

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 8420 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE H.K.RATHOD**

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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 ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
?

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**R K SHELAT REGISTRAR - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 3 - Respondent(s)**

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**Appearance :**

MR IS SUPEHIA for Petitioner(s) : 1,  
MR LB DABHI AGP for Respondent(s) : 1 - 2.  
NOTICE SERVED BY DS for Respondent(s) : 3 - 4.  
NOTICE SERVED for Respondent(s) : 4,

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**CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**

**Date : 29/09/2006**

**ORAL JUDGMENT**

1. Heard the Learned Advocate, Mr. I.S.Supehia,  
on behalf of petitioner.

2. Rule. Learned A.G.P., Mr. Dabhi, waives the service of rule on behalf of respondent Nos.1 and 2.

3. The brief facts of the present petition are that the petitioner retired as Assistant Registrar on attaining age of superannuation on 30<sup>th</sup> October 2002. Thereafter, the petitioner applied for the post of Registrar in Gujarat Public Work Contract Dispute Arbitration Tribunal, Lal Darwaja, Ahmedabad through Chairman of the Tribunal. The petitioner was given appointment for the period of 1 Year on contractual basis as per the post and pay scale sanctioned by the Government of Gujarat. On 1<sup>st</sup> October 2004, the petitioner took over as Registrar of the Tribunal for the period of 1 Year up to 30 September 2005. In August 2005, Legal Department reappointed the petitioner on the sanctioned post of Registrar w.e.f. 1<sup>st</sup> October 2005 to 30<sup>th</sup> September 2006 by Resolution dated 2<sup>nd</sup> August 2005. On 19<sup>th</sup> October 2005, by

office order, Legal department fixed the pay of the petitioner at the minimum of the prescribed pay scale + Admissible allowance as per GAD Resolution dated 9/5/2002. On 21<sup>st</sup> December 2005, Government issued one another GR that employee will be entitled to get the total remuneration on the pay scale in which he was working on the date of his retirement - (minus) Basic Pension. Thus, substituted the earlier GR dated 9/5/2002. Therefore, salary of the petitioner was re-fixed by the respondent which resulted loss of about Rs.10,854/-. Therefore, petitioner wrote a letter on 10<sup>th</sup> February 2006 to the Secretary, Legal Department, Government of Gujarat pointing out difficulty and other relevant facts. On 6<sup>th</sup> March 2006, Deputy Secretary, Legal Department sent reply to the petitioner informing that though the order of reappointment of the petitioner is prior to 21/12/2005, the date of issuance of Resolution, the petitioner's salary will have to be re-fixed accordingly.

4. Learned advocate Mr.Supehia submitted that by

impugned resolution, the petitioner has been put to monetary loss of more than Rs.10,000/- per month. The petitioner was getting total monthly emoluments of Rs.23,006/- which are now reduced to Rs.12,152/- per month w.e.f. 21<sup>st</sup> December 2005. Therefore, according to Learned Advocate Mr.Supehia, such reduction in salary, order has been passed by the respondent without giving any opportunity of hearing to the petitioner. Therefore, such order is required to be quashed and set aside and it also against the principles of natural justice. He relied upon the decision of the Division Bench of this Court in LPA No. 562 of 1996 dated 11/3/2005, copy of which has been annexed to the petition. He also raised contention that said Resolution is liable to be quashed and set aside on the ground that it is made applicable from the date of issuance i.e. on 21/12/2005 to the appointments already been made prior to the Resolution and continuing. This means the concluded contracts are also disturbed during their currency.

5. According to him, this Resolution operates retrospectively which is arbitrary and unreasonable. The relationship between the petitioner and respondent is not purely contractual but it is governed by Government Resolution, still the contract has to be reasonable and not arbitrary. However, he also emphasized that such contractual terms and conditions cannot be altered unilaterally during the currency of the contract. He also raised contention about estoppel against the respondent on the ground that such offer was made at the time of appointment, petitioner may not accept such appointment. Therefore, Learned Advocate Mr.Supehia submitted that now respondent can not insist for implementation of Government Resolution dated 21/12/2005 which altered the earlier terms and conditions of contract between the parties.

