

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 955 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

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

GAUTAMBHAI H TRIVEDI

Versus

A'BAD MUNICIPAL CORPORTION

Appearance:

MR AM RAVAL for Petitioner

MR SN SHELAT, Addl. Advocate General for Respondent

No.1

MR DC RAVAL for Respondent No.2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/07/1999

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitioner, a junior clerk of Ahmedabad Municipal Corporation, in this Special Civil Application, under Article 226 of the Constitution of India, is praying for following reliefs:

- (a) to count seniority of the petitioner on continuous officiation;
- (b) to direct the respondents to adopt the Notification dated 30th March, 1994, passed by the Government of Gujarat and to give its effect to the petitioner;
- (c) not to promote the juniors to the petitioner on the basis of passing of departmental examination prior in time;
- (d) to amend their resolution at annexure-G in the light of Government Notification dated 30.3.94;
- (e) to declare note to Rule 17 at Annexure-I as violative of Articles 14 and 16 of the Constitution of India;
- (f) to declare that service rules of the respondent-Corporation so far as counting of seniority is concerned is discriminatory and violative of Articles 14 and 16 of the Constitution of India;
- (f) to declare that the policy of the respondent-Corporation in not mending service rules of counting the seniority from the date of joining is discriminatory and violative of Articles 14 and 16 of the Constitution of India;
- (g) to quash and set aside the provisional seniority list issued vide Circular No.38 dated 5.8.97;
- (h) to quash and set aside the provisional seniority list published on 5.8.97 and to direct the respondents to consider the objections of the applicant filed against the issuance of provisional seniority list and to decide the seniority of the applicant and to place the applicant above the persons who are at sr.no. 423, 424, 425, 430, 456, 457, 458, 460 and 461;
- (i) to direct the respondent-Corporation not to finalise the seniority list unless and until the seniority list of persons from sr.no.310 to 405 are decided;
- (j) to decide the seniority list of Junior Clerks on the basis of continuous officiation from amongst

the internal candidates and to place the absorbed employees from other Municipality below the applicant;

(k) to stay the provisional seniority list dated 5.8.97 till further orders and to direct the respondent-Corporation not to issue final seniority list until further orders.

#. The learned counsel for the petitioner made manifold contentions in this Special Civil Application in support of the prayers made therein. If we go by the substance of the matter, I find that it is a case where on the basis of criteria laid down by the Corporation for preparation of seniority list of the junior clerks a provisional seniority list has been prepared. That has been acted upon and the petitioner is aggrieved of his position therein. It is further given out that the State Government has taken some Resolution for fixation of seniority of junior clerks working with it on the basis of the decision of this Court, and the learned counsel for the petitioner contended as well as what it is prayed by the petitioner is that the said criteria has to be taken by the Corporation for fixing the seniority of junior clerks working with it. The basic fact remains that the seniority list in which the petitioner has been placed junior to many of the persons is only a provisional list. The petitioner though has made manifold prayers also but any of the relief, if granted, it will amount to possible change of position as assigned to the persons who have been placed senior to the petitioner in provisional list. This is not the only result, but the persons who have been promoted in the year 1995, their promotions are likely to be affected. None of the persons who are to be affected by any of the relief granted to the petitioner in this writ petition are party to this Special Civil Application. What the petitioner has tried to make an attempt is to take decision on the serious question of seniority and consequential promotion behind the back of hundreds of persons which this Court will not permit. Secondly, it is the case where provisional seniority list has been challenged. Though many other prayers have been made, but in substance challenge is only to the provisional seniority list and as such it is a writ petition filed at a premature stage. The petitioner has to raise all his objections including the objections against the criteria laid down by the Corporation to fix seniority list and only after final seniority list is published there would have been some semblance of justification in the approach of the petitioner to this Court by filing this writ

petition under Article 226 of the Constitution of India.

#. Mr.S.N.Shelat, learned counsel appearing for the Corporation very fairly submitted that whatever objection raised by the petitioner against the provisional seniority list as well as the criteria on the basis of which the list has been prepared or against the rules unamended, the competent authority will consider the same and in case the same are not acceptable, it will pass a speaking order. The learned counsel for the petitioner made much emphasis on the fact that in the reply to the Special Civil Application, the Corporation has come up with the defence that it may not consider the Government Resolution as well as Division Bench decision of this Court which has strong bearing on the subject matter of this Special Civil Application. Mr.Shelat, appearing for the Corporation submitted that the competent authority will consider all these points and will also consider the Resolution of the Government and the decision of this Court. In view of this statement which has come from the mouth of the Addl. Advocate General appearing for the Corporation as well as the fact that this matter has been filed against the provisional seniority list, no relief of the nature as prayed for in this Special Civil Application can be granted at this stage.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

#. However, it is expected of the Corporation to finalise the seniority list expeditiously after considering the objections, if any, filed.

.....

(sunil)