

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5939 of 1988

with

SPECIAL CIVIL APPLICATION No 4183 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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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

SUDHIR S BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5939 of 1988
MRS KETTY A MEHTA for Petitioner
MR VM PANCHOLI for Respondent
 2. Special Civil Application No 4183 of 1996
MR JJ YAGNIK for Petitioner
MR VM PANCHOLI for Respondents
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/03/2000

ORAL JUDGEMENT

1. As in both these two matters, substantially identical questions of law have been raised, the same are being taken up for hearing together and are being disposed of by this common order.

SPECIAL CIVIL APPLICATION No 5939 of 1988

2. In this special civil application, the petitioner is praying for issuance of directions to the respondent to release three advanced increments to him from 1-7-1986 and further to direct to calculate ancillary benefits like D.A. on the basis of such increments and a further direction to pay the difference of pay between the pay received by him and the pay fixed after giving three advance increments from 1-7-86 till today. Next prayer has been made for direction to the respondent to fix the pay of the petitioner on the basis of three advance increments as on 1-9-88 for future pay and accordingly be continued to be paid. Prayer has also been made for interim relief to direct the respondent to release the three advance increments as claimed with effect from the date of the order of appointment i.e. 1-7-86 and to pay difference within two weeks from the date of the order of this court.

3. Ad-interim relief has been granted in terms of para-16(C) on 6-4-90 subject to condition that release of the increments would be subject to the result of the petition.

4. The facts of the case are that the Gujarat Public Service Commission advertised for the post of Assistant Engineer (Civil) in Gujarat Engineering Services Class II in Irrigation Department. In response to this advertisement, the petitioner applied for the post. He was holding on the date of application the degree of B.E. (Civil). On that date, he had appeared in the examination for the degree of M.E. in Civil Engineering of Rani Durgavati University at Jabalpur and the result was awaited. The petitioner appeared for the interview and he was selected for the post. He was informed by the G.P.S.C. vide communication dated 18th march, 1986 that the petitioner's name was recommended to the Secretary, Irrigation Department, Government of Gujarat, for appointment to the post of Assistant Engineer (Civil) in the Irrigation Department. The day on which he received this intimation, the petitioner had passed the

examination of M.E. (Civil) which result was declared on 8th January, 1986. Under the order of the Government dated 6-6-1986, the petitioner was appointed as an Assistant Engineer (Civil). The petitioner on 3-7-86 submitted a letter to the Superintending Engineer concerned requesting him that as per the advertisement of G.P.S.C., the petitioner was holding the postgraduate decree at the time when he was appointed as Assistant Engineer (Civil) and therefore he may be paid three advance increments. No reply to this letter was received. This letter of the petitioner was followed by two reminders dated 10-10-1986 and 6-12-1986. Under the order dated 6-12-1987, the Superintending Engineer concerned granted the petition three advance increments in his basic pay from the date of appointment. In the order aforesaid, the concerned Superintending Engineer made a reference to the Government Resolution dated 9-1-1980 and in pursuance of the said resolution of the Government, these three advance increments have been granted to the petitioner and accordingly his pay was fixed at Rs.625/-. The respondent under its communication dated 18th March, 1987 informed to the petitioner that as he had not passed M.E. (Civil) examination at the time of application for the post of Assistant Engineer (Civil) in the G.P.S.C. he is not entitled for three advance increments as per the Government Resolution. It has next been pointed out that the Government is the only competent authority to decide about the advance increments to be given to an officer, and accordingly, the order passed by the Superintending Engineer is beyond his competence. The concerned Superintending Engineer was directed to cancel his order and recover the amount of advance increments, if any, paid to the petitioner. In pursuance to this order of the Government, the Superintending Engineer passed this order No. 115/87 dated 2-4-1987 whereunder cancelling his earlier order. He further ordered for recovery of the amount of advance increments paid to the petitioner. The petitioner made a detailed representation to the Government against its action. The petitioner has furnished necessary information supported by documents as demanded from him by the Department. The petitioner send a representation-cum-reminder on 16-8-1988 to the Government to decide his claim for three advance grade increments. When nothing has been done in the matter by the government, the petitioner filed this petition and he has been protected by grant of interim relief.

5. Reply to the special civil application has been filed in which the defence has been taken that only those postgraduate Engineers are entitled for advance grade

increments who were possessing the postgraduate qualification on the date of application. In support of this defence, reliance has been placed on the Government resolution dated 7-8-1988. It has next been stated that these are only advance grade increments and not additional which are subject to the adjustment in future. Copy of the resolution of the Government dated 7-8-1988 is on the record of this special civil application.

