

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6097 of 1983

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?

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JK PANDYA

Versus

STATE OF GUJARAT

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Appearance:

MR PV HATHI for Petitioner

MS SIDDHI TALATI for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/07/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner now Senior Clerk in the office of the Director of Land Records & Settlement Commissioner, Gujarat State at Ahmedabad, filed this special civil application and prayer has been made for quashing and setting aside of the order dated 17th September, 1983, so far as it excludes the petitioner from promotion to the

higher post in the cadre of Sr. Clerk which was a scheduled post of Class-III and for further promotion to the next higher post from the deemed date on which Shri V.D. Thakker was promoted with all consequential benefits which follow therefrom. So the petitioner prayed for giving him the promotion to the post of Sr. Clerk then Shirastedar, Head Clerk etc. in the department. In view of the subsequent developments which have taken place during the pendency of this special civil application, it is not now necessary for me to give out all the facts in detail.

3. It is not in dispute that promotions to the other Class-III posts carrying higher pay scale would have been made only from the persons who have passed the Land Records Qualifying Examination. The petitioner admittedly passed the aforesaid examination in November, 1980. The persons who have not passed the said examination were given the promotion and the petitioner made a grievance that those should be reverted and he should be given promotion to the next higher post.

4. This writ petition has been amended by the petitioner two times and subsequent events which have taken place have been brought on record. Under the order dated 19th May, 1995, the petitioner was given the promotion on the post of Sr. Clerk from deemed date of 22-7-1981. Under the order of the same date, one Shri Y.N. Vaidya has also been promoted to the post of Sr. Clerk with deemed date of 4-9-1982. Shri Y.N. Vaidya has further been promoted under the same order on the next higher post of Shirastedar with deemed date of 17th September, 1983. These promotions have been made, as it comes out from these orders, in compliance of the judgment rendered by the Gujarat Civil Services Tribunal at Gandhinagar in Appeals No. 84/81, 239/87 and 250/87.

5. The grievance of the petitioner is that though in the case of other persons who were given the deemed date of promotion on the post of Sr. Clerk later in point of time than the petitioner, have been given further promotions, but his case was not considered for further promotion on the pretext that this special civil application is pending.

6. The respondents have admitted that the petitioner has been given the deemed date of promotion in the cadre of Sr. Clerk. They have also admitted that another person Shri Y.N. Vaidya has further been given promotion on the post of Shirastedar from 17th September, 1983. Reply to the amended writ petition has been filed and

curiously enough therein the respondents have not given out why the case of the petitioner has not been considered for promotion to the next higher post of Shirastedar with reference to the date from which Shri Y.N. Vaidya was given promotion.

7. In Para No.11 of the reply, the respondents have come up with a case that according to the Government Notification, Revenue Department, No.GHM 184/197/M-EXM/1083/34289-H dated 29-8-1984 the post of Sr. Clerk is considered a subordinate post instead of a scheduled post. However, if it is taken to be so, the fact remains that Shri Y.N Vaidya was given promotion on the post of Shirastedar w.e.f. 17th September, 1983 on which date the post of Sr. Clerk was certainly a scheduled post. The respondents have given out that the claim of the petitioner for deemed date of promotion to the post of Shirastedar after deemed date of promotion to the post of Sr. Clerk could be considered only after he is regularly appointed as Shirastedar. It has further been stated that the petitioner does not presently hold the post of Shirastedar, so the question of giving the deemed date of promotion does not arise. This is wholly arbitrary defence given by the respondents. It is not the case that the claim of the petitioner has been considered for promotion to the next higher post of Shirastedar from deemed date and he was not found suitable. From the aforesaid defence, it is a case now on which there is no doubt that the case of the petitioner for deemed date of promotion on the post of Shirastedar after giving deemed date of promotion on the post of Sr. Clerk has not been considered.

8. The next defence taken by the respondents is that the petitioner was not due for consideration for promotion to the post of Shirastedar prior to 1-9-1989, is a perverse defence. When Vaidya who has been given the promotion on the post of Sr. Clerk later in point of time than the petitioner, has been given promotion to the next higher post of Shirastedar from deemed date what for this claim of the petitioner was not considered is unreplied. The consideration of the case of petitioner for promotion in the year 1989 and the decision taken to keep his result in sealed cover is hardly of any relevance in the present case. The claim of the petitioner for promotion to the next higher post on the basis of deemed date of promotion to the post of Sr. Clerk and with reference to the fact that other person, Shri Vaidya has been given promotion to the next higher post from deemed date has to be considered, which has not been done in the present case.

9. In the result, this special civil application is disposed of with the direction to the respondents to consider the case of the petitioner for promotion to the next higher post of Shirastedar with reference to the deemed date of his promotional post of Sr. Clerk and deemed date of promotion of Shri Vaidya on the post of Shirastedar i.e. 17th September, 1983 and in case he is found suitable for promotion to the said post then he shall be entitled for all the consequential benefits which follow therefrom. This special civil application and Rule therein stand disposed of in the aforesaid terms with no order as to costs.

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