

(2014) 02 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 8311 of 2009

State of Gujarat

APPELLANT

Vs

B.K. Raghunath

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 GLH 365

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Niraj Ashar, Ld. AGP, Advocate for the Appellant; Biren A. Vaishnav, D.C. Dave and Venu H. Nanavaty, Advocate for the Respondent

Judgement

C.L. Soni, J.—In this petition, filed under Article 226 of the Constitution of India, State of Gujarat has challenged the order dated 26.03.2007, passed by Gujarat Affiliated Colleges Service Tribunal at Ahmedabad in Application No. 4 of 1998 preferred by the respondent No. 1 herein, whereby, the Tribunal held that the respondent No. 1 was entitled to continue in service of respondent No. 3 institute till he completed age of 60 years. It was also held that the respondent No. 1 was entitled to the retirement benefits considering the above age. It appears that the Tribunal gave the above benefits to the respondent No. 1 on the basis of the resolution dated 26.08.1989 and 27.10.1989 and the earlier order of the Tribunal passed in Application No. 9 of 1995.

2. The case put up by the State is that the respondent No. 1 was serving at Birla Institute of Technology and Science at Pilani in the State of Rajasthan from 26.08.1963. He served there till he was appointed as Professor in respondent No. 3 College on 06.09.1985. As averred in the petition, the Government introduced pension scheme for teaching and non teaching staff of non Government Engineering Colleges and Polytechnics and all the employees serving in the institutions named in the resolution dated 17.12.1987 stood governed by the said scheme for pension if in service on the date of resolution. It is further

averred that the services rendered by an employee in other institutions not covered by the resolution dated 17.12.1987 are not to be considered for the purpose of pensions. It is the case of the State Government that vide resolution dated 27.10.1989, it was decided that the retirement age of the teaching staff of non Government engineering colleges shall be 58 years, however, for those employees appointed prior to 01.10.1984, retirement age for them would be 60 years. The appointment of the respondent was since not prior to 01.10.1984 in the institution covered by the resolution, the respondent was not entitled to retirement age of 60 years.

3. On above such facts, the order of the Tribunal is challenged.

4. I have heard learned Advocates for the parties.

5. Learned AGP Mr. Niraj Ashar appearing for the petitioner State submitted that today, this Court in cognate matter being Special Civil Application No. 6809 of 1999 has taken a view that services rendered by an employee in the institution other than the institutions covered by the resolution dated 17.12.1987 and non Government aided institutions within the State, cannot be considered for the purpose of pension. Learned AGP Mr. Ashar submitted that resolution dated 27.10.1989 at Annexure:B was issued to further clarify the resolution dated 17.12.1987, wherein, it is provided that those employees who were appointed prior to 01.10.1984 in non-Government engineering colleges in the State shall be entitled to serve till the age of 60 years. Mr. Ashar submitted that the Tribunal has on misconstruction of the resolution dated 27.10.1989, allowed the application of the respondent No. 1. Mr. Ashar submitted that the order of the Tribunal in Application No. 9 of 1995, whereon, the reliance was placed by the Tribunal shall also not be applicable as in the said application, the Tribunal has not considered the question as to whether if the employee has not served the institution covered under the resolution dated 17.12.1987 before 01.10.1984, he could be given benefit of retirement age upto the age of 60 years. Learned AGP Mr. Ashar therefore, submitted that on plain reading of the resolution dated 17.12.1987 and 27.10.1989, only employees appointed prior to 01.10.1984 in any of the institutions or non-Government aided colleges covered under resolution dated 17.12.1987 can be given benefit of 60 years. Learned AGP Mr. Ashar submitted that undisputedly, the respondent No. 1 was not appointed with the respondent No. 3 college before 01.10.1984 and therefore, the Tribunal was not justified in holding that the respondent No. 1 was entitled to serve upto 60 years of age. He thus urged to allow the petition.

