

HIGH COURT OF GUJARAT

AMRUTLAL C THAKKAR

Versus

STATE OF GUJARAT & 4

Date of Decision: 07 September 2017

Citation: 2017 LawSuit(Guj) 1393

Hon'ble Judges: [K M Thaker](#)

Case Type: Special Civil Application

Case No: 17239 of 2006

Final Decision: Petition allowed

Advocates: [Vacha J Nanavati](#), [Swapneshwar Gautam](#), [Premal R Joshi](#), [R C Jani](#)

K M Thaker, J.

[1] Heard Ms. Desai, learned advocate for petitioner and Mr. Gautam, learned AGP for respondent State and Mr. Joshi, learned advocate for respondent no.3. Other respondents are not present.

[2] In the present petition, the petitioner has prayed, inter alia, that:

"10(A) Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction, to pay the amount of interest at the rate of 15% p.a. Calculated from 29.11.1999 on the amount of pension, gratuity, arrears of leave salary, etc. as per the details given at Annexure-J & K to this petition.

(B) Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction, to pay the amount of Rs.22,932/- being the amount claimable and not paid till date in respect of Commuted Value of Pension and be further pleased to direct the respondents to pay the said amount with interest @ 15% from 16.1.2000 till the date of actual payment."

[3] From the relief prayed for by the petitioner, it comes out that the petitioner has taken out the present petition only to enforce his demand for interest.

[4] Ordinarily, this Court would not exercise prerogative writ jurisdiction and would not entertain a petition, which is filed only for enforcing claim for interest and Court would relegate such claimant, who seeks direction only for payment of interest, to ordinary civil remedy.

[5] However, having regard to the fact that for long time the petitioner was allegedly deprived of the payment of retiral benefits and it is for the period of such delay in payment of retiral benefits that petitioner seeks interest and also having regard to the fact that the petitioner is a senior citizen, the Court considered it appropriate to indulge the petition.

[6] Initially the learned advocate for petitioner raised dispute with regard to the very foundation and the fact which would entitle the petitioner for retiral dues inasmuch as the petitioner disputed the decision about his voluntary retirement. Learned advocate for petitioner initially raised such dispute or grievance in light of the order dated 6.1.2005 passed by the Respondent Corporation. The learned advocate for petitioner also made reference of Order dated 4.1.2005, 9.2.2005 and 17.02.2005 (Annexures "O", "P", "Q" and "R" at page Nos. 67 to 71).

[7] However, subsequently upon considering the submission by learned advocate for District Development Officer and learned AGP and more particularly in light of the order dated 9.2.2005, learned advocate for petitioner admitted and accepted that the petitioner stands retired from service by way of voluntary retirement with effect from 15.1.2000.

[8] Actually, the petitioner has raised the claim for interest on that very premise i.e. he stood relieved from service on the ground of voluntary retirement on 15.1.2000 and that therefore he was entitled for all retiral benefits like Pension, Gratuity, leave encashment etc. on 16.1.2000, however said amounts were not paid for long trime and that therefore the respondents, according to the petitioner, should pay interest for the period of delay in payment of said amounts.

[9] From the order passed by this Court on 24.8.2017, it would emerge that so far as the respondents are concerned there was an inter se dispute between the respondents about the liability to pay retiral benefits including gratuity and pension.

[10] However, today Mr. Joshi, learned advocate for District Development Officer, in pursuance of Order dated 24.8.2017, submitted that atleast one factual aspect is clear from the history of the case, that the respondent State was not responsible to pay said amounts and it is not responsible to pay interest. Under the circumstances, now the inter se dispute with regard to liability to pay retiral benefits and consequently the

dispute with regard to responsibility and liability to pay interest survives between Office of District Development Officer and the Corporation.

[11] The Court would not enter into the said controversy i.e. whether the Office of District Development Officer is responsible to pay retiral dues and consequently interest or the said liability rests with the Corporation. It is for the said parties to resolve the issue and in case the said dispute is beyond the scope of the petition.

[12] Therefore, so far as the dispute between the said 2 authorities is concerned, it is directed that the respondent no.1 State, after discussion with Office of District Development Officer and office of Managing Director of the Corporation, shall decide the said dispute and pass appropriate direction/ or within 4 weeks form receipt of the certified copy of this Order and the concerned Office shall abide by the said direction.

