
(2017) 03 GUJ CK 0025
In the Gujarat High Court
Case No : 10706 of 2008

SHANTILAL JOITARAM PATEL

APPELLANT

Vs

SECRETARY- CO-OPERATION DEPTT. & ORS.

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Citation : (2017) 03 GUJ CK 0025

Hon'ble Judges : Mohinder Pal

Bench : Single Bench

Advocate : PRAVIN P PANCHAL, ?ANTANI, ?THAKKAR, PAHWA

Final Decision : Allowed

Judgement

1. Petitioner, in this petition, has claimed bonus, LTC, Leave Encasement, interest on the PF and further cost of Rs.2,000/-.

2. Petitioner was appointed as the Secretary of Agricultural Produce Market Committee, Visnagar in the year 1985. However, on 8.12.1988, petitioner came to be dismissed from service on certain grounds which came to be challenged by way of filing writ petition being Special Civil Application No.131 of 1989 before this Court. Special Civil Application came to be disposed of by order dated 10th April, 1996 and the order of dismissal of the petition was set aside. Respondents were further directed to reinstate the petitioner in service forthwith and petitioner was entitled to consequential benefits falling from the order. Against this order of the learned Single Judge, respondents preferred Letters Patent Appeal No.750 of 1996 which came to be disposed of by passing following order.

"Looking to the above facts, it is clear that the petitioner was gainfully employed and had drawn an amount of Rs.45,350/-. In these circumstances, from the amount towards payment of back wages, the above amount is ordered to be deducted. Appeal stands partly allowed with no order as to cost".

3. After the order passed in Letters Patent Appeal No.750 of 1996, petitioner resumed his duty with

respondent authorities on 8.10.1997 and retired from service on 31.12.1997. After retirement, petitioner claimed following dues from the respondents.

(a) Gratuity (10 salaries) - Rs.13,000/- (Approx) monthly multiplied by 10=Rs.1,30,000/- (Approx)

(b) Encasement of Earned leave (120 salaries) Rs.13,000/- (Approx) monthly salary multiplied by 10 = Rs.1,30,000/-.

(c) Amount of 180 days half pay leave, that equal to three months" full pay Rs.13,000/- (approx) monthly multiplied by 3= Rs.39,000/-.

(d) Arrears of 5th pay commission pay scale.

Salary prior to the 5th pay commission pay scale was about Rs.9000/-. After the 5th Pay commission pay scales, there is an increase of about Rs.4000/-. So the salary after the implementation of the 5th Pay commission pay scale is Rs.13000/- (Approx) Arrears for the period from 1/1/1996 to 31/12/1997 i.e. Rs.4000 (approx) multiplied by 24 = Rs.96,000/- (Approx).

(e) Bonus amount of all that period approximately Rs.43,000/-.

(f) LTC for all those years approximately Rs.12,000/-.

(g) Leave encasement of that period Rs.6000/-

(h) Interest on Provident Fund Rs.55,000/- (I) Cost awarded in the order dated 10.4.1996 passed by this Hon"ble High Court in SCA No.131 of 1989 Rs.2000/-.

4. With persuasion and representation, respondents paid some dues to the petitioner. However, some of the dues mentioned in the aforementioned paras were not paid. Aggrieved from this order, petitioner preferred the present petition before this Court.

5. It will be relevant to note that after filing of this petition, respondents failed to file any reply to this

petition. This Court vide order dated 13.1.2017 granted another opportunity to the respondents by passing following order.

1.Heard learned advocate Mr.Pravin P. Panchal for the petitioner and Mr.D.M. Thakkar, learned counsel for respondent no.3.

2. The order dated 14.10.2008 reads as under: ? Rule. Expedited.

Reply to be filed by the respondent within two months. It will be open for the petitioner to move for early hearing since the petitioner has retired and is a senior citizen.

3. However, there is no reply on record if any filed by the respondent.

Therefore, prima facie, petition needs to be allowed by taking adverse inference because of non compliance of order dated 14.10.2008 i.e. almost for eight years considering that thereby probably respondent does not have any defence and, therefore, they simply want to kill the time.

4. However, in the interest of justice, as requested by learned advocate for the respondent, as a last chance, they are directed to file affidavit in reply as per order dated 14.10.2008. At the same time, it would be appropriate to direct the respondent to produce on record the service book of the petitioner with all sheets and details of calculation for the amount which is paid by them to the petitioner as per their resolution dated 24.4.2008 and if at all they want to say that petitioner is not entitled to any

amount as claimed for namely; (1) amount of bonus, (2) amount of LTC, (3) amount of Earned Leave, (4) interest on Provident Fund as well as (5) cost awarded by this Court in Special Civil Application No.131 of 1989.

5. Thereby, it is now clear that practically petitioner is to be treated in services as per direction by the judgment and order dated 10.4.1996 in Special Civil Application No.131 of 1989 and judgment and order dated 9.4.2008 in Special Civil Application No.8023 of 1999 and, therefore, respondents have to calculate all the financial benefits in accordance with such direction. The respondents are entitled to deduct only Rs.45,350/? as per decision dated 28.9.1997 in Letters Patent Appeal No.750 of 1996. The affidavit in reply be filed with supporting documentary evidence for all the defence so also to clarify the above position.

6. List on 3rd February, 2017 .

6. Learned counsel for the petitioner has submitted that despite the Special Civil Application having been decided in faovur of the petitioner, aforementioned retiral dues are not paid to the petitioner to which the petitioner was legally entitled.

7. On the other hand, learned counsel representing the respondent No.3 has submitted that on various occasions, they have tried to contact department. However, department has failed to provide any assistance to their counsel despite the fact that counsel has written letter to the Chairman / Secretary, APMC, Visnagar, District: Mehsana on

16.1.2017. Copy of this letter is also placed on the file.

8. This Court has considered the submissions of both the sides. The dues claimed by the petitioner is not fully paid as there is no response from the respondents despite sufficient opportunities including the order passed on 13.1.2017. Under these circumstances, this Court has left with no other option except to allow this petition.

9. Resultantly, petition is allowed. Petitioner is entitled to get a sum of

Rs.1,18,000/- as prayed for. Petitioner will be further entitled to interest at the rate of 7% per annum from the date of his retirement till the actual payment. Now, the aforementioned dues will be paid to the petitioner within a period of 2 (two) months from the date of receipt of this order.

10. Rule is made absolute. Direct service is permitted.