
(1985) 11 GUJ CK 0005
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

P.D. Anklesaria and Others

RESPONDENT

Date of Decision : 27-11-1985

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 9(39)

Police Service (Cadre) Rules, 1954 — Rule 4

Police Service (Pay) Rules, 1954 — Rule 2

Citation : (1986) 1 GLR 506

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; I.C. Bhatt, J

Bench : Division Bench

Judgement

I.C. Bhatt, J.—This Letters Patent Appeal has been filed by the State of Gujarat—original respondent No. 1 against the judgment dated 28-3-1979 of the learned single Judge in Special Civil Application No. 883 of 1978.

2. Original Petitioner Mr. P.D. Anklesaria, joined the then Police Force of the State of Bombay, in 1935. On bifurcation of the State of Bombay the petitioner was allocated to the State of Gujarat. In the State of Gujarat the petitioner was confirmed as a Deputy Superintendent of Police with effect from 1-5-1960. On 27-12-1965 the petitioner was promoted to the higher post and was posted as D.S.P., Bulsar. For want of vacancy he proceeded on Earned Leave from 25-10-1966 and he was again promoted as Superintendent of Police, C.I.D. Crime and Railways Gujarat State, on 12-6-1967 which post he held continuously till his retirement on superannuation on 25-10-1970. The case of the petitioner is that the post of D.S.P. Bulsar and S.P., C.I.D. where cadre posts within the meaning of Indian Police Service (Cadre) Rules, 1954 and the Cadre post of D.S.P. carries with it the Senior time scale of pay of I.P.S., namely, Rs. 740-40-1100-50/2, 1250-50-1300. According to the petitioner, he was actually paid the minimum of the senior time scale of Rs. 740/- per month. He was also paid a Special Pay of Rs. 150 per month, which is permanently attached to the post. In addition to that he also got the actual D.A., H. R.A., C.L.A etc. when he was officiating as Superintendent of Police, C.I.D. According to the petitioner he

was actually entitled to an initial pay of Rs. 980/- p.m. on 12-6-1967 under the I.P.S. (Pay) Rules, 1954.

3. According to the petitioner after his retirement on 25-10-1970, his pay was revised five times and in the pay fixation done on 17-1-1973 the pay of the petitioner was fixed at Rs. 780/- p.m. while, according to the petitioner in the pay fixation done on 24-7-1973 grave injustice had been done to him. It is the case of the petitioner that instead of fixing the pay of the petitioner at Rs. 980/- p.m. on 12-6-1967 his pay was fixed only at Rs. 780/- p.m. Further, his special pay as the period at his affiliation was not approved by the Government of India, was not paid to him. It is his further case that for the periods 1-11-1969 to 24-11-69 and from 25-9-1970 to 24-10-1970 the petitioner was paid his substantive pay of Deputy Superintendent of Police although he discharged the functions and duties of the Superintendent of Police. On 1-4-1968 the substantive pay of the petitioner was Rs. 790/- while in the I.P.S. grade he had been paid Rs. 780/-. Similarly, on 1-4-1969 the substantive pay of the petitioner was Rs. 825/- while in the I.P.S. scale he had been paid Rs. 820/- only. On 1-4-1970 the substantive pay of the petitioner was Rs. 870/- while he had been paid Rs. 860/- only. The petitioner by his letter dated 9-9-1977 had brought this injustice to the notice of the Government, but according to the petitioner, no action was taken. Thus, the grievance of the petitioner is that grave injustice has been done to the petitioner in the matter of his initial pay, increments and special pay, and non-approval of his affiliation by the Government of India. The last fixation of pay done on 24-7-1973 has been accepted by the petitioner under protest, by his letter dated 21-11-1973.

