

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1204 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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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

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R M HAKIM

Versus

GUJARAT STATE WAREHOUSING CORPN  
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Appearance:

MR VM DHOTRE for Petitioner No. 1  
NOTICE SERVED for Petitioner No. 2-3  
Mr. D.C. Raval for Respondent No. 1-2  
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/09/2001

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution, the petitioners have mainly prayed for the relief of a direction to the respondent Corporation to treat the petitioners as senior to the respondent No.2 with retrospective effect and to give all other consequential benefits including re-fixation of the pay-scale. The petition appears to have been filed in

December 1988 and after issuance of notice in August 1989 the hearing appears to have been adjourned from time to time till the year 2001. On 19th April 2001, Rule was issued when admittedly no one was present on behalf of the petitioners. After filing of the petition, an affidavit affirmed on 3rd October 1989 appears to have been filed on behalf of the respondent Corporation but the same is stated to have been mislaid. Therefore, a fresh affidavit-in-reply has come to be filed in September 2001 to which an affidavit-in-rejoinder is also filed by petitioner No.1. Learned advocate, Mr. V.M. Dhotre appeared for petitioner No.1 and none was present for other petitioners though notice has been issued on account of the learned advocate appearing on behalf of the petitioners having been elevated to the Bench.

2. Apart from the foreground of above facts, it is conceded and admitted on behalf of petitioner No.1 that the original date of joining the service by the respondent No.2 was in dispute, that the subsequent promotions of the petitioners as well as the respondent No.2 were not based on the seniority and that the seniority list in question was finalised in the year 1973. It was also fairly conceded that, by now, all the petitioners as well as the respondent No.2 have retired and no specific consequential relief can be granted to the petitioners even if all the facts were assumed in their favour.

3. In view of the preliminary objections raised on behalf of the respondent-Corporation, Mr. Dhotre vehemently argued that the petitioners went on making representations to which a final reply was given only in the year 1987 and that therefore the petition should not be dismissed only on the ground of delay and laches. As against that the learned counsel, Mr. D.C. Raval appearing for the Corporation, relying upon the Judgment of the Apex Court in State of Orissa Vs. Shri Pyarimohan Samantaray and Others (AIR 1976 S.C. 2617) submitted that making of repeated representations after rejection of the first representation cannot be said to be a satisfactory explanation of delay. In the facts of the present case, although the petitioners had started making representations since the year 1973, they admittedly did not take any legal action till the filing of the present petition in December 1988 and, even after that, it took them 12 years to have the matter admitted in the Court. On the other hand it is also pointed out on behalf of the respondent Corporation that the petitioner No.1, who only is prosecuting this matter had challenged, by filing Special Civil Application No. 2026 of 1976, promotion of

some of his juniors, but had not challenged the promotion of respondent No.2 and that fact was suppressed by the petitioners.

4. In the above facts and circumstances, the petition is required to be rejected on the grounds of disputed questions of fact, delay and laches as also for it having become infructuous. Accordingly, the petition is rejected with no order as to costs. Rule is discharged.

rmr. [ D.H. Waghela, J. ]