitioner retired from service as Principal. It is the case of the petitioner that appointment as Principal in the respondent college is fresh appointment, which has been approved by the State Government way back in the year 1997.

4.2. It is the case of the petitioner that pension schemes for teaching staff in the non-Government affiliated colleges and the Universities was introduced vide Government Resolution dated 15.10.1984. Thereafter also one circular dated 21.02.1985 was issued by the Government and as per the policy of the Government, the petitioner is entitled to get the pensionary benefits. In spite of that no such benefit is granted and therefore present petition is filed.

5. Learned advocate Mr. Chauhan appearing for the petitioner mainly contended that Government Resolution dated 15.10.1984 provides for the pension scheme for teaching staff in non-Government affiliated colleges and Universities. Clause Nos. 4, 5 and 6 of the said G.R. provide as under:

"(4). The Principal or the teaching staff recruited on or after 01.04.1982 shall automatically be governed by the Scheme and the staff will not be allowed to opt for Contributory Provident Scheme.

(5) The Principal or the teaching staff, who have completed five years of service tenure will be treated as holding permanent posts for the purpose of this Scheme.

(6) In computing the length of qualifying service for pension under the Scheme all previous services, whether temporary, officiating or permanent, either in one or more than one non-Government aided colleges, university Department, Higher Secondary Schools, which are being paid grant-in-aid from the Government, shall be taken into account. The period of break in service will not be considered as qualifying service i.e. actual service rendered will be considered as qualifying service."

6. After referring the aforesaid clauses contained in G.R. dated 15.10.1984, learned advocate Mr. Chauhan submitted that the petitioner has put in more than 35 years of service and his appointment date is after 01.04.1982 and therefore he is entitled to get the benefit of the scheme and the petitioner was not required to exercise the option for the same. It is further contended that service rendered by the petitioner from the very beginning is required to be counted till his retirement. It is pointed out that in case of Mr. Korat of Bhavnagar University, Dr. Prajapati from North Gujarat University, Dr. Ranjana Harish from Gujarat University and Dr. Arvind Bhandari from Gujarat University whose cases are identical since their second appointment was after 01.04.1982 and though they have not opted for pension even then pensionary benefits were granted to them pursuant to G.R. dated 15.10.1984 issued by the respondent authorities. However, in case of the petitioner such benefit has been denied and thereby the respondent authorities have discriminated the petitioner and violated Article 14 of the Constitution of India.

7. At this stage, learned advocate Mr. Chauhan pointed out that in similar type of cases wherein the concerned petitioners preferred the petitions before this Court for getting the pensionary benefit pursuant to G.R. dated 15.10.1984 this Court has given direction to the respondent authorities to grant such benefit to the concerned petitioners. The State preferred Letters Patent Appeal against the decision rendered by the learned Single Judge. The Hon'ble Division Bench dismissed the said LPA against which in some of the cases the State preferred Special Leave Petitions before the Hon'ble Supreme Court and the said SLPs were dismissed by the Hon'ble Supreme Court. Thus, the State Government has accepted the decision rendered by this Court in similar type of matters. He, therefore, requested that this petition be allowed and pensionary benefit be

granted in favour of the petitioner.

8. On the other hand, learned Government Pleader Ms. Manisha Lavkumar has tried to distinguish the facts of the present case from the case decided by this Court. However, she is not in a position to dispute that this Court has given direction to the respondent authorities to grant pensionary benefits to the similarly situated persons and in past also the State Government has given similar benefit to the similarly situated persons.