4. The petitioner filed Special Civil Application No. 68 of 1973, which was allowed by judgment dated 28-6-1967 and it was held that the petitioner is entitled to the Special Pay of Rs. 150/- for the period as Superintendent of Police C.I.D. from 12-6-1967 to 24-10-1970 and it was directed that the amount of Rs. 2890/- deducted from the gratuity should be refunded to the petitioner. The petitioner was directed to approach the Government for increments. No appeal was filed against the said judgment and hence that judgment has become final between the parties. It appears from the material on record that initially the petitioner was paid full salary, but on account of the fact that the Central Government had not approved his officiation, certain deductions were made from the gratuity amount of the petitioner at the time of his retirement. It also transpires that the Government of Gujarat had also refused, on certain technical ground, special pay as claimed by the petitioner.

5. The petitioner, on 21-10-1974, represented his case for initial pay, increments and special pay to the Advisor to the Governor but did not receive any reply. On 19-8-1977 and 20-8-1977 the petitioner again wrote to the Chief Secretary to the Government requesting for the grant of increments and initial pay respectively. No reply was received by the petitioner. As stated earlier, the main grievance of the petitioner is that his initial pay has been incorrectly calculated in

contravention of the rules. His initial pay has been taken at Rs. 610/- in 1966, while his actual pay as per the rules should have been taken at Rs. 755/-. According to the petitioner he was not given the special pay of Rs. 150/- which was admissible to him. The petitioner's further grievance is that he was not given the due increments which he was entitled to. The petitioner also had a grievance that in counting the petitioner's pay, services of nine years have been taken but the services for calculating the initial pay should be taken as nineteen years as the petitioner was promoted as an Inspector on 4-1-1948. The petitioner wrote several letters to the Government of Gujarat but no reply was received by him. The Government had given the petitioner special pay of Rs. 150/- from 12-6-1967 to 24-10-1970, but later on, on 24-7-1973 a fresh pay slip was issued in which the special pay allowed formerly was disallowed for the periods the petitioner's affiliation was not approved and a sum of Rs. 2890/- was recovered from the gratuity. However, the said amount of Rs. 2890/- deducted from the gratuity of the petitioner was refunded after the decision of this Court in Special Civil Application No. 68 of 1973. In view of all these state of affairs the petitioner filed Special Civil Application No. 883 of 1978 before this Court mainly praying that his initial pay as on 12-6-1967 should be fixed at Rs. 980/-, that he should be granted four increments he had earned in the I.P.S. time scale of pay, that special pay of Rs. 150/- p.m. should be counted towards pension and gratuity for the period from 12-6-67 to 24-10-1970.

6. Under Secretary to the Government of Gujarat, Home Department filed Affidavit-in-reply mainly contending that the petitioner was not entitled to the special pay during his unapproved officiation on cadre posts for the period from 12-6-1967 to 24-11-1969 and 26-9-1970 to 25-10-1970. According to the deponent of the said Affidavit, the initial pay has been correctly fixed at Rs. 610/- as per the rules in force and as per the definition of the "Assumed Pay" in the rules, According to the said affidavit-in-reply the petitioner was not entitled to get the benefit of revision of pay which has taken place after 1-4-1960 and therefore, his pay was rightly fixed at Rs. 610/-. It has been stated in the affidavit-in-reply that special pay is not admissible under the I.P.S. (Pay) Rules, 1954 to an officer whose officiation in a cadre post under Rule 9 of the I.P.S. (Cadre) Rules, 1954 is not approved by the Central Government, and since the officiation of the petitioner in the cadre post prior to 25-11-1969 and subsequent to 25-9-1970 was not approved, the petitioner was not entitled to any increment during the unapproved-officiating period on the cadre post, and hence the petition should be dismissed.

7. The Special Civil Application filed by the petitioner came up for final hearing and at the time of final hearing mainly two points were urged namely, that the petitioner's pay should have been fixed at Rs. 755/- instead of Rs. 610/- and that the Special Pay granted to the petitioner should be taken into account for the purpose of making computation of the pension and gratuity. This Court after hearing the parties, allowed the said petition. Against the said judgment of the learned single Judge (Coram; M.P. Thakkar, J.) the State of Gujarat has preferred

this Letters Patent Appeal.

