

(2006) 02 GUJ CK 0072

In the Gujarat High Court

Case No : Special Civil Application No. 2231 of 1995

R.M. Aliji

APPELLANT

Vs

Gujarat Agricultural University and Others

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 02 GUJ CK 0072

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : I.S. Supehia, for the Appellant; S.N. Shelat, for Respondent 1 and 2 and S.M. Mazgaonkar, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—Invoking Article 226 of the Constitution, the petitioner has prayed to quash the orders dated 21.2.1991 and 25.1.1995 with a direction to refund the amount of Rs. 27,297.15 ps. already recovered from him, with interest @ 18%, and to revise his pension. After the first order dated 21.2.1991 cancelling the deemed date of promotion granted to the petitioner on the basis of provisional seniority list and ordering recovery from his retiral benefits, the petitioner had approached this Court by way of filing Special Civil Application No. 10572 of 1994. That petition was unconditionally withdrawn by the petitioner stating that he would like to make a representation to the Vice Chancellor of Gujarat Agricultural University raising all the points which were raised in the petition. The permission to withdraw the petition was granted with a direction to pass a speaking order on the representation of the petitioner which was proposed to be made. Thereafter, he appears to have made a detailed representation which has been decided by the second order dated 25.1.1995. Thus, in short, this is the second round of litigation on the same cause of action and for the same relief.

2. The relevant facts emerging from the petition and the affidavit-in-reply filed

by the Assistant Registrar of the respondent-University are that the petitioner was appointed as Agricultural Assistant from 29.9.1954 and promoted as Agricultural Supervisor from 14.5.1975. He was further promoted as Agricultural Officer from 3.6.1980 in Dantiwada Zone of the University where the petitioner was posted. Provisional seniority list of all Agricultural Officers was made and published on 19.10.1981 by the Director of Campus and, on that basis, the petitioner was given deemed date of promotion to the post of Agricultural Supervisor on account of which 30.6.1972 was taken as the date of promotion, though he was actually promoted only on 14.5.1975. Thereafter, the provisional seniority list of Agricultural Officers and equivalent posts was also published on 19.7.1982 in which the petitioner was given deemed date of 29.4.1975 as the date of promotion to the post of Agricultural Officer in place of the actual date of 3.6.1980. Pursuant to such artificial advancement of date of promotion, pay fixation for the period from 27.4.1975 to 2.6.1980 was treated as notional.

3. It is averred on behalf of the University that giving of deemed dates in the seniority list published by the Campus Director was found to be irregular and such deemed dates were not given in the seniority lists of other Zones of the University. Therefore, the University instructed the Administrative Officer of Dantiwada Zone to cancel the deemed dates in the lists published by that Campus and, by letter dated 16.12.1983, the Campus Director was directed not to make any payment of difference of salary to the officers who were given deemed dates and, if such payments were made, they were made liable to be recovered. By that time, the petitioner was transferred to Junagadh where the Principal, Agricultural College, was instructed not to pay any arrears of difference of salary. In spite of such instructions, the petitioner was paid the difference on account of the deemed date of promotion based on provisional seniority list. However, an undertaking was taken from the petitioner to the effect that, if the amount paid to him was found to be in excess as a result of final gradation list of Agricultural Supervisor or Agricultural Officer, it may be recovered from him in suitable installments or, in the event of his retirement, the over-payment may be recovered from the amount of his pension and/or D.C.R. Gratuity or as arrears of land revenue. The petitioner had duly executed that undertaking and received the amount of over-payment.

3.1 Thereafter, the correct and proper seniority lists of Agricultural Officers and Agricultural Supervisors came to be published and the pay fixation of the petitioner on the basis of provisional seniority list was disapproved. The re-fixation of pay of the petitioner, on that basis, was accepted by the petitioner and never challenged. Thus, in short, the amounts paid in excess came to be recovered from the retiral dues of the petitioner in terms of his own undertaking and as a necessary consequence of cancellation of seniority lists which, in any case, were provisional and of which cancellation was never challenged by the petitioner.

4. It was submitted by learned counsel Mr.Supehia that the amounts paid to an

employee by mistake could not be recovered and recoveries cannot be effected after passage of many years from the retiral benefits like gratuity. Learned counsel Mr.Mazgaonkar, appearing for the respondent, submitted in reply that the recoveries were made in terms of the written undertaking executed by the petitioner and in terms of a clear understanding arrived at on 31.12.1990 which is annexed at page 61 in the petition and it is signed by the petitioner himself. Mr.Mazgaonkar also submitted that the petitioner was the only officer who was granted such benefit of deemed date of promotion on the basis of provisional seniority list of a Division of the University and it was apparently a case of undue favour of the petitioner at the relevant time.

5. From the above record of facts, it is apparent that the petitioner has, after about three years of re-fixation of pay and order of recovery, challenged that order by the previous petition and took his first chance of challenging that order. Withdrawing that petition without any apparent good reason, he has taken other two chances of making a representation and inviting a fresh order on all the grounds available to him. That latter order dated 25.1.1995 has dealt with in detail the contentions of the petitioner and rejected the representation of the petitioner on all counts by giving cogent reasons. Thus, this is the third opportunity that the petitioner has taken of re-agitating all the issues again and again with a view to re-claiming the amount which is already deducted in terms of his own written undertaking.

6. Learned counsel Mr.Supehia has relied upon the judgments in following cases to submit that, if any over-payment is made by mistake, it cannot be recovered afterwards and it may amount to punishment on the employee:

- (i) SCA Nos. 2272 of 1995 and allied matters.
- (ii) SCA Nos. 6006 to 6008 of 2002.
- (iii) LPA No. 750 of 2003.
- (iv) SCA No. 8684 of 1996.
- (v) LPA No. 578 of 2000.
- (vi) 1995 Supp. (1) SCC 18 [Sahib Ram v. State of Haryana].
- (vii) Shyam Babu Verma and Others Vs. Union of India (UOI) and Others,
- (viii) Board of School Education, Haryana Vs. Arun Rathi and others,
- (ix) CWP No. 8810 of 2001 [K.G.Nachahal v. Punjab State].
- (x) SCA Nos. 6697, 6699 & 6722 of 2005

6.1 None of the above judgments are applicable in the facts of the present case since this is not a case where recovery is proposed to be made out of salary or terminal benefits of the petitioner, but here is a reverse case in which the petitioner seeks to re-claim the amount already deducted in terms of his

undertaking and written understanding at the time of his retirement. This is also a classic case in which litigations are multiplied and extensive arguments are made only to re-agitate the same issues over and over again and a number of judgments are cited to confuse the Court into believing that the amount which was already recovered was required to be refunded with interest in a case where the petitioner was originally not entitled and the amount had come into his hands by something worse to a bona fide mistake of other officer. It is a tragic irony that while number of Courts are few and time available with the Courts is short as against the mountains of arrears, such repetitive attempts at securing unfair advantage out of an ill-advised litigation take away a major part of the time at the cost of genuine litigation where some party might be suffering injustice for decades. In these circumstances, the petition is rejected with costs of Rs. 5,000/- which the petitioner shall pay to the respondent within a period of one month. Rule is accordingly discharged with the above observations and direction.