
(2000) 05 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No"s. 7667 of 1999 and 1952 to 2031 of 2000

R.F. Baria

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Citation : (2000) 05 GUJ CK 0022

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : H.M. Parikh, for the Appellant; Digant P. Joshi, o/i., S.P. Hasurkar, for the Respondent

Judgement

R.R. Tripathi, J.—The present petitions are filed by the petitioners who are serving in the Police Force of the State of Gujarat. The petitioners are serving as Police Constables, Head Constables Grade II, ASI, PSI and PI in the State Reserve Police Force. The present petitions are filed as by an order dated 9th July 1998, a copy of which is at Annexure "B" to this petition, the respondent authorities stopped payment of special pay, which was paid at the rate of 45% of the basic pay and which was paid on the basis of the revised pay which took place under the Gujarat Civil Services (Revision of Pay) Rules, 1998. The respondent authorities decided to pay special pay on the basis of the old pay scale of the petitioners and also decided to recover the amount paid by way of special pay on the basis of the new scale with immediate effect. The petitioners are also aggrieved of an order bearing No. HSB- JPK- Special Pay- 10472- 98 dated 15th July 1998, a copy of which is produced at Annexure "C" to the petition, whereby instructions are given for recovery of the amount paid as a special pay on the basis of the new pay scale.

2. The petitioners have prayed for a writ of mandamus, or any other appropriate writ, order or direction quashing and setting aside the orders at Annexures "B" and "C" and they also prayed for a direction to the effect that the petitioners be paid special pay at the rate of 45% of the new pay scale, which has come into

force with effect from 1.1.1996. The petitioners have also prayed for the direction that the respondents be directed to make payment of the amount of 25% of difference of pay for the period between 1.1.1996 and 31.12.1997. Notice was issued on 6.10.1999. Thereafter, the matter was adjourned from time to time. The learned Additional Govt. Pleader, Mr. S.P. Hasurkar appearing for the respondents sought time to file a reply which was filed by one Shri Mohabbat Sinh Ranchhodji Rajput, Commandant, State Reserve Police Group 12, Gandhinagar, sworn on 21.1.2000, to which a rejoinder came to be filed on 10.3.2000 sworn on 9.3.2000. On 13.3.2000, rule was issued making it returnable on 23.3.2000.

3. After some discussion of the matter, the learned advocate for the petitioners sought permission to join the Govt. of Gujarat, Finance Department as a party respondent. Said permission was granted and the learned Additional Govt. Pleader, Mr. Hasurkar waived service of "rule" on behalf of the newly added respondent.

4. The controversy raised in the petition is in a narrow compass inasmuch as the case of the petitioners is that in the year 1991, the Govt. created Commando force and by a Resolution dated 10.4.1991, a copy of which is produced at Annexure "A", the details of creation of the said Commando Force were prescribed and by clause no.3 of the said Resolution it was prescribed that all the members including the officers and employees of the Commando Force will be entitled to special pay at the rate of 45% of the pay scale as mentioned against each cadre. It is also mentioned in the said clause that the said special pay will be in addition to the pay scale and the admissible allowances.

5. It is the case of the petitioners that when the Gujarat Civil Services (Revisions of Pay) Rules, 1998 came into force, the authorities have paid the special pay on the basis of the revised pay scale (as mentioned in para 5 of the petition). However, the respondents by an order dated 9.7.1998 stopped the payment of said special pay with immediate effect on the ground that the said payment of special pay in the new pay scale is not in consonance with the directions of respondent no.2, Director General of Police. By said order, the special pay is ordered to be paid on the basis of the old pay scale. Thereafter, another order dated 15.7.1998 is issued and by that order it is provided that the special pay is to be calculated on the basis of the old pay scale and that the amount which is already paid in cash towards difference of pay from 1.1.1996 to December 1997, recovery be effected after calculating the special pay on the basis of the old pay scale.

6. The learned advocate appearing for the petitioners submitted that the action of the respondent authorities is totally unjust and arbitrary inasmuch as the special pay at the rate of 45% is to be paid on the basis of the existing pay of the petitioners as per the new pay under Gujarat Civil Services (Revision of Pay) Rules, 1998. On that basis only the special is to be paid. It is also submitted by the learned advocate for the petitioners that if the initial order for payment of

special pay had prescribed a fixed amount, then that amount could have been continued to be paid, but as the Resolution dated 10.4.1991 provided that the officers and the employees of the Commando Force will be entitled to special pay at the rate of 45% in addition to the pay mentioned against each designation and the admissible allowances, the special pay is to vary from time to time as and when the basic pay is revised. It is also submitted by the learned advocate for the petitioners that the special pay was made admissible to the petitioners, considering their duties as members of the Commando Force, looking to their nature of job and the risk involved in the same. The authorities were aware about the unfavourable conditions and as the work is required to be discharged in the areas where basic amenities of life are not available. The learned advocate for the petitioners also submitted that a simile can be drawn with the HRA, which is always a fixed percentage of the basic salary of an employee. As and when the basic pay is revised, HRA also gets revised. Similarly, the special pay of the petitioners is also to be paid on the basis of the revised basic pay. The learned advocate for the petitioners, therefore, submitted that the orders at Annexures "B" and "C" are required to be quashed and set aside and the petitioners are required to be paid special pay at the rate of 45% on the basis of the new pay scale.

