
(2014) 04 GUJ CK 0125

In the Gujarat High Court

Case No : Special Civil Application No. 5245 of 2014

Rameshchandra Sejpal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 19, 22, 36, 70, 70A

Citation : (2015) 1 GLR 370

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : B.P. Munshi, Advocates for the Appellant; N.J. Shah, A.G.P, Advocates for the Respondent

Judgement

Kaushal Jayendra Thaker, J.—We have heard Mr. B.P. Munshi, learned Advocate appearing for the petitioner and Mr. N.J. Shah, learned A.G.P. appearing for the respondent No. 1. By way of this petition, the petitioner has prayed the following prayers:

"(A) to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus, a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing and setting aside the impugned letter/order dated 27-2-2013 issued by the State Government of Gujarat i.e. the respondent No. 1;

(B) to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to fix and revise pensionary benefits and pay-scale and allowances and other pensionary benefits conferred by me respondent No. 1 to the Judicial Officers of me State as per the recommendations made by me K.J. Shetty Commission and the Padmanabhan Commission and directions issued by the Supreme Court of India from time to time in the proceedings of the Writ Petition (Civil) No. 1022 of 1989 in the case of All India Judges Association v. Union of India, and pay the difference of pay-scale, allowance and other benefits

to the petitioner with effect from 1-1-1996, in the interest of justice."

2. The brief facts leading to the present petition are as under:

2.1. The petitioner practised from March, 1960 to 4-10-1967 in the Courts of Amreli District. The petitioner was selected by the Gujarat Public Service Commission for the post of Civil Judge (J.D.) and Judicial Magistrate along with other candidates by the Legal Department, Sachivalaya, Gujarat State on 11-9-1967 Notification No. C/TM/1066/2985/D in the pay-scale of Rs. 370-380-390-750. The petitioner was posted as 3rd Joint Civil Judge (J.D.) and J.M.F.C. in Ahmedabad District Court (Rural) at Narol, Ahmedabad on probation. The petitioner joined duties on 5-10-1967. Subsequently, the petitioner was transferred as 2nd Joint Civil Judge and J.M.F.C., Ahmedabad (Rural) at Narol on 25-8-1968. The petitioner was transferred as Joint Civil Judge (J.D.) and J.M.F.C. at Ahmedabad (Rural) at Narol on 23-10-1968. Then in General Transfer, the petitioner was transferred as Joint Civil Judge (J.D.) and J.M.F.C. at Veraval in Junagadh District and the petitioner joined duties from 16-6-1969. The transfer order was issued by the High Court of Gujarat by Notification No. A0750/69 dated 30-4-1969. The Government of Gujarat through Legal Department issued Notification dated 21-1-1970 bearing No. CJAM/1066/2985/D for completing probation period satisfactorily and appointed as Civil Judge (J.D.) and J.M.F.C. on officiating basis from 23-10-1969.

2.2. On completing three years in service at Veraval, the petitioner was transferred as Civil Judge (J.D.) and Judicial Magistrate First Class at Kadi in Mehsana District vide Notification No. 705/72 dated 4-4-1972. The petitioner joined duties from 8-5-1972. On completion of three years at Kadi, the petitioner was transferred as Civil Judge (J.D.) and Judicial Magistrate at Jetpur (Kathi) in Rajkot District. The petitioner took charge on 16-6-1975 vide Notification No. A/705/15-4-75. From Jetpur, the petitioner was promoted as Civil Judge, Senior Division and Judicial Magistrate, First Class by Notification of High Court bearing No. AO/705/77 dated 9-11-1977 and the petitioner was posted as Joint Civil Judge (Senior Division) at Bhavnagar. On 19-12-1977, the petitioner joined duties at Bhavnagar as Joint Civil Judge (Senior Division). The petitioner also worked as 2nd Joint Civil Judge (S.D.) at Bhavnagar and the petitioner also worked as Chief Judicial Magistrate at Bhavnagar and then the petitioner worked as the Principal Civil Judge (S.D.), Bhavnagar. From Bhavnagar, the petitioner was transferred as the Metropolitan Magistrate at Ahmedabad vide Notification No. A/705/81 dated 29-4-1981 and took charge as Metropolitan Magistrate, Ahmedabad, Court No. 4 on 15-6-1981.

2.3. The petitioner worked as Deputy Charity Commissioner from 10-12-1984 to 25-11-1991. The petitioner was promoted as Joint Charity Commissioner at Rajkot and the petitioner took charge on 26-11-1991 at Rajkot as Joint Charity Commissioner vide Notification by Legal Department bearing No. ECO/1090/68/E dated 12-11-1991.

