

HIGH COURT OF GUJARAT

DINESHKUMAR MAVJIBHAI CHAUHAN

Versus

MANAGING DIRECTOR AND ORS

Date of Decision: 02 September 2013

Citation: 2013 LawSuit(Guj) 1255

Hon'ble Judges: [C L Soni](#)

Case Type: Special Civil Application

Case No: 18226 of 2007

Subject: Constitution

Acts Referred:

[Constitution Of India Art 226](#)

Final Decision: Petition allowed

Advocates: [G M Amin](#), [Ronak Raval](#), [Dhaval M Barot](#), [R C Jani](#)

C L Soni, J.

[1] In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed to direct the respondents to grant pension benefits to the petitioner.

[2] It is the case of the petitioner that he was initially appointed as Work Charge Technical Assistant at Panchayat Sub Division, Tharad, District Banaskantha on 21.3.1969 by Executive Engineer, Banaskantha District Panchayat Division, Palanpur. Thereafter, the petitioner was promoted as Mechanical Supervisor on 20.12.1972. On formation of the Gujarat Water Resources Development Corporation Ltd, there was enblock transfer of employees of the District Panchayat to the Corporation on 16.7.1978. The petitioner gave option to treat him in the Corporation from 14.12.1981 as per the resolution passed by the Government. The petitioner retired as an Executive Engineer on 30.11.2003. It is the case of the petitioner that though he had made several representations, no action was taken by the concerned respondent authority. However, the District Development Officer ordered to pay the petitioner only gratuity on 2.4.1994. It is the case of the petitioner that ultimately he served notice dated 29.7.2006 to the respondents for his claim of pension but of no avail. It is the case of

the petitioner he had completed more than 10 years of panchayat service and became eligible for pension for the services rendered with the District Panchayat.

[3] The petition is opposed by affidavit in reply filed on behalf of respondent NO.1. The stand taken by respondent no.1 is that considering the date of joining service of the petitioner as Assistant Work Charge Technician on 21.3.1969 with respondent No.2 and the date 15.7.1978 on which the petitioner was transferred enblock to respondent No.1 Corporation, total service rendered by petitioner with respondent NO.2 was between 21.3.1969 to 15.7.1978 means 9 years, 3 months and 25 days and, therefore, the petitioner is not entitled to the benefit of pension.

[4] I have heard learned advocates for the parties.

[5] Learned advocate Mr.G.M.Amin appearing for petitioner submitted that when the petitioner was transferred en-block in the corporation, there was no resolution for permanent absorption of the petitioner in the Corporation, therefore, he could be only on deputation in the service of the corporation. Learned advocate Mr. Amin submitted that when the Government issued resolution dated 14.10.1981 providing for absorption of panchayat employees on exercise of option by them, the petitioner had already completed more than 10 years of service as panchayat employees. Learned advocate Mr. Amin submitted that the period after the petitioner was were en-block transferred in the year 1978 till 1981, when the Government issued the resolution, since to be treated as on deputation in the services of the corporation as panchayat employees, said period of deputation of the petitioner cannot be counted in the services of the corporation as permanent employees of the corporation. Learned Advocate Mr. Amin submitted that though by subsequent resolution issued by the Government in the year 1990, it was provided by the State Government that the seniority of the employee taken in the services of the corporation would be counted from the date of joining the services of the corporation, same was only for the purpose of seniority in the corporation and cannot take away the right of the petitioner to have services for the period between en-block transfer of petitioner to the date of resolution considered for the purpose of pension. Learned advocate Mr. Amin submitted that the very issue involved in these petitions is no longer res-integra and in fact, covered by the decision of this Court in the case of Narubha Mahobatsinh Jhala versus District Development Officer and Ors., in Special Civil Application No. 6690 of 1989 decided on 1.8.2000 and in subsequent petitions. He, thus, urged to allow the petitions.

[6] As against the above arguments, learned Asstt.G.P. Mr. Ronak Raval appearing for Respondent State Authorities submitted that since the petitioner was transferred in the year 1978 to the Corporation, he could not be said to have completed minimum 10 years of panchayat service to become eligible for pension. Learned A.G.P. Mr. Raval

submitted that the Government in subsequent resolution dated 18.1.1990 provided that the seniority of the panchayat employee transferred to Corporation shall be counted from the date of his joining the Corporation and, therefore, services of the petitioner rendered till 1978 could be said to be panchayat services and rest of the services after 1978 could be said to be the services in the Corporation and, therefore, the petitioner could not be made entitled to pension benefits for the services rendered by him with the respondent District Panchayat. He, thus, urged to dismiss the petition.

[7] Learned Advocate Shri Dhaval Barot appearing for respondent No.2 submitted that since the petitioner was transferred to the corporation in the year 1978, he could be said to have rendered his services in the panchayat till 1978 and, therefore, he would not be completing 10 years of service in the panchayat for the purpose of pension benefits. Learned Advocate Mr. Barot submitted that even after the Government issued resolution in the year 1981, seniority of the petitioner in the corporation since counted from the date of their joining in the corporation as per the resolution dated 18.1.1990, the petitioner would not be entitled to have his services for the period between 1978 to 1981 considered for the purpose of pension.