7. The affidavit in reply which is filed on behalf of respondent, in which a preliminary contention is taken in para 2. It is stated that the Govt. of Gujarat-Home Department has intimated the office of the deponent, respondent no.3, Commandant, SRP Group No.12 that this matter pertains to the petitioners' claim for special pay at the rate of 45% of the present salary. It is also stated that the same was intimated to the deponent by letter dated 15.10.1998, a copy of which is also produced at Annexure "A" to the affidavit in reply (page 28). The deponent has also produced a copy of the application dated 6th July 198, which is forwarded to the Pay Anomaly Committee by letter dated 13.8.1998 (Annexure "B" to the affidavit in reply). It is also stated in para 4 of the affidavit in reply that the Finance Deptt. has already resolved on May 20, 1998 to constitute a Pay Anomaly Committee and has also prescribed scope of jurisdiction of the Pay Anomaly Committee under the said Resolution, a copy of which is also produced on record with the affidavit in reply. It is the submission of the learned advocate for the respondents that under subclause (3) of clause 3 of the said Resolution, the controversy involved in this petition will be covered and therefore, this petition is not required to be entertained. Subclause (3) of clause 3 reads as under :

"3(3) Existing Special Pay with a view to limiting the number of special pay posts and also to consider new demands, if any."

8. On behalf of the petitioners an affidavit in rejoinder is filed and it is mainly contended that it is not correct that the present controversy is required to be referred to the Pay Anomaly Committee constituted by the Govt. of Gujarat. It is submitted by the learned advocate for the petitioner that the item under

subclause (3) of clause 3 of the Resolution does not cover the present controversy. Therefore, there is no question of relegating the petitioners to the Pay Anomaly Committee. It is also the contention of the learned advocate for the petitioners that the Pay Anomaly Committee has no jurisdiction to decide the present dispute and that the authorities cannot confer jurisdiction to an authority which the said authority does not possess. It is also submitted by the learned advocate that even if the petitioners have filled in the forms, to be submitted to the Pay Anomaly Committee, that does not preclude the petitioners from pressing the present petitions. It is the submission of the learned advocate for the petitioners that the terms of reference are very clear and according to the Resolution in question, i.e. dated 20.8.1998 it only pertains to the number of special pay posts, which is required to be considered by the Pay Anomaly committee and therefore, the present dispute is not within the scope of the reference made to the Pay Anomaly Committee.

9. The learned advocate for the petitioners placed reliance on the judgement of the Honourable Supreme Court of India in the matter of *State of Gujarat & another v. D.C. Chauhan & anr.*, reported in 1998 (1) GLH 427. The judgement pertains to subsistence allowance which was not required to be restricted to the pay scale which was admissible to an employee at the time when the employee is placed under suspension. It is held by the Court that an employee is entitled to subsistence allowance on the basis of the pay revised from time to time. The said judgement cannot be of any help to the petitioners inasmuch as the controversy in the present case is about the entitlement of the petitioners for the special pay which is to be determined and it is to be decided as to whether the special pay is to be paid on the basis of the old pay scale or the new pay scale, more particularly, when this issue is pending before the Pay Anomaly Committee and the same is not required to be decided by this Court at this stage. It may be open for the petitioners to agitate this issue after the same is decided by the Pay anomaly Committee; if that decision is against the petitioners.

10. The learned advocate for the petitioners also relied upon the judgement of this Court in the matter of *G.B. Vadukar v. State of Gujarat & anr.*, reported in 1997 (4) GCD (Guj). Said judgement is also of no help to the petitioners at this stage. There cannot be any disagreement with the principle laid down by the said judgement that when the employer desires to tinker with pay scale fixed earlier to the disadvantage of the incumbents, rules of natural justice are attracted.

11. The learned advocate for the respondents submitted that there is a delay in filing of the present petition inasmuch as the recovery is already effected in July 1998, while the petition was filed on 5.10.1999. The learned advocate for the respondents placed reliance upon an order passed in Special Civil Application No.7691 of 1997, wherein this Court (Coram : S.K. Keshote, J.) by an order dated 17.8.1999 refused to entertain the petition on the ground that the petitioners have to first approach the Pay Anomaly Committee constituted under the Resolution of the Finance Department, Govt. of Gujarat dated 20th May

1998. This Court dismissed the petition at that stage. However, the Court granted liberty to the petitioners for revival of the petition in case of difficulty by filing a simple note. The learned advocate for the respondents also placed reliance upon the judgement and order of this Court in Special Civil Application No.3700 of 1988 (Coram : S.K. Keshote, J.) dated 29.10.1999, wherein this Court has observed as under.

".. .. When the Pay Anomalies committee is functioning in the State, such matters the courts may not decide on merits and first ask the concerned litigant to go before that committee."

12. In the result these petitions fail so far as the main relief is concerned. The petitioners shall approach, by filing a representation(s), the Pay Anomaly Committee, constituted under the Resolution of the Finance Department, Govt. of Gujarat dated 20th May 1998, if not already approached. However, liberty is granted to the petitioners for revival of these Special Civil Applications in case of difficulty.

13. With a view to see that the petitioners are not put to any undue hardships, the authorities are restrained from making any recovery pursuant to the impugned orders dated 9.7.1998 and 15.7.1998, Annexures "B" & "C" respectively, till the controversy in the petition is finally decided.

14. The petitions are partly allowed. Rule is made absolute to the aforesaid extent only. No order as to costs.