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(2015) 01 GUJ CK 0091

In the Gujarat High Court

Case No : Special Civil Application No. 16910 of 2014

Parvatiben Keshavbha Patel — APPELLANT

Vs

State of Gujarat and Others — RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:
Payment of Gratuity Act, 1972 — Section 7(3A)
Penal Code, 1860 (IPC) — Section 114, 306, 498A

Citation : (2016) GLH 1 201 : (2015) LabIC 2573

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Nasir Saiyed, for the Appellant; Swapneshwar Goutam, AGP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

K.M. Thaker, J—Heard Mr. Saiyed, learned advocate for the petitioner and Mr. Goutam, learned AGP. RULE.

2. In view of the facts and circumstances of the case, more particularly having regard to the fact that the petition involves issue related to delay in payment of retiral dues to the petitioner, process of Rule is made returnable forthwith. Mr. Goutam, learned AGP has waived service of Rule.

3. At the request of learned advocate for the petitioner and with consent of learned AGP, the petition is taken up for final hearing and final order today.

4. In present petition, the petitioner has prayed, inter alia, that:

"17(b) Your Lordship may be further pleased to issue a writ of mandamus or any other appropriate writ and/or order/direction(s) upon the respondent authorities and/or their servants/subordinates directing them to grant/release pension and all such benefits to the petitioner to which she is entitled from the date of such entitlement, along with interest, at such rate that may be deemed just and proper in the matter."

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5. So as to justify the relief prayed for in the petition, the petitioner has averred and stated that:

"3. The facts of the case in a nut shall, leading to filing of the present petition, are to the effect that the present petitioner was appointed as a Woman Police Constable on 02.12.1980 and since her appointment, the petitioner served the department with utmost hard work, loyalty, honesty and sincerity.

In the said regard, it is further respectfully submitted that during the entire tenure of her service, there was no complaint whatsoever against the present petitioner.

4. The petitioner further respectfully submits that in the year 2006 i.e. on 15.04.2006, a F.I.R. came to be lodged before Render Police Station being C.R. No. I-132/2006 against the son of the present petitioner as well as the present petitioner for the offences punishable under Sections 498A, 306 and 114 of Indian Penal Code.

In the said context, it is further submitted that as such the afore mentioned complaint came to be registered against the present petitioner and another, the petitioner was suspended from the service.

Thereafter, vide order dated 02.09.2006, the In-charge Additional Police Commissioner (Administration), Surat city was pleased to reinstate the present petitioner on service, subject to final outcome of the judgment by the Court of Law and/or completion of departmental proceedings.

5. It is further respectfully submitted that thereafter a show-cause notice was served upon the present petitioner, followed by the statement of charge and departmental inquiry/proceedings came to be initiated against the present petitioner.

In the said regard, upon thorough investigation/scrutiny and after perusing the report of the Presiding Officer who carried out the departmental inquiry/ proceedings against the present petitioner and as such the charges levelled against the present petitioner could not be proved in the said departmental inquiry/proceedings, by way of an order dated 16.04.2008, the Additional Police Commissioner, Range 2, Surat was pleased to acquit/exonerate the present petitioner from the charges levelled against her and further held that the decision in respect of calculation of the time period of suspension of the petitioner would be taken only after the judgment from the Court of Law.

6. The petitioner further submits before this Hon''ble Court that thereafter the present petitioner and another came to be tried before the Learned Sessions Judge, Surat pursuant to the aforementioned F.I.R. lodged against them.

In the said regard, after full-fledged trial, by way of judgment dated 13.03.2012 rendered in Sessions Case No. 77/2007, the Learned Sessions Judge - Surat was pleased to acquit the present petitioner and another accused by way of giving

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benefit of doubt.

