

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8547 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 to see the judgements? : 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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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BC PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 8547 of 1999  
MR JOY MATHEW for Petitioner No. 1  
MS ARCHANA RAVAL, AGP for Respondent No. 1-4  
MR HS MUNSHAW for Respondent No. 5

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

Date of decision: 30/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Joy Mathew for petitioner, learned AGP Ms. Archana Raval appearing on

behalf of respondent Nos. 1 to 4 and learned advocate Mr. H.S.Munshaw appearing on behalf of respondent No.5.

2. In the present petition, the petitioner who is a retired employee has challenged the action of the respondents in paying his retiral benefits after a period of 19 months from the date of his retirement without any interest. He has also challenged the action of the respondents in not paying house rent allowance and the benefit of revision of pay scale. According to the petitioner new pay scales are introduced w.e.f. 1.1.1996 and petitioner is paid his pension as per the old pay scale of Rs.2200-4000 when the revised scale is Rs.8000-13500 which caused great hardship to the petitioner. The petitioner joined the respondents as Agricultural Supervisor in the year 1966. He was then promoted as Agricultural Officer in the year 1979 and in the year 1987 he was again promoted as Assistant Director of Agriculture. Thereafter petitioner was sent on deputation to Sardar Sarovar Rehabilitation Agency at Vadodara in the year 1996. The petitioner was transferred to District Panchayat at Vadodara on 1.4.1997. Thereafter on 30.9.1997 petitioner retired from service on attaining the age of superannuation. On 4.3.1998 petitioner was paid a sum of Rs.19,493 towards insurance contribution. On 11.5.1998 the petitioner was paid a sum of Rs.69720 towards the leave encashment and in April 1999 the petitioner was paid a sum of Rs.2,55,560 inclusive of gratuity, commuted pension and pension arrears. The petitioner is not paid any amount as interest towards the delayed payment. The petitioner is also not paid house rent allowance for the period between April, 1997 and September, 1997.

3. Learned advocate Mr. Mathew has submitted that on 1.4.1997 when the petitioner was transferred to District Panchayat Vadodara, at the relevant time the quarter was not in a position to be occupied by the petitioner. Number of correspondences are on record which suggest that quarter is required to be repaired because it is not properly constructed by the concerned authority. Therefore learned advocate Mr. Mathew has submitted that though petitioner has not occupied the quarter even though house rent allowance for the said period has not been paid to the petitioner. He also submitted that in reply filed by the State Government, in para 6 also it is not made clear that the quarter has been occupied by the petitioner and petitioner has used the housing facility. He also submitted that retirement benefit has been paid after a period of 19 months due to administrative reasons and for that there is no fault on

the part of the petitioner. Therefore, petitioner is entitled atleast 12% interest for delayed payment. He relied upon decision of this Court in the case of RAJIKANT R. UPADHYAY V. GUJARAT GOVERNMENT THROUGH SECRETARY, EDUCATION DEPARTMENT AND OTHERS, 2001 (3) GLR 2628. He also relied upon the decision of the Apex Court in the case of DR. UMA AGARWAL V. STATE OF U.P. AND ANOTHER, AIR 1999 SC 1212 and also relied upon the decision of this Court in the case of DR. W.M.SAIYED V. STATE OF GUJARAT AND OTHERS 2000(1) GLH 526.

4. Learned AGP Ms. Archana Raval has submitted that there was some administrative reason because service book was not with the State Government, it was lying with the Sardar Sarovar Nigam Ltd. She also pointed out that the petitioner was retired on 30.9.1997 and subsequently the pay revision came into effect in the year 1998 which having effect from 1.1.1996. Initially, the case of the petitioner was prepared on the basis of old pay scale and thereafter it was required to be prepared on the basis of new pay scale which consumed more time and that is how payment could not be made to the petitioner immediately. She also clarified that there was no deliberate intention on the part of the department not to make payment to the petitioner in time but due to administrative reasons the payments were not made in time, therefore, according to her submission, petitioner is not entitled the interest upon the delayed payment. She relied upon the affidavit-in-reply filed by the State of Gujarat.

5. Learned advocate Mr. H.H.Munshaw appearing on behalf of respondent No.5 has submitted the same thing that petitioner is not entitled the amount of interest for the delayed payment because of administrative reasons.

