

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5044 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 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 ?
Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
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- 5 Whether it is to be circulated to the civil judge ?

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DINUBHAI Y MARATHE - Petitioner(s)**Versus****DIRECTOR OF ACCOUNTS AND TREASUREIS & 1 - Respondent(s)**

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Appearance :

MR BHAVESH N DAVE for Petitioner(s) : 1, MS SHAILI A KAPADIA for
Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 30/11/2006****ORAL JUDGMENT**

By way of this petition under Article 226 of the Constitution of India, the petitioner who has already retired from services on attaining age of 58 years on 31-8-1996, has prayed for an appropriate writ, direction and/or order directing the respondents to treat the

petitioner as promoted from the date his junior is promoted having regard to his seniority according to the deemed date granted by the District Panchayat, Surat, Accountant cadre, Group I i.e. 2-5-1974 and to pay me all the Pay & Allowances with retrospective effects.

2. It is the case on behalf of the petitioner that by order dated 12th May 1981, the District Panchayat, Surat passed an order granting the deemed date of 2-5-1974 in the pay scale of Rs.500-900 of Internal Auditor, Accountancy and therefore, his seniority should be fixed accordingly and he should be treated as promoted from the date his junior is promoted. It is submitted that various representations were made to consider the order passed by the DDO, Surat dated 12-5-1981, still the said was not implemented/complied with by the Deputy Director (Administration) Accounts and Treasury, State of Gujarat and therefore, it is requested to grant relief as prayed for.

3. Petition is opposed by the respondents. An affidavit-in-reply is also filed on behalf of the respondents. It is submitted that though the order was passed by the DDO, Surat, however, it was found that the

said order was not in accordance with rules and the controversy has been arisen on account of the fact that neither the petitioner was promoted to the post of Divisional Accountant as on 2-5-1974 nor his junior was promoted to the post of Divisional Accountant and even then the District Panchayat (Administration) passed an order giving deemed date of promotion w.e.f. 2-5-1974 pursuant to the representation made and only on the ground that at the relevant time, the post of Divisional Accountant was vacant. It is submitted that there is no provision under the statutory rules to extend such deemed date and on the contrary well recognized principles of seniority is to the effect that seniority can be counted from the date of continuous officiation on a cadre or a post appointed and/or promoted after due procedure of law. It is further submitted that the petitioner was not promoted as on 2-5-1974 and at the same time, he has also not worked on the higher post and therefore, extraneous consideration appears to have been given by the District Panchayat (Administration) dehors the provisions of the rules cannot give and/or extend a legal right in favour of the petitioner. It is further submitted that even the petitioner has sought implementation of the order after a period of more than 14 years on the basis of the deemed

date dated 12-5-1981. It is also further submitted that on the ground of non-joinder of property party and delay and laches, this petition deserves to be dismissed.

4. Heard the learned advocates appearing on behalf of the parties.

5. At the outset, it is to be noted that in the petition of 1997, which has been filed on 14-7-1997 much after the petitioner has retired, the petitioner has prayed to implement the order dated 12-5-1981 i.e. almost after a period of 16 years of the said order. He is claiming to be the deemed date and necessary changes in the seniority and if the prayer is granted, then other persons are likely to be affected by such a modification and those persons are not before this Court. Under the circumstances, in absence of those persons, who are likely to be affected, no relief can be granted in favour of the petitioner. Apart from the fact that the petition is filed belatedly after a period of 16 years of the impugned order, the petitioner has already been retired in 1996 and the present petition has been filed after a period of one year ever after his retirement. Considering the above, it will not be proper to reopen everything

after a period of 25 years. Even prima facie, it appears that the order dated 12-5-1981 issued by the DDO granting deemed date is not in consonance with the relevant provisions and the rules and regulations. Though, neither the petitioner was promoted w.e.f. 2-5-1974 nor his juniors were promoted and neither the petitioner has been promoted to the said post, the deemed date has been granted on the ground that one post was vacant. Though this Court is conscious of the fact that the order dated 12-5-1981 is not the subject matter of the present Special Civil Application, however, to consider the prayer of the petitioner after a period of 25 years, the same is also relevant factor.

6. For the reasons as stated above, the petition fails and is accordingly dismissed. No relief can be granted in favour of the petitioner after a period of 25 years, more particularly, when the petitioner is seeking implementation of the order dated 12-5-1981 and the present petition is filed in 1997 and before that the petitioner has already retired. Rule discharged. No costs.

(M.R.SHAH,J.)

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