

(2022) 09 GUJ CK 0110

In the Gujarat High Court

Case No : R/Special Civil Application No. 2361 Of 2021

Sanyuktaben Jagdish M Prasad And Dt/O Bhalchandra Raval **APPELLANT**
Vs

State Of Gujarat **RESPONDENT**

Date of Decision : 20-09-2022

Acts Referred:

Gujarat Civil Services (Pension) Rules, 2002 — Rule 34, 34(2)
Hindu Marriage Act, 1955 — Section 16

Citation : (2022) 09 GUJ CK 0110

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Kush R Vyas, Prasad N Bhatt, Utkarsh Sharma

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 Rule returnable. Mr.Utkarsh Sharma, learned AGP, waives service of notice of rule on behalf of the respondent – State.

2 Multiple prayers have been made in this petition, essentially the prayers of the petitioners is that the respondents be directed to finalize the Family Pension of the petitioner. Further direction is sought that the said pension amount be paid after deducting Rs.1,38,207/-deposited by the Government in this Court under an order dated 30.09.2009 and 08.10.2009. The case of the petitioners further is that salary of the deceased Dr.Jagdish M. Prasad including gratuity and retirement benefits from 01.01.1996 to 28.07.2007 be paid to the petitioner No.2 and the remaining 1/3rd share to the respondent No.6 on the basic pay-scale of Rs.8,000-13,500/- effective from 01.01.1996. By way of an amended petition, prayers have been made to quash and set aside the orders dated 19.04.2022 and 05.05.2022.

3 Facts in brief are as under:

3.1 The petitioner No.1, married the deceased Dr.Jagdish M Prasad on 11.12.1970. A daughter Shilpa, petitioner No.2, was born out of this wedlock. The marriage subsisted till Dr.Jagdish M. Prasad died on 28.07.2007.

3.2 Dr.Prasad was working as a Government Medical Officer, who after completion of 30 years of service retired on 30.1.2004. On his death, a dispute arose as to the claim of Family Pension because one maid servant named, Dhaklu, mother of respondent No.6, filed Special Civil Application No. 5022 of 2008 praying to get family pension. Dr.Jagdish Prasad too before his death had filed Special Civil Application No. 7265 of 2004 praying for payment of terminal benefits. Both these petitions were disposed of after the petitioners were brought on record as heirs by an order dated 24.12.2013, by which Dhakluben and the petitioners were relegated to the competent Civil Court to decide the entitlement of family pension. In the proceedings, an interim order was passed in SCA No. 5022 of 2008 directing the respondents to deposit an amount of Rs. 1,38,207/- in the registry of this Court.

3.3 The Civil Suit was disposed of and a claim of the petitioners was allowed and it was held that the petitioner No.1 was the only legally wedded wife of Dr.Jagdish Prasad and was therefore entitled to family pension. Petitioner No.2 was declared as a daughter and the respondent No.6, Gautam, was declared as a son under Sec.16 of the Hindu Marriage Act.

3.4 The petitioner No.1 therefore sent an application to the respondents in the year 2019 and 2020 to disburse the amount of family pension with other dues. The petitioner No.2, made an application to get her share (2/3rd of the pending dues). No decision was taken on these applications. On 03.11.2020, the Commissioner of Health & Medical Service addressed a letter to the Chief District Health Officer, District Panchayat, Bhavnagar, to finalize the pension case.

3.5 It may be noted that in the year 2004, certain departmental proceedings were initiated against Dr.Prasad, which had led to him filing Special Civil Application No. 7265 of 2004 on the ground that he is not being paid retiral benefits. On 14.02.2005, the Court passed an interim order to place on record the status of pending inquiries. On 19.10.2005, further order was passed, wherein it was observed that as far as departmental inquiry in respect to alleged absentism of the petitioner for a period between 1993 to 1996 and 1998 till the date of superannuation is concerned, no notice has been served or no departmental proceedings are initiated or contemplated. These aspect had remain uncontroverted. By way of an interim relief, the respondents were directed to complete the formalities for provisional pension and continue to pay provisional pension as per rules till the final disposal of the petition. Since Dr.Prasad died on 28.07.2007, the provisional pension that was being paid to him was stopped. Hence those petitions which have been referred to in the earlier part of the order.

