

HIGH COURT OF GUJARAT

KANTILAL KESHAVLAL PATEL

Versus

AHMEDABAD JILLA PANCHAYAT AND ORS

Date of Decision: 22 October 2013

Citation: 2013 LawSuit(Guj) 1707

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

Case Type: Special Civil Application

Case No: 10356 of 2006

Subject: Constitution

Acts Referred:

[Constitution Of India Art 226](#)

Final Decision: Petition allowed

Advocates: [N M Kapadia](#), [Ronak Raval](#), [R C Jani](#), [R V Acharya](#)

C. L. Soni, J.

[1] The petitioner has prayed for pension benefits with interest from the date of retirement by filing this petition under Article 226 of the Constitution of India.

[2] The case of the petitioner is that he was appointed by respondent No.1 District Panchayat on 7.11.1968 and was transferred en-block with other employees on 16.6.1978 to the respondent No.2 Corporation. From the service of the Corporation, the petitioner resigned voluntarily on 3.10.1998. It is the further case of the petitioner that the petitioner was entitled to pension benefits for the services rendered by him with the District Panchayat. However, he was not given such benefits. Therefore, the petitioner made representations in August 1999 and thereafter on 3.12.2005. The Executive Engineer of the District, however, informed the petitioner to contact the subordinate office for grant of pension if permissible under the law. It is the case of the petitioner that till 17.6.1978, he had completed nine years, six months and few days of service with the District Panchayat. However, by virtue of the subsequent resolution issued by the State Government dated 14.10.1981 issued by the State Government, the services of the petitioner as Panchayat employee were required to be treated on

deputation with the Corporation till at least the date of issuance of the resolution dated 14.10.1981 and if so considered, the petitioner would complete more than 10 years of service and therefore, as held by this Court in Special Civil Application No.6690 of 1989, the petitioner would become entitled for pension benefits for the services rendered by him with the Panchayat.

[3] The petition is opposed by affidavit-in-reply filed by the District Development Officer stating that as per the resolution of the Finance Department of the State Government, only when employee completes 10 years of service, he could be entitled to pension benefits. The service period of the petitioner has been counted from 13.11.1968 till 15.6.1978 and therefore, under no circumstances, the petitioner could be given pension benefits.

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

[5] Learned advocate Mr. N.M. Kapadia appearing for the petitioner submitted that till the Government issued resolution dated 14.10.1981, the petitioner was on deputation with the Corporation. Mr. Kapadia submitted that even as per the resolution dated 14.10.1981, service of the petitioner after his en-block transfer in 1978 was required to be treated as on deputation for further two months after issuance of the resolution. Mr. Kapadia submitted that this Court in Special Civil Application No.18226 of 2007 and allied matters has taken a view that till the date of resolution dated 14.10.1981, an employee transferred en-block is to be treated on deputation and if completed 10 years of service with the Panchayat, then such employee could be made entitled for pension benefits. Mr. Kapadia thus urged to allow this petition.

[6] As against the above arguments, learned Assistant Government Pleader appearing for respondent No.3 submitted that the reply affidavit is filed pointing out that the petitioner has not completed 10 years of service as service period of the petitioner has been counted from 13.11.1968 till 15.6.1978 and therefore, the petitioner was not made entitled to pension benefits. However, Mr. Raval could not dispute the view taken by this Court holding that employees, like the petitioner, who were en-block transferred in 1978, they were to be treated on deputation till the date of resolution dated 14.10.1981.

[7] Learned advocate Ms. R.V. Acharya appearing for respondent No.1- District Panchayat also could not dispute the above view taken by this Court except saying that the petitioner had completed less than 10 years of service before the petitioner was en-block transferred to the Corporation.

[8] Learned advocate Mr. R.C. Jani appearing for respondent No.2 raised similar contentions as raised by learned Assistant Government Pleader Mr. Raval and learned

advocate Ms. Acharya.

[9] Having heard learned advocates for the parties and having perused the record of the case, it appears that there is no dispute about the fact that after the petitioner was appointed on 7.11.1968, the petitioner served with the District Panchayat till 16.6.1978 when he was en-block transferred with other Panchayat employees to the respondent No.2 Corporation. Thereafter, the petitioner continued to serve with the Corporation on deputation till the resolution dated 14.10.1981 was passed. By resolution dated 14.10.1981, the Government provided for absorption of the Panchayat employees in the Corporation. However, even in the resolution dated 14.10.1981, it is clearly provided that District Panchayat employees transferred en-block shall be treated on deputation at least for a period of two months from the date of the resolution. Thus, the petitioner could be said to be on deputation till two months after the resolution dated 14.10.1981.

[10] This Court has already taken a view in Special Civil Application No.18226 of 2007 that the services rendered by the Panchayat employees after they were transferred en-block in the year 1978 till the date of issuance of the resolution in 1981 are required to be treated on deputation and if so treated, the petitioner would complete 10 years of service with the Panchayat. This Court has also held that subsequent resolution dated 18.1.1990 treating the Panchayat employees transferred en-block as absorbed from the date of transfer cannot take away the effect of deputation provided by the resolution dated 14.10.1981. In light of the said view taken by this Court in the above-said petition, this petition is required to be allowed.

[11] However, since the petitioner has approached this Court in the year 2006, the petitioner could be conferred the pension benefits from the date of filing of the petition.

[12] The petitioner has prayed for interest. However, since the petitioner could not be said to have been deliberately denied the benefit of pension, the respondents cannot be saddled with interest liability. Hence, the prayer for interest is refused.

[13] For the reasons stated above, the petition is allowed. It is held and declared that the petitioner has completed more than 10 years of panchayat service and thus is held entitled for the benefits of pension on the basis of the Panchayat service rendered by him for the period from 13.11.1968 to 14.10.1981. However, the petitioner shall be entitled to such pension benefits from the date of filing of the petition. The respondent Nos.1 and 3 are directed to take necessary action for finalizing the pension of the petitioner for the aforesaid service rendered by the petitioner and to release pension benefits in favour of the petitioner within a period of THREE MONTHS from the date of receipt of this order. Rule is made absolute to the aforesaid extent.