2.4. In 1984, the Government wanted to fill the post of the Deputy Charity Commissioner, at Ahmedabad, in the office of the Charity Commissioner, Gujarat State, Ahmedabad under the Bombay Public Trusts Act, 1950. The qualification of the Deputy Charity Commissioner is that he should be holding the post of Civil Judge, Senior Division, or he may be selected by the Public Service Commission from Advocate who must have practised for eight years or he may be promoted from the Assistant Charity Commissioner. The duties of the Deputy Charity Commissioner are to conduct judicial inquiries under Sec. 19 and to conduct change reports cases under Sec. 22 and to hold other judicial inquiries under the Bombay Public Trusts Act. The judgment, of the Deputy Charity Commissioner are appealable before the Charity Commissioner and then matters can be carried upto the District Court and the High Court. So the duties of the Deputy Charity Commissioner are judicial work and in addition executive powers are also vested under the Bombay Public Trusts Act.

2.5. The qualification of Joint Commissioner under the Bombay Public Trusts Act, 1950, is that of Joint District Judge or an Advocate selected by the Gujarat Public Service Commission or promotion from the post of Deputy Charity Commissioner. The Joint Charity Commissioner has to perform duties of appellate authority under Sec. 70 of the Bombay Public Trusts Act or revisional powers under Sec. 70A and other duties to conduct cases under Sec. 36 of the Bombay Public Trusts Act and other duties shown in Bombay Trusts Act. Therefore, the petitioner has performed judicial duties till retirement till 31-1-1994 and retired on account of superannuation.

2.6. The petitioner having come to know that the officers transferred from Judiciary to other departments like Consumer Court, Labour Court, etc., are also given the benefit of salary fixed under Shetty Commission, and as the petitioner has put in 17 years of service as Judicial Officer and about ten years in the Charity Organization Department exercising quasi-judicial powers, made a representation of the respondent No. 2 on 13-6-2012 for re-fixation of his pay scale and pension. As nothing was heard, the said representation was followed by another representation dated 8-1-2013. In response to the representation made by the petitioner, the respondent No. 1 by letter dated 27-2-2013 addressed to the respondent No. 1, whereby it was communicated that the respondent No. 2 has rejected the application of the petitioner on the ground inter alia that the petitioner is not a Judicial Officer under the High Court, but he being an officer of Charity Organization (the State Government) his prayer to revise the pension according to the Shetty Commission is rejected. The petitioner having failed to obtain the relief from the respondent Nos. 1 and 2 hereinabove, had been advised to approach the Hon'ble Supreme Court of India by filing interim application in the proceedings of the All India Judges Association v. Union of India, (Writ Petition No. 1022 of 1989). But it was subsequently decided that it is necessary first to approach this High Court for challenging the aforesaid letter dated 27-2-2013 and as such the petitioner, withdrew the application filed on 12-6-2013 by submitting an application to the Registrar of the Supreme Court on

27-2-2013 and accordingly, the petitioner approached this Court.

3. Mr. Munshi, learned Advocate for the petitioner submitted that in pursuance of the directions contained in the Report dated 17-7-2009 submitted to the Court which is known as Padmanabhan Commission, the State Government had also revised the pay-scales as well as the pay and allowances and benefits of the Judicial Officers of the State by Government Resolution dated 16-8-2012. As the petitioner came to understand that the aforesaid recommendations of the Shetty Commission and the Commission as well as the Resolutions passed by the State Government of Gujarat from time to time in respect of the Judicial Officers of the State, the petitioner is entitled to get pensionary benefits like similarly situated Judicial Officers of the State and as such he submitted a representation dated 13-6-2012 to the respondent No. 2 for re-fixation of the pay-scales, pensions and other benefits, etc. The petitioner had drawn attention of the respondent Nos. 1 and 2 towards the directions contained in the order passed by the Supreme Court of India in the case of Kerala Magistrate Association on 20-11-2007.

4. It has been urged on behalf of the petitioner that in I.A. No. 126 in Writ Petition (Civil) No. 1022 of 1989 by Hon"ble Supreme Court in the case of All India Judges Association v. Union of India, in Para 60(2)(2) that "The Shetty Commission has on the basis of decision of the Apex Court in Paras 7, 16 at page 4894 of Vol. 1 of its report, indicated the factors which are required to be taken into consideration for determining the question of posts where there are no similar posts. The factors are:

(a) Nature and duties of post.

