

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 384 of 1994****With****SPECIAL CIVIL APPLICATION NO. 397 of 1994****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE G.R.UDHWANI**

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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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DAHAYABHAI NYALCHAND VORA....Petitioner(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MR CHINMAY M GANDHI, ADVOCATE for the Petitioner(s) No. 1

MR MB GANDHI, ADVOCATE for the Petitioner(s) No. 1

MS KHYATI P HATHI, ADVOCATE for the Petitioner(s) No. 1

MR RONAK RAVAL, AGP for the Respondent(s) No. 1 - 3

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CORAM: **HONOURABLE MR.JUSTICE G.R.UDHWANI**

**Date : 31/07/2014**

**COMMON ORAL JUDGMENT**

1. Both these petitions mainly pray for retiral dues on the ground that though, as per the Bombay Civil Services Rules, their

age of superannuation was 58 years, it got extended to 60 years by virtue of the Government Resolution dated 14.09.1988 by which the recommendation of Melhotra Commission appointed by the Universities Grant Commission (for short "U.G.C.") for upward revision of pay of Lecturers in different Universities and Colleges as also their superannuation age to 60 years was accepted. It is their case that however, the consequential amendment in the age of superannuation was not carried out as a consequence of which the petitioners apprehended their superannuation at the age of 58 years. Their representations having fell on the deaf ears of the authorities concerned, each of the petitioners had to institute Regular Civil Suit Nos.1193 of 1988 and 945 of 1989 respectively, wherein, in the separate application for interim relief, orders of status quo were passed by the Civil Court as a consequence of which both the petitioners worked until the age of 60 years.

2. It is their case that as per the Government Policy providing that in the eventuality of the date of superannuation falling in the mids of the academic year, it shall get extended to the end of the academic year, respective date of the superannuation of the petitioners got extended upto the end of the academic year and consequently, the petitioners ought to have been superannuated on 30.11.1990 and 31.10.1991 respectively.

3. The petitioners further contend that except provisional

pension on the basis of their date of superannuation as 58 years, other pensionary benefits like gratuity, commutation of pension, encashment of unspent leave, etc. were withheld. They, therefore unsuccessfully, approached the Gujarat Civil Services Tribunal who rejected their applications on the ground of jurisdiction while making certain observations. It is their case that even those observations have not been complied with the respondents.

4. In each of the petitions, two separate interim orders on different dates were passed which have been partly complied with inasmuch as the interest amount, which was ordered by this Court, was withheld. Other benefits were paid considering the superannuation age of the petitioners at 58 years.

5. Each of the petitioners have amended their respective petitions claiming interest on the unpaid amount. They also seek a revision of pension in terms of recommendation of the 5<sup>th</sup> Pay Commission which was denied to them with a plea that the pensioners getting senior grade or selection grade were ineligible to revision of pension, as prescribed in the Government Resolution dated 01.11.2000.

6. The issue as regards 60 years of superannuation age came to be settled by a decree in each of the appeals in the Civil Suits.

The Second Appeal was unsuccessfully preferred against the petitioner of Special Civil Application No.384 of 1994, whereas no Second Appeal was preferred against other petitioner.

7. The petitioner in Special Civil Application No.384 of 1994 also stake a claim to the pay-scale of the post of Reader on the ground of he being the only eligible candidate at the relevant point of time.

8. The petitions are opposed by the separate affidavits. The main common contention is that the petitioners having exercised an option in terms of the Government Resolution dated 14.09.1988 opting for revised pay-scale as against the extension of superannuation age to 60 years could not have instituted the Civil Suit contrary to the option.

9. Having considered the rival contentions as also perused the record of the case, it appears that the issue as to superannuation age of 60 years was concluded by the Competent Court in the Civil Suit instituted by the petitioner of Special Civil Application No.384 of 1994 and the State having been unsuccessful in its challenge to the said issue, the question cannot be allowed to be re-agitated in this petition.

10. It also appears from the record that the suit was filed by the

petitioners before reaching the age of 58 years and by virtue of interim order of the Trial Court, they continued in the service upto the age of 60 years, and thereafter, the present petitions were filed in 1994 seeking a declaration *inter alia* that the superannuation age of the petitioners should be 60 years. The grievance is that disputed decree/the retiral dues on the basis of 60 years as age of superannuation has not being fixed. It appears that during the pendency of these petitions, the suit came to be decreed as aforesaid. As discussed above, concededly, the interim order passed by this Court *inter alia* ordering the payment of interest as aforesaid was not fully complied with. Since the petitioners have worked upto the age of 60 years and their age of superannuation is 60 years as declared in the decree aforesaid, the petitioners, who have been paid only provisional pension without other retiral benefits, would be entitled to the difference of the retiral benefits for the between 58 and 60 years with interest.

11. Insofar as the claim as regards the pay recommended by the 5<sup>th</sup> Pay Commission is concerned, the averments made in the petitions are uncontroverted. It is, therefore, deemed appropriate to direct the respondents to consider the petitioners' case and extend the benefits on the basis of the 5<sup>th</sup> Pay Commission if such benefits were extended to other employees serving as Professor and Head of Chemistry Department in the Government College.

12. Insofar as Special Civil Application No.384 of 1994 is concerned, the learned AGP contends that the petitioner was stepped up to the pay-scale of Reader on 07.07.2008. He, however, contends that the said claim suffers from the delay and latches as also it is not supported by Rules. He also contends that in absence of a legal right to hold the said pay-scale, this Court may not exercise its jurisdiction under Article 226 of the Constitution of India. He would also contend that considering the main prayer as regards age of superannuation of the petitioner, the amendment claiming the pay-scale of Reader is mis-joining the causes of action. There appears to be substance in the arguments advanced by the learned AGP in this regard. The only averment seeking the pay-scale for the post of Reader is that the petitioner is the only eligible candidates. Except that, there is nothing on record investing any right to an employee to claim the pay-scale of the post of Reader. In absence of such material, such claim cannot be accepted. The learned AGP has also contended that the claim is made at a very belated stage. The petitioner made a representation in the year 1986 and thereafter, was silent until 23.01.2000 when the amendment was made in the petition making the aforesaid claim. Thus, after 15 years of representation, such claim is rightly nomenclated as stale claim by the learned AGP.

13. In above view of the matter, Special Civil Application No.384 of 1994 is **partly allowed** and Special Civil Application No.397 of 1994 is **allowed**.

14. The respondents are directed to revise the terminal benefits of the petitioners as if they had superannuated on completion of 60 years at the end of their respective academic term and pay to them difference of terminal benefits after taking into account the pay-scales recommended by the 5<sup>th</sup> Pay Commission if such pay-scales were extended to other similarly situated persons. The respondents will also pay the difference of pension and other terminal benefits like gratuity, commutation, encashment of unspent leave, etc. which are not paid. Both the components i.e. difference of pension and other terminal benefits would fetch interest at the rate of 10% per annum.

15. Considering the petitioners' age i.e. above 80 years, the exercise of revision of pension and other terminal benefits and its payment to the petitioners shall be completed within a period of **three months** from the date of receipt of the writ of this Court. If the deadline as regards payment is not complied with, the interest from the date of default shall stand enhanced at the rate of 12% per annum.

16. Rule is made absolute to the aforesaid extent with no order

as to costs.

**(G.R.UDHWANI, J.)**

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