3.6 Pending this petition, the Court passed an order on 01.04.2022, in response

to a communication dated 19.03.2022 where the department opined that unless and until a decision is taken with regard to break in service of the petitioner's husband for a period of nine years, five months and sixteen days, the issue of family pension cannot be resolved. Subsequently, pending this petition, the decisions have been taken which are challenged by way of amendments. By a communication dated 19.04.2022, the State has held that the period of absence of the deceased of nine years, five months and sixteen days in two phases from 01.07.1993 to 13.02.1997 and 02.01.1998 to 31.01.2004 shall be treated as break in service under Rule 34 of the Gujarat Civil Services (Pension) Rules, 2002. A subsequent order dated 05.05.2022 was passed where it was observed that for the purposes of pensionable service, on deduction of nine years, five months and sixteen days, pension which was otherwise computed counting 34 years, three months and twenty three days of pensionable service was reduced to 24 years, 10 months and 07 days. Further as a result of such deduction of the period, excess amount paid to Dr.Prasad of Rs.44,728/- towards pension and gratuity needed to be recovered. The petitioner was compelled to file an undertaking that unless and until this amount is paid, her pension case will not be finalized.

4 Mr.Prasad Bhatt, learned counsel for the petitioner, would submit that the petitioner No.1 being 72 years of age, on the death of her husband is entitled to family pension as finally decreed by the Civil Court.

4.1 Mr.Bhatt, learned counsel, would further submit that after an interim orders passed by this Court in Special Civil Application No. 7265 of 2004, the State had filed an affidavit before the Hon'ble Supreme Court categorically stating that the departmental proceedings against Dr.Prasad were dropped. In view of this unqualified statement made before the Hon'ble Supreme Court, on the date of his death no departmental proceedings were pending and therefore, the order dated 19.04.2022 deducting nine years, five months and sixteen days from pensionable service is bad. The order of 05.05.2022 subsequently ordering recovery of amount of Rs.44,000/-by revising the order dated 27.12.2005 by which pensionary benefits was sanctioned is bad.

4.2 Mr.Prasad, learned counsel, during the course of his submissions relied on the following decisions:

(1) In the case of Deokinandan Prasad vs. The State of Bihar & Anr., reported in AIR 1971 SC 1409(1).

(2) In the case of Lilaben Digambar Navre vs. State of Gujarat & Ors., rendered in Special Civil Application No. 15690 of 2011 dated 13.06.2013.

(3) In the case of Basudeo Tiwary vs. Sido Kanhu University & ors., reported in AIR 1998 SC 3261.

(4) In the case of T.P.Viradiya vs. State of Gujarat & ors., rendered in Special Civil Application No. 16957 of 2004.

- (5) In the case of S.D.Chauhan vs. Narmada Water Resources Department & Ors., rendered in Special Civil Application No. 1212 of 1995 dated 12.09.2016.
- (6) In the case of D.D.Tewari (D) Thr. Lrs vs. Uttar Haryana Bijli Vitran Nigam Ltd., & Ors., reported in AIR 2014 SC 2861.
- (7) In the case of Hemantkumar Chitranjan Raval vs. State of Gujarat., rendered in Special Civil Application No. 5580 of 2021 dated 25.03.2022.
- (8) In the case of Hirabhai Bhikanrao Deshmukh vs. State of Maharashtra & Anr., rendered by the Hon'ble Bombay High Court in Writ Petition No. 836 of 1984.
- (9) In the case of Kaushalya Devi vs. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna & Ors., rendered by the Hon'ble Patna High Court in Civil Writ Jurisdiction Case No. 3349 of 2018 dated 12.09.2019.
- (10) In the case of Ravjibhai Khimjibhai Ninama vs. State of Gujarat, rendered in Special Civil Application No. 560 of 2019 dated 05.07.2022.
- (11) In the case of Mahesh Keshavlal Joshi vs. State of Gujarat., rendered by this Court in Special Civil Application No. 2247 of 2019 dated 21.07.2022.
- (12) In the case of Lalaram & Ors vs. Jaipur Development Authority & Anr., reported in 2015 AIR SCW 6849.
- (13) In the case of Bhagwandas Gopaldas Bhagchandani vs. Ahmedabad Municipal Corporation, rendered by this Court in Special Civil Application No. 15420 of 2011 and allied matters.
- (14) In the case of Hradesh Kumar Sharma vs. Institute of Plasma Research., rendered by this Court in Special Civil Application NO. 16877 of 2020.
- (15) In the case of Shivshankar Jivram pandya vs. State of Gujarat & 2 ors., rendered by this Court in Special Civil Application No. 9673 of 2008 dated 09.09.2019.
- (16) In the case of Prem Nath Bali vs. Registrar, High Court of Delhi., reported in AIR 2016 SC 101.
- (17) In the case of Manohar Manikrao Anchule vs. State of Maharashtra & Ors., reported in AIR 2013 SC 681.
- (18) In the case of Hari Ram Maurya vs. Union of India & Ors., rendered by the Hon'ble Supreme Court in Civil Appeal No. 5523 of 2005.
- (19) In the case of Union of India vs. Dr.M.R.Diwan & Anr., rendered by the Delhi High Court in W.P(C) No. 5653 of 2018 dated 12.03.2019.
- (20) In the case of Shivshankar Jivram Pandya vs. State of Gujarat & ors., rendered in Special Civil Application No. 9673 of 2008 dated 09.09.2019.

