

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 1609 of 1998****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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M U BHARATI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR BS SUPEHIYA FOR MR JIVANLAL M PATEL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 28/04/2006****ORAL JUDGMENT**

1.I have heard the learned advocate Shri B.S. Supehiya for Shri Jivanlal M. Patel for the petitioner. No one is present for the respondents though duly served.

2.The petitioner has primarily made two fold grievances before this Court in this petition. First grievance is that for a particular period between 11-06-1984 to 31-10-1992, the respondents have not granted the pensionary benefits including gratuity. It is the case of the petitioner that even otherwise the pension and gratuity were released in favour of the petitioner after much delay which should carry appropriate interest.

3.Short facts leading to the present petition are that the petitioner was serving as a principal in the respondent no.3-college. His service came to be terminated by an order dated 11-06-1984 by the respondent no.3. He challenged the termination before the Director of Higher Education. The Director of Higher Education found that termination was in breach of principles of natural justice. The termination order was set aside. Liberty was given to the management to hold an inquiry and to take appropriate steps in accordance with law. Such an order was passed by the Director on 27-03-1985. The management challenged the order passed by the Director before this Court by filing Special Civil Application No.2646/1985. During

the pendency of the petition however, the petitioner was reinstated in service. Eventually, the parties to the litigation namely the petitioner herein and the college management arrived at a settlement. Written consent terms dated 17-08-1992 were placed on record before this Court. In view of the settlement, the Court disposed of the petition permitting the employer to withdraw the petition. This order was passed by the Court in Special Civil Application No.2646/1985 on 17-08-1992. It was specifically stated in the said consent terms that service of the petitioner herein i.e. respondent no.1 in the earlier petition will be treated as continuous for the purpose of increments, higher pay scale and retiral benefits like gratuity, pension, provident fund, etc.. It was further stated that the employee was not claiming salary for the intervening period. However, this will not be held against him for fixing his pension. Eventually the petitioner retired from service on superannuation on 01-06-1996.

4.The petitioner was entitled to receive pension and other retiral benefits as per the Government rules. His pension was however, not finalised for a substantial

period since the Government was of the opinion that for the intervening period between 11-06-1984 i.e. his date of termination till 31-10-1992 when he was reinstated, the petitioner was not entitled to count the said period for his pension and other retiral benefits. The petitioner eventually agreed to accept his pension, gratuity and other benefits, under protest, ignoring the aforesaid period of service. Eventually, the Government released his pension and gratuity on 24-12-1997.

5. In view of the above facts, the case of the petitioner is that the entire period between 11-06-1984 to 31-10-1992 should count for the purpose of pension and other retiral benefits and that petitioner should receive interest on the delayed payment of post retiral dues.

6. I find that the petitioner is justified in claiming the pensionary and other retiral benefits after counting his entire service for the purpose of said benefits. The termination of the petitioner dated 11-06-1984 was set aside by the Director of Higher Education. In fact, the petitioner was held entitled to consequential benefits from the management. Of-course, the back-wages

to be paid were not held to be grantable. The order of the Director came to be challenged by the college management before this Court by filing Special Civil Application No. 2646/1985 in which management as well as the petitioner herein arrived at a settlement. The petitioner agreed to forgo back-wages. The management treated his service as continuous for all purposes except for back-wages. It was specifically stated that entire period would be counted as continuous for the purpose of increment, higher pay scale and retiral benefits including gratuity, pension and provident fund. The Government which was party to the said petition did not oppose the said formula. Even otherwise, the Director had set aside the order of termination and also found that the petitioner will be entitled to receive salary from the management. It was this order that college management has challenged before this Court by filing Special Civil Application No.2646/1985. Therefore, in terms of consent terms, order passed by the Director stood modified to the extent that the employee had not pressed for back-wages. The continuity of service for all purposes was however, saved. In that view of the matter, Government's stand that the entire period between 11-

06-1984 to 31-10-1992 should be ignored for the purpose of pension and other retiral benefits of the petitioner, cannot be upheld.

7. With respect of the pension of the petitioner, since there was dispute between the parties, it is understandable that same was not straightway finalised. However, gratuity of the petitioner could have been released without any hesitation by the Government on the basis of length of service put in by the petitioner according to the Government which was required to be taken into account for payment of gratuity. I therefore, find no justification in the stand of the Government taking nearly 18 months for releasing gratuity of the petitioner. The petitioner retired on 01-06-1996, was paid gratuity on 24-12-1997. The gratuity shall therefore, carry interest at the rate of 12% per annum. This rate I have fixed considering that during the relevant period in the year 1996-1997, the interest rates were much higher than those prevailing currently.

8. In the result, the petition is allowed substantially. The respondents and in particular respondent no.1 is

directed to recalculate the pension, gratuity and other retiral benefits of the petitioner by considering his service as continuous including the period between 11-06-1984 to 31-10-1992. The arrears flowing from such recalculation shall be paid to the petitioner. The petitioner shall also be paid interest on the delayed payment of gratuity as provided here-in-above. The entire exercise of re-fixation of pension, gratuity and other retiral benefits, payment of arrears and payment of interest on delayed release of gratuity shall be completed within a period of four months from the date of receipt of a copy of this order.

9. In view of this direction, the petition is disposed of. Rule made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(raghu)