6. After this reply, the petitioner has prayed for amendment of the special civil application and that amendment has been accordingly granted by the court. In the amended writ petition, it is the case of the petitioner that the circular dated 7-8-1988 does not apply to the case of the petitioner as the petitioner was appointed on 6-6-1986 and his case has to be regulated under the circular dated 9-1-1980. The circular dated 9-1-1980 makes entitled all those Engineers who are having postgraduate qualification for three advance increments, if they were possessing that qualification on the date of appointment. It has next been stated that the circular dated 7-8-1988 is not retrospective in effect. Otherwise also, it being an executive/administrative action of the respondent-State, cannot be given retrospective effect. In the alternate, it is submitted that if this circular is applicable in the case of the petitioner then it is violative of principles of equal opportunity in the employment and equal protection of law to all the employees working in the same cadre of Gujarat Engineering Services Class II. A plea of discrimination has also been raised in the way that in some other Engineering Departments the Engineers have been given three advance increments if they are holding the postgraduate degree in Engineering at the time of their appointment though they were not holding the said degree at the time of application before the Public Service Commission.

SPECIAL CIVIL APPLICATION No 4183 of 1996

7. There are two petitioners in this special civil application and both of them are SC/ST candidates. The G.P.S.C. vide its advertisement dated 20th September, 1989 invited applications for the post of Assistant Engineers. It was mentioned in the advertisement that those candidates who possess postgraduate degree in Engineering will be given three advance increments. Both the petitioners, on the date of applications, were possessing the postgraduate degree in Engineering. They applied for the post and they have been selected by G.P.S.C. and ultimately the respondents have given

appointment to them also but they were not given three advance increments as per the terms given in the advertisement. The petitioners made a representation on 19th December, 1990 and 28th December, 1990 for grant of three advance increments to them. Vide order dated 18th February, 1995 of the respondents, the petitioner No.1 was given three advance increments with the condition to adjust the same in future. On 24th March, 1995 and 17th July, 1995, the petitioners made a detailed representations against this order to the extent where it imposes the condition of adjusting such advance increments in future. The petitioner No.2 was granted three advance increments under the order dated 21st March, 1995 with the same condition of adjusting the same in future. He also made a representation against this condition on 29th May, 1995. These representations of the petitioners were replied by the respondents vide their communication dated 25th January, 1996. It was informed to them that their request to grant three advance increments without aforesaid condition of adjusting the same in future cannot be acceded to. Hence, this special civil application. This petition was admitted but interim relief has not been granted.

8. Learned counsel for the petitioners appearing in these petitions made manifold contentions in support of their cases. Both the resolutions i.e of 1980 and 1988 were read in extenso. It is the say of the petitioners that all those candidates who had postgraduate qualifications on the date of the appointments are entitled for three advance grade increments and that too without any condition of adjusting of the same in future.

9. Learned counsel for the respondents, on the other hand, contended that only those candidates who possessed the postgraduate qualifications on the date of applications are entitled for three advance grade increments and that too with condition of adjusting of the same in future. Shri Pancholi, learned counsel for the respondents, contended that these are advance grade increments and not conditional and are liable to be adjusted in future.

10. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The object and purpose behind these resolutions and other aspects of the matter, prima-facie I am satisfied that these three advance grade increments are in fact additional increments which are being given to the candidates who were possessing higher qualification and these may not be liable to be adjusted in future. Be

that as it may. I consider it to be appropriate that first on this aspect, the Secretary of the Department concerned may consider the matter after hearing the petitioners, if they so desire and considering their representations made from time to time.

11. In the result, both these writ petitions are allowed accordingly and the Secretary of the Department concerned is directed to decide this important question after hearing the petitioners, if they so desire. The petitioners are free to file a further representation in respect of their claim. In case the claim of the petitioners is acceptable then all the consequential reliefs are to be given to them but in case where their claim is not acceptable, a reasoned order be passed and copy of the same be sent to the petitioners by registered post A.D.. In the first petition, the interim relief is operating in favour of the petitioner and it shall continue to operate till the decision is made in these matters by the concerned Secretary to the Government and further it shall continue for 15 days more where the matter is decided against the petitioner concerned by the Secretary concerned. In other case, the interim relief has not been granted. The petitioners if they so desire may make a representation to the Secretary concerned within a period of 15 days from the date of receipt of writ of this order. The Secretary concerned has to decide the representation within a period of two months from the date of receipt thereof. Copy of this order be sent to the petitioners. Liberty is granted to the petitioners for revival of these special civil applications in case of difficulty by filing a simple note. Rule is made absolute accordingly with no order as to costs.

zgs/-