

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1420 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.B.SHAH and
MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

K. K. MESWANIA

Versus

B. D. KANABAR

Appearance:

MR BHARAT J SHELAT for Petitioners

MR AJ DESAI for Respondent No. 1

CORAM : MR.JUSTICE M.B.SHAH and
MR.JUSTICE M.R.CALLA

Date of decision: 10/08/94

ORAL JUDGEMENT

It is the say of the petitioners that they were appointed to the post of Deputy Mamlatdar (provisionally) in January 1977 and on the date of filing of this petition they were working as such. It is also pointed out that the order dated 27th April 1977 they were

wrongfully reverted to the lower post of Clerk by erroneous interpretation of Revenue Qualifying Examination Rules, 1970. The petitioners have, therefore, prayed that -

- (1) this Hon'ble Court be pleased to issue interim directions to respondents Nos.38 and 39 asking them to prepare the Seniority List from 1976 till today within a period of four weeks and produce the same before this Hon'ble Court;
- (2) this Hon'ble Court be pleased to issue interim direction to respondent No.40 - Gujarat Public Service Commission to postpone the holding of the Examination in May 1983 till the aforesaid Seniority List from 1976 is prepared bearing in mind the relevant rules and thereafter invite applications, giving permission to the petitioners to appear for the examination for the post of Mamlatdar;
- (3) this Hon'ble Court be pleased to issue a Writ of Mandamus and/or any other appropriate Writ, direction and/or order directing the Government to implement the 1970 rules amended in 1975 read with the judgments of this Hon'ble Court and the directions given by the Hon'ble Supreme Court and prepare Seniority List in the cadre of Deputy Mamlatdar from 1976 till today and give such other benefits which the petitioners are entitled to including the benefit of salary, increments gratuity, future pension, etc.

At the time of admission of this matter, on 3-5-83 the Court had passed the following interim order:

"The Department is directed to prepare a revised seniority list in accordance with the rules as interpreted by the Supreme Court in V.K.Rao Vs State of Gujarat. Civil Appeal Nos.2309-10 of 1979 at an early date. In the mean time the Department should also consider the request of the petitioners to be permitted to appear at the Higher R.Q.E. on the basis of their seniority under the existing list since their grievance is that their juniors have been permitted to appear at the said examination while they have been denied the opportunity. It would be desirable that the decision on the question of revising the seniority list is taken before the examination is held by the G.P.S.C. However, if that is not

possible because of paucity of time, the claim of the petitioners to be permitted at the examination should be considered independently. S.O. to 22/6/1983.

Subsequently on 6-7-83 the Court had further directed as under :

"Rule.

By way of interim relief respondents Nos.38 and 39 are directed to finalise the seniority list of Dy. Mamlatdars on or before October 7, 1983. Seniority list as finalised to be placed on record on or before October 14, 1983."

In view of the aforesaid interim orders passed by this Court and the various decisions rendered by this Court with regard to the interpretation of the Revenue Qualifying Examination Rules this petition has now become infructuous.

The question involved in this petition is concluded by this Court (Coram: P.S.Poti, C.J. & S.B.Majmudar, J.) in Special Civil Application No.2860 of 1983 and other allied matter, decided on 16th December 1983, Special Civil Application No.5007 of 1982 decided on 16th December 1983, Special Civil Application No.4615 of 1986 and another decided on 7th November 1990. Further, this Court in the case of A.P.Bhatt v. Collector of Panchmahal. (1992) 33(2) G.L.R. 805, issued directions and held as under:

"That those clerks who are promoted as Deputy Mamlatdars after having passed the RQ examination within prescribed chances and within specified period would get benefit of Rule 9 seniority viz., their juniors who might have been promoted earlier. But such benefit will not flow to those clerks who are late latifs or irregulars, meaning thereby, those clerks who have passed the LRQ examination beyond specified period and beyond prescribed chances. As per Rule 19 of the Rules, nothing in these Rules shall be deemed to have affected the existing rights of any candidates, if any, accrued under the old rules. As per the proviso to Rule 19, it is laid down that permission to appear at the examination granted under the old rules shall be deemed to be permission granted for the purpose of Rule 4 of these Rules."

In this view of the matter, this petition would not survive at this stage as the respondents are bound to follow the law laid down in the aforesaid decisions.

In the result, this petition is rejected. Rule discharged with no order as to costs. The interim relief stands vacated.