6. On behalf of the respondent, affidavit-in-reply is filed by one Shri Mehul Gandhi, Deputy Secretary, Legal Department, Government of

Gujarat raising the following contentions in para 5, 6 and 7 of the reply, which are coated as under :

"5. It is submitted that the petitioner was serving as an Assistant Registrar in the High Court of Gujarat and after his retirement as such, he was appointed as the Registrar of the Gujarat Public works Contract Disputes Arbitration Tribunal vide Legal Department's G.R. Dated 15/9/2004 purely on contractual basis as per the terms and conditions mentioned therein considering the G.R. Dated 9/5/2002 issued by the General Administrator Department. Accordingly, he was entitled to the minimum pay of the pay scale of the post of Registrar minus pension. The said appointment being only for one year it was extended for one more year up to 30/9/2006 vide Legal Department's G.R. Dated 2/8/2005.

6. It is submitted that thereafter the G.R. Dated 9/5/2002 of General Administrator Department on the basis of which the appointment of the petitioner was made was modified by the Government in General Administrator Department vide G.R.

Dated 21/12/2005 to the extent that the person appointed on contractual basis would be entitled to the consolidated sum arrived at by deducting pension from the total salary drawn by him at the time of his retirement. As per para 4 of the said G.R. dated 21/12/2005, the retired Government servant already employed on contractual basis would be entitled to such consolidated amount, from the date of issuance of the said G.R. Since the petitioner was working on the contractual basis, pay of the petitioner was re fixed by the Tribunal vide Office Order dated 8/2/2006 considering G.R. of General Administrator Department dated 21/12/2005.

7. It is most respectfully submitted that the appointment of the petitioner being purely on contractual basis and as per the terms and conditions fixed on the basis of the policy of the Government, the petitioner is not entitled to the relief as claimed for in the petition."

7. Learned A.G.P. Mr.Dabhi relying upon these averments made in Affidavit-in-Reply submitted that according to the Government Resolution dated 21/12/2005, which gives power to the State

Government to re-fix fresh fixation of the petitioner as per Government Resolution dated 21/12/2005. Learned A.G.P. Mr.Dabhi also submitted that the Government Resolution dated 21/12/2005 is applicable to the petitioner and Government has rightly re-fixed the salary of the petitioner. He also submitted that there is no necessity to give hearing to the petitioner as it is in pursuance to the compliance of Government Resolution. Therefore, he submitted that State Government has rightly issued order dated 8/2/2006 while fixing the salary deducting the pension from the salary of Rs.16,884/- which comes to Rs.12,152/-. For that Government has not committed any error. On the contrary, the Government has rightly implemented the Resolution dated 21/12/2005. Therefore, according to him, petition may be dismissed.

8. I have considered the submissions made by both the Learned Advocates and have also perused the petition as well as Annexures and Affidavit in reply which has been filed by respondent.



9. It is necessary to consider facts that petitioner was given appointment for the period of 1 Year on contractual basis as per the post and pay scale sanctioned by the Government of Gujarat wherein, petitioner was took over on 1<sup>st</sup> October 2004, remain continued in service up to 30/9/2005. Thereafter, by Resolution dated 2/8/2005, Legal Department reappointed the petitioner on the sanctioned post on the same terms and conditions as Registrar w.e.f. 1<sup>st</sup> October 2005 to 30<sup>th</sup> September 2006. Meaning thereby that initial appointment w.e.f. 1<sup>st</sup> October 2004 remained intact with all terms and conditions in second appointment order for the period 1<sup>st</sup> October 2005 to 30<sup>th</sup> September 2006. The salary of the petitioner has been fixed in light of the GAD Resolution dated 9/5/2002 which is at page 20 order dated 19/10/2005. The pay of Registrar was Rs.14,300-Rs.18,300/- wherein his minimum basic pay, D.A., H.R.A., T.A., Medical Allowance, and Local Allowance which ultimately comes to Rs.27,738/-. Out of this total amount,

basic pension of Rs.4,732/- has been deducted which comes to Rs.23,006/- being a salary in the post of Registrar on the basis of Resolution dated 9/5/2002. In the order dated 19/10/2005, it is made clear by the Legal Department that other service conditions are remain intact as per Government Resolution dated 9/5/2002. Therefore, the petitioner acquired legal right on the basis of GAD Resolution dated 9/5/2002 to receive such salary on the post of Registrar w.e.f. 1<sup>st</sup> October 2005 to 30<sup>th</sup> September 2006. This fixation was made by State Government for entire period of 1 year. It is not a fixation for one or two months. This fixation when made by State Government, at that occasion, Government Resolution dated 21/12/2005 was not in existence. Therefore, petitioner was receiving the salary as per order dated 19/10/2005, but all of a sudden, relying upon resolution dated 21/12/2005, which is at page 18 (Annexure-D), the salary of the petitioner has been reduced unilaterally without giving any opportunity of hearing to the petitioner. In Government Resolution dated