7. It is further respectfully submitted that as such the present petitioner came to be acquitted by the Learned Sessions Judge - Surat, both the State Government (Through: The Public Prosecutor, High Court of Gujarat, Ahmedabad) and the original complainant challenged the aforementioned judgment dated 13.03.2012 rendered by the Learned Sessions Judge - Surat in Sessions Case No. 77/2007 by way of Criminal Appeal Nos. 731 and 1359 of 2012 respectively before this Hon''ble High Court.

In the said regard, both the said Criminal Appeal Nos. 731 and 1359 of 2012 came to be admitted by this Hon''ble Court and the same are pending for final hearing."

6. From the above quoted details, it emerges that while the petitioner was in service, a complaint alleging offence punishable under sections 498A, 306, 114 of Indian Penal Code was filed against the petitioner and her son. The said complaint/FIR was registered as ICR No. 132/2006.

6.1 In view of the said complaint, the petitioner was placed under suspension for some time and subsequently the period of suspension was not extended and the petitioner was reinstated.

6.2 Upon reaching age of superannuation, the petitioner retired from service with effect from 31.12.2012.

6.3 Though she retired from the service in December 2012, until almost two years the respondents did not make payment towards retiral dues including pension and provident fund.

6.4 According to the petitioner, she made several attempts to claim the retiral dues, however, the respondents did not make the payment and ultimately, she was informed that since appeal proceedings are pending against her, the retiral dues cannot be paid.

6.5 According to the petitioner, while taking such stand and while informing said reasons, the respondents did not take into account the fact that the petitioner was already acquitted in the criminal proceeding by the learned trial Court.

7. At this stage, it is relevant to note that a criminal case was filed against the petitioner and her son for alleged offence punishable under sections 498A, 306 and 114 of Indian Penal Code and was registered as Criminal Case No. 77 of 2007 in respect of ICR No. 132/2006. After trial, the learned Sessions Court acquitted the petitioner and her son vide judgment and order dated 13.3.2012.

7.1 It is also pertinent to mention that besides the said criminal proceeding, the respondents had also initiated departmental proceeding and subsequently, upon conclusion of the departmental proceeding, the petitioner came to be exonerated from the charges levelled against her.

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7.2 Despite such facts, for long time, the retiral dues were not paid to the petitioner.

7.3 Upon further enquiry, the respondents informed the petitioner that an appeal against the decision dated 13.3.2012 passed by the learned Sessions Court is filed and that, therefore, the retiral benefits cannot be paid.

7.4 In this background, the petitioner filed resent petition.

8. During the pendency of the petition, certain directions came to be passed by the Court and ultimately, the respondents filed an affidavit dated 17.1.2015 wherein, it is averred and stated that:

"2. I respectfully say and submit that the office of the Director of Pension and Provident Fund, vide order dated 16.01.2015 have passed the order sanctioning petitioner with basic pension of Rs. 5,985/-, gratuity of Rs. 3,29,408/- and commuted pension of Rs. 2,40,482/-."

9. On instructions from Mr. Narubhai D. Kumol, Deputy Administrative Officer, Office of the Commissioner of Police, Surat, who is present in this Court, learned AGP submitted that vide order dated 16.1.2015, the respondents have sanctioned basic pension of Rs. 5,985/- and gratuity to the tune of Rs. 3,29,408/- and commuted pension to the tune of Rs. 2,40,482/- and appropriate order dated 16.1.2015 in respect of the said amount is already passed. Thus, after delay of more than almost 3 years, the respondents released the aforesaid retiral benefits.

10. At the time of hearing, learned advocate for the petitioner submitted today that until now the petitioner has not received any payment.

10.1 Learned advocate for the petitioner also made grievance that until now the amount towards provident fund is also not paid.

11. From the details mentioned in the reply affidavit dated 16.1.2015, it appears that appropriate order with regard to monthly pension, commuted pension and gratuity is passed and the petitioner would receive the said amount in short time.

12. So far as the petitioner''s grievance with regard to provident fund (GPF) is concerned, learned AGP submitted that the Office of the Accountant General, Rajkot makes the said amount and that, therefore, he does not have any instruction as to whether the said payment is released or not, however, on the basis of the instructions received from the officer who is present in this Court, he submitted that the necessary instructions to release payment have been issued on 12.1.2015.

