



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 916 of 2016

In R/SPECIAL CIVIL APPLICATION NO. 8229 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
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

STATE OF GUJARAT & ORS.

Versus

RAJESHKUMAR GOVINDBHAI PATEL

Appearance:

MR SAHIL TRIVEDI, AGP for the Appellant(s) No. 1,2,3

MR TEJAS SHUKLA FOR MR BIPIN P JASANI for the Respondent No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

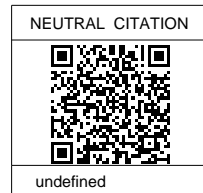
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 14/06/2024

ORAL JUDGMENT

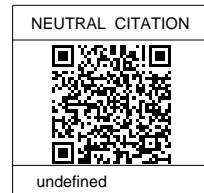
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present appeal is filed under Clause 15 of the Letters Patent Act, 1865 and directed against the judgement and order dated 04.04.2016



passed in the captioned writ petition being Special Civil Application No. 8229 of 2012.

2. At the outset, learned AGP Mr. Trivedi has submitted that a short issue is involved in the present appeal i.e. interpretation of Clause 3 of the Government Resolution dated 18.03.2005 issued by the Finance Department promulgating New Defined Contributory Pension Scheme (NPS) w.e.f. 01.04.2005. He has submitted that the respondent has joined Secondary School as a Teacher on 01.09.1995 and has served in the same capacity till 16.01.2001 and thereafter, he joined Higher Secondary School from the next date i.e. from 17.01.2001 however, he had resigned from that post and he was placed in a fixed salary of Rs.4,500/- per month for 5 years and after completion of 5 years of service, he was placed in a regular pay-scale. It is submitted that in the meantime, as per Clause 3 of the Government Resolution dated 18.03.2005, he would be governed by the NPS and he is not entitled to continue with the old pension scheme. He has thus, submitted that the Tribunal as well as learned Single Judge have fallen in error in granting relief to the respondent to continue him in General Provident Fund (GPF) account under the old pension scheme. He has submitted that having resigned from the earlier post and having been appointed in the new post on a fixed salary, he



would not be entitled to be continued in the old pension scheme. Hence, it is urged that the impugned judgement and order passed by the learned Single Judge as well as Tribunal may be quashed and set aside.

3. Per contra, learned advocate Mr. Shukla appearing for the respondent has submitted that in fact, the said Government Resolution dated 18.03.2005 is further clarified by the clarificatory Government Resolution dated 06.09.2005 and it is decided by the State Government that those employees, who have tendered their resignation on a technical ground and their GPF accounts have been continued, they would be entitled to be the members of the old pension scheme. It is thus, urged that the case of the respondent is squarely covered by the Government Resolution dated 18.03.2005, which has been precisely construed by the Tribunal as well as learned Single Judge.

4. We have heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

5. The facts, which are not in dispute, are that the respondent has joined the Secondary School as a Teacher on 01.09.1995 and continued as such till 16.01.2001. His contribution was towards the



old pension scheme and GPF account was also opened. On the next date i.e. on 17.01.2001, he was appointed as Vidya Sahayak and he was paid fixed salary of Rs.4,500/- per month for 5 years and thereafter, on 16.01.2005, after rendering 5 years of service, he was placed in a regular pay-scale of Rs.5,500-9,000/-. Since the appellant did not allow the respondent to be a member of old pension scheme in view of the promulgation of NPS vide Government Resolution dated 18.03.2005, the respondent assailed such action of the appellant before the Tribunal by filing an application being Application No.90 of 2008 with a prayer that he was required to be construed as a member of old pension scheme i.e. GPF and not NPS applicable from 01.04.2005. The Tribunal allowed the application by considering the entire scheme as well as the Government Resolution dated 06.09.2005. The same was assailed by the State Government by filing the captioned writ petition being Special Civil Application No.8229 of 2012. In the said writ petition, the respondent filed Civil Application No.2328 of 2016 seeking interim relief. While hearing the said application for interim relief, the learned Single Judge dismissed the writ petition filed by the State Government and confirmed the order passed by the Tribunal.

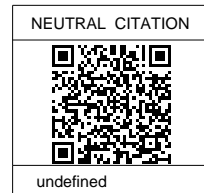


6. The entire case of the appellant hinges on Clause 3 of the Government Resolution dated 18.03.2005, by which the NPS was introduced w.e.f. 01.04.2005. The same reads as under:

“(3) Employees already appointed prior to 1st April, 2005 under the practice adopted by the State Government for appointment on Monthly Lumpsum Salary and the employees who may be appointed now onwards on Monthly Lumpsum Salary though the regular recruitment procedure applicable as per the Government orders in force and who may be converted in the regular pay-scale on or after 1st April, 2005.”

7. It is not in dispute that as per Clause 1, the said scheme was applicable to all the employees of the Government and Panchayat, who may be appointed on or after 01.04.2005. It is the case of the appellant that since the respondent had tendered his resignation and he was appointed on lump-sum salary for a period of 5 years, he could not have been continued with the old pension scheme but his case would be governed by the NPS.

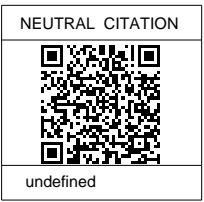
8. At this stage, it would be apposite to refer to the Government Resolution dated 06.09.2005 issued by the State Government, which is clarificatory in nature, clarifying the scheme of Government Resolution dated 18.03.2005. The said resolution specifically mentions that those employees, who were already in service prior to



introduction of the NPS w.e.f. 01.04.2005 and have tendered resignation on the technical grounds and thereafter, have been appointed by due process of law, they will be governed by the old pension scheme of 1972.

9. In the instant case, the GPF account of the respondent was continued till 20.01.2006, which pertains to the old pension scheme and the same was in existence. The stance taken by the appellant before us does not appear to be palatable. There is no other way for the employees like the present respondent to join the service on the next day i.e. on 17.01.2001, without tendering resignation one day before i.e. on 16.01.2007. An employee, who is already serving, could have been appointed on substantive post only after he tenders resignation. Hence, it would be a technical issue, as encompassed in the Government Resolution dated 06.09.2005 and the case of the respondent would squarely fall under the said resolution since his GPF account, which was opened, was continued even after he was appointed on the second post on 17.01.2001.

10. Hence, we do not find any infirmity and illegality in the order passed by the Tribunal as well as learned Single Judge.



11. Under the circumstances, the present appeal fails. The same stands dismissed.

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

Sd/-
(MAUNA M. BHATT,J)

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