

(2014) 03 GUJ CK 0011
In the Gujarat High Court

Case No : Letters Patent Appeal No. 415 of 2014

State of Gujarat

APPELLANT

Vs

Hansaben B. Upadhyay

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Citation : (2014) LabIC 2249

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Utkarsh Sharma, A.G.P, Advocate for the Appellant; J.D. Ajmera, Advocate for the Respondent

Judgement

Kaushal Jayendra Thaker, J.—We have heard Mr. Utkarsh Sharma, learned AGP appearing for the appellants, Mr. J.D. Ajmera, learned advocate appearing for the respondent No. 1 and Ms. Asmita V. Patel, learned advocate appearing for the respondent No. 2. This Letters Patent Appeal has been filed by the appellants-original respondents challenging the judgment and order dated 28.02.2013 (Reported in 2013 Lab IC 3256) passed in Special Civil Application No. 12335 of 2004, whereby the learned single Judge was pleased to hold that the respondent-original petitioner entitled for pension and other retirement dues considering the date of voluntary retirement i.e. 30.06.1999.

2. The facts in brief of this case are that the respondent-original petitioner joined the service of the opponent department school on 01.6.1972 and that if the same is considered, the respondent-original petitioner completed 27 years of service in the year 1999. It is stated that the respondents-original petitioners requested for voluntary retirement. It is stated there was scheme of pension at the relevant of time, where the respondent No. 1 (original petitioner) used to work. The case was not considered for payment of pension. However, subsequently the pension benefits were extended to the grant in aid provided to recognize primary schools in accordance with the Government Resolution dated 6.4.2002 with retrospective effect from 1.1.1997. It is stated that respondent

No. 1 (original petitioner) whole petition based on the said backgrounds. The respondent No. 1 (original petitioner) had also relied on various documents and the orders passed by this Court i.e. Special Civil Application No. 7109 of 2005 and the Government Resolution dated 13.07.2006.

3. It is submitted by the learned AGP that the resolution dated 6.4.2002 will not apply to the facts of the present case. He further submitted that the learned single Judge ought to have considered the scheme i.e. Government policy dated 6.4.2002 in its true perspective, the foundation of the said scheme was claimed on one lady viz. Kusumben Barsada who preferred the petition claiming pension benefits. The scheme is clear to the extent that it would be applicable to those who were in service from 1997 to 2002 and have retired i.e. they would be eligible for claiming pension. However, the respondent No. 1 (original petitioner) on voluntarily retired in the year 1999 and therefore, her case could not have been considered for payment of pension because of her superannuation would not have been between 1997 and 2002 and even otherwise had the case been with her superannuation within the said duration she has not completed her full service till superannuation and therefore, she is not eligible for the said benefits of pension.

3.1. It is further submitted that even the Education Department had rejected the request of the petitioner by a letter dated 10.2.2004 as there was no specific clause for giving the pension benefits to those who have voluntarily retired, therefore, giving any such benefits to those who have voluntarily retired would amount to overreaching the policy. Even the present respondent (original petitioner) has not disputed the policy and in fact had preferred the petition claiming the benefits. It is further submitted that the learned single Judge has considered the issue with reference to whether the petitioner had resigned or voluntarily retired and while deriving the conclusion the learned single Judge had referred the affidavit filed by the authority dated 6.2.2013 and also the Court has shown its concern that the affidavit was an attempt to improve the case. The learned single Judge had come to the conclusion that the reliance upon various documents that the original petitioner (respondent) had in fact voluntarily retired and not resigned. It is submitted that without going into any observations, the question which was required to be considered was that even if the respondent (original petitioner) had voluntarily retired, whether her case would fall in the category of those who have retired on superannuation. The impugned judgment of the learned single Judge resulted into serious miscarriage of justice and the learned single Judge's observation is bad in law and therefore, the impugned judgment passed by the learned single Judge being contrary to the evidence and policy of the Government available on the record of the case deserves to be quashed and set aside on the ground that the continuity of the illegality cannot be perpetuated.

