
(2013) 03 GUJ CK 0052
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1148 of 2012 in SCA No. 7090 of 1996

Prabhavatiben G. Desai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 203, 203

Citation : (2013) LabIC 2630

Hon'ble Judges : Jayant M. Patel, J;G.R.Udhwani, J

Bench : Division Bench

Advocate : Asit B. Joshi, for the Appellant; Dhawan Jayswal, AGP, H.L. Patel and P.J. Kanabar, for the Respondent

Judgement

Jayant Patel, J.—The present appeal is directed against the order dated 23.7.2009 passed by the learned single Judge of this Court in Special Civil Application No. 7090 of 1996, whereby the learned single Judge, for the reasons recorded in the order, has dismissed the petition. We have heard Mr. Asit Joshi, learned Counsel for the appellant, Mr. Jayswal, learned AGP for the State respondent, Mr. Hardik Raval, learned Counsel for H.L. Patel Advocates for respondent No. 3 and Mr. Kanabar, learned Counsel for respondent No. 4 for final disposal of the appeal.

2. At the outset, we may record that though the prayers are made by the original petitioner in the petition for directing the respondent authority to make payment of family pension as if her husband was working as Secretary of the Gram Panchayat, however, Mr. Joshi, learned Counsel appearing for the appellant, under the instruction of his client, declared before the Court that the appellant would be satisfied, if the family pension is directed to be paid on the basis of the last salary drawn by the deceased and as per him, the deceased was working as Tax Collector/Octroi Clerk/Junior Clerk. He further submitted that as the deceased had expired in the year 1996 and by now about 16 years period has passed, he is not pressing the prayer for compassionate appointment.

3. In view of the above, the only aspect to be considered in the present petition would be the entitlement of the family pension by the original petitioner-appellant herein, who is the widow of the deceased employee, Shri G.G. Desai.

4. The short facts are that the husband of the original petitioner, deceased employee was working with Dhari Gram Panchayat since 1967. He was not absorbed in the regular cadre and, therefore, he had raised dispute under Industrial Disputes Act against the Panchayat in the year 1975 and such dispute came to be referred to the Labour Court for adjudication being Reference (LC) No. IDA/89/75. The Labour Court ultimately vide award dated 30.6.1978 directed the Gram Panchayat to absorb the deceased on the post of Accountant in the permanent set up and the pay-scale prevailing for the post of Accountant was also directed to be paid with the revision of pay-scale, as may be made from time to time. It is undisputed position that the said award was not carried before the higher forum and was accepted by the Panchayat. Accordingly, the deceased was absorbed in the permanent set up of the Panchayat. As per the petitioner, thereafter the deceased was promoted to the post of Additional Secretary and then, Secretary and thereafter was reverted to the post of Tax Collector/Octroi Clerk/Junior Clerk. The deceased, while in service, expired on 28.1.1996 and thereafter as stated by the learned Counsel appearing for the appellant, the provident fund contribution has been paid. However, the family pension has not been paid to the family members of the deceased. Under these circumstances, the original petitioner filed the petition for appropriate writ to direct the respondents to compute the family pension on the basis of the pay-scale and to pay the family pension. As stated above, there were other prayers also in the petition, including for pension be paid for the post of Secretary, the compassionate appointment be ordered and the medical bills be ordered to be disbursed. The learned Counsel for the appellant has stated that pending the litigation, medical bills are already paid and, therefore, the said prayer would not remain. So far as the other two prayers are concerned, as we have recorded earlier, the appellant is now pressing for the relief for the payment of family pension on the basis of the last salary drawn by the deceased only and the prayer for compassionate appointment is also not pressed.

5. The learned single Judge considered the matter and found that the issue is covered by the decision of the Division Bench of this Court in the case of Chorvad Gram Panchayat & others v. Ramniklal Dahrshi Shah & Ors., in Letters Patent Appeal No. 1381 of 2004 decided on 2.7.2009 and, therefore, the learned single Judge dismissed the petition. It is under these circumstances, the present appeal before the Division Bench of this Court.