[8] Learned Advocate Mr. R.C. Jani appearing for respondent Corporation while adopting the arguments of learned advocate Shri Dhaval Barot, submitted that since the petitioner was transferred en-block in the corporation, the petitioner was treated as an employees of the corporation right from the year 1978. Learned Advocate Mr. Jani submitted that though the Government has issued resolution dated 14.10.1981 for absorption of panchayat employees on their exercising option, however, by virtue of the second resolution dated 18.1.1990, services of such employees were required to be treated in corporation from the date of their joining i.e.1978. He, therefore, submitted that the petitioner could not be said to have completed more than 10 years of service with respondent no.1 District Panchayat and, therefore, he cannot be made entitled to pension benefits.

[9] Having heard the learned advocates for the parties and having perused the record of the case, it appears that there is no dispute about the fact that from panchayat service, the petitioner was en-block transferred with other panchayat employees to respondent - corporation. However, such transfer of the petitioner to the corporation could only be by way of deputation as there was no resolution of the Government treating the petitioner and other panchayat employees as finally absorbed in the services of the corporation. It is required to be noted that the petitioner had completed minimum 10 years of service including period of deputation before issuance of resolution dated 14.10.1981. By resolution dated 14.10.1981, panchayat employees were asked to exercise option either to be with the corporation or in the panchayat services. However, as provided in the resolution dated 14.10.1981, the employees

were to be treated on deputation in the Corporation till two months from the date of resolution. Thus, if the petitioner could be said to be on deputation in the Corporation till December, 1981, such period of services of the petitioner could be said to be in the district panchayat because he could be said to have his lien with the District Panchayat.

[10] Contention raised by Learned A.G.P. that by virtue of subsequent resolution dated 18.1.1990, seniority of the employees like petitioner would be counted from the date of their joining services of the corporation and, therefore, from the date of enblock transfer, the services of the petitioner could be said to be the services in corporation cannot be accepted for the simple reason that the said resolution could not take away effect of the services of the petitioner rendered as deputationist between 1978 to 1981.

[11] This Court, in the decision rendered in the case of Narubha Mahobatsinh Jhala had an occasion to consider the similar issue and on consideration of the resolution dated 14.10.1981 issued by the State Government, held and observed in the said decision as under:

"The short question that arises before me is, as to whether the petitioner is entitled to take the benefit of resolution, dated 14.10.1981 and seek addition of period of his service in the Corporation for claiming pensionary benefits. Relevant part of resolution has already been quoted above. It is not made clear in the resolution dated 14.10.1981 that work-charged employees are outside its purview. Even if the petitioner was workcharged employee, he could have claimed a right not to seek transfer to the Corporation service but to seek employment elsewhere. Since his services were compulsorily transferred without taking any option from him under the resolution dated 14.10.,1981 along with other employees transferred from different departments, he would be deemed to be work-charged employee on deputation from the service of the Panchayat to the services of the Corporation. Period of service, therefore, spent by him in the Corporation has to be added to his pensionary service. It is also not in dispute that the petitioner on attaining superannuation age of 58 years, has retired on 30.4.1988 and before his retirement, had not exercised any option to be absorbed in the services of the Corporation. Subsequent resolution on which reliance has been placed on behalf of the State, therefore, cannot be made applicable to him as the same has been issued after his retirement."

[12] On the above consideration, the Court in the said petition directed the respondents to make available the benefits of pension to the petitioner by treating his services as panchayat services. Though in the present petition, when the resolution dated 18.1.1990 was issued by the State Government, the petitioner were in service,

the same shall not convert the services of the petitioner rendered on deputation from 1978 to 1981 as services of permanent employees of the corporation, especially when the petitioner had completed 10 years of panchayat service with deputation before the resolution dated 14.10.1981 was issued. In any case, when the resolution dated 14.10.1981 provided for extended period of deputation, petitioner is required to be held entitled to pension benefits considering their services rendered upto 14.10.1981 as panchayat services.

[13] During the course of hearing, learned advocate Mr. Amin stated that the petitioner would like to make representation for the claim of interest before the respondent authorities. The Court has, therefore not gone into such claim of interest in this petition. It is left open to the petitioner to make representation for claim of interest on the amount of pension to be paid to the petitioner.

[14] For the reasons stated above, the petition is partly allowed. It is held and declared that the petitioner has completed more than 10 years of panchayat services and is thus held entitled to pension benefits on the basis of such panchayat services rendered by him. The Respondent No.2, 4 and 5 are directed to take necessary action for finalizing the pension of the petitioner. The respondent No.2 and 4 are directed to work out and pay the pension benefits to the petitioner within a period of three months from the date of receipt of this order. Rule is made absolute to the extent stated above.

Levons Technologies Pvt. Ltd.