

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1646 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
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? : NO

1 to 5 - No

RAJNIKANT M SONPAL

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioner (Absent)
M/S PATEL ADVOCATES for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/06/1999

ORAL JUDGEMENT

The petitioner who was employed as a Telephone Operator-cum-Clerk by the Executive Engineer of the Irrigation Department since 15.6.1983, has filed this petition in the year 1987 contending that he has been continuously discharging his duties as Telephone Operator-cum-Clerk and that the petitioner is rendering the same services which are being rendered by the regular

employees, but the petitioner is not given salary in the regular time scale. The petitioner is given artificial breaks and that in January, 1987 the petitioner was taken on duty at Rajkot on the post of Telephone Operator-cum-Clerk, but three days thereafter the petitioner was not allowed to resume his duties at Rajkot and asked to discharge duties as a labourer at Bhadar. Relying on the principle of 'equal pay for equal work', the petitioner filed the present petition in the year 1987 for the following reliefs :-

(a) for a declaration that the petitioner is
in continuous service with the
respondents from the date of his initial
appointment and the artificial breaks, if
any, are illegal and non-est and that the
transfer of the petitioner outside the
cadre is non-est and he continued to be
on the post of Telephone
Operator-cum-Clerk.

(b) for a direction to the respondents to
regularize the petitioner's services from
the date of his initial appointment and
to pay the petitioner regular salary and
allowances in the regular pay scale and
all the consequential benefits such as
seniority, fixation of salary, arrears of
salary etc.

2. Looking to the averments made in the petition, it is clear that it is not the petitioner's case that he was regularly appointed through the regular recruitment procedure. In the context of this situation, the Court is required to consider the pronouncement of the Hon'ble Supreme Court in State of Haryana vs. Jasmer Singh & Ors., (1996) 11 SCC 77 wherein the following observations are made :-

"The principle of "equal pay for equal work" is
not always easy to apply. There are inherent
difficulties in comparing and evaluating the work
done by different persons in different
organizations, or even in the same organization.
There may be differences in educational or
technical qualifications which may have a bearing
on the skills which the holders bring to their
job although the designation of the job may be
the same. There may also be other considerations
which have relevance to efficiency in service
which may justify differences in pay scales on

the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. The evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

3. In view of the above pronouncement of the Apex Court, this Court would not entertain the petitioner's contention that the petitioner should have been placed in the regular pay scale. However, since the Apex Court has laid down that the evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted, and in view of the fact that during pendency of this petition, the State Government had appointed a Committee called Daulatbhai Parmar Committee which submitted its report and on the basis of the said report, the State Government issued Government Resolution dated 17.10.1988 laying down the formula as to how persons working on daily wages basis and who were not regularly appointed through the regular recruitment process, were to be paid salary. The matter is squarely governed by the principles laid down in the aforesaid Government Resolutions.

5. Moreover, during pendency of the petition there was no interim relief in favour of the petitioner. Hence, this Court would not give any direction to consider the case of the petitioner on the basis of the resolutions as such a direction cannot be given when the employee is not found to have completed 5 years service. Admittedly, the petitioner had not completed 5 years service upto the date of filing of this petition. Further, the petitioner had also filed Civil Suit No. 104/87 and nothing is brought to the notice of this Court as to what was the outcome of the said suit. The petitioner having thus availed of the alternative remedy and in view of the factual situation, no relief can be granted to the petitioner in the present petition.

6. In view of the above discussion, the the petition is dismissed. There shall be no order as to costs.

Sd/-

June 30, 1999 (M.S. Shah, J.)

sundar/-