9. I have considered the submissions canvassed on behalf of the learned advocates appearing for the parties. I have also gone through the material produced on record and the various orders passed by this Court in case of similarly situated persons. From the record, it has emerged that the petitioner had joined as lecturer in the year 1966 with U.P. Arts and Smt. A.G. Panchal Arts and Commerce College at Pilvai. Thereafter, in the year 1991, since the post of lecturer fell vacant at Uma Arts and Nathiba Commerce College, Gandhinagar, the petitioner had applied and he was appointed on the post of lecturer at the said college on 03.06.1991. Thereafter, the petitioner was appointed as Principal on 07.11.1998 and worked as such till 14.06.2002 and retired voluntarily on 14.06.2002. By way of G.R. dated 15.10.1984, the State Government has framed pension scheme for teaching staff in non-Government affiliated colleges and universities. As per the said scheme, the Principal or the teaching staff recruited on or after 01.04.1982 shall automatically be governed by the scheme and the staff will not be allowed to opt for Contributory Provident Fund Scheme. Thus, it is clear from the said scheme that when the petitioner was appointed as Principal after 01.04.1982 i.e. on 7.11.1998, he was not required to exercise the option and he was governed by the scheme automatically. Even clause No. 6 of the said G.R. is providing that while computing the length of qualifying service for pension under the said scheme, all previous services, whether temporary, officiating or permanent, either in one or more than one non-Government aided colleges, university, department, higher secondary schools, which are being paid grant-in-aid from the Government, shall be taken into account. Thus, the service rendered by the petitioner prior to 1998 is also required to be calculated for considering his qualifying service.

10. In similar type of fact situation, the Hon''ble Division Bench of this Court while dismissing the LPA being L.P.A. No. 981 of 2015 preferred by the State Government passed an order on 02.07.2015, wherein the Hon''ble Division Bench has observed in para 6 as under:

"[6.0] Heard learned advocates appearing for respective parties at length.

Having heard learned advocates appearing for respective parties, the following three questions are posed for consideration of this Court.

1. Whether an employee like the original petitioner who has been appointed after the G.R. dated 15.10.1984 can be denied the pension/pensionary benefits under the G.R. dated 15.10.1984 on the ground that he had not exercised the option

for GPF?

2. Whether past services of such an employee is required to be counted for qualifying services for pension?

3. Whether the past services is required to be counted/considered for fixation of the pension or for qualifying services for pension only?"

10.1. The Hon'ble Division Bench, after considering various clauses of G.R. dated 15.10.1984, observed and held as under:

"..... From the aforesaid it appears that prior to 01.04.1982 the GPF Scheme/Pension Scheme and other retirement benefits admissible under the Gujarat State Government Servants was not applicable/admissible to the full time teaching staff of the University under the Education Department and in affiliated and aided non-government Arts, Science and Commerce Colleges in the State. By G.R. dated 15.10.1984, the State Government came out with a pension scheme for the teaching staff in the non-government affiliated colleges in the universities and by the G.R. dated 15.10.1984, which was made effective from 01.04.1982, the pension, gratuity and other retiral benefits admissible to the Gujarat State Government servants under the Revised Pension Rules, 1950 contained in Appendix XIVC to BCSR Rules, Volumes II, as amended from time to time, the family pensions scheme sanctioned in Government Resolution, Finance Department No. FPS1071J dated 01.01.1972 as amended from time to time is made applicable to the full time teaching staff of the universities under the Education Department and in affiliated and aided non-Government Arts, Science, Commerce and Education Colleges in this State with effect from 01.04.1982. As noted hereinabove, the said scheme is made applicable with effect from 01.04.1982. If Clause 3 is perused, two types of employees were to exercise option viz. (1) members of the existing staff recruited before 01.04.1982 and (2) those staff who have retired on or after 01.04.1982 and prior to the date of issue of the G.R. dated 15.10.1984, even the period of one year from the above date, whether to continue in CPF or to go under the pension scheme and such option was to be final. The reason for giving such option by the aforesaid two types of employees was because at the time and prior to the issuance of the G.R. dated 15.10.1984 which was made effective from 01.04.1982, the employee had no opportunity whatsoever, whether to opt for pension or for any other scheme and/or such employee should be governed by the prevailing system of CPF. Clause No. 4 of the G.R. dated 15.10.1984 makes it very much clear that member of staff recruited on or after 01.04.1982 shall automatically be governed by the said scheme and such staff will not be allowed to opt for CPF. Therefore, all the employees recruited on or after 01.04.1982 shall automatically be governed by the Pension Scheme under the G.R. dated 15.10.1984 and only those employees who were recruited prior to 01.04.1982, meaning thereby the existing staff recruited before 01.04.1982 and those who have retired on or after 01.04.1982, but prior to the date of the issuance of the G.R. dated 15.10.1984 were required to exercise the option as to whether they would like to continue in CPF or to go

