

(2010) 08 GUJ CK 0081

In the Gujarat High Court

Case No : Special Civil Application No. 6427 of 2010

Ramdas Kalubhai Mali

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Gujarat Civil Services (Pension) Rules, 2002 — Rule 78(1)

Citation : (2010) 08 GUJ CK 0081

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Nikhil S. Kariel, for the Appellant; Nirag Pathak, Asstt. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—The petitioner joined the police force as an Unarmed Police Constable on 15.9.1965. He remained absent unauthorisedly for a period of 166 days in the year 1999 and therefore, by order dated 31.7.1999 he came to be compulsorily retired. Without dispute, that order has attained finality.

2. The petitioner thereafter applied for the benefit of compassionate pension and the respondent-authorities by a communication dated 9.1.2008 (Ann.C) rejected the request of the petitioner for compassionate pension. Hence, this petition.

3. Learned advocate Mr. Kariel for the petitioner submitted that the respondent-authorities have not exercised discretion vested in them under Rule 78(1) of the Gujarat Civil Services (Pension) Rules, 2002 in its proper perspective and non-exercise of discretion in favour of the petitioner has resulted into a situation rendering the provisions redundant. Mr. Kariel also submitted that the decision of denial of compassionate pension has resulted into double jeopardy to the petitioner. On the one hand, he is compulsorily retired resulting into denial of pension, gratuity and other benefits, and on the other hand, he is denied compassionate pension also. Mr. Kariel submitted that, therefore, the petition

may be entertained.

4. Learned A.G.P. Mr. Pathak for the respondents has opposed this petition. According to him, the authorities have taken into consideration all relevant aspects while examining the case of the petitioner whether his case would attract the category of "an exceptional case" or not, and having found that it does not, have decided not to exercise discretion in favour of the petitioner. Mr. Pathak submitted that there is no question of double jeopardy, as the petitioner does not enjoy any legal right for compassionate pension and, therefore, the petition may be dismissed.

5. Having regard to the rival submissions, at the outset, relevant rule, which is Rule 78(1) of the Gujarat Civil Service (Pension) Rules, 2002, needs to be examined. The above Rule 78(1) runs as under:

78. Grant of Compassionate Pension in deserving cases by Government;

(1) When a Government employee is removed or required to retire from Government service for misconduct or insolvency or is removed or required to retire from Government service on grounds of inefficiency before he is eligible for a Retiring or Superannuation Pension, Government may, if the case is considered deserving of special treatment, sanction the grant to him of a compassionate pension.

6. A plain reading of this Rule would mean that an absolute discretion is left with the Government to decide whether to grant compassionate pension or not. The Government has to examine when an application is made to it, whether the case of such compulsorily retired employee deserves a special treatment, and when the answer is in the affirmative, then the Government has a discretion whether to grant compassionate pension or not. Differently put, the person claiming the benefit of compassionate pension has to make out a case that his case deserves a special treatment.

7. With this proposition in mind, if the case of the petitioner is examined, the impugned order makes it clear that the petitioner had enjoyed 865 days of leave without pay, meaning thereby he had already exhausted all types of leave available to him before resorting to leave without pay. It also transpires that he had absented from duty for 166 days without any intimation, in an arbitrary manner. The order indicates that the authority has taken an overall view of the career of the petitioner to assess, whether his case falls under the category of a case deserving of a special treatment and then has come to the conclusion that it does not, and the compassionate pension is, therefore, denied. The question of judicial review on this aspect does not arise, as the facts stated in the impugned order are not under dispute. The target is non-exercise of discretion in favour of the petitioner. Sufficiency of ground for coming to a conclusion that the case does not fall in an exceptional category, "deserving of special treatment", therefore, is not open to judicial review in the given set of circumstances. The petitioner has not been able to point out any exceptionally bright achievement

during his career which may make him eligible for being considered in the category of a case "deserving of special treatment". Under these circumstances, this Court does not find any substance in the allegation that the respondent-authorities have not exercised their discretion, arbitrarily or illegally.

8. At one stage, it was contended by learned advocate Mr. Kariel that no details are given in the impugned order, but if the provision is seen, grant of benefit is an exception and when an exception is made, the authority has to give reasons for treating the case as an exceptional one and not in a routine or ordinary case falling in the general category wherein exercise of discretion is not required. Still, the impugned order does reflect the parameters examined by the respondent-authorities while deciding not to exercise discretion.

9. The second fold of arguments was that the decision of not exercising discretion in favour of the petitioner has resulted into double jeopardy. He is compulsorily retired. He is denied pension, gratuity etc., and he is also denied compassionate pension. This contention is not sustainable for the reason that, as discussed in the earlier part of this judgment, compassionate pension is not a legal or constitutional right of the petitioner. It is only a concession which can be given by the respondent-authorities. Secondly, the punishment of compulsory retirement takes into its sweep or ambit the consequential result of denial of pension, gratuity etc., when the compulsory retirement is by way of punishment and, therefore, compulsory retirement and denial of pension and other benefits cannot be treated as two different actions on the part of the respondent-authorities because denial of pension etc., is only a consequence of compulsory retirement awarded to the employee by way of punishment. As such, the petitioner's case that he is put to double jeopardy cannot be accepted.

10. Before parting, it may be observed that in the impugned order, the respondent-authorities have considered the fact that the petitioner has two major sons and their approximate annual income is Rs. 48,000/-, besides the petitioner having 7 Bighas of agricultural land, fetching annual income of Rs. 10,000/- and that the application for compassionate pension is tendered after two and a half years. It was, therefore, contended that the respondent-authorities have taken into consideration the grounds which are relevant for compassionate appointment and not for compassionate pension. This argument also does not hold any water for the reason that these observations in the order are made while examining, whether the family of the petitioner is put in a financial crisis due to his compulsory retirement. This is done to assess, whether the case of the petitioner would fall in an exceptional case deserving a special treatment. It is also worth to note that apart from the above aspects, the impugned order also contains details to reflect that the relevant aspects have been considered before coming to a conclusion that the petitioner's case is not an exceptional case, deserving a special treatment, merits of which have been discussed earlier.

11. For the foregoing reasons, the petition fails and stands dismissed. Notice is

discharged. No costs.