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Court : Gujarat

Decided On : Jan-27-1993

Reported in : (1993)1GLR877; (1993)IILLJ1150Guj

Judge : C.K. Thakker, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Application No. 801/1988

Appellant : S.D.M. Basha

Respondent : D.i.G. of Police, Wireless Communication and ors.

Advocate for Def. : T.H. Sompura, A.G.P.

Advocate for Pet/Ap. : I.S. Supehia, Adv.

Judgement :

1. This petition is filed by the petitioner for an appropriate writ, direction and/or order quashing and setting aside the order dated February 9, 1988 by which application of the petitioner came to be rejected for balance of the Leave Travelling Concession ('L.T.C.' for short).

2. To appreciate the controversy raised in the present petition, few relevant facts may now be stated :

It is the case of the petitioner that he was serving as Head Wireless Operator under the Director General of Police, Gujarat State, Ahmedabad, respondent No. 2 herein. In accordance with the policy of the Government, he was entitled to enjoy benefits of L.T.C. The petitioner belongs to State of Tamilnadu. He used to enjoy Earned Leave (E.L.) at every block year at his native place. For availing that benefit, the petitioner used to travel by All India Permit Taxi with his family members because to get immediate reservation in Railway in First Class was extremely difficult. The authorities had granted the L.T.C. claim and sanctioned bill of the petitioner on previous two occasions, i.e., in the year 1982-83 and in 1984-85. Copies of those orders have been annexed to the petition. In the year 1987 again the petitioner became entitled to get that benefit. Since he wanted to avail of the advantage, he made necessary application and by an order dated April 2, 1987, passed by the second respondent, he was granted E.L., with effect from May 22, 1987 upto June 20, 1987, i.e. in all 30 days. A copy of that order is also annexed to the petition. As per the past practice, the petitioner travelled by All India Permit Taxi bearing No. GRR 642 from Ahmedabad to Salem and Salem to Ahmedabad. The petitioner had drawn an advance Rs. 5,720/- towards L.T.C. claim from the respondents. The petitioner came back after the period was over. First Class fare for to and fro journey from Ahmedabad to Salem and back would come to Rs. 7,346/-. The petitioner, therefore, demanded the balance amount of Rs. 1,626/- towards L.T.C. claims (Rs. 7,346-Rs. 5720 = Rs. 1,626/-) from the respondents. The petitioner was, however, informed by a letter dated December 15, 1987, Annexure 'F' to the petition which is impugned in the present petition that since he had travelled by a private taxi, in accordance with the resolution passed by the Government of Gujarat on January 22, 1987, he was not entitled to get the benefit of L.T.C. by taxi. He was even asked to repay amount of Rs. 5,720/- which he had withdrawn in the past. The petitioner in these circumstances has approached this Court by filing the present petition.

3. Mr. I. S. Suphia, learned Counsel for the petitioner, contended that the impugned order is clearly illegal and contrary to law inasmuch as before passing the impugned order, no notice was issued, no explanation was sought and no hearing was afforded to the petitioner. The order was, therefore, violative of the principles of natural justice and fair play. He also submitted that in the past, the

petitioner had travelled by private taxi and the L.T.C. benefits had been given to him. Without there being any change in the situation, the petitioner was denied that benefits this time which was arbitrary and unlawful. Mr. Supehia further submitted that the petitioner was not informed at any time before passing the impugned order that the petitioner would not be entitled to get L.T.C. benefits if he would travel by a private taxi. He submitted that had the petitioner been intimated well in advance about it, he would not have travelled by taxi but about it, he would not have travelled by taxi but would have gone by train. When the petitioner had enjoyed the leave, it was not open to the respondent-authorities now to withhold the benefits to which he was considered eligible and entitled. Finally, it was submitted that the resolution on which reliance was placed would not apply in the instant case inasmuch as though it was issued on January 22, 1987, it was sent to the office of the second respondent by a communication, dated May 14, 1987 and it was received by the office of the second respondent as late as on July 1, 1987. Mr. Supehia submitted the order granting leave of the petitioner was made on April 2, 1987 and at that time, the above resolution was neither received by the office of the second respondent nor even sent by the State Government to the office of the second respondent. He, therefore, submitted that the impugned action requires to be interfered with by this Court.

4. Mr. T. H. Sompura, learned Assistant Government Pleader, on the other hand, submitted that the impugned action taken by the respondent authorities is in accordance with law. Relying on the affidavit filed by Dy. S.P., Wireless (Administration), he submitted that as per the policy of the Government of Gujarat set out in the resolution, the petitioner could not claim L.T.C. benefit if he would travel by a private transport. He submitted that since the resolution is of January 22, 1987 and was made applicable with effect from February 1, 1987, knowledge of the petitioner was altogether immaterial and irrelevant. He was bound by the said resolution. In view of the clear provision in the resolution it was also not necessary for the Government to afford him hearing and the petition requires to be dismissed.