under the pension scheme as per the G.R. dated 15.10.1984. Under the circumstances, as such the employee who was recruited after 01.04.1982 was not required to exercise any option as there was no such need under the G.R. dated 15.10.1984 to exercise such option by such employees who are recruited after 01.04.1982. Therefore, the contention of learned Government Pleader that the original petitioner was required to exercise option for pension and as at the time of joining original respondent No. 4 College I.e. in the year 1987, he did not give any option and therefore, the petitioner is not entitled to the pension under the G.R. dated 15.10.1984 cannot be accepted and is hereby rejected. On fair reading of the entire G.R. dated 15.10.1984, it is observed and held that any staff and/or employee of the University under the Education Department and in affiliated and aided non-government Arts, Science and Commerce Colleges in the State, appointed/recruited after 01.04.1982 shall automatically be governed by the G.R. dated 15.10.1984 and shall be entitled to the pension scheme automatically and they are not required to give any option."

10.2. Thereafter, the Hon"ble Division Bench answered question Nos. 2 and 3 formulated in para 6, in para 6.2. as under:

"[6.2] Now, so far as question Nos. 2 and 3 posed for consideration of this Court referred to hereinabove i.e. with respect to past services of such an employee is concerned, as such Clause 6 of the G.R. dated 15.10.1984 is very clear. Clause 6 of the G.R. dated 15.10.1984 confers benefits upon an employee of all previous services whether temporary, officiating or permanent, either in one or more than one non-government aided colleges, University Department, Higher Secondary School, who were being paid Grantinaid from Government, shall be taken into account for computing the length of qualifying service for pension under the said scheme. Therefore, all previous services whether temporary, officiating or permanent either in one or more than one non-government aided colleges, University Department, Higher Secondary School, who were being paid Grantinaid from the Government was required to be taken into account for computing the length of qualifying service for pension. For example if the qualifying service for pension is 10 years and after getting appointment after 01.04.1982 an employee does not have the qualifying service of 10 years, however his previous service prior to 01.04.1982 whether temporary, officiating or permanent either in one or more than one non-government aided colleges, University Department, Higher Secondary School who were being paid Grantinaid is counted and thereafter it is found that he is fulfilling the qualifying service for pension, in that case, his past services is required to be counted and/or taken into account for computing the qualifying length of service for pension. However, his previous service is not required to be considered for any other purpose other than for computing the length of qualifying service for pension i.e. for fixation of pension etc. Therefore, on fair reading of Clause 6 of the G.R. dated 15.10.1984, it is observed and held that all the previous services of the employee who has been appointed after 01.04.1982, is required to be counted and/or taken into account for computing the qualifying length of service for pension only."

10.3. The Hon"ble Division Bench in the said order ultimately directed the respondent authorities as under:

"[7.0] In view of the above, it cannot be said that the learned Single Judge has committed any error in directing the appellants to consider the previous service of the original petitioner i.e. for the period between 27.06.1968 to 17.11.1969 and 15.06.1970 to 30.06.1975 for computing the length of qualifying service for pension. However, as clarified hereinabove, the aforesaid previous service is required to be counted/considered and/or to be taken into consideration for computing the length of qualifying service only and not for computation of the pension and/or fixation of the amount of pension, as prior to 01.04.1982, the GPF Scheme/pension scheme was not applicable at all and it is made applicable with effect from 01.04.1982 and therefore, the past service/previous service is required to be taken into account only for computing the length of qualifying service for pension as per Clause 6 of the G.R. dated 15.10.1984. It is required to be noted that in the present case as such even if his previous service is not taken into account for fixation of the pension and/or for quantification of the amount of pension, the amount of pension is not likely to be changed. As observed hereinabove, the original petitioner was mainly denied the pensionary benefits/GPF Scheme as per the G.R. dated 15.10.1984 mainly on the ground that at the time when the original petitioner joined original respondent No. 4 College/institution, he did not exercise the option for the pension scheme, which as observed and held hereinabove the original petitioner was not required to exercise such an option."