6. We find considerable force in the submission of the learned Counsel for the appellant that the reliance placed upon the decision of the Division Bench in the case of Chorvad Gram Panchayat & others v. Ramniklal Dahrshi Shah & Ors. (supra) was erroneous, inasmuch as in the case of Chorvad Gram Panchayat & others v. Ramniklal Dahrshi Shah & Ors. (supra), the question considered by the

Division Bench was as to whether the employee concerned, who was not selected by regular selection process and was not in the permanent set up would be entitled to any pensionary benefits or not. The Division Bench, at the concluding observations at paragraphs 19 of the decision, had taken the view that those employees, who have been appointed in Panchayat service by following the procedure laid down u/s 203 of Gujarat Panchayat Act can be treated as the Member of Panchayat Service and entitled to get pensionary benefits under Gujarat Panchayat Service (Pension) Rules, 1976 and Family Pension Scheme, 1972. It was further observed by the Division Bench that those persons, who have been appointed otherwise than following the abovementioned statutory procedure would be entitled to the pensionary benefits and family pension only if there is a Scheme available with the respective Panchayats. The learned single Judge, therefore, found that since it was a matter pertaining to family pension scheme, the issue was covered by the aforesaid decision.

7. In our view, even if the said decision of the Division Bench is considered, the facts of the present case were different, inasmuch as the deceased was directed to be absorbed in the permanent set up by the Labour Court as back as in the year 1978. Not only that, but after the award of the Labour Court, the deceased was also absorbed in the permanent set up by the Panchayat and he was paid salary in the pay-scale as ordered by the Labour Court. It is true that thereafter he was promoted to the higher post and subsequently, reverted. In either of the cases, the common factor would be that he remained as employee of the Panchayat in the permanent set up. Once a person was absorbed in the permanent set up and remained as a member of Panchayat service, he would be entitled to get the pensionary benefits as per the relevant rules and family pension scheme. The aforesaid is coupled with the additional aspect that in the case of the deceased, the provident fund contribution was being deducted and upon his death, by way of terminal benefits, the balance of provident fund had also been paid to him. In our view, when any employee for all purposes was treated as the member of Panchayat Service in the permanent set up, the family members of the deceased employee would be entitled to the family pension in accordance with the relevant Rules for pension for Panchayat Employees read with the Scheme of the Family Pension. At this stage, we may refer to another decision of the Division Bench of this Court in the case of Chief Officer, Una Nagarpalika, UNA Vs. Mohd. Irsha Husenbhai Baloch and Others, wherein one of us (Jayant Patel, J.) was Member of the Division Bench. The Division Bench in the said decision also had an occasion to consider the above referred decision of another Division Bench of this Court in the case of Chorwad Gram Panchayat & others v. Ramniklal Dahrshi Shah & Ors. (supra). This Court, in the case of Chief Officer v. Mohmad Irshad Husenbhai Baloch (supra) observed at paragraphs 8 and 9 thus:-

8. There cannot be any different view in respect of the employees taken by this Court in Chorwad Gram Panchayat (supra). However, the point which arise for consideration in the present group of matters did not arise in the said case

inasmuch as if for all purposes the employees concerned were treated as in panchayat service with the scheme of the Government for pension by deduction of GPF, would it be open to the Government or the municipality to deny the pensionary benefits, if the employees concerned have retired from service. It is true that if one was not appointed by regular recruitment process, he may not fall in the panchayat service. In our view, the factum of giving treatment by the municipality and Government to all the concerned employees in the present case as member of the panchayat service and the consequent action of regular deduction of contribution of GPF account that too from the inception of the service as the permanent employees until reaching to the age of superannuation or until the services came to an end, would be sufficient to decline the entertainment of such plea taken by municipality and/or the Government as the case may be, that the employees concerned in view of the aforesaid decision of this Court in case of Chorwad Gram Panchayat (*supra*), would not be entitled for the pensionable benefits. Be it noted that it is not the case of the appellant or any of the State Authority that it is on account of any fraud or misrepresentation or any mischief played by the concerned employees at the relevant point of time or even thereafter they were treated as member of GPF scheme. Therefore, the question is to be examined in light of the bona fide action on the part of employee as well as the concerned officer of the employer or the Government, as the case may be. It is true that in normal circumstance, such estoppel may not operate against any Statute, but it is not a mere case of considering the question of estoppel. In our view, a case of conduct of the party concerned coupled with the alteration of the position of the party concerned throughout. At any point of time, neither the municipality or the Government has refunded the amount of contribution nor they have intimated to the employees concerned for their mistake or otherwise. After completion of the service, if such a plea is entertained or is accepted, in our view, it would result into allowing the atrocious treatment to be played by the municipality or the Government or its officers, which would violate Article 14 of the Constitution.

