
(1985) 04 GUJ CK 0001
In the Gujarat High Court

S.D. Dayal

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 02-04-1985

Acts Referred:

Citation : (1985) 2 GLR 1043

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The petitioner a clerk in a technical institute under the Director of Technical Education, has prayed for the following relief; "directing the respondents to release the petitioner's increments as from 1-5-76 the date on which he completed 12 years" continuous service" He joined the clerical post on 2nd May, 1964 and he completed 12 years of continuous service on 1st May, 1976. However, he had not passed the required departmental examination which he was required to pass within a period of two years from the date on which he joined that appointment. Therefore, his increments have been withheld. On expiry of 12 years of continuous service he requested for release of increments. However, that request was turned down. He also made representations to the Director of Technical Education. However, he did not get any reply or justice and, therefore, ultimately he filed this petition.

2. In the affidavit in reply in paras 5.8 and 11 a stand has been taken that it is discretionary for the Director of Technical Education to exempt clerical staff who fail to pass departmental examination on completion of 12 years and in the present case the scrutiny of the confidential reports of the present petitioner showed that the service of the petitioner was not satisfactory to grant him exemption for passing the departmental examination.

3. Therefore, the question whether the Director of Technical Education has any such discretion after a lapse of a period of 12 years? The relevant rule prevailing at that time i. e. 2nd, May, 1976 as contained dt. 24-12-1962 (Ann. "A" to the petition) was as follows:

A person who fails to pass the above examination within the prescribed period shall after the expiry of the prescribed period be liable to have his increments withheld till he completes the age of 40 years or 12 years of service. Provided that for special reasons the period prescribed for passing the examination in the case of a person may be extended by the appointing authority or a person may be exempted from passing the examination by the Director of Education. An increment so withheld shall become payable to the said person with effect from the date on which he passes the examination or is exempted from passing it and all future increments shall accrue to him as if no increments has been withheld. Provided that such person shall not be entitled to refund of actual pay which he has lost owing to one or more of his increments being so withheld.

4. The reading of this rule makes it clear that the person who fails to pass the departmental examination within the prescribed period of two years is "liable to have his increments withheld until he completes the age of 40 years or 12 years of service". Thus, the liability to have the increments withheld is only upto the age of 40 years or completion of 12 years of service and thereafter there is no such liability to have the increments withheld. The proviso gives power or discretion for special reasons to extend the period of two years prescribed for passing the examination or to exempt a person from passing the examination, but this discretion is during this period upto the age of 40 years or 12 years of service. Within the said period the Director of Technical Education may in his discretion extend the period of two years for passing the examination or exempt a person from passing the examination so as to enable him to be relieved of the liability to have his increments withheld. But after the lapse of 12 years of service there is no liability to have the increments withheld and therefore, there is no question of the Director exercising any discretion to withhold or to release the increments. It appears that the respondents have mixed up the discretion of the Director within this period of 12 years as if it was a discretion for all time to come and the liability to have the increments withheld for all time to come. The liability is clearly restricted upto the completion of age of 40 years or of service of 12 years. At the end of that period there is no lity in the employee to have his increments withheld on the ground that he had failed to pass the departmental examination. Therefore, the stand taken by the respondents in the affidavit in reply is clearly beyond the scope of rule and the authority of the Director of Technical Education. The Director of Technical Education or any other authority of State could not have withheld the increments beyond the period of 12 years.

5. In the case of the The State of Punjab and Another Vs. Shamlal Murari and Another, the Supreme Court observed "passing petty tests after a petrifying length of dull official service is an old insistence except in important levels of work." Here the petitioner is working at clerical level since 1964 and there does not appear to be any reason or legal basis for withholding normal increments which would accrue to him from time to time. The language of the aforesaid rule does not permit withholding of the increments beyond the period of 12 years. In the result the petition succeeds and it is directed that the respondent shall

release the petitioner's increments from 1st May, 1976, the date on which he completed 12 years of continuous service and on that basis to pay him arrears accordingly. The arrears shall be paid latest by 31st August, 1985. Rule is made absolute with costs.