12.1 In view of the facts and submissions by learned AGP, it appears that the said amounts towards monthly pension, commuted pension and gratuity will be paid to the petitioner in short time, however, so far as the provident fund is concerned, there is no clarity as to the payment, i.e. whether the amount is already paid or not and if not whether any order to release the said payment is

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passed/issued or not.

13. At this stage, it is necessary to recall that the petitioner retired in December, 2012 whereas, the respondents commenced the process of making payment to the petitioner as late as in January 2015 and that too when the Court issued certain directions and the order with regard to some of the retiral benefits is as claimed by the respondents, passed on 16.1.2015.

13.1 The criminal proceeding came to an end as back as in March, 2012, i.e. even before the petitioner retired from the service. Likewise, the petitioner was exonerated in the departmental proceedings from the charges vide order dated 16.4.2008.

14. Despite this fact-situation, even the Procedure Rule 145 of Gujarat Civil Services (Pension) Rules, 2002 was not followed.

14.1 In this context, it would be appropriate to take into account some relevant provisions. The Pension Rules provide, inter alia, that:

"160. Date from which pension becomes payable:

(1) Except in case of a Government employee to whom the provisions of Rule 51 apply and subject to the provisions of Rules 24 and 142 a pension other than Family Pension shall become payable from the date on which a Government employee ceases to be borne on the establishment.

(2) Pension under Family Pension Scheme, 1972 shall be payable for the day on which its recipient dies.

128. Time schedule for the processing the pension papers of the Government employees:

The schedule for the preparation and finalisation of the pension cases of Government employee shall be as under:--

(i) The work of preparation of pension papers shall be initiated by the pension sanctioning authority prior to twenty four months of the date of superannuation of the Government employee. In case of a death of a Government employee while in service or in case of his retirement before the date of superannuation, the work shall be immediately initiated on occurrence of death or the date of retirement of the Government employee before superannuation is known.

(ii) Pension papers shall sent to the Director of Pension & Provident Fund twelve months before the date of retirement.

(iii) Director of Pension & Provident Fund shall ensure the issue of Pension Payment Order and Death-cum-Retirement Gratuity Order etc., six months before the actual date of retirement of the Government employee and send the same to the concerned treasury officer.

130. Verification of Pay Fixation:

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While preparing pension papers the verification of only last pay revision and recording of the same in the service book shall be sufficient.

139. No departmental inquiry/No Event Certificate: (1) The Pension Sanctioning Authority shall issue "No Department Inquiry" certificate on the date on which the pension papers are sent to the Director of Pension and Provident Fund. This certificate shall include the position as obtaining of that date.

(2) After forwarding the pension papers to the Director of Pension and Provident Fund the Pension Sanctioning Authority shall verify that no departmental inquiry or other inquiry has been initiated and that no events has occurred till the date of the retirement of the Government employee, which would have bearing on his eligibility for pensionary benefits and the quantum of such benefits. The certificate in Form-22 shall be issued after due verification and a copy of the same be given to the retiring Government employee on the last day of his service to enable him to present the same to the treasury officer while drawing his/her first claim of pension and/or death-retirement gratuity.

141. Reference to Director of Pension and Provident Fund regarding occurrence of any event affecting pension:

If, after the pension papers have been forwarded to the Director of Pension and Provident Fund within the period specified in sub-rule (3) of Rule 138, any event occurs which has a bearing on the amount of pensionary benefits admissible to the Government employee it shall be immediately intimated to the Director of Pension and Provident Fund by the Pension Sanctioning Authority.

