

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 11020 of 2020**

=====

VASANTKUMAR MANGABHAI KHUMAN

Versus

STATE OF GUJARAT

=====

Appearance:

MS VIDITA D JAYSWAL(6730) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3,4,5

MR ADITYASINH JADEJA ASSISTANT GOVERNMENT PLEADER/PP(99)

for the Respondent(s) No. 1

=====

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

Date : 29/10/2020

ORAL ORDER

Deprivation of the post retiral benefits namely pension, commuted pension and the gratuity to the petitioner who has served the police department of the State since more than 37 years has compelled him to invoke the writ jurisdiction of this court under Article 226 of the Constitution of India.

The question which is raised in this petition is as to whether in absence of the departmental/judicial proceedings the aforesaid benefits could have been withheld.

Aforesaid being the limited issue which is by now settled in catena of the decisions, the petition is taken up by consent of the parties for final disposal.

The petitioner demitted the charge of the Police Inspector on superannuation after serving the police department for more than 37 years on 31.08.2019 with no blemish worth the name on his service. However, FIR came to be lodged against the petitioner attributing to him the offence under the Prevention of Corruption Act on 12.12.2019; the cognizance of which has not yet been taken; nor was the departmental inquiry initiated against the petitioner for said misconduct, before the date of his superannuation by serving the charge-sheet upon; neither were his services extended for the purpose of holding the departmental inquiry against him, as required by law.

In the light of the above admitted factual background, the issue is required to be examined.

Learned counsel for the petitioner has taken this court to Rule 45 read with Rule 10 and Rule 24(3) of the Gujarat Civil Services (Pension) Rules, 2002 (for short “the rules”) wherefrom, it appears that the government servant would be entitled to pensionary benefits upon satisfaction of the criteria mentioned in Rule 45 and the pension can be substituted under Rule 24(3) with the provisional pension under two eventualities: (1) the pendency of the departmental inquiry and (2) the pendency of the judicial proceedings.

Learned counsel for the petitioner has invited attention of this court to **Ganpatbhai Haribhai Patel vs. State of Gujarat- (Special Civil Application No. 11487 of 2002- 2002(0) AIJEL-HC 203566)** wherein, upon consideration of the pari materia provision under the Bombay Civil Services Rules, 1959 it was held thus:

“5. Thus, both the above referred Rules are applicable in case where a departmental or judicial proceeding is instituted while the Government servant is in service and is continued after his retirement. It is well settled that a departmental proceeding can be said to have been instituted when a formal charge-sheet is issued in respect of the charge levelled against the delinquent. Similarly, a Judicial Proceeding can be said to have been instituted when a complaint has been lodged and the cognizance of the offence has been taken by the court concerned.....”.

Learned counsel for the petitioner has also invited attention of this court to the expression “judicial proceedings” defined in Section 2(i) of the Code of Criminal Procedure, 1973 and submitted that the proceedings would amount to judicial proceeding only if the cognizance is taken by the court. Learned counsel would thus urge for the grant of the relief with the submission that action of withholding of the pension by the respondent though pension papers were prepared on 17.01.2020, is contrary to the Rules above-stated.

Learned Assistant Government Pleader would justify the action of the respondents in withholding the pension with the submission that a serious case under the provisions of Prevention of Corruption Act has been lodged against the petitioner.

Having regard to the undisputed fact that no departmental proceedings for the alleged act of the petitioner were initiated during the subsistence of the employer-employee relationship between the petitioner and the respondent nor was the service tenure of the petitioner extended for the purpose, during the course of inquiry neither was the departmental inquiry held against the petitioner pre or post retirement, no ground for fixing the provisional pension of the petitioner in terms of Rule 24(3) of the Rules was available to the respondents. The circumstances under which Rule 24(3) would operate is very eloquently and clearly explained by this court in **Ganpatbhai Haribhai Patel(supra)**. None of those conditions are found to be in existence nor learned AGP is able to contend to that effect. Therefore in the opinion of this Court, Rule 24 of the Rules would not apply to the facts of the case and the petitioner would be entitled to pension irrespective of the lodgment of the FIR(supra).

Learned AGP has invited attention of this court to para 11 of the affidavit- in -reply wherein it has been contended that no desire to avail of the provisional pension was ever expressed by the petitioner and therefore it could not be extended to him. The argument has serious legal flaw inasmuch as the premise that Rule 24(3) would apply enabling the respondents to fix the provisional is itself faulty as explained herein- above. In absence of the applicability of Rule 24(3) of the Rules, the obligation to pay the retiral dues to an eligible employee would be governed by other relevant provisions of Rules and when such absolute obligation is statutorily cast upon the respondents, there was no occasion for the petitioner to concede to provisional pension under Rule 24(3) of the Rules. Furthermore, the pension is a right and as a necessary corollary an statutory obligation cast upon the employer and therefore the pension provisional or otherwise, as the case may be, must be paid to the employee without an application in absence of the rule obliging the employee to make a demand for the same.

The right to gratuity is governed by Payment of Gratuity Act, 1972. Scheme of the Act makes it incumbent upon the employer to follow the necessary time bound procedure on its own without any application from the person entitled to gratuity and the default by the employer has been viewed seriously by the legislature by making appropriate provisions in that context in the Act. The default would expose the employer to various actions including the enhanced interest/penalty etc. Thus the respondents do not have power to withhold the gratuity if the employee is eligible for the same under the Act. No justification is discernable for withholding of the gratuity from the record of the case. Therefore the petitioner is entitled to the appropriate writ.

Under the circumstances, the petition deserves to be allowed. Accordingly the petition is allowed. The respondents are directed to release the post retiral benefits to the petitioner within eight weeks henceforth, including the commuted pension if the petitioner applies for the same as permissible under the Rules.

The withholding of the pension and the intention of the respondents to substitute the pension with provisional pension and that too only upon the application by the petitioner is not supported by any legal provision and therefore the petitioner would be entitled to receive the interest upon the arrears of the retiral dues at the bank rate applicable to the fix deposits of the duration of twelve months. Accordingly such interest shall be computed and paid to the petitioner on the retiral dues.

(G.R.UDHWANI, J)

Shaikh/niru/songara