

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8285 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 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? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

J M PATEL

Versus

DY. DIRECTOR OF HIGHER EDU.

Appearance:

MR SURESH M SHAH for Petitioner
MR RJ OZA for Respondent Nos. 1 and 2
Ms. Harsha Devani, AGP,
for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 31/03/2000

ORAL JUDGEMENT

1. The petitioner, who now apparently stands retired as an employee in the Directorate of Higher Education of Gujarat State, has approached, by this petition under Article 226 of the Constitution of India, praying for quashing of pay fixation order, Annexure 'E' dated 17th November, 1989, which, according to the petitioner, has been erroneously passed by ignoring earlier order regarding his pay fixation dated 14.9.1981, Annexure 'D'.

2. The dispute regarding his alleged erroneous pay fixation is based on following facts :-

He was appointed as Junior Clerk on 8.11.1959 and was promoted as Senior Clerk on 1.8.1967. He was, thereafter, promoted on 28.4.1978 as Statistical Assistant and his pay was fixed at Rs.545/-, and this is evident from the relevant extract of the Service Book produced at Annexure 'A'.

3. The above-mentioned order of fixation of his pay at Rs.545/- was varied and his pay was reduced to Rs.485/-, by order Annexure 'C' dated 27.3.1979.

4. The petitioner approached this court in Special Civil Application No.1765 of 1979, but he withdrew the same, on an undertaking given by the respondents that they would grant him opportunity of hearing and pass a fresh order of pay fixation.

5. The petitioner was thereafter heard and a fresh order of pay fixation in his favour was passed on 14.9.1981, Annexure 'D'. By the said order, his earlier pay fixation, shown in Annexure 'A', was restored and the subsequent order Annexure 'C', reducing his pay, dated 27.3.1979, was set aside.

6. In the meantime, the petitioner had been promoted as Senior Auditor on 8.4.1979 and to the post of Auditor Group I on 30.11.1987. By order passed on 24.10.1989, his deemed date of promotion as Senior Auditor was taken to be 15.1.1979. Assigning of deemed date of promotion required passing of fresh pay fixation order. The petitioner's case is that the impugned order of pay fixation, Annexure 'E' dated 17.11.1989, contains an apparent error, as, in fixing his pay, effect was given to pay fixation order Annexure 'C' dated 27.3.1979, fixing his pay in the lower amount of Rs.485/-. When that order had already been set aside by order Annexure 'D' dated 14.9.1981, his earlier pay fixation under Annexure 'A', fixing his pay at Rs.545/- had been restored. As the order Annexure 'E', in fixing the pay of the petitioner, ignored the order Annexure 'D' dated 14.....

revised suitably by directions of this Court.

7. The petition was filed in the year 1989 and by an interim order passed on 16.4.1991, this Court granted the following interim relief, by staying the operation of the impugned order of pay fixation Annexure 'E' :-

"... Rule. By way of interim relief, it is directed that the operation and implementation of the order at Annexure 'E' is stayed, on condition that the petitioner files an undertaking in this court within a period of four weeks from today that in case the petitioner does not succeed in the petition, the amount of monetary benefits which the petitioner has enjoyed on account of this stay, shall be repaid together with interest. It is agreed between the learned counsels for the parties that such rate of interest shall be 12 per cent "

As a result of the above interim order, the petitioner continued to receive his pay on the basis of his pay fixation shown in Annexure 'A' and has apparently now retired from service.

8. On behalf of the respondents, no counter affidavit has been filed and the learned counsel appearing for the State is unable to point out any ground not to accept the contention advanced on behalf of the petitioner. After examining the record of this case and hearing the counsel, the petition deserves to succeed. It has not been controverted that the impugned order Annexure 'E' dated 17.11.1989 has not given effect to the pay fixation order Annexure 'A', fixing the pay of the petitioner at Rs.545/- and it has erroneously given effect to the order dated 27th March, 1979, Annexure 'C', reducing his pay to Rs.485/-. Consequently, the petition succeeds and is allowed. The impugned order of pay fixation Annexure 'E', dated 17.11.1989, is hereby quashed. The respondents are directed to re-fix the pay of the petitioner on various posts held by him in the Department, by ignoring the impugned pay fixation order Annexure 'E', and by giving effect to the pay fixation, shown in Annexure 'A' and the order dated 14.9.1981, Annexure 'D'. After passing the necessary orders of fixation within a period of three months from the date of this order, the petitioner's terminal benefits, including pension, be necessarily revised and arrears be paid to him, if they are due. Rule is made absolute to the aforesaid extent. Interim order is confirmed. Since the petition is allowed, undertaking given pursuant to the interim order dated 16.4.1991 is discharged.

9. In the circumstances, the petitioner shall also get costs of this petition. Counsel's fee of Rs.500/- if certified.

31st March, 2000 (D.M. Dharmadhikari, C.J.)

(apj)