

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7764 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
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 concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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TK SHAH

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 7764 of 1999  
MR IS SUPEHIA for Petitioner No. 1  
MR KL PANDYA ASSTT GOVERNMENT PLEADER for Respondent No. 1  
MR MUKESH R SHAH for Respondent No. 2-3  
RULE SERVED for Respondent No. 4

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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 29/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr.A.S.Supehia on behalf

of the petitioner and learned AGP Mr.K.L.Pandya for respondent No.1 & 4, so also, learned advocate Mr.M.R.Shah for respondent Nos.2 & 3.

The brief facts giving rise to the present petition are as under :

The petitioner was serving as Malaria Laboratory Technician and he retired on 31.3.1998 on superannuation but his pensionary benefits have been paid on 9th April, 1999 and therefore, it is case of the petitioner that he is entitled to interest upon delayed payment of the retirement benefits. He also submitted that leave encashment was also paid less for 16 days causing loss of Rs.2500/-. However, so far this claim of Rs.2500/- is concerned, the respondent in their reply in para-8 clarified that it is not correct. It is contended by the respondent that installment of Rs.2500/- is required to be deposited by the respondent and all the installment have been deposited and paid and he has been paid the amount of Rs.10,267/- which was due and payable to him as per the order passed by the Account Office, Dist Panchayat on date 21.1.99 for which amount of Rs.2500/- of March, 1997 and April, 1997 is also included and therefore the petitioner is not entitled to the same. In light of this reply given by the respondent, the claim of the petitioner for Rs.2500/- does not survive and the same is declared to be not entitled by the petitioner.

However, learned advocate Mr.Supehia submits that there is delay in making the payment late by one year the total amount of Rs.3,63,584/- and therefore, he submits that the petitioner is entitled to 12 % interest upon said amount for the period from 1st April, 1998 to 8th April, 1999. Learned advocate Mr.M.R.Shah for the respondent Nos.2 & 3 has submitted that on each occasion, the papers had cleared by the respondent Nos.2 & 3 and whatever query raised by the respondent No.4 was complied with within some reasonable time by the respondent Nos.2 & 3. Therefore, according to him, there is no delay on their part and hence, interest cannot be awarded in favour of the petitioner.

Learned AGP Mr.K.L.Pandya submits that he has received parawise remarks and according to the Director - respondent No.4, there is no delay in the office of the Director in sanctioning the pension and retirement benefits. However, he submitted that on each and every occasion in respect of the case of the petitioner, some query was raised and the same required to be complied with by the respondent nos.2 & 3 and therefore, some time has

been consumed in the correspondence between the respondent nos.2-3 and respondent no.4.

I have considered submissions made by the learned advocates for the parties and also perused the parawise remarks submitted by the respondent no.4. However, one fact cannot be ignored that retirement benefits have been paid to the petitioner one year late. However, who is responsible for causing such delay is immaterial and out of question. According to the Rules, pension papers are required to be prepared before the date of retirement. Therefore, detailed procedure is prescribed which consumes some time. However, considering the reply filed by the respondent nos. 2 & 3, on each occasion some query was raised by the Director and the same were complied with by the respondent Nos.2 & 3 and that is how the matter prolonged for some time and thereby caused delay. Therefore, according to Government Resolution if any delay occurs in making payment of retirement benefits to the Government employee as per the Government Resolution of Finance Department dated 8th December, 1994, the employee is entitled to 12 % interest upon the said amount. However, the respondent Nos.2 & 3 has explained the delay for some extent but ultimately, delay which has occurred being unreasonable and not paid the benefits within reasonable time. However, considering the entire facts and circumstances of the case, the petitioner is entitled to 12 % interest upon the said amount as per the Government Finance Department Resolution dated 8th December, 1994. But according to my opinion, the petitioner is not entitled for 12 % interest for a period of initial three months as the such period can be said to be reasonable period required for normal process and the same requires to be deducted from claim of interest to be entitled by the petitioner.

In the result, present petition is partly allowed. It is directed to the respondents to pay 12 % interest on the delayed payment of Rs.3,63,584/paid towards retirement benefits to the petitioner for the period from 1st July, 1998 to 8th April, 1999, within two months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated above with no order as to costs.

Direct Service permitted.

Date : 29.8.2003 [ H.K.Rathod, J.]

#kailash#