142. Provisional payment of pension and gratuity:

(1) The Pension Sanctioning Authority shall adhere to the procedure laid down in Rules 128 to 138. In cases where, in spite of following the procedure laid down in Rules 128 to 138, it may not be possible for the Pension Sanctioning Authority to forward the pension papers referred to in Rule 138 to the Director of Pension and Provident Fund within the period prescribed or where the pension papers have been forwarded to the Director of Pension and Provident Fund within the prescribed period but the Director of Pension and Provident Fund may have returned the pension papers to the Pension Sanctioning Authority for elucidating further information before issue of pension payment order and order for the payment of gratuity where in case departmental or judicial proceedings are not pending against the retiring/retired Government employee and if the pension sanctioning authority is of the opinion that a Government employee is likely to retire before his pension and gratuity or both, can be finally assessed and settled in accordance with the provisions of these rules, he shall without any delay, take steps to determine the qualifying years of service and the pensionable pay after summary investigations.

Explanation: For this purpose, he shall

(i) rely upon such information as may be available in the official records, and in

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pension papers,

(ii) if necessary, call for from the retiring Government employee a written statement stating the total length of qualifying service including details of pay drawn during the last ten months of service but excluding the breaks and other non-qualifying period of service.

(2) The written statements as referred to Explanation (ii) above shall be signed by the Government employee along with declaration as to the truth of the statement.

(3) The Pension Sanctioning Authority shall thereafter determine the qualifying years of service and the pensionable pay in accordance with the information available in the official records and the information obtained from the retiring Government employee under sub-rule (1). He shall, then, determine the amount of pension and the amount of death-cum-retirement gratuity.

143. Sanction of provisional payment of pension and death-cum-retirement gratuity in case where departmental or judicial proceedings are not pending: After the amount of pension and gratuity have been determined under sub-rule (3), of Rule 142 the Pension Sanctioning Authority shall take action as follows:

(1) If departmental inquiry or judicial proceedings are not pending or initiated against the retiring/retired Government employee prior to his retirement, he shall issue a sanction order sanctioning provisional payment of pension and death-cum-retirement gratuity authorising

(i) 100 per cent of pension as determined under sub-rule (3) of Rule 142 as provisional pension from the date of retirement of the Government employee; and

(ii) 100 per cent of the gratuity as provisional gratuity as determined under sub-rule (3) of Rule 142 subject to withholding ten per cent of gratuity or one thousand rupees, whichever is less.

144. Sanction of provisional payment of pension and gratuity where charge-sheet is not issued or judicial proceedings are not instituted in respect of the Government employee against whom the departmental inquiry is pending:

In case of a Government employee against whom the departmental inquiry is initiated but charge-sheet is not issued or judicial proceedings are not instituted prior to retirement, the Pension Sanctioning Authority shall accord sanction to the provisional payment of pension and death-cum-retirement gratuity as under:

(a) pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government employee, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension. The amount of pension shall be determined as per sub-rule (3) of Rule 142. The provisional payment shall be continued till the date on which final order are

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passed, after the conclusion of the departmental inquiry or judicial proceedings.

(b) ninety per cent of the amount of death-cum-retirement gratuity determined under sub-rule (3) of Rule 142, subject to withholding ten per cent of gratuity or fifteen thousand rupees whichever is less.

145. Provisional payment of pension and gratuity where charge-sheet is issued or judicial proceedings are instituted in respect of the Government employee against whom the departmental inquiry is pending:

(1) In case of a Government employee against whom the Departmental Enquiry is initiated or prosecution is granted (i.e. charge-sheet is issued or FIR is filed, as the case may be) prior to retirement, but the departmental inquiry or prosecution, is not concluded (i.e. the order of the competent authority on the report of the inquiry officer is not issued or the judgment of trial court is not delivered, as the case may be), the Pension Sanctioning Authority shall sanction provisional payment of full amount of pension as determined under sub-rule (3) of Rule 142. No provisional payment of death-cum-retirement gratuity shall be sanctioned.

