

(2004) 06 GUJ CK 0011
In the Gujarat High Court

Case No : Misc. Civil Application No. 1121 of 2000 in Special Civil Application No. 246 of 1987

Saiyed Faizmohmed Noormohmed

APPELLANT

Vs

K. Kailasnathan - IAS

RESPONDENT

Date of Decision : 30-06-2004

Acts Referred:

Citation : (2004) 06 GUJ CK 0011

Hon'ble Judges : K.M. Mehta, J;D.K. Trivedi, J

Bench : Division Bench

Advocate : D.R. Bhatt, for the Appellant; R.M. Chhaya, for the Respondent

Judgement

D.K. Trivedi, J.—This contempt petition is pending for final hearing since 2000 for about more than four years. The grievance raised in this petition is that in spite of direction given earlier by the learned Single Judge when the petitioner has approached this Court by filing Special Civil Application No. 246 of 1987, the respondents have not complied with the same. The said petition was disposed by the learned Single Judge on 15.10.1999 when the learned Single Judge has allowed the petition filed by the petitioner and the respondents were directed to treat the petitioner as if he is appointed on the post of Extension Educator with effect from 19.4.1975, and the petitioner was entitled for all the consequential benefits, namely, continuity of service, confirmation and seniority as well as salary for the period from the date of his appointment till the date on which actually he was given appointment. The arrears of salary payable to the petitioner were ordered to be calculated by respondent No. 1 within a period of one month from the receipt of the writ and the arrear amount so fixed be paid to him within a period of one month thereafter. The learned Single Judge has also accordingly while allowing the petition filed by the petitioner, given direction to that effect. Prior to the filing of the said petition, the petitioner approached this Court as back as in the year 1975 and the application being Special Civil Application No. 1694 of 1975 was disposed of on the statement being recorded

from the counsel of the Ahmedabad Municipal Corporation and as per the statement the Court has disposed of the matter on 13.11.1978. The learned Single Judge while disposing of Special Civil Application No. 246 of 1987 has also reproduced the order passed while deciding Special Civil Application No. 1694 of 1975.

2. The learned Single Judge has, while deciding Special Civil Application No. 246 of 1987 in paragraph No. 7, given directions which read as under:

"As a result of the aforesaid discussion, this petition deserves to be accepted and accordingly the same is allowed. The respondents are directed to treat the petitioner as if he is appointed on the post of Extension Educator w.e.f. 19th April, 1975. The petitioner shall be entitled for all the consequential benefits i.e. the continuity of service, confirmation and seniority as well as the salary for the period from the date of the appointment till the date on which actually he was given the appointment. The calculation of the amount of the arrears of salary payable to the petitioner has to be made by the respondent No. 1 within a period of one month from the date of receipt of writ of this order and the arrears so fixed be paid to him within period of one month next. Necessary orders regarding giving him the deemed date of appointment as well as placing him accordingly at appropriate place in the seniority list has to be passed within a period of two months. The petitioner is also entitled for costs of this petition. The respondent Municipal Corporation is directed to pay Rs. 2500/- as costs of this petition to the petitioner which amount has been paid as per the statement of his counsel to him for providing the petitioner his professional services in the matter. Rule is made absolute."

3. It is the case of the petitioner that in spite of the directions given by the learned Single Judge there was no compliance of the directions from the Corporation and accordingly a legal notice through advocate was issued on 6.2.1999 and under the said notice the petitioner has brought to the notice of the respondent authority to carry out the directions of the Court immediately failing which the petitioner will be constrained to initiate contempt proceedings. We may also observe that the petitioner due to his superannuation has retired from the service of the Corporation on 30.11.1999 and as the learned Single Judge has granted relief in favour of the petitioner on 15.10.1999, hardly within a period of one and half month due to superannuation he retired from the service and accordingly the petitioner was only entitled to consequential relief as per the directions of the High Court and promotion on the higher post when other junior persons to the petitioner were selected and appointed on higher posts. As per the select list the petitioner was at serial No. 7 and though he was at serial No. 7 other juniors were promoted and when the High Court has accepted the case of the petitioner he was considered to be promoted when his juniors were promoted on higher post. As there was no compliance by the respondent authority, contempt petition is filed on 5.7.2000. Affidavit in reply is filed on behalf of the respondent, namely, by Smt. Kinnariben Mehta, Family Planning, Welfare Officer

family Welfare Bureau, Ahmedabad, and she has annexed certain documents. Rejoinder affidavit is filed by the petitioner and in the said rejoinder affidavit the petitioner has also annexed certain documents.

4. We have heard Mr. Bhatt at great length who in turn has taken us through the record of the petition and the documents attached thereto with the affidavit filed on the record of the case. Mr. Bhatt has also contended that as the petition was pending, the petitioner has submitted representation to the respondent authority which is still under consideration meaning thereby that the respondent authority has to consider the representation independently.

5. Mr. Chhaya, learned counsel for the respondent Corporation has also submitted that the representation of the petitioner is under consideration. However, we have to consider only in this contempt petition that whether there is disobedience by the respondent authority in respect of direction given by the Court and whether any action is to be taken against the respondent authority under the Contempts of Court Act. We have gone through the affidavit filed by the respondent and further the file submitted by Mr Chhaya in respect of the select list prepared by the Corporation and in the light of the contention raised in the petition. AS the petitioner has already retired from service on reaching his superannuation age on 30.11.1999 the petitioner was considered on higher post and he was entitled for the scale on the higher post as well as other consequential relief. As found from the reply affidavit from the authority that the petitioner's salary was fixed on the higher post when his two juniors were promoted when the petitioner was ignored earlier. As per the select list the petitioner was at serial No. 7 while other two juniors to the petitioner were at serial No. 12 and 18 in the select list, namely, Shri Vadilal P. Patel and Shri R.C. Raval who were promoted on higher post. As per the direction, the respondent authority had considered that the petitioner was appointed on higher post when his two juniors were promoted, namely, Shri Vadilal P. Patel and Shri R.C. Raval. As the petitioner has also retired from the service, the petitioner was entitled for all benefits of arrears of salary as well the pensionary benefits and other retirement benefits, the respondent authority has fixed the salary of the petitioner on higher post and also fixed pension on the higher post. It is the case of the petitioner that he was entitled for higher post from 1975 and accordingly Mr. Bhatt has taken us through the rejoinder affidavit filed by the petitioner. It is the case of the petitioner that one Tarulata N. Desai was promoted in the year 1987, the petitioner was entitled for higher promotion on the basis of promotion given to Tarulata N. Desai. As found from the select list, it is difficult for us to accept the submission of Mr. Bhatt that petitioner was senior to Tarulata N. Desai. In fact, Tarulata N. Desai had joined respondent authority as back as on 1.12.1970 while the petitioner had joined respondent authority on 19.4.1975. Therefore, the petitioner cannot be considered as senior to Tarulata N. Desai. As found from the reply affidavit filed by the Corporation the petitioner was given all consequential benefits and even his pension was fixed as if he was promoted on higher post when his two other juniors were promoted earlier, namely, Shri

Vadilal P. Patel and Shri R.C. Raval. The petitioner has already been paid salary and all other consequential benefits including the pension. We are of the view that this is not a case in which the respondent authorities are required to be held responsible under contempt. The petitioner's pension is already fixed on the higher post, namely, on the post of Extension Educator and he has also received all the retirement benefits. Accordingly, this petition is rejected. Rule is discharged with no order as to costs.