3.2. It is submitted that the judgment of the learned single Judge is bad in law. The petitioner has no legal right to claim the benefits of pension though he had

been resigned from the corporation service without taking any necessary confirmation on approval from the State authority. The impugned judgment of the learned single Judge has resulted into serious miscarriage of justice. Therefore, the impugned judgment passed by the learned single Judge being contrary to the evidence available on the record of the case, the same deserves to be quashed and set aside by this Court on this ground also.

3.3. It is further submitted that the learned single Judge has committed an error, as merits involved in the matter are not examined and direction in mandatory nature is given. On such other and further grounds as the circumstances of the case may require, it is further submitted that in view of the above mentioned facts and circumstances of the case, the appellants preferred this Letters Patent Appeal under Clause 15 of the Letters Patent, which requires to be allowed.

4. In a similar matter being Special Civil Application No. 7109 of 2005, the State has chosen not to prefer any LPA, which has been relied upon by the learned single Judge. Para-8.1, 8.2, 9, 11, 11.1, 11.2 and 11.3 of the impugned judgment passed by the learned single Judge is extracted hereinbelow:

8.1. At this stage, prima facie, I find that this improvement in the stand of the authorities, is less the contest by the Government, more an attempt by the deponent of the affidavit-in-reply dated 06.02.2013, to frustrate the claim of the petitioner, and also to obstruct the administration of justice, which needs to be viewed seriously, however before arriving at any conclusion, let the merits of even this contention be gone into first, and if it is found that the stand in this affidavit dated 06.02.2013 is justified on merits, let Government be not fasten with avoidable financial liability.

8.2. In this regard, it needs to be ascertained first, as to whether, the petitioner had tendered resignation or she had opted for voluntary retirement at the relevant time. In this regard, some of the facts which are already recorded above needs to be recorded again. The said voluntary retirement was duly accepted by the Competent Authority with effect from 30.06.1999, which is supported by the affidavit-in-reply dated 11.1.2004, filed on behalf of the said competent authority who is respondent No. 3, in this petition. Further, there is also an entry in the service book of the petitioner in this regard, which is duly endorsed by the District Education Officer. Further, the service book also records that the pay of the petitioner at the time of her voluntary retirement i.e. as on 30.06.1999, was Rs. 6550/-. Even this entry is also duly approved by the District Education Officer. At this stage, learned Assistant Government Pleader Mr. Soni has pointed out that all the entries which are placed on record are not approved by the District Education Officer. Specific reference is made to page Nos. 57 and 58 of the paper book. When confronted, that the endorsement by the District Education Officer is very much there on page Nos. 52, 53, 54, 55, 56, 59 and 60 and the relevant entries with regard to voluntary retirement of the petitioner is on page Nos. 59 and 60, learned Assistant Government Pleader does not have any answer. Further, these are the documents approved by the competent