8. Now, so far as the question of Special Pay granted to the petitioner and recovered from his gratuity is concerned, this point has been decided, in Special Civil Application No. 68 of 1973. As no appeal is preferred against the Judgment in the above petition, the judgment therein has become final between the parties and is binding to them. In the said judgment, it has been observed as under:

...The State Government has also accepted his stand that he is entitled to special pay of Rs. 150/- attached to this post. It stands to reason that if the petitioner has in fact discharged the functions on this post, he is entitled to the emoluments admissible in respect of the office held by him. It, however, transpires from the documents placed on record that the Resident Audit Officer has raised some objection on the ground that his officiation on the cadre post was not subsequently approved by the Government of India. It is difficult to comprehend as to what that aspect has to do with the drawing of emoluments attached to the office. The respondents have not filed any affidavit-in-reply to show under which rule the emoluments attached to the office can be denied if subsequently the Government of India does not approve of the officiation. Going by ordinary common sense notions, if his officiation is disapproved, he may be reverted, but for the period during which he has actually officiated on the post, he would be entitled to the emoluments of that post. And that common sense approach seems to have found favour with the Government which has issued order at Annexure "E" dated May 2, 1972. But it appears that on account of the letter written by the Resident Audit Officer on June 20, 1972 which is recorded at Annexure "F" the State Government made a deduction from the gratuity amount payable to the petitioner as mentioned in paragraph 10 of the petition. In paragraph 10 the petitioner has mentioned a figure of Rs. 5,000/- but the learned Counsel for the petitioner has stated at the Bar that upon verification it is found that the actual amount deducted is Rs. 2819/-. The petitioner has prayed for the refund of this amount deducted from the gratuity payable to him. The respondents have not filed any affidavit-in-reply to justify the deduction. Under the circumstances the petition must succeed and respondents Nos. 1 and 3 must be directed to make payment of the said amount of Rs. 2819/- deducted from his gratuity which deduction is not Justified in the Court. This refund will be made within 60 days from today.

Thus, in view of the observations made by the learned single Judge in Spl. C.A. No. 63 of 1973 to the effect that the State Government has also accepted his stand that he is entitled to Special Pay of Rs. 150/- attached to this post, order for refund of Rs. 2819/- was made. In view of the fact that the said decision has become final between the same parties, it is not open for the Appellant State to reagitate the said question in this Letters Patent Appeal. The State of Gujarat cannot raise the said point in this Appeal now.

9. Now, the another point that arises in this Appeal is as to how the initial pay of the original petitioner Respondent No. 1 in this Appeal, is to be fixed at the time

when he was promoted on 12-6-67. The initial pay fixation is claimed by the petitioner as on 12-6-67 when he was promoted to the higher post from his substantive post. Now the "pay" has been defined by Rule 9(39) of the Bombay Civil Services Rules as under:

9(39)(a) pay means the amount drawn monthly by a Government servant as-

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantially or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, technical pay, special pay, and personal pay; and

(iii) any other emoluments which may be specially classed as may by Government.

The rules under which the initial pay of the petitioner is required to be fixed are known as Indian Police Service (Pay) Rules, 1954. Rule 2 of the said Rules gives definitions and Rule 3 prescribes junior as well as senior time scales of pay. In the present case we are concerned with Rule 4 of the said rules which provides for the fixation of initial pay in the time scale in case of direct recruits as well as promoted officers. The relevant portion of the said Rule 4 reads as under:

FIXATION OF INITIAL PAY IN THE TIME SCALE:

The initial pay of a direct recruit shall be fixed at the minimum of the junior time scale. Provided that

(2) ... (3) The initial pay of a promoted officer who prior to the date of his appointment to the Indian Police Service had not held a cadre post in an officiating capacity shall be fixed in accordance with the principles laid down in Section 1 of Schedule II.

