



NUTAN BHARTI GRAM VIDYAPITH ... Appellant(s)

GOVERNMENT OF GUJARAT AND ANR. ... Respondent(s)

Rajesh Bindal, J.

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3. At the time of hearing, the learned senior counsel appearing for the appellant submitted that he only wishes to press the claim regarding liability of the appellant-college to pay retiral benefits to the respondent-employee.

4. Briefly noticed, the facts are that the respondent no.2 was appointed as lecturer by the appellant. On account of certain misconduct, he was issued a chargesheet on 07.08.1993. After inquiry, he was dismissed from service on 06.06.1994.

4.1 Aggrieved by the dismissal, the respondent no.2 preferred an appeal to the Joint Director of Higher Education (appellate authority). The said appeal was dismissed as not maintainable *vide* order dated 15.11.1994.

4.2 By order dated 20.03.1996, in an application⁵ filed by the respondent no.2 before the High Court, his appeal before the Joint Director of Higher Education was held to be maintainable and the same was directed to be heard by appellate authority-respondent no.1. The appeal was allowed *vide* order dated 21.08.1996.

4.3 Aggrieved against the aforesaid order, the appellant preferred an application⁶ before the High Court where the above said

⁵ Special Civil Application Number 12822 of 1994

⁶ Special Civil Application No. 7111 of 1996

order was set aside and the matter was directed to be heard afresh *vide* order dated 07.10.1996. Thereafter *vide* order dated 02.03.2000, the appeal filed by the private respondent was allowed by appellate authority. He was directed to be reinstated as the dismissal was found to be an extreme punishment.

5. The appellant challenged the aforesaid order before the High Court by filing an application⁷. The Learned Single Judge *vide* order dated 30.06.2010, noticing the fact that the private respondent had already superannuated, upheld the order of reinstatement passed in the aforesaid appeal. However, the High Court directed the appellant to pay back wages to the extent of 75%. The aforesaid order was challenged by the appellant by filing Letters Patent Appeal⁸. *Vide* order dated 26.07.2022, the appeal was disposed of while passing the following directions:

“Private respondent No.2 would not be entitled for any backwages as ordered by learned Single Judge.

Services of the private respondent No.2 shall be treated as continuous service from the date of his appointment till date of his superannuation. Private

⁷ Special Civil Application Number 4357 of 2000

⁸ Appeal No. 1456 of 2010

respondent shall be entitled for all the retiral benefits of his employment.

All the benefits shall be granted to the private respondent No.2 by the appellant as well as by the State authority within a period of eight weeks from the date of receipt of this order along with interest, as per the prevailing policy in such cases.

If the amount is not paid within a period of eight weeks, the appellant as well as respondent authority shall pay the entire amount along with interest at the rate of 9% per annum till it is actually paid.”

6. A perusal of the aforesaid direction shows that the back wages granted to the respondent no.2 were set aside and the appellant as well as the State were directed to pay retiral dues to the respondent No.2. Aggrieved against the aforesaid order, the State as well as the appellant filed Review Petitions⁹. The review filed by the State was allowed *vide* order dated 21.04.2023 and it was directed that the appellant shall be liable to pay the retiral dues. The order as modified is extracted below:

“7. We do recollect that the parties – the appellant University and the employee (original respondent No.2) have agreed for such order and,

⁹ Miscellaneous Civil Application Number 01 of 2022 and Miscellaneous Civil Application Number 01 of 2023

therefore, the order was passed directing to grant benefits to the employee. However, through oversight, we have observed appellant as well as respondent – State shall be liable to pay the amount. Hence, we hereby modify the order. Paragraphs 6 sub-para (3) and (4) shall read as under:

“All the benefits shall be granted to the private respondent No.2 by the appellant within a period of eight weeks from the date of receipt of today’s order along with interest, as per the prevailing policy in such cases.

If the amount is not paid within a period of eight weeks, the appellant shall pay the entire amount along with interest at the rate of 9% per annum till it is actually paid”.”

7. Aggrieved against the aforesaid modification, where the direction has been issued to the appellant to pay retiral dues to the private respondent, the college is before this Court.