authorities and they are contemporaneous documents. It is not even the case of the deponent of the affidavit-in-reply dated 06.02.2013 that those documents are forged documents or that there was connivance of the officer of the rank of District Education Officer with the petitioner at the relevant time, when even the Government Resolution dated 06.04.2002 was not there. Further, even the annexure with the said affidavit-in-reply dated 06.02.2013, i.e. letter of respondent No. 4, addressed to respondent No. 3 also clearly reveals that the petitioner had opted for voluntary retirement, which was requested to be accepted. As already recorded above, affidavit-in-reply is filed on behalf of Respondent No. 3 in this petition, stating that the petitioner had voluntarily retired on 30.06.1999 and the same was approved by respondent No. 3. Even the letter of the government dated 10.02.2004, which is specifically with regard to the petitioner herself and which is on record as an annexure to the affidavit-in-reply dated 26.09.2005, in terms, states that the petitioner had opted for voluntary retirement but since it was between 01.01.1997 to 06.04.2002, only on that count the petitioner was not entitled to pension at the relevant time. It is recorded that learned Assistant Government Pleader has, by referring to the letter dated 26.07.1999, contended that it is not that there is no basis to take the stand which is contained in the affidavit-in-reply dated 06.02.2013. In my view, the said letter, which is a cyclostyled pro forma prevailing at the relevant time, cannot be read in isolation and has to be read conjointly with other contemporaneous record. Taking into consideration the above referred overwhelming material, which is on record, I find that, it is not only the case of the petitioner that she had opted the voluntary retirement in the year 1999, but it has been the case of the Government as well, all throughout, that the petitioner had opted voluntary retirement. In my view, the stand taken in the affidavit-in-reply dated 06.02.2013 cannot be, and is not the stand of the Government. It is the stand of the deponent of the said affidavit in his personal capacity and it is inconsistent with the record, it is also inconsistent with the affidavit-in-reply dated 26.09.2005 which was already on record of this Court and there is not even a whisper in the affidavit-in-reply dated 06.02.2013 to the said earlier affidavit-in-reply dated 26.09.2005. Therefore, I hold that the defense sought to be put forward through learned Assistant Government Pleader as contained in affidavit-in-reply dated 06.02.2013 is a manufactured stand of the deponent of the said affidavit and it needs to be rejected. For these reasons, I hold that the improvement in the stand of the authorities, as contained in the affidavit-in-reply dated 06.02.2013, is less the contest by the Government, more an attempt by the deponent of the said affidavit-in-reply to frustrate the claim of the petitioner, and it can also be termed as an attempt to obstruct the administration of justice, which needs to be viewed seriously. In this regard, appropriate observations are made in this judgment subsequently.

9. Reverting back to the relief claimed by the petitioner, I find and hold that the claim of the petitioner is covered by the judgment of this Court in Special Civil Application No. 7109 of 2005 dated 14.03.2006, read with consequential

Government Resolution dated 13.07.2006. The petition also needs to be allowed in view of the specific stand of the authorities as contained in the affidavit-in-reply dated 26.09.2005 and the letter of the Government dated 10.02.2004 annexed with the said affidavit-in-reply. Therefore, the petition needs to be allowed and respondents are required to be directed to pay pension and other retirement dues to the petitioner, considering 30.06.1999 as the date of her voluntary retirement.

11. For the reasons recorded above, this Court arrives at the judgment and passes order as under.

11.1 The petitioner is held to be entitled to claim pension and other retirement dues from the respondents, considering 30.06.1999 as the date of her voluntary retirement.

11.2 Respondents are directed to calculate and pay the pension and other retirement dues to the petitioner, considering 30.06.1999 as the date of her voluntary retirement. Respondents are further directed that, this amount shall be paid to the petitioner, within a period of three months from today.

11.3. Principal Secretary of the Education Department is directed to take necessary steps, pursuant to the observations made in para: 10 of this judgment, keeping in view the observations and findings recorded in paras. 8.1 and 8.2 of this judgment.

5. We are in complete agreement with the view taken by the learned single Judge. We are unable to persuade ourselves with the submission made by the learned AGP that case of the respondent No. 1 was of the resignation and not of voluntary retirement and judgment is against the policy of State Government. Therefore, it had been argued to take different view then taken by the learned single Judge and the observation of the earlier Bench on whose judgment the learned single Judge has relied upon will also not apply to the facts of the case. As against this the respondents have heavily relied on the facts and circumstances and the decision of the learned single Judge.

6. We agree with the judgment and order of the learned single Judge and we also direct that if the same is not decided within the period given by the learned single Judge, the same shall be decided within a period of one month maximum from today, failing which, the concerned authorities, who has delayed, will be personally responsible.

7. In the result, this Letters Patent Appeal is partly allowed. The discretions issued in para-10 of the judgment passed by the learned single Judge are set aside. In view of dismissal of the present Letters Patent Appeal, Civil Application No. 3170 of 2014 also stands disposed of.