6. I have considered the submissions made by all the learned advocates. The fact remains that retirement benefit has been paid to the petitioner after a period of 19 months from the date of his retirement. Normally in case of retirement, the necessary papers are required to be prepared by the department before two years as per the Government Resolution. If something has been misplaced or papers are not traceable then they should have to act promptly because, after retirement an employee is not able to get salary from the department and he has to maintain his family. An employee could not able to maintain his family in absence of retirement benefits that create mental agony and it also cause inconvenience and hardship in the society to such an employee. Therefore, the reason which has been given by the

respondent in affidavit-in-reply, filed by C.K.Kharadi, Assistant Administrative Officer working in the office of respondent No.2 wherein it is pointed out that because the service book was not available with the department and other service records are also not available with the concerned office, therefore, there was some delay in making the payment in favour of the petitioner. However, according to their reply periodical payments were made by the department as and when necessary papers were available. In respect to the contention raised by Mr. Mathew about claim of house rent allowance, the answer given in para 6 is that petitioner was a Class II Gazetted officer and the department has constructed quarter for limited number of gazetted officers, means the quarters attached to the post and, therefore, separate house rent allowance is not applicable to the said post, and thus the petitioner is not entitled for house rent allowance. Normally, separate order is not passed saying that the quarter is allotted in the name of an officer. The limited number of quarters are built for this purpose only, that is, the officers are given housing facility and therefore petitioner is not entitled for house rent allowance. The claim of house rent allowance and interest on this amount is not payable to the petitioner.

7. The contention raised by the petitioner in paragraph 16 of the petition in respect to claim of house rent allowance is quoted as under:

"The petitioner further submits that he was not paid HRA for the period from April, 1997 to September, 1997. Though there were some quarters being kept by the respondents, they could not be used for residential purpose. Since the year 1991 to 1998 there are correspondence between the officers stating that this building cannot be used as residential premises. According to these letters, this building requires major repairing work. None of the authorities has taken step to repair this building. During this period, the petitioner was forced to hire a house on rent. On the one hand the respondents did not pay him HRA and on the other hand they deducted licence fee for the unused and unallotted quarter. Therefore, the petitioner submits that non-payment of HRA for this period is unreasonable, illegal and violative of Articles 14, 16 and 21 of the Constitution of India."

8. The respondent has given reply in para 6 in

respect to house rent allowance. Para 6 of the reply is quoted as under:

"In respect of house rent allowance I say that the petitioner was Class-II Gazetted officer. The department has constructed quarter for such limited number of gazetted officers, means the quarter is attached to the post and therefore separate H.R.A. is not applicable to the said post, thus the petitioner is not entitled for house rent allowance. Normally separate order is not passed saying that the quarter is allotted in the name of an officer. The limited number of quarter is built for this purpose only, that is, the officers are given housing facility and therefore petitioner is not entitled for H.R.A. The claim of house rent allowance and interest on this amount is not payable to the petitioner."

9. In light of these averments made in the petition and reply, the respondent has not made it clear that during the period from April, 1997 when the petitioner was transferred to District Panchayat, Vadodara till the date of retirement on 30.9.1997, whether the petitioner has occupied the quarter in question or not and whether allotment has been made in favour of the petitioner. No details have been given by the respondents with this regard. Therefore, considering this fact, the petitioner is entitled the amount of house rent allowance for the period from April 1997 to September, 1997 which has not been given to the petitioner.

10. In respect to the delayed payment which is not in much dispute except the cause of delay between the parties, the relevant observations made by the Apex Court in para 5 and 6 of the reported decision in the case of DR. UMA AGARWAL V. STATE OF UP (supra) are quoted as under:

"We have referred in sufficient detail to the Rules and instructions which prescribe the time schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because after all, grant of pension is not a

bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which two there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case.

The case before us is a clear example of departmental delay which is not excusable. The petitioner retired on 30.4.1993 and it was only after 12.2.1996 when an interim order was passed in this writ petition that the respondents woke up and started work by sending a special messenger to various places where the petitioner had worked. Such an exercise should have started at least in 1991, two years before retirement. The amounts due to the petitioner were computed and the payments were made only during 1997-98. The petitioner was a cancer patient and was indeed put to great hardship. Even assuming that some letters were sent to the petitioner after her retirement on 30.3.1993 seeking information from her, an allegation which is denied by the petitioner, that cannot be an excuse for the lethargy of the department inasmuch as the rules and instructions require these actions to be taken long before retirement. The exercise which was to be completed long before retirement was in fact started long after the petitioner's retirement."

11. In view of the decision of the Apex Court and the observations made in two other decisions which have been relied upon by learned advocate Mr. Mathew, according to my opinion, the respondent has not taken effective steps as per the rules. Merely saying that the service book was not available with the respondent No.2, that may not be considered to be a ground to deny the amount of interest to the petitioner. Therefore, considering the entire facts and circumstances of the case, according to my opinion, petitioner is entitled 9% interest upon the delayed payment of retirement benefits. The petitioner was retired on 30.9.1997 and ultimately payment was made

in April, 1999, therefore, petitioner is entitled 9% interest upon the total amount of retirement benefits and also entitled the amount of house rent allowance for the period from April, 1997 to September, 1997.

12. In result present petition is allowed. It is directed to the respondent to pay 9% interest upon the total amount of retirement benefits from 30.9.1997 to April, 1999 and also to pay house rent allowance for the period from April, 1997 to September, 1997 to the petitioner within a period of three months from the date of receiving the copy of this order. Rule is made absolute. No order as to costs.

(H.K.Rathod,J)

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