

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1262 of 1998

in

SPECIAL CIVIL APPLICATION No 8274 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JAYVANTRAY PRAMODRAY BUCH

Versus

STATE OF GUJARAT

Appearance:

MR DS VASAVADA for Appellant

MR ANANT DAVE, AGP, for Respondents No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 30/11/98

ORAL JUDGEMENT (Per A.L. Dave, J.)

1. Admitted. Mr. Anant Dave, learned Assistant Government Pleader, waives service of notice of admission

on behalf of the respondents. Considering the special facts and circumstances of the case and with the consent of both the parties, the matter is taken up today for final hearing.

2. We have heard Mr. Vasavada and Mr. Dave on facts. The appellant retired from service in October 1982. He had made representations repeatedly for revision in the pension and those representations has not been decided.

3. In the meantime, the appellant had preferred Special Civil Application No.3157 of 1998, which came to be rejected with the following observations by the learned Single Judge on 21st April, 1998 :-

"It will be open to the petitioner to address a representation to the concerned department requesting to pass appropriate order for the revised pension. As and when such a request is made, the same will be considered and appropriate order will be passed in accordance with law. With this observation, this petition stands rejected at this stage. D.S. permitted."

4. After passing of the above order, the appellant made representation to the authorities on April 29, 1998, but the authorities concerned paid no heed to the representation made by the appellant and, therefore, he preferred Special Civil Application No.8274 of 1998, which also came to be rejected on 29th September, 1998 with the following observations :-

"...Merely because the said representation is not decided, the petitioner cannot be permitted to approach this Court again. In view of the fact that the petitioner is claiming revised pension on the basis of his deemed date fixed as 3.5.1958 and when he was retired in the year 1982 and, therefore, it would be too much for the concerned respondent to go into the question posed by the petitioner for all these intervening period. Whether the petitioner is entitled to the increments and higher pay scale for the intervening period till the date of his retirement at a belated stage to be considered by the respondents and, therefore, they are likely to take some time. Merely because the authority has not decided the representation of the petitioner promptly is not a ground to invoke the

jurisdiction of this Court on the same facts and contentions. Apart from this, as stated in the petition, even though the petitioner retired on 30.9.1982 and the petition filed in the year 1998, the delay itself is a ground for not entertaining the petition. This Court has already directed the concerned respondent to decide the representation of the petitioner and the same has not been decided till date, the concerned respondent is once again directed to decide the representation of the petitioner within 4 months from today. Subject to this direction, this petition is rejected."

The above order is challenged in the present appeal.

5. Mr. Dave, learned Assistant Government Pleader, appearing for the respondents stated that the Government has moved the machinery for deciding the representation of the appellant.

6. Mr. Vasavada, learned advocate appearing for the appellant has produced xerox copy of a communication from the Accounts Officer (Class-I) of the Department of Health, Gandhinagar, addressed to the Administrative Officer of the very department, which indicates that the department is taking action in furtherance of the direction of this Court issued in the earlier order dated 21st April, 1998.

7. Mr. Vasavada is agitated on the observation in the impugned order that Special Civil Application is not maintainable. As can be seen, the authority has not decided the representations despite observation of this Court in Special Civil Application No.8274 of 1998 on 29.9.1998, which is a matter of serious concern. When the authority concerned is not vigilant enough to follow the directions/observations of this Court, the aggrieved party is not rendered remedyless and will certainly have a right to approach this Court again for redressal.

8. In the facts and circumstances of the case, we feel that the respondent-authorities need to be directed to take final decision on the question of revision of pension of the appellant, and to see to it that consequential orders are passed and action is taken expeditiously and, in any case, not later than 31st January, 1999. Appeal is allowed accordingly. No costs. Liberty to revive in case of difficulty.

[C.K. THAKKAR, J.]

[A.L. DAVE, J.]

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