

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 2637 OF 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

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?

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H.M.DAVE

VERSUS

THE CHIEF SECRETARY, GANDHINAGAR & ORS.

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Appearance:

MR AM MEHTA for thepetitioner.

MR VB GHARANIA for respondent Nos.1-5

None present for respondent No.6

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CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 30/04/99

C A V JUDGMENT

#. Heard learned counsel for the parties.

#. This is another matter in the series today on the Board of final hearing in which the total contribution of the respondents, the officers of the State of Gujarat of the rank of Chief Secretary, Secretary, Higher Education Commissioner, Director of Pension and Provident Fund, District Education Officer etc. not to file any reply to the special civil application. I fail to see any justification in the attitude and approach of the State of the Gujarat, its functionaries and the officers not to care to file reply to the special civil application. In the absence of the reply to the special civil application, the serious consequences follows there from are not being taken by them. Once the facts are taken to be admitted then naturally in almost all the cases the decision may go in favour of the petitioners. Though there may be few exceptions to this rule. The State of Gujarat is the biggest litigant in the courts but, it is totally ignorant of these matters or seems to be not interested to defend the same. If that is the thing, I fail to see any justification in setting of Rs.1,19,00,000/- in the budget towards the expenses of the litigation for the financial year 1998-99. In many matters, even the Government Advocates, who are putting appearance on behalf of the State of Gujarat, its functionaries, officers are not having the briefs with them. Invariably in all the cases unless otherwise court directs, nobody is remaining present from the office of the respective respondent. So, the Government Advocates even have no assistance and briefing from the office of the respondents. So, in this factual aspect, the role of the Government Advocate is only as if appearance of a guest artist. That is not the real assistance from the State of Gujarat, its functionaries and officers provided to the courts though sufficiently high and handsome amount has been set in the budget for litigation expenses. It is really a pitiable and pathetic condition of the State of Gujarat. Its position in the court as a litigant appears to be worst than that of a widow, orphan or minor.

#. The petitioner is a retired teacher filed this special civil application with the grievance that while counting his services for the purpose of pension, the services, which had been rendered by him for the period from 3/4/1948 to 15/7/52, has to be counted towards its qualifying service for pension.

#. The facts of this case in brief are that the petitioner had joined his services as Assistant Teacher in Nawanagar High School of Jamnagar on 3/4/48. He was

transferred as Assistant Teacher to Botad, Bhavnagar. On 22/4/52. He discharged his duties upto and including 15/7/52. He resigned from the said post on 15/7/52. Thereafter, he was again appointed on 2/1/56 at Nawanagar High School, Jamnagar and from this service he retired on 30/4/82 on attaining the age of superannuation.

#. The learned counsel for the petitioner contended that the services which he rendered from 3/4/48 to 15/7/52 has to be counted towards the qualifying service for fixing pension of the petitioner and, in support of this contention, he placed reliance on the decision of this court in the case of B.B.Desai Vs. Accountant General, Ahmedabad & Ors. reported in GLT Vol.XXII page 368.

#. The learned counsel for the respondent has opposed this special civil application.

#. Reply to the special civil application has not been filed and whatever the factual averments made by the petitioners therein stand uncontroverted by the respondent and as such the same are to be taken to be admitted.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. In the decision of this court in the case of B.B.Desai Vs. Accountant General, Ahmedabad & Ors. (Supra), I do not find any facts of this case in the text of the judgment. It is also not clear that the petitioner therein has resigned from the service or not. In this case there is no dispute that the petitioner has resigned from the services and he has been given the fresh appointment on 2/1/1956. However, from the reading of the judgment of this court in the case of B.B.Desai Vs. Accountant General, Ahmedabad & Ors., I find that what the learned counsel for the petitioner contends may not be absolutely without any substance or merits. But the respondent No.1 has to consider this matter in consultation with the Finance Department. It is expected of the respondent No.1 to sit together with the Secretary (Finance) in the matter and after considering all the relevant circulars, which has been issued from time to time and the decision of this court in the case of B.B.Desai Vs. Accountant General, Ahmedabad & Ors., the case of the petitioner is considered afresh.

##. In the result, this special civil application is disposed of in the term that the respondent No.1 is directed to consider the case of the petitioner for

counting of his services for the period from 3/4/1948 to 15/7/1952 towards the qualifying service for pension within a period of 2 months from the date of the receipt of the writ of this order. It is advisable that he may sit together with the Secretary (Finance) while deciding the matter and in case the services are countable towards the qualifying service of the petitioner for pension, the same may be accordingly counted and the petitioner will be given all the consequential benefits and, his pension may accordingly be revised and arrears of the pension may be given to him and further the pension may accordingly revised. In case the claim of the petitioner is not accepted, a reasoned order may be passed and the copy of the same may be sent to the petitioner by Registered Post A.D.

Rule and the special civil application are disposed of in the aforesaid terms.

(S.K.Keshote, J.)

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