8. Learned counsel appearing for the appellant submitted that the order passed by the High Court is not in consonance with the Scheme¹⁰ applicable for grant of retiral dues to an employee of an

¹⁰ Pension Scheme for the teaching/ non-teaching staff in the Gram Vidyapeeth, Government of Gujarat, Education Department, Resolution Number GUS/1089-5369/B Sachivalaya, Gandhinagar dated 13.07.1990

aided institution. The relevant paragraph of the Scheme applicable is extracted below:

*“11. The pension papers of the members of the staff entitled to pension, gratuity, etc. under the scheme should be prepared in case of Gram Vidyapeeth staff by the Principal of the Gram Vidyapeeth on the basis of service record maintained by the Gram Vidyapeeth concerned. The entries in the service book of the staff will be made and attested by the Principal of Gram Vidyapeeths and in case of Principal, by the management of the Gram Vidyapeeth concerned and such entries should be verified by the Director of Higher Education of the officer authorized by him and a certificate of verification recorded in the service books. The Director of Higher Education should sanction the pension, gratuity, etc. and forward the pension completed to the Director of Pension and Provisions Fund. **The pension, gratuity, etc. so sanctioned will be payable from the Government Treasurers.** The Director of pension and Provident Fund will produced be clean and issue a pension payment order and/or gratuity payment order on the Treasury, from which the pensioner illegible pension gratuity, under intimation to Director of Higher Education.”*

9. Learned counsel argued that the aforesaid Paragraph 11 of the Scheme provides that the liability to pay pension is on the State Government. The direction given by the High Court in the order passed in the Review Application is not in consonance with the aforesaid provisions. Hence, the same be set aside and the State should be held liable to pay retiral dues to the respondent no.2.

10. On the other hand, learned counsel for the State submitted that the conduct of the appellant is to be seen before putting any liability with the State to pay retiral dues to an employee. It is a case in which the respondent no.1/appellate authority *vide* order dated 02.03.2000 directed reinstatement of the respondent no.2. However, thereafter the college continued litigating, raising frivolous grounds, as a result of which, the State is now sought to be burdened with liability to pay pension to the respondent no.2, who had not actually worked for the requisite period. More than two decades have passed thereafter and during this period, respondent no.2 attained the age of superannuation. In support, reliance has been placed upon judgment of this Court in **Educational Society, Tumsar and Others vs. State of Maharashtra and Others**¹¹.

¹¹ (2016) 3 SCC 512; 2016 SCC Online SC 93

11. Learned counsel appearing for respondent no.2 supported the argument raised by learned counsel for the appellant while stating that in terms of the laws applicable to the appellant, being Grant-in-Aid Institution, the duty to pay retiral dues lies with the State, which cannot escape its liability.

12. Heard learned counsel for the parties and perused the paper book.

13. It is not a matter of dispute that the appellant is an institution entitled to Grant-in-Aid and the employees thereof are entitled to pensionary benefits in terms of the aforesaid Scheme. The only argument raised by the learned counsel for the State is regarding conduct of the appellant in fighting litigation after the State had directed reinstatement of the respondent no.2 and finally settling the matter before the High Court. In our opinion, the same cannot be fatal for the appellant and burden it with the retiral benefits of respondent no.2 whereas the Scheme provides for otherwise. There is no exception provided in the Scheme to enable the State to deny payment of retiral benefits to an employee of the Grant-in-Aid Institution under certain circumstances and shift the burden on the institution.

14. The judgment relied upon by the State may not have application in the facts of the case, wherein it was found that the action

of the Education Institution was without jurisdiction, transgressing its power to terminate its employee. If the facts of the present case are concerned, no such finding has been recorded by the appellate authority. There were serious charges against the respondent no.2 which included *inter alia* instigation of students to go on strike, improper behaviour with the co-employees, attempt to pollute the atmosphere in the institution, violation of rules and regulations of the institution and involvement in the activities which may cause damage to the institution. Out of 30 charges, 10 were proved. After inquiry, with a view to maintain discipline in the institution, it was found appropriate that the respondent no.2 be dismissed from service. However, the appellate authority found the charges established to be trivial in nature and opined that those should have been sorted out. The appellate authority found that the punishment of dismissal is too harsh and the issues could have been resolved by way of discussion.

15. The appellant, keeping in view the discipline in the institution, thought it appropriate to challenge the same. In such circumstances, it cannot be opined that it's conduct was such that it should be burdened with the retiral benefits of delinquent employee. It is not the opinion of the appellate authority or any Court that the action taken by the appellant against the respondent no.2 was without

jurisdiction as was the case in **Educational Society, Tumsar and Others (supra)**.

16. For the reasons mentioned above, the appeals are allowed. The impugned order dated 21.04.2023 passed by the High Court, allowing the Review Application filed by the State and dismissing the Review Application filed by the appellant, is set aside. The Review Application filed by the appellant is allowed. As a consequence, the order dated 26.07.2022 is modified. The consequence thereof is that the State, respondent no.1 shall be liable to pay retiral dues to respondent no.2.

.....J.
(J.K. MAHESHWARI)

.....J.
(RAJESH BINDAL)

New Delhi
December 02, 2024.