9. The aforesaid is coupled with the circumstance that it is not that in every case whenever a person is daily wage or a temporary employee of the Government, he would not be eligible or entitled for pension. On the contrary as per the policy of the Government, even if a person is an Ad hoc/temporary employee, after completion of requisite length of service, he is to be treated as eligible for the scheme of pension and once he is treated as eligible for the scheme of pension, and his contribution are being deducted from his salary, he would be eligible for the pension upon completion of the requisite length of service. Therefore, there is no absolute bar operating upon the entitlement of the pension by the employees of the then Gram Panchayat, who are treated as for all purposes covered by the scheme of pension for the contribution from their salary and same position continued until they reached to the age of superannuation or until the end of their service.

8. The aforesaid shows that the decision of the Division Bench of this Court in the

case of Chorvad Gram Panchayat & others v. Ramniklal Dahrshi Shah & Ors. (supra) would have no direct applicability for denying the pensionary benefits to the family members of the deceased employee, who was a member of Panchayat service. It has come on record that the deceased employee for all purposes was directed to be absorbed in the permanent setup and was actually absorbed in the permanent setup pursuant to the award passed by the Labour Court in the year 1978 and thereafter, continued to serve with the Panchayat until he expired in the year 1996. Therefore, it appears to us that after the death of the deceased employee, if the denial is made of the family pension, the same would be arbitrary and violative of Article 14 of the Constitution. As a matter of fact, even if the principles laid down in the decision of this Court in the case of Chorvad Gram Panchayat & others v. Ramniklal Dahrshi Shah & Ors. (supra) is considered, it would show that the permanent employee of Gram Panchayat who is in the permanent setup would be entitled to pensionary benefits since he would be a member of panchayat service governed by the relevant rules.

9. In view of the aforesaid observations and discussions, we find that the appellant-original petitioner would be entitled to the family pension on account of the death of her husband Shri G.G. Desai who expired on 28.01.1996. It is directed that the respondent shall prepare the pension papers for family pension accordingly on the basis of last salary drawn by the deceased and shall calculate the pension and pay the same from the date on which the family pension became due till today and shall further continue to pay regularly the pension to the original petitioner in accordance with law. The aforesaid exercise of forwarding the pension papers, sanctioning thereof, and disbursement shall be completed within a period of three months from the date of receipt of the order of this Court, inasmuch as, within one month, the pension papers shall be forwarded and within one month, sanction shall be granted and within one month thereafter, the actual disbursement of the amount shall be made to the original petitioner.

10. It is clarified that the amount of pension paid pending the petition pursuant to the interim direction shall be given set off and the balance amount of the pension shall be paid to the original petitioner.

11. The learned Counsel for the appellant submitted that since there was entitlement to get pension, but the same was denied to the original, the payment of interest may also be ordered as may be found proper by this Court.

12. In our view, the fact remains that the original petitioner was entitled for the pension but the money of the pension has not been made available to her. The Government has enjoyed the money during the said period and therefore, by way of compensatory measure, reasonable bank rate interest at the rate of 8% p.a. from the date on which the pension was payable until actual payment should also be paid to the original petitioner in addition to the aforesaid amount of pension. Hence, ordered accordingly and the payment of interest shall also be within three months from the date of receipt of the order. The order of the

learned single Judge is set aside. The appeal shall stand allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.