

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5323 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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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?

USMANKHAN D PATHAN

Versus

STATE OF GUJARAT

Appearance:

MRS DT SHAH for Petitioners

MRS SIDDHI TALATI for Respondents No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/07/97

ORAL JUDGEMENT

1. The petitioners, in all seven originally and now six, filed this special civil application and prayer has been made for declaration of the order dated 27th September, 1984, annexure 'D' as violative of Articles 14 and 16 of the Constitution of India.

2. The facts of the case, in brief, are that the petitioners are heavy vehicle Drivers in the department

of Building and Construction of the Government of Gujarat. In the department, there are other categories of Drivers i.e. the Jeep Drivers and Road Roller Drivers. On 21st May, 1982, the seniority list of the drivers was prepared by the Circle Officer and the petitioners felt aggrieved of their position therein have objected to the same.

3. One of the contentions was that the alternative stand taken by the respondents either to maintain a common seniority list of drivers including the jeep drivers and driver of road roller or for making three designations amongst drivers namely, truck drivers, jeep drivers and road roller drivers are illegal. The request of the petitioners appear to have not been granted, and as such, they filed an appeal before the Gujarat Civil Services Tribunal. In pursuance of the directions given by the Tribunal under the order dated 25th September, 1984, the petitioners were given the selection grade prescribed for the drivers. The petitioners were satisfied with the aforesaid order and hence they had withdrawn the appeal on 29th November, 1984. However, under the order dated 27th September, 1984, annexure 'D', the order dated 25th September, 1984 was placed under suspension. Hence, this special civil application.

4. One of the contentions raised is that the order annexure 'D' dated 27th September, 1984 has been passed without giving any notice or opportunity of hearing to the petitioners.

5. On the other hand, the counsel for the respondents contended that this special civil application is premature as under the impugned order only the earlier order dated 25th September, 1984, granting the selection scale to the petitioners, has been placed under suspension.

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

7. I find sufficient merits in the contention of the counsel for the petitioners that the order dated 27th September, 1984 has been passed without giving any notice or opportunity of hearing to either of the petitioners. Under the order dated 25th September, 1984, the selection scale has been granted to the petitioners and in case for any reasons, that order has to be put under suspension then the principles of natural justice have to be followed. The order dated 25th September, 1984 confers benefit of selection scale to the petitioners and

suspension of the said order is certainly calling civil consequences, and even if it is an administrative order then also the principles of natural justice have to be followed. The learned counsel for the respondents does not dispute the position that before passing of the order dated 27th September, 1984, any notice or opportunity of hearing has been given to the petitioners.

8. It is true that the order dated 25th September, 1984 has been placed under suspension vide order dated 27th September, 1984, but till date the final order has not been passed. Against the order dated 27th September, 1984, the writ petition is certainly premature, but though more than 12 years have passed, it is not the case of the respondents that any final order has been made in the matter.

9. So the interest of justice will be met in case this special civil application is disposed of in the terms that the respondent No.2 shall consider the matter finally regarding the cancellation of the order dated 25th September, 1984, after giving an opportunity of hearing to the petitioners. In case ultimately, the respondent No.2 decides to cancel the order dated 25th September, 1984, it is expected of the respondent No.2 to pass a speaking order and copy of the same may be given to the petitioners. In case the petitioners are not satisfied with that order, then it will be open to them to take remedy available against the same before appropriate forum. This special civil application and rule stand disposed of in the aforesaid terms with no order as to costs.

zgs/-