6. Mr. Vaishnav appearing for respondent No. 1 submitted that the services rendered by the respondent No. 1 prior to 01.10.1984 in institution under the University of Rajasthan if considered with the services rendered by the respondent No. 1 in respondent No. 3 institution, the respondent No. 1 could be said to have been appointed prior to 01.10.1984 as, the respondent No. 1 was appointed in Birla Institute of Technology and Science at Pilani, Rajasthan from 1963 and continued to serve there till 01.10.1984 and thereafter also. Mr.

Vaishnav submitted that in such case, the Tribunal in Application No. 9 of 1995 held that if an employee was appointed prior to 01.10.1984 in the institution/ University of another State and served beyond 01.10.1984 and then appointed in the institution covered under the resolution, then he could be given the benefit of 60 years of age for retirement. Mr. Vaishnav submitted that in Application No. 9 of 1995, the Tribunal had placed reliance on the order passed in earlier application No. 21 of 1994, where the applicant had served Birla Institute of Technology and Science, Pilani (Rajasthan) from 24.08.1962 to 23.07.1988 and then joined Birla Vishwakarma Mahavidhyalaya at Vallabh Vidhyanagar the respondent No. 3 herein and he was taken to have been appointed with the respondent No. 3 before 01.10.1984. Mr. Vaishnav, therefore, submitted that the Tribunal in the present case has committed no error in interpreting the resolution dated 27.10.1989 as also in relying on the order made by the Tribunal in Application No. 9 of 1995. Mr. Vaishnav thus, urged to dismiss the petition.

7. Having heard learned Advocate for the parties and having perused the resolution dated 17.12.1987 and resolution dated 27.10.1989 as well as the copy of the order dated 30.04.1993 passed by the Tribunal in earlier application No. 9 of 1995, which was relied on by the Tribunal in the case of the respondent No. 1, it appears that by resolution dated 17.12.1987, the Government decided to confer benefit of pension to the employees of the colleges/institutions/universities referred/named in the said resolution. For the purpose of computing the length of qualifying service, the Government provided that all services either in one or more than one institution mentioned in para No. 1 of the said resolution and any other non Government aided colleges, universities, higher secondary schools receiving grant in aid from the Government were intended to be considered. Therefore, it clearly appears that Government intended to confer the pension benefits to the employees of the institutions covered under the said resolution.

8. By resolution dated 27.10.1989, the Government clarified and amended its resolution dated 17.12.1987 and additionally provided for the retirement age for the employees of non Government Engineering Colleges. By the said resolution, it resolved that the retirement age for the teaching staff serving in non Government Engineering College shall be 58 years. But the retirement age for the employees appointed prior to 01.10.1984 shall be of 60 years.

9. Thus, by resolution dated 27.10.1989, the Government intended to give benefit of retirement age of 60 years only to the employees appointed prior to 01.10.1984 in the institutions covered under resolution dated 17.12.1987. Reading resolution dated 17.12.1987 and 27.10.1989 together, the only conclusion which could be reached is that only the services rendered in one or more institutions covered in the resolution dated 17.12.1987 are to be considered for the purpose of pension and retirement age of 60 years shall be for those employees appointed prior to 01.10.1984 in such institutions. If the appointment of the employee has continued in other institution after 01.10.1984,

he cannot be made entitled to benefit of retirement age of 60 years.

10. The Tribunal while deciding Application No. 9 of 1995 lost sight of the above aspect of the matter and granted benefit of retirement age of 60 years to the applicant of the said application by taking his appointment made in the institution situated in the State of Rajasthan as if made in respondent No. 3 before 01.10.1984.

11. In my view, since, the Tribunal has lost sight of the above aspect of the matter, the order made by Tribunal in earlier application could not be relied for making the respondent No. 1 entitled to the benefit of retirement age 60 years. In any case, the Tribunal has otherwise also misconstrued the resolution dated 17.12.1987 and 27.10.1989 for the purpose of giving benefit of retirement age of 60 years. In above such view of the matter, the impugned order of the Tribunal cannot stand scrutiny of law and the same is therefore required to be quashed and set aside. For the reasons stated above, the petition is allowed. Impugned order dated 26.03.2007 passed by Gujarat Affiliated Colleges Services Tribunal in Application No. 4 of 1998 is hereby quashed and set aside. Rule made absolute.