(4) ... (5) The initial pay of an officer of a State Police Service who has been appointed to hold a cadre post in an officiating capacity in accordance with Rule 9 of the Indian Police Service (Cadre) Rules, 1954, shall be fixed in the manner specified in Section III of Schedule II. 5A)

A reference will also have to be made to Schedule II and Section I thereof. The said provision, insofar as material, reads as under:

SCHEDULE II (see Rule 4)

Principles of promoted Officers on Appointment to the Indian Police Service in the Schedule, the term-

(i) "actual" pay means the pay whether in the ordinary time-scale or in the selection grade to which an officer of a State Police service is entitled by virtue of his Substantive position in the cadre of that service; and includes, after the first day of April 1960 dearness allowance, if the State Government have not

revised the scales of pay applicable to the State Police Service on the said date so as to include therein a portion or the entire amount of the dearness allowance;

(ii) "assumed" pay means the pay and, if the State Government have not revised the scales of pay applicable to the State Police Service on the first day of April 1960 so as to include therein a portion or the entire amount of the dearness allowance, includes, after the said date, the dearness allowance which an officer of a State Police Service, officiating or confirmed in a "selection grade" would have drawn in the ordinary time-scale (which does not include selection grade) of his service, had he not been officiating or confirmed in the selection grade.

NOTE 1. In the State of Tamil Nadu the term selection grade shall, for the purpose of this Schedule, include the scale of pay sanctioned for the posts of Additional Superintendent of Police, in that State.

NOTE 2. Wherever the State Governments have revised the scales of pay applicable to the State Police Service more than once after the first day of April 1960 merging the entire or major portion of the dearness allowance with pay, the pay in the scale revised for the first time on or after the said date shall alone be taken into account for the purpose of fixation of pay.

SECTION I - FIXATION OF INITIAL PAY OF PROMOTED OFFICERS FALLING UNDER RULE 4(3).

(1). The initial pay of a promoted officer shall be fixed at the stage of the Indian Police Service senior time-scale next above the amount equal to his actual pay in the ordinary time-scale or his assumed pay, as the case may be, increased at the rate of one increment in the senior time-scale of the Indian Police Service. The resultant increase should be subject to a minimum of Rs. 150 and a maximum of Rs. 200 over his pay in the State Police Service:

Provided that-

... ..

10. Now, the real question that arises in the present case for our consideration is as to how the initial pay of the original petitioner is to be fixed and calculated as on the date when he was promoted to the higher post on 12-6-67. Rule 4(1) provides that the initial pay of a direct recruit shall be fixed at the minimum of the junior time-scale. Rule 4(3) provides that the initial pay of a promoted officer who has not held a cadre post in an officiating capacity shall be fixed in accordance with the principles laid down in Section I of Schedule II. Rule 4(5) provides that the initial pay of an officer of a State Police Service, who has held a cadre post in an officiating capacity, in accordance with Rule 9 of the Indian Police Service (Cadre) Rules 1954, shall be fixed in the manner specified in Section III of Schedule II. Section III of Schedule II provides that the initial pay of a State Police Service Officer appointed to officiate in posts borne on the Indian Police Service cadre shall be fixed in accordance with the principles enunciated in Section 1. Therefore, in any event, either under Sub-rule (3) or

