

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2190 OF 1978

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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NK AGRAWAL & ORS.

VERSUS

OIL & NATURAL GAS COMMISSION

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Appearance:

MR PC MASTER for Petitioners.

MR RH MEHTA for Respondents.

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Coram: S.K. Keshote,J

Date of decision:9.5.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The petitioners, thirteen in number, the employees of Oil & Natural Gas Commission (ONGC), filed this writ petition and challenge is made to the orders annexures 'J', 'K', 'L' & 'M'.

3. The dispute pertains to assignment of seniority to the petitioners and private respondents herein on the post of Technical Assistant, Gr.I (Chem.), now redesignated as Assistant Chemist. The challenge has been made on the ground that though selection has been made of the candidates on the post in different batches, the seniority has to be assigned with respect to the continuous length of service, i.e. from the date of joining the service.

4. The learned counsel for the respondent-ONGC raised a preliminary objection that this writ petition suffers from gross delay and latches. It has next been contended that otherwise also, this Special Civil Application has become infructuous as all the petitioners after filing of this petition, have been promoted to next two higher posts and petitioners No.3, 7, & 9 have been promoted for further two next higher posts. All the petitioners have been promoted firstly to the post of Chemist and then to the post of Senior Chemist up to 1st October 1982 and the petitioners No.3, 7 & 9 were promoted to next two higher posts of Deputy Superintendent Engineer (Chemist) on 1.1.86 and then to the post of Superintendent Engineer (Chemist) on 1.1.90. In view of this fact, the learned counsel for the respondent-ONGC contended that nothing survives in this Special Civil Application.

5. The learned counsel for the petitioners does not dispute that all the petitioners have been given two promotions after filing of this petition and the petitioners No.3, 7 & 9 have been given further two promotions. However, so far as the contention of the learned counsel for the respondent-ONGC regarding delay and latches is concerned, the learned counsel for the petitioners contended that there is no question of delay and further after admission of the Special Civil Application, the petition should not be dismissed on the ground of delay and latches. On merits, the learned counsel for the petitioners contended that the seniority has to be assigned to the petitioners on the basis of the date of joining but contrary to it, the seniority has been assigned to them with reference to the date of selection. That action of the respondent-ONGC was wholly arbitrary and unjustified.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. In service matters, and particularly in petitions in which dispute regarding seniority is raised, it is utmost important and necessary for the petitioners to bring on record of Special Civil Application, all subsequent events and developments which have taken place. The petitioners owe duty to the Court to bring on record, the latest position of theirs in service. All the petitioners have been given two promotions after filing of this Special Civil Application and the petitioners No.3, 7 & 9 have been given four promotions. Irrespective of the effect of interse seniority of the petitioners and private respondents, there may be possibility that after further promotions, the dispute may not survive of the seniority list and lowest cadre. The very fact that the petitioners have not given out these details may go to show that no grievance of the petitioner now survives in the Special Civil Application. The possibility of getting earlier promotion by the petitioners and leaving back the private respondents in the service matters cannot be overlooked. In many cases, this Court has time and again observed that in the matters of disputes relating to seniority, promotions, reversions, and other service conditions, it is utmost necessary that the petitioner should bring on record, all the subsequent events and developments which have taken place and bring on record, ultimately what grievance now survives. Be that as it may. Otherwise also, after going through the contents of Special Civil Application and the orders made from time to time by the Commissioner on representation of petitioners, I do not find any substance in the claim of the petitioners on merits. The provisional seniority list in the cadre of Assistant Chemist, Gr.I was published on 5.7.71. Against this provisional seniority list some of the petitioners have filed representation and grievance has been made that seniority should have been assigned therein on the basis of the date of joining in the cadre and not on the basis of date of selection. A reference in this respect may have to the letter No.22(301) 65 Establishment.Techinc, dated 5.10.74 of the Directorate of Administration, Dehradun Division addressed to the general Manager, Western Region, Baroda, copy of which has been filed by the petitioners at page 51. The representation made by some of the petitioners was considered by the constituted committee for the purpose and the said committee has observed that in accordance with paragraph (I) of the Memorandum 16(27)/62 - Reg. dated 10th May 1963, the

candidates appointed as a result of an earlier selection will be deemed senior to those appointed as a result of subsequent selection. The persons who have been selected in interviews held on 7/10.8.67, though appointed subsequent to the persons interviewed and selected, were deemed to be senior to those officers. The Memorandum dated 10th May 1963 has not been challenged by petitioners in this Special Civil Application. In this matter, the final seniority list has been prepared in May 1972. The principle on which the final seniority list has been prepared does not suffer from any infirmity or illegality which calls for interference of this Court. A consolidated final seniority list was then issued in July 1974 which has been challenged by the petitioners before this Court. Some of the petitioners have filed appeal and further representations in the matter, but the same came to be dismissed under annexure 'M' dated 8th March 1977. So, leaving apart the question of delay and laches in challenging the seniority list on merits also, the petitioners have no case. The candidates who have been selected in the interviews held earlier in point of time have rightly been given seniority above those persons who have been selected in the later interview. Ordinarily, the persons who have been selected earlier should have been given appointment order earlier to the persons who have been selected later but the appointment orders of later selectees have been issued earlier and as such, on the basis of this unfortunate circumstance, no weightage of length of service could be given to the petitioners. It is not the case of the petitioners that interviews on two different dates have been made for the post under common advertisement. When it is a recruitment on two different occasions, then naturally, the candidates who have been recruited in earlier selection, though appointment letter has been given in later point of time to them, are certainly having preferential claim of seniority above those candidates who have been selected in later selection though appointment has been given earlier.

8. Taking into consideration the totality of the facts of the case, this writ petition is wholly misconceived and the same deserves to be dismissed. Order accordingly. The Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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