
(2012) 10 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 1842 of 2002

Rajkot District Panchayat

APPELLANT

Vs

S.J. Rajguru

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Gujarat Civil Services Tribunal Act, 1972 — Section 11, 11

Citation : (2013) LabIC 1046

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; P.M. Dave and Asit B. Joshi, for the Respondent

Final Decision : Allowed

Judgement

N.V. Anjaria, J.—The respondent herein was serving as a Live Stock Inspector under the petitioner-Rajkot District Panchayat. On his completion of 9 years of service in the said cadre, he was granted higher pay scale with effect from 01-06-1991 vide order dated 28-12-1992. The District Development Officer by his order dated 30-12-1998 directed withdrawal of the said benefit of higher pay-scale on the ground that the respondent refused to accept promotion. The order dated 15-05-1998 by which he was granted promotion as Extension Officer contained a condition that on refusal to accept the promotion, the higher pay-scale benefit would be cancelled. 1.1 Aggrieved by the aforesaid order dated 30-12-1998 cancelling/withdrawing the higher grade, the respondent approached the Gujarat Civil Services Tribunal, Gandhinagar by way of Appeal No. 131 of 1999. The Tribunal held that the withdrawal of higher pay-scale was bad and allowed the appeal of the respondent and set aside the order dated 30-12-1998 and directed reimbursement of the financial loss suffered.

In the present writ petition, the aforementioned order dated 12-10-2001 of the Gujarat Civil Services Tribunal is challenged. 2. Learned advocate Mr. H.S. Munshaw appears for the petitioner. Learned advocate Mr. Asit B. Joshi working

the brief for learned advocate Mr. P.M. Dave, is for the respondent.

2.1 In course of the submissions, learned advocate for the petitioner assailed the impugned judgment and order of the Tribunal from the root, by submitting that the order of the Tribunal was without jurisdiction as it could not have adjudicated upon the dispute regarding higher pay-scale in view of Section- 11 of the Gujarat Civil Services Tribunal Act, 1992 and the matters specified in the Schedule to the said Act. According to learned advocate for the petitioner, the impugned order, irrespective of its merits, could not sustain on that preliminary ground.

2.2 Learned advocate for the respondent countered the contention of the petitioner by submitting that the issue of jurisdiction was not raised before the Tribunal, therefore, the petitioner cannot be permitted to raise such a contention for the first time in this petition. He endeavoured to justify the order of the Tribunal on merits.

3. Going into the merits of the matter is not necessary, because there is a substance in the contention of learned counsel for the petitioner, as the point raised is no longer res-integra in view of the decision of this Court in (i) State of Gujarat v. B.L. Trivedi & another being Special Civil Application No. 1852 of 2004 decided on 27-08-2004; (ii) State of Gujarat v. Geeta D. Patel being Special Civil Application No. 13653 of 2005 decided on 26-10-2005 and (iii) State of Gujarat v. B.M. Anjara being Special Civil Application No. 7350 of 2000 decided on 25-04-2012.

3.1 In "State of Gujarat v. B.M. Anjara" (supra), the other two decisions mentioned herein were relied on and it was observed as under:--

Section 10 of the Act provides that the tribunal shall have jurisdiction to hear and decide (a) appeals filed by specified civil servants u/s 11; (b) any application filed by the State Government u/s 12; and (c) appeals and applications transferred to it u/s 21. u/s 11 appeals lie in respect of the matters specified in the Schedule. The Schedule appended for the provisions of Sections 11, 12, 19 and 21 of the Act. It specified the following matters.

(1) Dismissal or removal from service or reduction in rank, (2) Reduction of pay or to a lower time-scale of pay, (3) Non-confirmation in service, (4) Non-promotion to a higher post, (5) Reversion to a lower post, (6) Discharge from Service, (7) Compulsory retirement, (8) Reduction to a lower stage in the time-scale of pay for a specified period, (9) Censure, (10) Reduction in or withholding the pension or denial of the maximum pension admissible under the rules, (11) Withholding of increments, (12) Stoppage at Efficiency Bar in time-scale of pay, (13) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

Section 19 of the Act provides that the State Government may, by Notification in the Official Gazette, add to the schedule any entry relating to any matter affecting specified civil servants and thereupon the schedule shall be deemed to

have been amended accordingly for the purpose of this Act. No such Notification is shown to have been issued by which the matter of higher grade is specified to be added to amend the schedule.

In all, 13 categories of subjects are specified in the Schedule. An appeal would lie to the Tribunal u/s 11 in respect of dispute of those categories and the Tribunal is vested with jurisdiction to decide such appeals in respect of the matters specified. In other words, the categories enumerated in the Schedule determine the jurisdictional sweep of the Tribunal for the purpose of appeals u/s 11. Amongst the matters specified in the Schedule, grant of higher grade or higher pay scale is not one of the subjects specified. When the higher grade is not one of the subjects specified in Schedule, no appeal would lie before the Tribunal and the Tribunal would not be having jurisdiction to entertain and adjudicate an appeal involving that subject-matter. Learned Assistant Government Pleader rightly contended that the impugned decision by the Tribunal was without jurisdiction.

3.2 The contention of the other side that the issue of jurisdiction having not raised in the original proceedings before the Tribunal, it cannot be allowed to be raised at this stage, cannot be accepted. A clear statement of law is noticed in Apex Court's decision in *Fatma Bibi Ahmed Patel Vs. State of Gujarat and Another*, that a jurisdictional issue can be permitted to be raised at any stage of the proceedings.

3.3 In *Kanwar Singh Saini Vs. High Court of Delhi*, taking mark of several decisions, the Supreme Court set out the principle as under:--

....There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation.... (Para-22)

4. In the instant case, the issue before the Gujarat Civil Services Tribunal was in respect of pay-scale. The Tribunal, therefore, had no jurisdiction over the subject-matter. As the Tribunal could not have exceeded jurisdiction over the subject-matter, the order passed by it, was a nullity and stood as void.

5. Accordingly, the impugned judgment and order of the Tribunal is quashed and set aside as being without jurisdiction. 5.1 It is clarified that this Court has not expressed any opinion on the merits of the controversy. It is also clarified that dismissal of the present petition will not preclude the petitioner from challenging the order in question, which was impugned before the Tribunal. It will be open and permissible for the petitioner to file appropriate proceedings before the

appropriate Court/Forum and to challenge therein the order which was challenged before the Tribunal.

The petition is allowed subject to aforesaid observations. Rule is made absolute. No order as to costs.