

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5775 of 1986

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

- 
1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter 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 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----

MA PATEL  
VERSUS  
STATE OF GUJARAT

-----

Appearance:

MR PS CHAMPANERI for the Petitioner  
MR BA VAISHNAV for Respondent No.1  
MR VB GHARANIA for Respondents No. 2 and 3

-----

CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 30/09/1999

C.A.V. JUDGMENT

1. The petitioner, an employee of the Agricultural Department of the Government of Gujarat by this petition

under Article 226 of the Constitution is praying for following reliefs:

- (A) That this Hon'ble Court will be pleased to issue an appropriate writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned order Annexure 'G'.
- (B) That this Hon'ble Court will be pleased to quash and set aside impugned resolution Annexure F to this petition.
- (C) That this Hon'ble Court will be pleased to restrain the respondents their agents or servants from treating the petitioner reverted to the post of The Agricultural Assistant with effect from 1st November, 1986, till and pending the hearing and final disposal of this petition.
- (D) That this Hon'ble Court will be pleased to stay the implementation, execution and operation of the impugned order Annex. G, till and pending the hearing and final disposal of this petition.
- (E) That this Hon'ble Court will be pleased to pass such other and further order as the nature and circumstances of the case may require;
- (F) That this Hon'ble Court will be pleased to provide costs of this petition.

2. Under annexure 'G' at page No.59 of this special civil application, the petitioner was informed to pass the Departmental Examination on or before 31st October, 1986, failing which he will be reverted to the post of Agricultural Assistant w.e.f. 1st November, 1986.

3. The facts of the case, in brief, are that the petitioner was appointed on the post of Agricultural Assistant Gr.II under the order dated 10th January, 1958. Under the order dated 27th February, 1964, of the Superintending Agricultural Officer, Rajkot Division, Rajkot, the petitioner was promoted to the post of Agricultural Supervisor and he continued to work on this post till the day on which he filed this petition and till the day he attained the age of superannuation in 1995 and retired from the Government services. Under the Gujarat Agricultural Department (Conditions of service relating to non-ministerial staff Departmental Examination) Rules, 1976 the petitioner was required to

pass this examination as provided thereunder. These rules were brought into force in the year 1976 whereas the petitioner was promoted in the year 1964.

4. This special civil application is contested by the respondents by filing reply thereto.

5. One of the contentions raised by the learned counsel for the petitioner is that as per Sub-rule-6 of Rule 3 of the Rules aforesaid, those promotee Agricultural Supervisors, who have experience of more than one year on the date of commencement of these Rules are exempted from passing of this examination and the petitioner could not have been asked by the respondent to appear in the examination and that too to the extent of non-passing thereof, his reversion from the post.

6. On the other hand, learned counsel for the respondents contended that this rule is of little help to the petitioner for the reason that the petitioner was appointed as Agricultural Assistant, Gr. II in the erstwhile State of Bombay in the year 1958 and in 1964 though he was promoted, that promotion was granted in excess of quota prescribed for such promotion as by way of local arrangement. This promotion was made in violation of the Quota Rules and without due regard to seniority and so the petitioner cannot be given the benefit of this Rule 3 (6) of Rules, 1976.

7. In rejoinder, the learned counsel for the petitioner placed reliance on the decision of this Court in special civil application No.3399/79 decided on 18-19-23/9/86.

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

9. I do not find any justification in the interpretation which is sought to be given to Sub-rule (6) of Rule 3 of Rules, 1976 by the counsel for the respondents. Sub-rule (6) of Rule (3) of Rules, 1976 is explicit and in unambiguous language, provides that a promotee if he has more than one year's services on the promotional post on the date of commencement of the Rules, he shall not be required to pass the examination. The benefit of this rule is available to those employees who have been promoted and have more than one year's services on the promotional post on the date of commencement of the Rules. What the learned counsel for the respondents states, if it is accepted then this court has to read something in the Rule which otherwise rule

making Authority was not contemplating. The purpose and object of rule seems to be that an experienced person on the promotional post needs not to pass the departmental examination. It is true that the promotion would have been made in excess of promotion quota or on the basis of local arrangement, but the same has been made by the competent authority and this court cannot be oblivious of the fact that the petitioner was having more than 13 years services on the date on which Rules, 1976 were made applicable. A person who is having 13 years services if again ask to give this examination it may cause injustice to him. Rule 3 (6) of Rules, 1976, is framed for giving the weightage to experience person and to exempt an experienced person from passing of the examination. The petitioner has 13 years' experience on promotional post he should have been exempted from passing of the examination. Rule 3 (6) of Rules, 1976 has not been read in the correct perspective, purpose and object for which the same has been framed. The petitioner retired from the Government services on attaining the age of superannuation and he has been given all the retiral benefits. It is true that this court has protected the petitioner but otherwise also on merits the petitioner's claim deserves to be accepted.

10. In the result, this special civil application succeeds and the same is allowed and order annexure 'G' dated 20th January, 1986 is quashed and set aside and it is hereby declared that the petitioner was not required to pass the examination as prescribed under the Rules, 1976 for the promotion post. Rule is made absolute in the aforesaid terms with no order as to costs.

\*\*\*\*\*

zgs/-