
(1985) 10 GUJ CK 0037
In the Gujarat High Court

S.H. Sanghvi

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 03-10-1985

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 327, 327

Citation : (1986) 1 GLR 222

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Judgement

R.C. Mankad, J.—Petitioner a retired District Judge who was re-employed as President of the Industrial Court, has filed this petition praying for refixation of his pay on account of revision of pay-scale of selection grade of the District Judge with effect from January 1, 1973; and refixation of his pension, commutation of his pension on the basis of such refixation and payment of arrears of difference in pension and gratuity as a result of his re-employment as President of the Industrial Court.

2. Petitioner was District & Sessions Judge of Kutch at Bhuj, when he was appointed as Member of the Industrial Court under the Government Resoution dated June 1, 1967. Petitioner was entitled to special pay of Rs. 200/- in addition to the pay which he was getting as District & Sessions Judge, when he was appointed as a Member of the Industrial Court. Petitioner retired from service on reaching superannuation age of 58 years on October 28, 1972. At the time of retirement, petitioner's pay was Rs. 2000/in the scale of Rs. 2000-125-2250 with Dearness Allowance of Rs. 100/-. Thus his total emoluments came to Rs. 2300/- Petitioner was re-employed as a Member of the Industrial Court initially for one year upto October 28, 1973. He was allowed to draw increment of Rs. 125/- on October 28, 1973 and his period of re-employment was extended for one year that is upto October 28, 1974. It appears that petitioner was selected by the Gujarat Public Service Commission for appointment as President of the Industrial Court and he was appointed to that post on May 17, 1974. It is not in

dispute that retirement age for the President of the Tribunal is 60 years. When petitioner, became President of the Industrial Court his pay was Rs. 2125/-. In addition was also entitled to special pay of Rs. 200/- and Rs. 100/- by way of Dearness Allowance. Thus the total emoluments of the petitioner came to Rs. 2425/- when he was appointed as President. Petitioner retired as President of the Industrial Court on October 28, 1974. Two grievances are made by the petitioner, namely, (i) that his pay was not correctly fixed as President, and (ii) that he was entitled refixation of his pension after adding the service rendered by him as President to the service already rendered by him as District Judge and Member of the Industrial Court before his retirement as stated above.

3. Petitioner does not press his first claim in as much as stated in the affidavit in reply filed on behalf of the State Government, his pay has been fixed at Rs. 2325/- with effect from January 1, 1973. The question which survives for consideration is whether the service rendered by the petitioner as President of the Industrial Court can be added to the service rendered by him before his retirement on October 28, 1972 for the purpose of pension. The petitioner bases his claim for pension on Rule 327 of the Bombay Civil Services Rules. Rule 327 of the Bombay Civil Services Rules ("B.C.S. Rs." for short) reads as under:

Unless in any case it is otherwise distinctly provided in this section, a Government servant who has received a pension on retirement shall not, if re-employed in Government service, be permitted to count his new service as qualifying for a second pension. If the new service is pensionable, it must be combined for the purpose of calculating pension with the service previously rendered and the whole be treated as one service.

4. The contention of the petitioner is that since retirement age for the President of the Industrial Court is 60 years, the service which he rendered after becoming President of the Industrial Court till he completed 60 years would be pensionable service. This service must be combined for the purpose of calculating pension with the service previously rendered and whole treated as one service. Petitioner rendered service as President from May 17 to October 18, 1974. And it is this period which petitioner wants to combine with his previous service rendered as District Judge and Member of the Industrial court and whole treated as one service for the purpose of calculation of his pension.

5. It appears that petitioner had represented to the State Government to count the service rendered by him from October 28, 1972 to October 28, 1974, the period during which he was re-employed as stated above as continuous pensionable service, and to revise his pensions on that basis. The State Government did not agree to count whole of the period from October 28, 1972 to October 27, 1974 as pensionable service. However, State Government requested the Accountant General, Ahmedabad vide its letter dated May 10, 1976 to count the petitioner's service as President of the Industrial Court that is as service rendered by him from May 12, to October 28, 1974 for the purpose of pension and to refix his pension accordingly. It is stated that the Accountant General did

not agree with the Government. It would thus appear that the State Government considered the service rendered by the petitioner as President of the Industrial Court as pensionable service. Service rendered by the petitioner as Member of the Industrial Court after his retirement was not considered to be pensionable service inasmuch as the age of retirement for Member is 58 years. Petitioner retired as Member of the Industrial Court on completion of 58 years and therefore, the service rendered by him as Member of the Industrial Court after his retirement and before he was appointed as President of the Industrial Court was not pensionable service. Consequently the State Government did not agree to combine the service rendered by the petitioner as Member after his retirement on reaching supranuation age and before his appointment as President as pensionable service. As already observed above, petitioner is not now pressing for combining the service rendered by him as Member of the Industrial Court after his retirement with his previous service. He is pressing his claim only for combining the service rendered by him as President with his previous service for the purpose of pension.