(2) In case of a Government employee against whom the Departmental enquiry is initiated or prosecution is granted (i.e. charge-sheet is issued or FIR is filed, as the case may be) prior to retirement, but the departmental inquiry or prosecution, is not concluded (i.e. the order of the competent authority on the report of the inquiry officer''s not issued or the judgment of trial court is not delivered, as the case may be), and two years have lapsed since the date of retirement, the Pension Sanctioning Authority shall sanction the provisional payment of pension and death-cum-retirement gratuity as under:

(i) 100 per cent of pension as determined under sub-rule (3) of Rule 142 if the same is not sanctioned under sub-rule (1).

(ii) 100 per cent of gratuity as determined under sub-rule (3) of Rule 142 subject to withholding of after 10 per cent or fifteen thousand rupees which ever is less."

14.2 Thus, Rule 160 prescribes the date/time when pension becomes payable. On the other hand, Rule 128 prescribes time schedule within which the process of verification/scrutiny should be completed. Rule 130 prescribes the procedure required to be followed to clear the path for releasing the amounts viz. certifying that any departmental proceedings are not pending while Rule 141 imposes obligation to inform the Director, if any event having bearing on payment of benefits occurs. Rule 142 read with Rules 143 to 145 contain provisions which prescribe the circumstances, wherein provisional pension and gratuity should be released. The Rules do not provide that even after the employee is exonerated in the enquiry and/or even after the learned trial Court acquits the employee, the authority cannot withhold payment merely because appeal (after acquittal) is pending.

14.3 As mentioned earlier, despite the above noted fact-situation and in spite of

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the said provisions, any procedure was not followed until January, 2015.

14.4 In view of the facts of the case, there was no justification for withholding entire payment and/or for causing such inordinate delay in making payment towards retiral benefits.

15. In view of this Court, the respondents have caused delay in making payment of retiral benefits to the petitioner, without any justification.

16. When the petitioner was already exonerated from the charges after completion of departmental proceeding and was also acquitted in the criminal proceeding, and that too even before she retired from the service on reaching age of superannuation, there was no justification in not releasing the payment towards retiral benefits immediately in accordance with applicable Rules.

17. Delay in paying retiral benefits, without legally sustainable reason, would entail obligation to pay interest. According to regulations obligation to pay retiral benefits arise immediately when employee ceases to be borne on the establishment, e.g. on superannuation of employee and law imposes obligation to pay the retiral benefits without any delay after retirement on superannuation and such payment cannot be withheld or delayed except in accordance with law and except for the reasons and circumstances acknowledged or prescribed by applicable regulation. Even if applicable regulations prescribe pendency of departmental/disciplinary proceedings and/or criminal proceedings as a ground to withhold payment of retiral benefits then also the delay in payment or action of withholding the payment after the employee is acquitted from criminal charges/proceedings by learned trial Court and/or he is exonerated in disciplinary proceedings (as the case may be) cannot be justified and sustained and if the payment of retiral benefits is withheld/delayed even after the employee is exonerated/acquitted, then such action would entail obligation to pay interest for such delay from the date on which the benefit becomes payable in accordance with the Rules.

17.1 An action or the decision which deprives a person of any amount payable to him and/or his rightful claim and/or the dues legally payable to him and/or the decision or action which delays such payment shall entail consequences and shall impose obligation to compensate the person who is so deprived. Interest is one of the modes of compensation whereby the Court can compensate the person who is wronged or who has suffered any loss or is deprived of any benefit (including amount due to him) on account of delay on the part of the other side or on account of any unjustified action or inaction on the part of the other side.

17.2 It is trite that pension, gratuity, provident fund and such other retiral benefits are not any bounty distributed by the Government to its employees and they are not any ex gratia payment made to the employees. Such benefits and payments are right of the employees and accrued property in their hands. If any delay in payment of such amounts/benefits is caused by Government as an employer and if such delay is not attributable to any act of omission or

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commission by the concerned employee and/or if such delay occurs on account of any unjustified actions of the Government/employer or its negligence, then such delay would amount to culpable delay and would invite obligation to pay interest for the period of delay so as to compensate the loss of the employee. In certain cases, the statute acknowledges such liability and imposes obligation to pay interest. For instance, reference may be made to section 7(3A) of Payment of Gratuity Act, 1972 which acknowledges the liability to pay gratuity within prescribed time limit and obliges the employer to pay interest in case of delay.