11. The case of the petitioner is squarely covered by the aforesaid decision rendered by the Hon"ble Division Bench.

12. Even the learned Single Judge in similar type of other case passed an order on 07.08.2013 in Special Civil Application No. 12214 of 2005. The said decision was challenged by the State Government by filing Letters Patent Appeal No. 447 of 2014 before the Hon"ble Division Bench. However, the Hon"ble Division Bench dismissed the Letters Patent Appeal preferred by the State Government against which the State preferred Special Leave Petition before the Hon"ble Supreme Court. However, by an order dated 23.03.2015 the said SLP was also dismissed.

13. In another petition filed by the Principal of the College before this Court being Special Civil Application No. 740 of 2013, learned Single Judge allowed the said petition and observed in para 14 as under:

"14. Impugned order dated 15.9.2012 at Annexure-A is quashed and set aside. The petitioner is held entitled to the benefit of pension (GPF scheme) under the resolution dated 15.10.1984 with effect from the date the petitioner joined as Principal from 1.4.1996. The respondents are directed to give benefit of GPF scheme to the petitioner by transferring the account of the petitioner from CPF to GPF if the petitioner is not paid any amount from CPF account, however if the petitioner has received any amount from her CPF account, the petitioner shall be

entitled to the benefit of pension scheme under the resolution dated 15.10.1984 only on petitioner depositing such amount with the respondent No. 2. For such purpose, the respondent No. 2 shall intimate the petitioner within a period of one month from the date of receipt of this order to deposit the amount of CPF received by her for the period of service after 1.4.1996. After the petitioner receives such intimation, she shall deposit the CPF amount within a period of one month thereafter with the respondent No. 2. The respondent Nos. 1 and 2 shall then complete the exercise of transferring the CPF amount to GPF account and finalize the pension case of the petitioner within a period of three months. However, if the petitioner has not received any CPF amount, the respondent Nos. 1 and 2 shall complete the exercise of transferring the CPF amount to GPF account and finalize the pension case of the petitioner within a period of three months from the date of receipt of this order."

14. Against the said order also the State preferred Letters Patent Appeal being L.P.A. No. 982 of 2015. The Hon"ble Division Bench dismissed the said appeal and the State has accepted the said order.

15. In view of the aforesaid orders passed by this Court in various similar type of petitions and confirmed by the Hon"ble Division Bench of this Court, I am of the opinion that the case of the present petitioner is also covered by the said decisions. As observed hereinabove, learned Government Pleader is not in a position to distinguish the case of the petitioner.

16. In view of the aforesaid discussion, the respondents are hereby directed to consider the previous service of the petitioner i.e. for the period between 1966 to 1998 for computing the length of qualifying service for pension. However, it is clarified that the aforesaid previous service is required to be counted/considered and/or to be taken into consideration for computing the length of qualifying service only and not for computation of the pension and/or fixation of the amount of pension, as prior to 01.04.1982, the GPF Scheme/Pension Scheme was not applicable at all and it is made applicable w.e.f. 01.04.1982. Thus, the past service/previous service of the petitioner is required to be taken into account only for computing the length of qualifying service for pension as per Clause 6 of G.R. dated 15.10.1984. In the present case, the benefit flowing from G.R. dated 15.10.1984 has not been extended to the present petitioner on the ground that the petitioner has not opted for the pension scheme. However, as observed hereinabove and as held by this Court in aforesaid decisions, the petitioner was not required to exercise such an option as he had joined the service as Principal after 01.04.1982 and therefore he was not required to exercise such an option.

17. Thus, it is held that the petitioner was entitled to get the pension/GPF scheme as per G.R. dated 15.10.1984. However, petitioner shall deposit the amount of CPF received by him. It is once again clarified that the period of service prior to 01.04.1982 shall be counted only for the purpose of pensionable service and not for any other purpose.

18. In view of the aforesaid discussion, the petitioner shall re-deposit/deposit the amount of CPF within a period of one month from the date of receipt of this order and the respondent authorities shall pay the pensionary benefit as observed hereinabove within a period of 3 months thereafter. Petition is allowed. No order as to cost. Rule is made absolute to the aforesaid extent.