(b) Powers exercised by the officer holding a post, extent of territorial or other charge or responsibility discharged.

(c) The minimum qualifications if any prescribed for recruitment to the post.

(d) The salary of the post.

It is submitted by learned Advocate Shri Munshi that the post of Joint Charity Commissioner and post of the Deputy Charity Commissioner are judicial in nature and qualifications are similar to the judicial officer and a judicial officer working in Judiciary could be transferred in Charity Organization Department and his services remained continuous service from Judiciary and the petitioner should be granted all benefits. Therefore, the petitioner has prayed that the pay-scale and pension be re-fixed as per recommendations and provisions of Shetty Commission and directions of the Supreme Court accepting the recommendations of Shetty Commission and also Padmanabhan Commission.

4.1. It is submitted that in pursuance of the directions given in W.P. No. 1022 of 1989 (All India Judges Association v. Union of India) by the Hon"ble Apex Court, Resolution dated 21st March, 1996, the Central Government had appointed the First National Judicial Pay Commission headed by the Hon"ble Mr. Justice K.J.

Shetty (hereinafter referred to as "the Shetty Commission"), who had submitted its report in the year 1999. On the basis of the said Report and as per the directions given by the Hon"ble Supreme Court, the State Government of Gujarat had also accepted the recommendations made by the Shetty Commission in respect of the pay, allowances, and benefits to the Judiciary Officers of the State. It is further contended that the duties and functions of the Joint Charity Commissioner are akin and alike to the functions and duties of the Judicial Officers of equivalent cadre in the judicial department and as such on the basis of the recommendations of the Padmanabhan Commission and otherwise on correct appreciation and application of the principles of law, the petitioner is entitled to get the revised pension, pay scales and other benefits etc. like other Judicial Officers of the State with effect from January 1, 1996. In support of his contention, the petitioner has relied on the decision of the Hon"ble Apex Court in the case of Statesman (Private) Ltd. Vs. H.R. Deb and Others, .

5. We have heard learned Counsel for the petitioner at length and perused the material available on record. Paras 1 and 2 in Part-I of the Padmanabhan Commission Report reads as under:

"1. The Hon"ble Supreme Court by order dated 28-4-2009 (Annexure "A") appointed a Commission to determine the pay-scales of all the Judicial Officers etc. throughout the country on the basis of the Hon"ble Justice Shetty Commission's Report i.e. First National Judicial Pay Commission.

2. The Commission was directed to determine scales of pay, allowances, perquisites, etc. of Judicial Officers in the cadre of (i) Civil Judges (Junior Division), (ii) Civil Judges (Senior Division), (iii) District Judges (Entry Grade), (iv) District Judges (Selection Grade) and (v) District Judges (Super Tithe Scale) having regard to the recommendations already made by the Hon"ble Justice Sherry Commission in respect of the pay scales, allowances and other perquisites of the Judicial Officers, and so revised pensionary benefits payable to Judicial Pensioners."

6. Having considered representations/suggestions and having heard Judicial Officers, Office Bearers of the Associations and others, Justice Padmanabhan submitted the Report on 17-7-2009. In Part-III at Para 5 of the said Report details of Judicial Officers who are entitled to the present determination of revised pay scales etc. are as under:

"5(a)(i) Civil Judges i.e. Civil Judges (Junior Division) (already nomenclature changed by First National Judicial Pay Commission in Para 5.86 Chapter 5 Vol. I)

(ii) Civil Judges (Senior Division)

(iii) District Judges (Entry Level)

(iv) District Judges (Selection Grade)

(v) District Judges (Super Tithe Scale)

District Judges mean and include regular District Judges and Presiding Officers of Labour Courts and Industrial Tribunals.

5(b) With respect to States of Maharashtra, Gujarat and Kerala, District Judges will include the Presiding Officers of Labour Courts and Industrial Tribunals, as it has already been held by the Hon"ble Supreme Court in the following two pronouncements that the Presiding Officers of Labour Courts/Industrial Tribunals are holding the post of District Judges and the two categories shall not be treated differently:

(i) State of Kerala Vs. B. Renjith Kumar and Others, (ii) The State of Maharashtra Vs. Labour Law Practitioners" Association and Others, ."

