

HIGH COURT OF GUJARAT

CHANDRAN K (CHANDRAN KASU EZHUVA)

Versus

GUJARAT WATER SUPPLY AND SEWERAGE BOARD & ANR

Date of Decision: 08 July 2025

Citation: 2025 LawSuit(Guj) 1662

Hon'ble Judges: [N S Sanjay Gowda](#)

Case Type: Special Civil Application

Case No: 11184 of 2022

Subject: **Civil**

Final Decision: Petition allowed

Advocates: [Harshal N Pandya](#), [Vishrut R Jani](#), [R C Jani & Associate](#)

N S Sanjay Gowda, J.

[1] These facts are not in dispute.

1.1. On 5.2.1976, the petitioner was appointed as a Temporary Work-charge Helper in the respondent Board and on 19.3.1979, his services were regularized.

1.2. In the month of July 2023, the Board called upon the petitioner to furnish his school leaving certificate in order to enable it to extend the benefits of 6 th Pay Commission. On school leaving certificate being furnished by the petitioner, the Board instead of extending the benefits of 6 th Pay Commission proceeded to pass an order on 27.8.2009 holding that as per the school leaving certificate furnished, the petitioner would attain the age of superannuation on 30.6.2010. This was on the basis that in the school leaving certificate, his date of birth was shown as 1.6.1952, as against the date of birth recorded in the service register as 11.11.1955.

1.3. The petitioner, thereafter, preferred a petition being Special Civil Application No.4280 of 2010 before this Court challenging the said order, which was disposed of by this Court on 26.4.2010, holding that the order passed by the Board was

opposed to the principles of natural justice and this Court directed the Board to reconsider the matter afresh after hearing the petitioner.

1.4. Pursuant to the said order, a show cause notice dated 27.4.2010 was issued, to which a reply was furnished by the petitioner on 17.5.2010. However, the Board was not inclined to accept the cause shown by the petitioner and it proceeded to reiterate its decision to retire the petitioner with effect from 30.6.2010, by considering his date of birth as 1.6.1952.

1.5. The petitioner challenged the said order by filing Special Civil Application No.6836 of 2010. However, the Board proceeded to relieve the petitioner with effect from 30.6.2010.

1.6. On 26.12.2018, i.e. 8 years after relieving of the petitioner, this Court accepted the plea raised by the petitioner along with two other similarly placed petitioners and allowed their writ petitions. In fact, this Court imposed cost of Rs.5,000/- on the Board.

1.7. The Board, being aggrieved by the said order, preferred an appeal being Letters Patent Appeal No.1318 of 2019. But, a Division Bench of this Court dismissed the appeal by order dated 3.7.2019.

1.8. The Board carried the matter to the Supreme Court by filing Special Leave Petition No.20430-20432 of 2019. However, the Supreme Court also dismissed the said SLP on 31.8.2021.

1.9. Thus, the order by which the petitioner was ordered to be superannuated with effect from 30.6.2010 was quashed and upheld even by the Apex Court. As a consequence, it cannot be in doubt that there was no order of retirement in existence and the petitioner was deemed to have continued in service till he attained the age of superannuation, i.e. on 30.11.2013.

1.10. In view of the fact that the petitioner was not given any consequential benefits, despite the order retiring him having been quashed, the petitioner initiated the contempt proceedings before this Court being Misc. Civil Application No.490 of 2019.

1.11. During pendency of the contempt proceedings, an office order No.72 of 2021 was passed by the Board, by which it treated the petitioner to have retired from 30.11.2013 and on that premise, it also went to calculate the consequential benefits, including the arrears of pay, difference of gratuity, leave encashment and benefit of higher pay scale and paid the same to the petitioner. However, while

making the above computation, the Board did not take into consideration its share of contribution to the provident fund and also the transport allowance for the period during which the petitioner was out of service i.e. from 1.7.2010 to 30.11.2013.

1.12. The petitioner is, therefore, before this Court challenging the computation insofar as it excludes the components of the employer's contribution of provident fund and the transport allowance while paying the consequential monetary benefits.

[2] It may be pertinent to note here that the contempt proceedings initiated by the petitioner was dropped by this Court by order dated 25.1.2022. However, while dropping the contempt proceedings, the Division Bench held that if there is any amount due to the complainant, i.e. the petitioner herein, he would be at liberty to work out his rights in accordance with law. Thus, the Division Bench has reserved the rights of the petitioner to claim any sum that was due to him and as a consequence, this Court will have to examine whether the petitioner would be entitled to the sum which is not claimed him, i.e. provident fund contribution and transport allowance.

[3] It is the case of the petitioner that once the order retiring him was quashed, in law, he is deemed to have continued in service and as a consequence, the employer would be bound to pay employer's contribution to the provident fund. Merely because the provident fund account was closed because of his unlawful termination, that would not exonerate the liability of employer to pay its contribution to the provident fund once it was held that the termination was illegal.

[4] Similarly, it is contended that as the petitioner is deemed to have continued in service, he would necessarily have to be paid all allowances, that were required to be paid on the assumption that he was in service.

[5] It is contended that since the petitioner was kept out of service illegally, the employer cannot be permitted to take advantage of its own wrong and contend that since the petitioner did not travel to his work place, he would not be entitled to the transport allowance.

[6] Learned counsel appearing on behalf of the respondent Board while not disputing the facts mentioned above, however, contended that the Board could not have contributed the amount into the account of the petitioner since the petitioner's PF account was closed, the moment he was out of service. The Board contends that contribution to provident fund of an employee would be paid only if the employee was in service and since the petitioner was not in service, liability to contribute its share to PF account would not arise.