6. The objection raised by the Accountant General ("A.G." for short) against refixation of pension as claimed by the petitioner is contained in letter Annexure "M" dated July 15, 1980 addressed by the A.G. to the Secretary, Education & Labour Department of the Government of Gujarat. The following is the relevant part of the letter addressed by the A.G.:

In accordance with the provisions of Rule 327 B.C.S.Rs. no re-employed person can get a second pension on retirement. In addition, the pension admissible by a reemployed pensioner cannot be withheld under Rule 330 of the B.C.S.Rs. However, where the post is pensionable, that service can be added to the service rendered by him previously. As pension is payable for continuous service only and breaks can be condoned or regularised by the competent authority, the service rendered by him as President after the lapse of 1XA years of retirement will not be governed by Rule 327 B.C.S.Rs. referred to above. The break due to re-employment cannot also be condoned. Further, Shri Sanghvi has also commuted his pension on 19-10-73 on the basis of M.C. and this has become absolute (vide 320(2) B.C.S.Rs). Therefore, there cannot be a second date of superannuation in October, 1974. Incidentally, it may be mentioned that Rule 327 B.C.S.Rs. contemplates only addition of the service to the previous service and not postponement of the date of retirement. Further once the date of superannuation, has been reached and pension and gratuity has been finalised and paid, a second date of superannuation does not arise unless from the date of superannuation, a Government servant's appointed to another post for which the date of superannuation is 60 or beyond. In view of this, there is no scope for revising the pension of Shri Sanghvi.

7. It would appear from the letter of the A.G. that he also does not dispute that service rendered by petitioner as President of the Industrial Court was pensionable service. He has objected to combining of his service with the

previous service rendered by the petitioner on two there grounds, namely (i) there was no continuous service as there was break in service after retirement and before appointment of the petitioner as President; (ii) break in service could not be condoned; and (iii) petitioner had obtained benefit of commutation of pension on the basis of medical certificate and this had become absolute. The A.G. has also pointed out in his letter that there cannot be two dates of superannuation one date when petitioner retired as Member of the Industrial Court and second when he attained 60 years of age when he was President of the Industrial Court and on the above grounds according to the A.G. there was no scope for revising the pension of the petitioner.

8. The objection raised by the A.G. is totally misconceived Rule 327 on which petitioner relies does not speak about continuity of service for combining pensionable service rendered after re-employment with the previous service. Reemployment in Government service, after retirement, can be at any time after retirement for the purpose of combining pensionable service with the previous service under Rule 327. Rule does not say that a Government servant would be entitled to combine the service rendered by him on re-employment which is pensionable service with his previous service provided, (i) re-employment is in continuation of the retirement form service and (ii) he has not obtained benefit of commutation. Rule 327 does not permit re-employed Government servant to count his new service as qualifying for second pension but it permits combining of new service with previous service provided new service is pensionable. If new service is pensionable the Government servant is entitled to combine it with previous service and whole to be treated as one service for the purpose of pension notwithstanding that new service is not in continuation of previous service and that there is break between the two services. The question of break in service and condonation thereof does not arise for consideration while granting benefit of two services under Rule 327. The fact that the Government servant had got the benefit of commutation is also irrelevant for refusing benefit under Rule 327. It is having regard to the language of Rule 327 that the State Government agreed to combine the service rendered by the petitioner as President of the Industrial Court with his previous service for the purpose of calculation of pension. The objection, raised by the A.G. is not supported by the provisions contained in Rule 327. He seems to have brought in extraneous considerations in rejecting the petitioner's claim for fixation of his pension. As already pointed out above, there is no dispute that service rendered by the petitioner as President of the Industrial Court is pensionable service. Consequently as provided in Rule 327 this service has to be combined with the previous service rendered by the petitioner before his retirement for the purpose of calculating the pension payable to him. Petitioner must, therefore, succeed so far as claim for refixation of his pension is concerned. In my opinion, the A.G. was not justified in rejecting the petitioner's claim. Petitioner has been wrongly denied pension at the enhanced rate, as claimed by him for no fault of his. The State Government must, therefore, pay interest at the rate of 12 per cent per

annum on the difference of the amount due and payable to the petitioner towards his pension and gratuity from the date such amounts have become payable.

10. Rule made absolute with costs.