

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2526 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? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
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? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BM JANI, RESEARCH ASSOCIATE, SURGERY, GUJARAT COLLEGE OF
VETERINARY SCIENCE AND ANIMAL HUSBANDRY

Versus

PRINCIPAL, GUJARAT COLLEGE OF VETERINARY SCIENCE
AND ANIMAL HUSBANDRY

Appearance:

MR NS SHETH for Petitioners

MR SK PATEL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/10/1999

ORAL JUDGEMENT

1. This special civil application was earlier disposed of by this court on 13th November, 1997. The direction had been given to the respondent No.3, the Secretary to the Agricultural Department, Sachivalaya, Gandhinagar to decide the claim of the petitioners of nonpractising allowance. In pursuance to the order of

this court aforesaid, the Dy. Secretary of the Department has decided the matter and it is held that those persons are not entitled for nonpractising allowance.

2. On the request of the petitioners' this special civil application was ordered to be revived and thereafter it has come up for hearing today in the Court. Shri S.K. Patel, learned A.G.P. is present and on being asked by the court he stated that he has no instructions in the matter to appear nor he has the papers of this case. He also admits that on the record of this special civil application, reply-affidavit is also not there. However, he submits that he is physically present and whatever as per his experience, knowledge after hearing the counsel for the petitioners he could submit he will plead on the basis of record of this case. It is really a sorry state of affairs that despite of time and again noting of the same, the respondent- State of Gujarat and its officers and functionaries are not taking care of it. Physical presence of the Government advocate is nothing but as good as nobody is present on their behalf. It is a matter of shock that even the Government advocate has not been sent the papers of the matter what to say to instruct him to appear in the matter. Reply to the special civil application has also not been filed though this petition has been filed in the year 1983. After revival of this petition also, the respondents have not cared to file reply to this special civil application. Be that as it may. I fail to see if this is the only assistance to be provided to the courts by the State Government what for this Government Pleader's Office is there. It is a sheer wastage of public money and a burden on public exchequer. The Advocate General of the State of Gujarat, on being asked by the Court earlier, informed that for the financial year 1998-99, total budget for litigations was of Rs. 1 crore and 19 lacs. Despite of setting such a huge budget, this is the total assistance which is provided to the court by the State of Gujarat and its officers. Be that as it may.

3. The petitioners, teachers in the Gujarat College of Veterinary Science and Animal Husbandry have made a grievance that the action of the respondents No.1 and 2 to withdraw the benefits of nonpractising allowance which they were receiving is wholly arbitrary. This petition has been admitted and by grant of interim relief, the petitioners were protected from recovery of amount paid to them. The respondents No.1 and 2 as what it is borne out from the record of this special civil application, has stopped to make payment of nonpractising allowance to

the petitioners on the ground that the Government has raised the objection that the teachers who are in the scale of Rs.700-1300 are not entitled for that allowance. However, on the record of this special civil application, there is no dispute that though the petitioners were earlier in the pay scale of Rs.650-1200 which has been revised to Rs.700-1300 under the Government Resolution dated 3-8-1979, the nonpractising allowance, from the record of the special civil application I find has been granted to the officers in the pay scale of Rs.650-1200, Rs.1400-1800 and Rs.1600-2000 and the objection taken on the basis of which nonpractising allowance of the petitioners has been discontinued seems to be not correct. It is also not in dispute that the postgraduate Doctors in the University are getting nonpractising allowance who are working in the pay scale other than Rs.700-1300.

4. Learned counsel for the petitioners submitted that ban has been put on the right of the petitioners of private practice and to compensate for this loss, the petitioners were given the nonpractising allowance by the respondents but in later point of time it was taken back. It is also not in dispute that all the Veterinary Doctors in the Department and even the Doctors who have been promoted to the administrative posts in the Department are getting the nonpractising allowance. In the facts of this case and more so when all the persons in the pay scale of the petitioners i.e. the postgraduate Doctors are getting nonpractising allowance in the University also, how these persons who are the teachers in the Veterinary College should have been denied of this benefit.

5. It is really shocking that this court expected from the State Government to decide this matter in correct perspective and with justice oriented approach, it has altogether again decided the matter in the same manner and fashion as what it is usually done by the State Government and its officers. I fail to see any justification in the approach of the respondents to justify the grant of private practice allowance to the teachers of Gujarat Agricultural University but not to the teachers in the Veterinary Colleges. The nonpractising allowance is only for the reason that the qualified professors were denied the benefit of private practice. To compensate for this loss this benefit is given and secondly to attract the qualified persons in the services, this benefit is given. It is not in dispute that the petitioners are highly qualified persons in the Veterinary Science and Animal Husbandry and as per

their service conditions, they are also not permitted to do the private practice. It is also the case of the teachers that both these grounds are also applicable in their case. To compensate for the loss of private practice this allowance has to be given to them and for attracting highly qualified persons to the teaching posts it has to be permitted. This matter has not been considered by the Secretary and he has given this matter to the Deputy Secretary. This Court has given direction to the Secretary to decide this matter but he has not carried out these directions. Even if the Chief Secretary or the Secretary to the Department is not available then this matter could not have been decided by the Deputy Secretary. The Secretary concerned or the Chief Secretary has to decide this matter and if they have no sufficient time to decide the same, they could have approached to court for extension of time but they could not have given this matter to the Deputy Secretary. This is not the direction of this court. The way and the manner in which the Secretary has dealt with the matter is contemptuous in nature but I do not consider it to be appropriate to take any action, as on merits I am satisfied that this petition deserves to be allowed. In the facts of this case, I do not find any justification for discontinuation of nonpractising allowance which the petitioners were getting by the respondents No.1 and 2 under the order dated 27/28th April, 1993, annexure 'D' on the record of this special civil application.

6. In the result, this special civil application succeeds and the same is allowed. The order dated 27/28th April, 1993 annexure 'D' on the record of this special civil application is quashed and set aside. It is hereby declared that the petitioners are entitled for nonpractising allowance. The petitioners shall also be entitled for all the consequential benefits as a result of quashing and setting aside of the aforesaid order. Rule is made absolute accordingly.

7. The petitioners have unnecessarily been dragged into litigation by the State Government and its officers and litigation is not an ordinary thing. It heavily costs and it has cost to the petitioners under the head of professional fees to be paid to the advocate. They have paid Rs.5000/- to their advocate, Shri N.S. Sheth who states that he has charged and received Rs.5000/- from the petitioners for providing them his professional services in the matter. The respondent - State of Gujarat is directed to pay Rs.5000/- as costs of this petition to the petitioners.

zgs/-