[13] Now so far as the petitioner's grievance is concerned, the first and fundamental factual aspect required to justify the claim for pension, gratuity, leave encashment etc. i.e. retiral dues on voluntary retirement in accordance with applicable Rules is clarified. The petitioner has accepted and admitted that he stood voluntary retirement in accordance with the applicable Rules with effect from 15.1.2000.

[14] It has come out from the record that the petitioner had raised same dispute by way of Appeal No. 421 of 2000 which came to be decided by learned Tribunal on 18.8.2004. The subject matter of the dispute raised by the petitioner and the conclusion/ direction by learned Tribunal emerge from below quoted observation from the order dated 18.8.2004 by learned Tribunal:

"We have considered the plea on behalf of the appellant as well as respondents. The facts of the case are discussed above and it is clear that the appellant is governed by the G.R. of 18.4.2000. The point has been further continued by the clarifications given by the Narmada and Water Resources and Water Supply Department vide their office letter datd 26.5.04. Further the Panchayat, Housing and Rural Development Deptt. Vide their office letter dt. 14.7.01 (No. PRCH/10/2002/563/D) have also stated that they have no further submission in the matter apart from the clarifications given by the N.W. & W.S. Deptt. In result the plea of the appellant has to be accepted. The District Panchayat-Kachchh has of course represented that the appellant shall be entitled to pensioners beNefits after the G.W.R.D.C takes certain actions including depositing the pension and leave salary contributions in the Government Treasury. We feel that this is a mater between the different organs of the Government G.W.R.D.C is of course the Corporation but it is a Government Corporation and therefore the District Panchayat and the Corporation should settle the matter of leave and pension contribution

between themselves expeditiously. This, however, should not come in the way of appellant getting his pension. He has already retired more than 4 years also. We think that the case of his pension should be decided as expeditiously and the matter of leave and pension contribution from the G.W.R.D.C through the District Panchayat can be settled separately and should not hold up the pension of the appellant. We, therefore, pass the following order"

ORDER

The appeal is accepted. The respondent No.2 is directed to grant pensionary benefits to the appellant as per the G.R. of 18/4/2000 of the Narmada Water Resources and Water Supply Deptt. within a period of 3 months."

[15] It is not in dispute that the said order has attained finality and both, the State and even the petitioner have accepted the said order.

[16] In this background, it becomes clear that (i) at the relevant time the learned Tribunal did not pass any direction with regard to interest; (ii) however, the petitioner's entitlement for interest for period of delay, cannot be denied, if delay in actual payment is established.

[17] From the document dated 1.03.2000 at Annexure "I" page-47 of the Petition, it comes out that concerned authority had offered payment of Rs.3,80,440/-. Mr. Gautam, learned AGP submitted and clarified that the said amount of Rs.3,80,440/- included petitioner's entitlement for gratuity and leave encashment.

[18] The said factual aspect is not controverted by the petitioner. It appears that the petitioner had some grievance about the quantification of the amount and on account of non-inclusion of pension.

[19] Be that as it may, but the petitioner preferred to refuse to accept the said amount and returned the offer for payment of Rs.3,80,440/-.

[20] At this stage, the learned advocate for the petitioner clarified that subsequently the petitioner accepted the said payment. It is pertinent to note that even at this stage it is not the claim or allegation of the petitioner that there is shortfall or error in calculation of amount payable towards gratuity and leave encashment. The petitioner has accepted said payment as correct and full/ complete payment of said benefit/ discharge of said dues.

[21] Under the circumstances, it is necessary and appropriate to clarify at this stage the petitioner shall not be entitled for payment of interest in respect of gratuity and leave encashment i.e. in respect of Rs.3,80,440/-.

[22] This leaves behind the petitioner's grievance for delay in payment of pension and computed pension. From the details mentioned by the petitioner, it appears that the respondent started payment towards pension in December, 2005 whereas the payment towards computed pension came to be paid in January, 2006. The said amounts and benefit should have been paid immediately after petitioner's retirement and such long delay of almost 5 years cannot be ignored.

[23] Under the circumstances, the petitioner would be entitled to interest at the rate of 9% for period of delay i.e. from 16.1.2000 to December, 2005 towards payment of pension.

[24] After the respondent no.1 State Government decide the responsibility of the department (i.e. the Office of District Development Officer or the Corporation, as the case may be) as the department liable to pay pension in accordance with Rules, the said department shall pay the interest to the petitioner within 4 weeks from the date of receipt of the decision by the State Government.

[25] With the aforesaid direction and clarification, the petition is partly allowed. Rule is made absolute to the aforesaid extent.