

(2017) 01 GUJ CK 0152
In the Gujarat High Court
Case No : 1469 of 2015; 12033 of 2014

STATE OF GUJARAT & ORS

APPELLANT

Vs

HARISH DUNICHAND CHANDNANI

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Citation : (2017) 01 GUJ CK 0152

Hon'ble Judges : R Subhash Reddy, Vipul M Pancholi

Bench : Division Bench

Advocate : D M Devnani, Mauna M Bhatt

Final Decision : Dismissed

Judgement

1. This LPA is filed by the original respondents in Special Civil Application No.12033 of 2014 aggrieved by the order of the learned Single Judge dated 20.07.2015. By the aforesaid order the learned Single Judge allowed the petition filed by the respondent- original petitioner and issued directions to the appellants herein to extend the benefits of Tiku Pay Commission in favour of the respondentoriginal petitioner and to re-fix the pension payable to him. As against such order this appeal is filed.

2. Necessary facts in brief for disposal of the appeal are as under. The respondent-original petitioner is a retired Medical Officer, Class-II. He joined the services of the State Government in the Office of the Medical Service, Employees State Insurance Scheme, Ahmedabad, as Medical Officer, Class-II, in the year 1985. He worked as such from September 1985 to 31st December 2013 as Class-II Officer. He was given the benefit of Tiku Pay Commission with effect from 4th September 1991, viz. on completion of six years of continuous service. The said benefit was extended pursuant to the Government Resolution dated 17.10.1994. Further, benefit was also extended as recommended in Tiku Pay Commission on completion of 13 years of continuous service, with effect from 04.09.1998. In 2012, he suffered a stroke of paralysis, which resulted in 75% of permanent

disability. As such he was compelled to take voluntary retirement. His request for voluntary retirement was accepted and he came to be retired as having voluntarily retired with effect from 31.12.2013. Page

3. For the purpose of pensionary benefits, when the benefit of Tiku Pay Commission was denied, he made a representation to the State Government, but the same was rejected by order dated 24.12.2013, to the extent of extending benefit of Tiku Pay Commission, for the benefit of fixation of pensionary benefits. The Government has placed reliance on Government Resolution dated 11.05.2001 for denial of benefit under Tiku Pay Commission recommendations for the purpose of fixation of pensionary benefits.

4. The learned Single Judge by recording a finding that the Government Resolution dated 11.05.2001 cannot be applied to the respondent and further holding that in similar cases to that of the respondent herein, Government has already extended the benefit of the recommendations of Tiku Pay Commission for fixation of pension, has allowed the petition by issuing directions to extend the benefit of the recommendations of Tiku Pay Commission and to re-fix the pension accordingly.

5. In this appeal it is contended by the learned Assistant Government Pleader appearing for the appellants that the State Government has passed Government Resolution on 17.10.1994 to give benefits of the recommendations of Tiku Pay Commission and the said benefit was extended, as per the terms and conditions mentioned therein, for the respondent. It is submitted that the respondent took voluntary retirement with effect from 31.12.2013 on account of his permanent disability and the same was accepted vide order dated 24.12.2013. In view of the voluntary retirement, pension of the respondent was sanctioned by the Director of Pension and Provident Fund and the same was determined on the basis of his original pay scale with increment without the benefits of the recommendations of Tiku Pay Commission. It is contended by the learned Assistant Government Pleader that in view of the Government Resolution dated 11.05.2001 when an employee takes voluntary retirement he/ she is not entitled to the benefits of the recommendations of Tiku Pay Commission while considering the pensionary benefits. It is submitted that the learned Single Judge has misconstrued the above said Government Resolution while deciding the case. It is further the say of the learned AGP that second part of para 3 in the Government Resolution refers to those employees who have taken voluntary retirement and the period mentioned in the first part, viz. 14.11.1991 to 16.10.1994 will not apply to those who have retired on voluntary retirement basis.

6. On the other hand it is submitted by Ms.Mauna M. Bhatt, learned counsel for the respondent- original petitioner that the respondent had worked as Medical Officer from September 1985 to 31st December 2013 as Class-II Officer. It is submitted that he was already given the benefit of the recommendations of Tiku Pay Commission from 04.09.1991, viz. on completion of six years of continuous

service. Again he was also given further benefit on completing 13 years of continuous service with effect from 04.09.1998. It is submitted that as he suffered stroke of paralysis in the year 2012, resulting into 75% permanent disability he had to apply for voluntary retirement and on acceptance thereof he was retired voluntarily. It is the say of the learned counsel for the respondent-original petitioner that by misinterpreting the Government Resolution dated 11.05.2001, the appellants have wrongly denied the benefit of the recommendations of Tiku Pay Commission while fixing the pay. It is submitted that in view of the reasons assigned by the learned Single Judge, there are no merits in this appeal so as to interfere with the order of the learned Single Judge.

7. From a reading of Government Resolution dated 11.05.2001 it is clear that Medical Officers are not entitled to dual benefits of senior scale as well as the benefit of the recommendations of Tiku Pay Commission. Without going into the controversy, namely, whether the period from 14.11.1991 to 16.10.1994 applies to the case of the respondent or not, it is clear from the Government Resolution itself that it is issued to clarify that the Medical Officers are not entitled to the dual benefit of senior scale as well as the recommendations of Tiku Pay Commission. As it is not disputed that the respondent was not entitled to the benefit of senior scale, there is no reason or justification for denying the benefits of the recommendations of Tiku Pay Commission. When the respondent-original petitioner has not availed any benefit of senior scale, in which event the question of double benefit will not arise so as to apply Government Resolution dated 11.05.2001.

8. There is also yet another reason to reject this appeal. There is specific averment made in paras 10 and 11 of the petition by the respondent- original petitioner stating that similarly placed persons to that of the respondent- original petitioner, namely, (i) Dr.A.J. Oza, (ii) Dr.Hemant B. Patel, and (iii) Dr.M.J. Gupta, who have voluntarily retired as Class-II officers were also extended the benefit of the recommendations of Tiku Pay Commission for pensionary benefits, but the same was not dealt with in the reply filed by the appellants herein in the petition. As much as the appellants have not rebutted such allegations in the reply, they have to be taken as admitted facts. In that view of the matter there is no reason or justification to make differentiation among similarly placed officers for the purpose of extending the benefit of the recommendations of Tiku Pay Commission. The learned Single Judge has also taken note of such discrimination among similarly placed persons while allowing the petition filed by the respondent- original petitioner.

9. It is clear for us that Government Resolution dated 11.05.2001 cannot be applied to the case of the respondent and further similarly placed persons to that of the respondent were already extended the benefit of the recommendations of Tiku Pay Commission, we are of the view that there is no reason or justification in denying such benefit to the respondent- original petitioner, who had served the appellant-Department from September 1985 to 31st December 2013 as Medical

Officer Class-II. It is needless to observe that he was compelled to take voluntary retirement in view of disability suffered by him on account stroke which resulted into disability of paralysis to the extent of 75%.

10. For the aforesaid reasons we are of the view that no error is committed by the learned Single Judge so as to interfere with the order of the learned Single Judge dated 20.07.2015 passed in Special Civil Application No.12033 of 2014. For the aforesaid reasons this Letters Patent Appeal is devoid of merits. The same is dismissed accordingly. No order as to cost.

11. The appellants are directed to issue revised pensionary orders by applying the recommendations of Tiku Pay Commission within the period of two months from today.