[7] Similarly, it is contended that since the transport allowance is granted to an employee to travel to the work place, the Board would not be liable to pay the said amount since indisputably, the petitioner by virtue of being out of service did not travel to the work place from 2010 till 2013.

[8] In light of the above arguments, the only question to be considered is as to whether the petitioner would be entitled to be paid the employer's contribution to its provident fund and also the transport allowance for the period during which he was out of service.

[9] As narrated above, it is not in dispute that the order retiring the petitioner with effect from 30.6.2010 was quashed and this order was upheld even by the Apex Court. As a necessary consequence, in law, there was no order of retiring the petitioner with effect from 30.6.2010 at all and the order that was passed was non est. If there was no order of retirement, the Board cannot use that as an excuse to escape from its liability of paying its share of contribution to the petitioner's provident fund. It is to be stated here that the provident fund account was closed due to the act of the Board and the closure of account cannot be attributed to the petitioner in any manner whatsoever.

[10] The Board has framed Regulations, titled as Contributory Provident Fund Regulation, 1983, which is produced at Page 98- A of the writ petition. Regulation 13 of the said Regulations read as under:-

"13 Contribution by Board :-

(1) The Board shall make a contribution to the account of each subscriber every year on 31 st March.

Provided that if a subscriber quits the service or dies during any month contribution shall be credited to his account for the period between the close of the preceding year and the date of quitting the service or the date of death as the case may be:

Provided further that no contribution shall be payable in respect of any period for which the subscriber is permitted under the Regulations not to or or does not-subscribe to the fund.

(2) The contribution shall be made at the rate of 8 1/3% of the subscribers' emoluments drawn on duty during the month or period as the case may be.

Provided that if through oversight or otherwise, the amount subscribed is less than the minimum subscription payable by the subscriber under regulations 10 and. It the short subscription together with the interest accrued thereon is not paid by the sub-subscriber within three months from the date of intimation received by the

subscriber. In this behalf the contribution, payable by the Board shall be equal to the amount actually paid by the subscriber or the amount normally payable by the Board whichever is less.

(3) If a subscriber is on deputation out of India, the emoluments which he would have drawn had he been on duty in India shall for the purpose of this Regulations be deemed to be emoluments drawn on duty.

(4) Should a subscriber elect to subscribe during leave, his leave salary shall for the purposes of this Regulations, be deemed to be emoluments drawn on duty.

(5) Should a subscriber elect to pay arrears of subscription, the emoluments or portion of emoluments, which he may be allowed for that period on reinstatement, shall for the purpose of this Regulation, be deemed to be emoluments drawn on duty.

(6) The amount of any contribution payable in respect of a period of Foreign-service shall unless it is recovered from the foreign employer, be recovered by the Board from the subscriber.

(7) The amount of contribution payable shall, be rounded to the nearest whole rupee fifty paise counting as the next higher rupee."

[11] As could be seen from the Regulation 13(1), the Board is required to make a contribution to the account of each subscriber and as per sub-Regulation (2), the contribution is to be made at the rate of 8 1/3% of the subscribers' emoluments drawn on duty during the month or period as the case may be.

[12] A conjoint reading these two Regulations would thereby indicates that when emoluments are drawn, the Board is required to contribute to the extent stated therein. Admittedly, in this case, the Board has accepted that the order of retiring the petitioner prematurely was unsustainable by virtue of the orders of this Court and the Apex Court and it has proceeded to pay the petitioner's emolument that was due to him. Once the Board has paid the emoluments to the petitioner, it cannot escape from its liability as imposed in Sub-Regulation (2) to pay its share of contribution to the provident fund account of the petitioner.

[13] A conjoint reading of Sub-Regulations (3) to (6) would also indicate that employer's liability to contribute to employee's provident fund would continue to subsist even if the employee was deputed outside, was on leave or on foreign service. It is, therefore, clear that so long as the employee is in service, liability to pay the employer's share of contribution would not cease. As already held also, since the

petitioner is deemed to have been in service till 30.11.2013, the employer Board would be liable to pay its share of contribution as prescribed under the Regulations, to the petitioner.

[14] As far as transport allowance is concerned, the argument of the Board is that since the petitioner did not travel to the work place for three years, he will not be entitled for being paid the transport allowance. The said argument is to be stated, only to be rejected. The Board by retiring the petitioner prematurely prevented the petitioner from traveling to the workplace. This order retiring the petitioner prematurely was found to be illegal and was quashed. In other words, this Court found that the Board has committed a wrong in retiring the petitioner prematurely and, therefore, the Board cannot take advantage of its own wrong to contend that it is not liable to pay the transport allowance.

[15] It is no-doubt true that the petitioner did not travel to the work place by virtue of the order retiring him prematurely. If the order of prematurely retiring him was not passed, he would have continued in service and would have definitely traveled to the work place and as a consequence, would have been entitled to draw the transport allowance. In my view, therefore, the petitioner would also be entitled for payment of the transport allowance for the period during which he was out of service.

[16] Learned counsel appearing on behalf of the Board was asked vide order dated 26.6.2025 to file a memorandum indicating the amount to be paid to the petitioner. Accordingly, the respondent Board has filed a tabular column, in which it is indicated that the total CPF contribution for the respondent would amount to Rs.2,92,894/-. Since the amount is now quantified by the Board itself, the Board shall pay the amount of Rs.2,92,894/- (Rupees Two Lac Ninety two Thousand Eight Hundred Ninety Four only) within a period of FOUR WEEKS from the date of receipt of the copy of this order.

[17] With the aforesaid observations and directions, the present writ petition is ALLOWED.