

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 524 of 1999****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE G.R.UDHWANI**

- =====
- 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 ?

=====

GUJARAT FISHERIES DEVELOPMENT CORPORATION LTD....Petitioner(s)

Versus

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

=====

Appearance:

Ms. BHARGAVI THAKAR for MR PINAKIN M RAVAL, ADVOCATE for the
Petitioner(s) No. 1

MR. RONAK RAVAL ASSTT. GOVERNMENT PLEADER for the
Respondent(s) No. 1 - 1.1 , 2

MR ND GOHIL, ADVOCATE for the Respondent(s) No. 3

=====

CORAM: HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 30/06/2014

ORAL JUDGMENT

1. The petitioner is a union representing erstwhile Gujarat Fisheries Development Corporation (for short “GFDC”) which came to be closed on 4th July 1998.

2. At the time of closure of the corporation there were about 36 employees and 9 officers and other 52 officers/employees serving with the corporation.

3. For such employees a resolution dated 27th November 1997 came to be passed by State Government evolving a scheme and offering them an option of either voluntary retirement or their declaration as surplus for a period of one year. As per the said resolution, the surplus employees/ officers were to be offered fresh appointments in any class or grade as may be available irrespective of the class or grade in which they were employed with the corporation. However, amongst the aforesaid employees/officers of the corporation 9 were absorbed in different departments of the State Government without being declared as

surplus.

4. In this petition the Court is not concerned with the employees/ officers who opted for voluntary retirement. The Court is concerned with officers/ employees opting for being declared surplus as aforesaid and those absorbed in the service as above.

5. The Government Resolution dated 27th November 1997 protected the pay of surplus incumbents with a rider that their higher payscale if any received on the basis of the Government Resolutions applicable at the time of their service with the corporation would not be considered for the purpose of protection of the pay of such incumbents.

6. In conformity with the said resolution, the circular (Annexure B) came to be issued and various employees/officers opted for being declared surplus after such circular. As promised, various employees have been offered fresh employment in various departments of the State Government. Their pay has been fixed at the

basic of the scale they were drawing immediately prior to the higher payscale which was offered to them while they were serving with the corporation. The main grievance of the union for such employees is that the respondents have not correctly interpreted the resolution aforesaid and in fact the pay in the higher payscale was required to be protected; the higher pay scale however may not be protected.

7. Another grievance is that though the State has set apart the funds with Gujarat Fisheries Central Co-operative Association Limited, for enabling closure of Gujarat State Fisheries Development Corporation, the benefits of 5th Pay Commission for the period surplus incumbents worked with GFDC has not been extended to them.

8. The last grievance is that the bonus during the period surplus incumbents were employed with GFDC has also not been paid to them.

9. Learned counsel for the petitioner strenuously urged

that interpretation of condition no. 5 as contained in Circular dated 6th July 1998 as canvassed by the respondents is not correct. It was argued that said condition intends to protect the basic pay of the surplus incumbents even in the higher grade. It is argued that according to the said condition, the higher grade was to be given up but not the pay which was fixed and crystalised in favour of the surplus incumbents in such higher grade.

10. On the other hand learned AGP would strenuously urge that clause '5' protects only the basic pay in the payscale other than the higher grade and accordingly the basic pay of all the surplus incumbents have been protected in the re-employment offered to them. It was contended that State has not caused any discrimination or prejudice to such incumbents, since, till the period they remained on the surplus list, even the compassionate payment was made.

11. Having given thoughtful consideration to the first issue as aforesaid what is required to be appreciated is

that an employee/ officer may during his employment receive various benefits including higher grade payscale as per the various Government resolutions. Normally higher grade is offered to remove stagnancy in absence of promotional avenues. Such right to receive higher payscale having been crystalised and consumed immediately on compliance with the Government Resolution offering such higher payscale, the question is whether subsequent policy of the State Government can be construed as withdrawing such benefits retrospectively as if it was not given to the employees at all ?. A close scrutiny of impugned resolution indicates that it intends to protect the last pay drawn by surplus incumbents of erstwhile corporation. Reading the impugned resolution as canvassed by learned AGP would nullify the benefits sought to be given to such employees.

12. True that the policy intends to see that the surplus incumbents can be re-employed as far as possible and that the State may have come to the rescue of such incumbents so that they are not rendered jobless. However, had the surplus incumbent opted for voluntary

retirement, they would not have been deprived of the higher payscale and, thus, the policy tends to discriminate the two set of similarly situated employees. The argument is that the surplus employees have accepted all the conditions of the resolution with open eyes and therefore, they have now no reason to complaint. In the opinion of this Court in public employment, the State cannot take advantage of the weakness of its employees inasmuch as the State is answerable to various constitutional provisions including Article 16 of the Constitution of India.

13. In the opinion of this Court rights and liabilities of an employee as on the date of closure of the corporation are required to be considered and adjustments are to be made only in existing conditions of service. It cannot pierce into the rights consumed and crystalised. Condition no. 5 of the circular therefore, is required to read in the manner as would rule out the arbitrariness and discrimination. So read, the said condition only mean that the surplus incumbent will have to give up the higher grade payscale and not the pay fixed in such

higher grade payscale before the closure of the corporation.

14. So far as the grievance as to non-grant of 5th pay commission to the surplus incumbents is concerned, no substance is found in such arguments inasmuch as it is not the case of the petitioner that the erstwhile corporation which was an autonomous body has ever accepted the recommendation of the 5th pay commission and therefore, just because such recommendation were accepted by the State Government, the employees of the corporation would not automatically get such rights. At this stage the learned AGP on instructions from Under Secretary states that even to others who retired voluntarily, the benefits of 5th Pay commission for period they were serving with the corporation has not been extended so far.

15. Additionally, it appears that a decision to close the corporation was taken on account of financial crunches faced by the corporation. In such a scenario, it will be unreasonable to ask the corporation to bear extra

burden. Learned counsel for the petitioner however, relied upon **Haryana State Minor Irrigation Tubewells Corporation Vs. G.S Uppal AIR 2008 SC 2152 and State of Maharashtra Vs. Manubhai Pragaji Vashi and Ors. AIR 1996 SC 1** wherein the Hon'ble Supreme Court ruled that financial crunches cannot be a reason for depriving the benefits due to the employees. In none of the cases before the Hon'ble Supreme Court the facts and circumstances were similar to one on hand, ie closure of a institute or a corporation. Therefore, none of the said cases help the petitioner.

16. Similarly, the grievance as regards bonus also cannot be acceded since, the corporation was closed on account of financial crunches faced by it and therefore, it cannot be asked to bear extra burden.

17. Before closing the judgment it is to be noted that surplus incumbent has no grievance that they have not been paid the salary and other benefits in accordance with recommendation of the 5th and 6th pay commission from the date they have joined their new

assignments and, thus, deprivation of such benefits was only for a short period of their service with the corporation.

18. In view of above, the petition partly succeeds. It is held that the erstwhile employees ie the surplus incumbents of the GFDC are entitled to protection of their pay in the higher payscale if any as may have been drawn by them on the date of closure of the corporation. Accordingly such surplus incumbents shall be paid the consequential benefits within three months from the date of receipt of the writ of this Court. The reasoning aforesaid will apply to all the employees of the erstwhile corporation who were drawing the higher grade payscale, including those who were absorbed in different government departments without being declared as surplus. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(G.R.UDHWANI, J.)

mary