18. In present petition/the petitioner reached the age of superannuation on 31.12.2012. Long time before that date, the proceedings related to departmental enquiry against the petitioner were concluded and he was exonerated. Likewise, even the proceedings related to criminal case (which was instituted in view of the complaint alleging offence under sections 498A, 306, 114 against the petitioner and her son) culminated into acquittal, long time before the petitioner reached the age of superannuation. Despite such fact, the respondents did not release pension and other retiral dues including payment payable towards provident fund for long time and without informing any reason to the petitioner. It was only after repeated and persistent enquiry by the petitioner that she was informed that since an Appeal is pending in the High Court against the judgment by the learned trial Court acquitting the petitioner and her son, the retiral benefits are not released and paid. The relevant and applicable rules do not authorise the respondents to completely withhold full payment of all retiral benefits including amount towards G.P.F. on ground of pendency of Appeal after acquittal. Learned AGP has failed to point out any provision from the applicable rules which confers such authority.

19. Under the circumstances, the delay caused by the respondents in making payment of retiral dues is ''culpable'' and it is wholly unjustified as well as unauthorised, i.e. without any authority in law. Thus, such delay would invite and incur obligation to pay interest.

20. Therefore, in present case, the petitioner''s claim for interest for the period of delay caused by the respondents in making payment is justified cannot be denied.

21. In this view of the matter, present petition is disposed of at this stage with following order.

22. According to the learned AGP, the competent authority has already passed order directing the payment of monthly pension, gratuity and commuted pension, therefore, any further order with regard to the said benefits is not required to be, passed, except the direction that the respondents will pay interest at the rate available on Fixed Deposit with a Public Sector Bank for period of three years in respect of the said amount for the period of delay, i.e. from 1.1.2013 (since the petitioner reached age of superannuation on 31.12.2012) to 16.1.2015 (i.e. the date on which the order to release the amount came to be passed).

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22.1 So far as the petitioner''s grievance with regard to non payment of provident fund is concerned, learned AGP could not give any definite and clear reply in response to the query as to whether the amount towards provident fund is already released and paid to the petitioner or not. However, it is not in dispute that until the petitioner filed present petition and this Court passed order dated 5.1.2015, the amount payable towards provident fund was also not released and paid to the petitioner.

22.2 Therefore, the respondents are obliged to pay interest towards the total amount of provident fund payable to the petitioner which obtained in petitioner''s provident fund account as on 31.12.2012 (i.e. the date on which the petitioner reached age of superannuation).

The amount towards provident fund ought to have been released and paid to the petitioner immediately after the petitioner retired from service on reaching age of superannuation. By not making payment or by delaying the payment, the respondents deprived the petitioner of the said amount and that, therefore, the petitioner should be compensated. The respondents withheld the amount without any justification and without any authority in law, more particularly from 1.1.2013 and that, therefore, the respondents have invited and incurred obligation to pay interest.

22.3 So far as the rate of interest at which the amount of provident fund should be paid to the petitioner is concerned, the respondents shall pay the interest at the same rate at which the amount in provident fund account earned interest until 31.12.2012 according to the relevant rules. Interest over entire amount which obtained in petitioner''s provident fund account on 31.12.2012 shall be paid at aforesaid rate from 1.1.2013 until the date on which the respondents actually released the amount from the provident fund account and if the amount is still not released, then in that case, the interest shall be paid until the date on which the amount is actually released from the petitioner''s provident fund account.

22.4 The said entire payment, i.e. the amount towards interest to be calculated as per the directions in present order and the principal amount (if already not paid) must be paid to the petitioner as expeditiously as possible and preferably within two weeks.

With the aforesaid observations and directions, the petition is partly allowed and Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

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