7. Thus, the word "District Judge" included the Presiding Officer of Labour Court/ Industrial Tribunal as the persons holding posts akin to that of District Judge. The Charity Commissioner Organization is a quasi-judicial authority of the State Government. The pay-scales have been prescribed by the State Government and just because quasi-judicial or judicial function is carried by such officer, it cannot be equated with judicial services. Shetty Commission in the First National Judicial Pay Commission has also not considered the post of Charity Commissioner to be equivalent to District Judge. Had the petitioner gone to the Charity Organization either on deputation or keeping his lien with the Judiciary, the case would have been different. The petition is silent about mode and the manner in which the petitioner switched over to the Charity Organization in 1994. Certain facts go to show that he was neither deputed nor his services were placed at disposal of the Charity Organization. Further the petitioner cannot claim revision of his pay on the basis of even Shetty Commission Report leave apart Padmanabhan Committee recommendation.

8. As far as this aspect is concerned, the reliance placed by the petitioner on the decision reported in Statesman (Private) Ltd. Vs. H.R. Deb and Others, will not apply to the facts of this case. In that case, the Judicial Magistrates of the First Class which forced part of judicial service and the said observations in I.A. No. 214 of 2006 will not at all benefit the petitioner. The authorities concerned have rightly held that he was not a judicial officer under the supervision of Hon"ble High Court. He was never posted or transferred or deputed by the High Court and this fact is not disputed by the petitioner.

9. Though the petitioner retired from service in the year 1994, he moved the present petition in 2014. The delay is also not explained, however, we do not enter into the question of delay as we have examined and decided the case on its own merits.

10. The Government of India, Ministry of Law and Justice, had appointed the First National Judicial Pay Commission based on the directions of the Supreme Court of India by Resolution No. L/1903/3/94/JUS, dated the 21st March, 1996 for the purpose of revision of scale of pay of Judicial Officers belonging to the Subordinate Judiciary. On that basis, the Government of Gujarat issued a

notification on 26-6-2009, whereby the Gujarat Subordinate Judicial Services (Revision of Pay) Rules, 2009 have come into force. The relevant part of the notification is extracted below:

"Categories of Judicial Officers to whom these rules apply:- Save as otherwise provided by or under these Rules, they shall apply to the persons appointed as judicial officers of Subordinate Courts in the State of Gujarat."

Therefore, though the petitioner was in judicial service, he opted for the post of Deputy Charity Commissioner, which is a quasi-judicial service.

11. Further, while rejecting the claim of the petitioner, the State Government addressed a letter dated 27-2-2013 to the Charity Commissioner, which reads as follows:

"Ref. : ECO/48/102012/132/E

Legal Department 4, Sardar Bhavan, Sachivalaya, Gandhinagar, Dated 27-2-2013
To,

The Charity Commissioner,

Office of Charity Commissioner, Mirzapur Road, Ahmedabad.

Subject: In relation to revise the Pension of Retired Joint Charity Commissioner Mr. R.A. Sejpal.

Sir,

With reference to the above-mentioned subject and in view of your letter dated 17th of August, 2012, I am directed to inform you that Mr. R.A. Sejpal was posted as Deputy Charity Commissioner from Metropolitan Magistrate, Ahmedabad vide Notification No. ECO/1082/34/22342/E dated 21st November, 1984 initially for one year from joining. Thereafter, his service was regularised by Government vide its Notification dated 19th September, 1985.

His request for retransfer, and repatriation was rejected by Hon"ble Gujarat High Court on 17th September, 1989 and again on 28th January, 1988 on the ground that he is not having a lien on the post of Civil Judge, Senior Division.

Thereafter, he was promoted as Joint Charity Commissioner by the Government on 12th November, 1991. He is retired as Joint Charity Commissioner on 31st January, 1994 on account of superannuation. Thus, Mr. Sejpal is not a judicial officer under the High Court but he being an officer of Charity Organisation (State Government), his prayer to revise the pension according to Shetti Commission is rejected after careful consideration by the Government.

Yours faithfully, Sd/-

Deputy Secretary, Legal Department Copy to:

Mr. R.A. Sejpal, Retired Joint Charity Commissioner, 3/2, Nirav Complex,

Navrangpura, Six Road, Post Navjivan, Ahmedabad-14 for information."

The contents of above letter are self explanatory. We do not find that any interference is required by issuance of writ in the nature of mandamus. Hence, the petition is devoid of merits and is dismissed. The recommendation of the Padmanabhan Commission also cannot be made applicable to the present petitioner as the recommendation of either Commission pursuant to which G.R. Dated 26-6-2009 has been brought in effect and the order dated 19-7-2005 cannot be made applicable to petitioner. No order as to costs.