5. Having given anxious consideration to the facts and circumstances of the case, I am of the opinion that the petition requires to be allowed. It is the case of the

petitioner that in past, such benefits were granted to employees who had travelled by private taxi. The petitioner was also granted that benefit. Necessary averments have been made in the petition and the documents are also produced. The averments are not controverted by the respondents. Though in affidavit-in-reply, a reference was made to the said resolution and it was stated that a copy of the said resolution was annexed to the affidavit-in-reply, it was not annexed to the reply. A copy is, however, placed on record by the petitioner along with his affidavit in rejoinder. Looking to the resolution, Mr. Supehia appears to be right that copies of the resolution were sent to different departments on May 14, 1987. Mr. Supehia also appears to be right that a copy of the resolution was received by the office of the second respondent on June 1, 1987 which is clear from the endorsement made on a copy of that resolution. If these are the facts, in my opinion, the learned Counsel for the petitioner is right in contending that it could not be pressed into service by the respondent-authorities for denying the benefits to the petitioner. It cannot be gainsaid that it has been given effect from February 1, 1987. The question, however, is whether it was made known to the persons for whom it was issued. This is a resolution, i.e., administrative instruction and, ordinarily, by sort of publication it is required to be made known to the persons who are sought to be affected thereby.

6. A similar question arose before the Hon'ble Supreme Court in the case of *Harla v. State of Rajasthan*, reported in AIR 1951 SC 467. There the appellant was convicted under Section 7 of the Jaipur Opium Act and fined Rs. 50/-. The conviction was confirmed by the High Court of Rajasthan and the matter was carried to the Hon'ble Supreme Court under Art. 136 of the [Constitution of India](#). Reliance was placed in that case by the respondents on a resolution passed on December 11, 1923. It was the case of the appellant that he was not aware of any such order or resolution and it was not published in any known manner. Upholding the arguments and setting aside the conviction of the appellant, the Hon'ble Supreme Court observed.

'In the absence of any special law or custom, we are of opinion that it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they could not even with the exercise of

reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised man. It shocks his conscience the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.'

The Hon'ble Supreme Court also observed that the principle underlying the above rule had been judicially recognised in England. Drawing the distinction between an Act of Parliament and an order or resolution, the Supreme Court observed that Acts must be placed entirely on a different footing inasmuch as they are publicly enacted. The debates are open to public and such Acts are passed by the accredited representatives of people who in theory can be trusted to see that their constituents know what has been done. Moreover, they also receive wide publicity in papers and, over the wireless. The said principle cannot be extended to delegated or promulgated legislation and other orders, circulars or resolutions. There must, therefore, be promulgation and publication of such orders and resolutions of some kind. It may be that mode of publication may vary, but reasonable publication of some sort must be there.

7. In the leading case of *Patchett v. Leathem*, reported in (1949) 65 TLR 69, Streatfield, J. pithily observed :

'Whereas ordinary legislation, by passing through both Houses of Parliament or, at least, laying on the table of both Houses, is thus twice blessed, this type of so called legislation is at least four times cursed. Firstly, it has seen neither House of Parliament; Secondly, it is unpublished and is inaccessible even to those whose

valuable rights of property may be affected; Thirdly, it is a jumble of provision, legislative, administrative or directive in character; and fourthly, it is expressed not in the precise language of an Act of Parliament or an Order in Council but in the more colloquial language of correspondence, which is not always susceptible of the ordinary canons of construction.'

8. In the instant case, the resolution left the chamber of the first respondent as late as on May 14, 1987 and reached the office of the second respondent only on June 1, 1987. Prior to that, an order came to be passed in favour of the petitioner in April 1987. In past also, the petitioner was granted benefits and there was no justifiable reason to deprive the petitioner of the said benefit. The petitioner would, therefore, be entitled to get L.T.C. as claimed by him in the past and as per order Annexure 'E' dated April 2, 1987. The respondent-authorities had no right to deny the said benefit and the impugned order at Annexure 'F' dated December 15, 1987 requires to be quashed and set aside.

9. Mr. Supehia, submitted that the petitioner has already retired but his retirement benefits have been withheld by the authorities on the ground that the petitioner has to re-pay the amount of Rs. 5,720/- as per the impugned order dt. December 15, 1987, Annexure 'F' is set aside, the respondent-authorities are now directed to pay all retirement benefits to the petitioner to which he is otherwise entitled.

10. In the result, this petition is allowed. The order at Annexure 'F' is hereby quashed and set aside. Rule is accordingly made absolute. In the facts and circumstances, however, there shall be no order as to costs.