(21) In the case of Ilaben Natvarlal Dave vs. State of Gujarat & Ors., rendered in Special Civil Application No. 16812 of 2007 dated 11.10.2019.

(22) In the case of Dr.(Mrs) Gurjeewan Garewal vs. Dr.(Mrs.) Sunitra Dash & Ors., rendered in AIR 2004 SC 2530.

(23) In the case of Mariyaben Wd/o Mamad Umar Sorathia vs. State of Gujarat., rendered in Special Civil Application No. 12181 of 2015.

(24) In the case of Vijay L Mehrotra vs. State of U.P & Ors., reported in AIR 2000 SC 3513(2).

4.3 The summary of these decisions, in the submission of Mr.Bhatt, learned counsel, indicates that no departmental proceedings can be initiated after the person has retired, more so without the sanction of the government. Additionally, no recoveries can be ordered after several years once the pension is fixed. Such orders are even otherwise bad on the ground of violation of principles of natural justice.

5 Mr.Utkarsh Sharma, learned AGP for the State, would submit that Dr.Prasad was charge sheeted vide letter dated 17.12.1997 for the charge of unauthorized absence from 01.07.1993 to 13.02.1997. He was thereafter, superannuated retrospectively with effect from 31.01.2004. Dr.Prasad was sanctioned provisional pension on 27.12.2005. He died on 28.07.2007 and the provisional pension was stopped. Taking the Court through the additional affidavit, Mr.Sharma, learned AGP, would submit that the prayer of the petitioner to deduct Rs.1,38,207/- and pay other pensionary benefits is misconceived. By the impugned orders, the period of nine years, five months and sixteen days has not been regularized and is considered as break in service. It is not an order imposing punishment. In fact, the petitioner is lucky that the departmental proceedings have abated. Break in service in any circumstances has to be considered for the purpose of regularization by the department and the department has not considered it fit to regularize the break. Since that period is not regularized, over payment of Rs.44,728/- has to be recovered. Though the Charge sheet may not have culminated into punishment, it is always open for the department to pass the orders.

6 Considering the submissions made by the learned counsels for the respective parties, reiteration of facts need not be done. It is clear that the petitioner No.1 and petitioner No.2 and the respondent No.6, have been held as entitled to the dues of the deceased Dr.Jagdish Prasad. In the interim orders, in Special Civil Application No. 7256 of 2004, directions were given to finalize the pension case of Dr.Prasad, which were so done. The respondents had on 27.12.2005, based on the pay-scale of Rs.3,600-4450/-, finalized the pension case of the deceased and sanctioned the amounts. It was an order of provisional pension. No departmental proceedings were initiated, however, as the affidavit now indicates, a charge sheet was issued to Dr.Prasad for absence for the period from 1993 to 1997. When certain proceedings were pending before the Hon'ble Supreme Court at the

hands of the petitioners, which were disposed of on 31.08.2015, the State had filed an affidavit before the Hon'ble Supreme Court that the departmental proceedings were dropped. Even otherwise, as is evident from the affidavit-in-reply in the present proceedings, the State has admitted that the departmental proceedings had abated.

6.1 Obviously therefore, once for the period of absence the departmental proceedings abated on the death of Dr.Prasad in the year 2007, after 15 years of his death, it was not open for the authorities to treat this period of nine years, five months and sixteen days as break in service under Rule 34(2) of the Pension Rules, 2002. By a subsequent order for a pension fixed in the year 2005, 17 years thereafter recovery of Rs.44,728/- is ordered before the pension case is finalized. There is no rational behind

the authorities passing these orders 15 and 17 years respectively after the death and fixation of provisional pension of the deceased Dr.Prasad.

6.2 Mr.Bhatt, learned counsel, has cited the judgement of this Court as well as the Hon'ble Supreme Court and it is a settled proposition of law that no recoveries can be made after several years and the illegality becomes more glaring when it is done in case of pensionary benefits from a deceased government employee.

7 On all these counts therefore, the orders dated 19.04.2022 and 05.05.2022 are cannot be sustained.

8 The petitioner No.1, petitioner No.2 and the respondent No.6 are entitled to 2/3 rd share respectively of the family pension on the basis of the last pay drawn by the deceased Dr.Jagdish Prasad as if the orders dated 19.04.2022 and 05.05.2022 were not passed. The petitioner No.1 shall also be entitled to the disbursement of the amount of Rs.1,38,207/- with interest that has accrued and deposited before this Court. She shall be entitled to withdraw the same forthwith. Petition is allowed. The order of payment of the family pension as aforesaid shall be made and complied with arrears within a period of ten weeks from the date of receipt of copy of this order. Rule is made absolute accordingly.