

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15664 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE A.S. SUPEHIA****Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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M S NANAVATI
Versus
STATE OF GUJARAT

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Appearance:

NIMIT Y SHUKLA(8338) for the PETITIONER(s) No. 1

MR.BHARGAV PANDYA, AGP (1) for the RESPONDENT(s) No. 1

RULE SERVED(64) for the RESPONDENT(s) No. 1,2

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CORAM: HONOURABLE MR.JUSTICE A.S. SUPEHIA**Date : 30/10/2018****ORAL JUDGMENT**

1. In the present writ petition, the petitioner has prayed for quashing and setting aside the order dated 23.11.2006, whereby the pay of the present petitioner has been re-fixed for the period from 25.09.1984 to

31.12.1985.

2. It is pertinent to note that the order dated 23.11.2006 is passed prior to one year before his retirement on 31.08.2007. Thus, pay of the present petitioner is re-fixed with retrospective effect from 25.09.1984 to 31.12.1985. Further, it is also observed that period from 01.01.1986 to 31.05.1999, he has to deposit an amount of pay difference in General Provident Fund and can neither withdraw the said amount till his retirement nor can it be withdrawn. Thus, at the fag end of his service, the impugned order has been passed re-fixing the pay for the period from 25.09.1984 to 31.12.1985.

3. Mr.Shukla, learned advocate for the petitioner has submitted that impugned order dated 23.11.2006 is liable to be quashed and set aside since the same is passed without giving proper opportunity of hearing to the present petitioner.

4. Learned advocate for the petitioner has submitted that the petitioner was never served with any notice before passing of the impugned order dated 23.11.2006. He has also submitted that the order re-fixing the pay of the present petitioner is also required to be quashed and set aside on the ground of delay. It is also submitted that the impugned order is passed by placing reliance on the Resolution dated 10.04.2001 which envisages of giving an option for pay fixation as per Rule 41 of the Bombay Civil

Services Rules. He has submitted that no such instructions were issued by the concerned Department to the present petitioner for exercising the option and hence, the impugned order is required to be quashed and set aside.

5. In view of aforesaid submissions, learned advocate for the petitioner has submitted that impugned order is required to be quashed and set aside.

6. Per contra, Mr. Bhargav Pandya, learned AGP for the respondent-State while placing reliance on the affidavit filed by the respondent no.1 has submitted that as per the provisions of Resolution dated 10.04.2001, an employee has to exercise his option for pay fixation under the provisions of the Bombay Civil Services Rules and if such employee/officer does not give option within the specified time period, then it should be considered as if they do not want to give option and hence their pay has to be fixed as per rules and regulations. He has submitted that such option is required to be given at the time of promotion/higher pay-scale or while granting deemed date promotion pursuant to implementation of Rule 41 of Bombay Civil Services Rules.

7. Learned AGP has submitted that as prescribed in the Resolution dated 06.04.1990 and provisions of Rule 41A of the Bombay Civil Services Rules, such option should be exercised within a period of one

month which the petitioner has not done so and hence, his pay fixation and increments were adjusted. He has submitted that in present case, the petitioner vide application dated 10.07.2007 had requested to allow him to exercise option for fixing his pay in the pay-scale of Section Officer as per provisions] of Finance Department, Government Resolution dated 06.04.1990 and hence, said representation is belatedly made, and therefore, his option was not considered.

8. In this view of the matter, he has submitted that present petition deserves to be rejected.

9. Heard learned advocates appearing for the respective parties.

10. The facts which are not in dispute are that the petitioner retired on 31.08.2007 and few months prior from his retirement date, the impugned order dated 23.11.2006 is passed and the pay of the present petitioner is re-fixed with retrospective effect from 25.09.1984 to 31.12.1985 and subsequently, the order of recovery of Rs.17,939/- was passed. It is reflected from the impugned order dated 23.11.2006, that the increments and the pay fixation of the petitioner has been done for the period from 25.09.1984 to 31.12.1985.

11. In the considered opinion of this Court, the State Government has acted in arbitrary and illegal manner by re-fixing the increments of the present

petitioner, and thereafter, re-fixing the pay-scale for period from 25.09.1984 to 31.12.1985 at the fag end of his retirement. Thus, the action of the State Government authorities is hopelessly belated.

12. As the impugned order reflects that no opportunity of hearing was given to the present petitioner before re-fixing his pay and subsequently, his pension also, the impugned order id held to be in violation of principles of natural justice and is required to be quashed and set aside.

13. The entire exercise of passing impugned order dated 23.11.2006 is based on the Resolution dated 10.04.2001, whereby an employee is required to give option for pay fixation as per Rule 41A of the Bombay Civil Services Rules. In the present case, it is the case of the present petitioner that he was never informed about such option. It is specifically stated in the Resolution that the concerned Administrative Department/Head of the Department and Head Office are instructed to give instructions to his employees for giving option at the time of promotion/higher pay-scale or deemed date of promotion. In present case, nothing is produced on record which reflects that at the relevant time, the respondent authorities had called upon the present petitioner to exercise his option. By the impugned order this higher pay-scales, which were also subsequently granted to the present petitioner have also been disturbed. The petitioner has already retired from the service on 31.08.2007

and he has been paid pension on reduced rate on the basis of erroneously fixed salary of Rs.9500/- instead of Rs.9700/- per month.

14. Under the circumstances and in view of foregoing observations and analysis, the impugned order dated 23.11.2006 is hereby quashed and set aside. The respondent authorities are hereby directed to refund the amount of Rs.17,939/- to the present petitioner which has been recovered from the petitioner as he was constrained to deposit the same since it was made conditional that on such deposit, his pension papers will be forwarded. The respondent authorities are hereby also directed to re-fix the pension of the present petitioner; as if the impugned order dated 23.11.2006 was not in existence. Consequential benefits shall also be paid to the present petitioner. The entire exercise shall be carried out within a period of three months from the date of receipt of copy of present order.

With the aforesaid observations and direction, present petition is allowed. Rule is made absolute to the aforesaid extent.

Sd/-
(A. S. SUPEHIA, J)

GIRISH