Sub-rule (5) of Rule 4, petitioner's pay will have to be fixed in accordance with the provisions of Section I of Schedule 11 of the Indian Police Service (Pay) Rules, 1954. Schedule 11 provides the meaning of the term "actual pay" and the "assumed pay". The term "actual pay" means the pay whether in the ordinary time-scale or in the selection grade to which an officer of a State Police Service is entitled by virtue of his substantive position in the cadre of that service and will include the dearness allowance, if the State Government, have not revised the scales of pay applicable to the State Police Service after 1-4-1960. If the State Government has revised the pay scale after 1-4-1960 then it shall be on the basis of the revised scales of pay and the benefit of the revised pay scales would be available to the promoted officer. Now, from the material on record it appears that the State of Gujarat revised the pay scales under the Gujarat Civil Services (Revision of Pay) Rules, 1964 with effect from 1-10-1961 and thereafter with effect from 1-6-1967. The claim of the petitioner in the present case is that he should get the benefit of these two revisions of scales of pay and his initial pay in the substantive post, which he was holding on or before 12-6-1967 should be fixed giving him the benefit of both the revisions of pay scales, which had taken place earlier to that date. Now, the real meaning of "actual pay" as stated above, would be the time-scale to which the original petitioner is entitled to by virtue of his substantive post in the cadre of that service including both the revisions of scales of pay which had taken place prior to 12-5-1967, and after 1-4-1960. The meaning of "assumed pay" will not apply in the present case, because the initial pay which is required to be fixed in the case of the present petitioner is on the date of his promotion, when revised pay scales were applicable. Therefore, considering all the facts and circumstances of this case, the initial pay of the original petitioner has to be fixed as per the above definition of "actual pay" on the date of his appointment i.e., on 12-6-1967 to the cadre post.

Now take a situation where the petitioner was not promoted to the Cadre post. Then, what would be the effect of it? In that situation what would have been his pay at that time? Naturally, in that case, the pay of the petitioner would have been fixed as per the revised scales which had taken place before his promotion to the cadre post. Considering the meaning of actual pay as per Schedule II, the petitioner should get his pay fixed including the two revisions of the pay scale which were applicable to the scale of the petitioner when he was given the cadre post.

11. Therefore, in view of the above position, in our view the learned single Judge has correctly come to the conclusion that the pay of the petitioner should be fixed on the basis of the second pay revision as on 1-6-1967 at the material time i.e., on 12-6-1967. The learned single Judge has rightly observed that in fact the State Government themselves had placed such an interpretation and fixed the pay of the petitioner on the correct basis by their earlier orders and there was no necessity for the re-fixation of the pay determining the initial pay at a lower figure. The contention of the appellant-State of Gujarat that as per the said rules the pay has been correctly fixed by the State Government and that the

competent authority was justified in revising the original order and refixing the pay of the original petitioner at Rs. 610/- cannot be accepted. We are of the opinion that the original petitioner is entitled to get his initial pay fixed as per the provision of Rule 4 and as per the principles laid down in Section 1 of Schedule II of the Indian Police Service Pay Rules, 1954. We are not entering into the detailed calculation. In the present case, the main question to be determined is as to what would be the initial pay of the petitioner at the time of his promotion i.e., on 12-6-1967. Section I of Schedule II also clearly provides that initial pay of a promoted officer shall be fixed at the stage of the Indian Police Service senior time scale next above the amount equal to his actual pay in the ordinary time scale or his assumed pay, as the case may be. This clearly indicates that the initial pay has to be fixed on the date on which the original petitioner was promoted and not as on 1-4-1960 as is sought to be argued by the appellant-State of Gujarat.

12. In any view of the matter, no other interpretation can be placed on the meaning of the "actual pay" and as per the said meaning the petitioner would be entitled to get the benefit of both the revisions of pay scales which were made applicable on or before 12-6-1967. Under these circumstances, the pay of the petitioner must be fixed on the basis of the reality of the situation in the context of the fact that as per the Second Pay Revision made effective from 1-6-1967 the petitioner was entitled to Rs. 755/- at the material time i.e., on 12-6-1967. We have gone through the judgment of the learned single Judge and we are in complete agreement with the ultimate conclusions arrived at by the learned single Judge and we see no merits in this Letters Patent Appeal preferred by the Appellant-State of Gujarat. We confirm the judgment of the learned single Judge and accordingly dismiss the Letters Patent Appeal preferred by the State of Gujarat, with no order as to costs.