21/12/2005, specifically, Para no. 2 (3) of G.R. dated 9/5/2002 has been set aside / cancelled and new provisions have been made which having the effect prospectively. It further suggests that now onward, this change will have to be effected. Item No.3 of the said Resolution is also applied to the retired employees, those who will be appointed subsequent to this Resolution and their salary is required to be fixed as per this resolution dated 21/12/2005. The last part of the Resolution below item no. 4 made it clear that before issuing this Resolution, whatever the contract has been fixed for whatever the period and salary has been fixed as per old circular/resolution it has not to be disturbed as per this Resolution dated 21/12/2005. Therefore, item No. 4 must have to be read with last para and accordingly it required to be implemented. But in this case, the State Government has ignored the last para of item no. 4 and relied upon first part of the item no. 4 and re-fixed the salary which resulted the loss to the petitioner about more than Rs.10,000/-. The last

part of the item no. 4 is very clear that before issuing said Resolution dated 21/12/2005, if any retired employee is working on contractual basis for particular period, his salary should not be re-fixed as per this Resolution dated 21/12/2005. Therefore, the decision which has been taken by respondent to re-fix the salary of the petitioner on the basis of G.R. dated 21/12/2005 is apparently illegal and contrary to resolution dated 21/12/2005.

10. In view of these facts, the fixation which was initially made on the basis of Government Resolution dated 9/5/2002 as per page 20 dated 19/10/2005 is correct fixation, no need to make any change/alteration adverse to the petitioner on the basis of Government Resolution dated 21/12/2005. The answer given by the Deputy Secretary, Legal Department relying upon item no.4, ignoring the last part of item no.4. Therefore, the answer which has been given by respondent dated 6/3/2006 is also not correctly interpreted the resolution dated 21/12/2005.

Most relevant part has been ignored and non relevant part has been implemented, which adverse to the petitioner without giving any reasonable opportunities. Such action has been violating the basic principles of natural justice.

11. The said aspect has been examined by Division Bench of this Court in LPA 562/96 in SCA 3/96 (State of Gujarat V/s. S.V. Shah) dated 11/3/2005. The Division Bench of this Court has examined similar question relying upon the Apex Court decision in case of A.K.Kraipak v. Union of India, AIR 1970 SC 150 and Sayeedur Rehman v. State of Bihar, AIR 1973 SC 239. The observation which has been made by the Division Bench of this Court in para 1 is quoted as under:

"In State of Orissa v. Dr.(Miss) Binapani Dei, AIR 1967 SC 1269, the Supreme Court recognised the applicability of the rules of natural justice in purely administrative matters and laid down the following propositions:

I. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

II. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated,

must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.

In A.K.Kraipak v. Union of India, AIR 1970 SC 150, the Supreme Court held that thin line of distinction between administrative and quasi judicial function is gradually diminishing and that the rule of fairness/rule of hearing must be read as implicit in every administrative action which results in an adverse order against an affected person.

In Sayeedur Rehman v. State of Bihar, AIR 1973 SC 239, the Supreme Court treated the unwritten right of hearing as a part of the concept of rule of law by making the following observations:

"This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in

the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi judicial authorities when deciding controversial points affecting rights of parties."

In *Swadesi Cotton Mills v. Union of India*, AIR1981 SC 818, *S.L.Kapoor v. Jagmohan and others*, AIR 1981SC 136, *Smt. Maneka Gandhi v. Union of India*, AIR 1978 SC 597, *Olga Telis v. Bombay Municipal Corporation*, AIR1986 SC 180 the Supreme Court reiterated and emphasized that every administrative action which visits a person with adverse civil consequences must be preceded by a notice and opportunity of hearing.



We have prefaced the disposal of this appeal by making reference to the above noted judicial precedents because the only legal issue which calls for determination by the Division Bench is whether the learned Single Judge erred in quashing the action taken by the appellant for revising the pay scale of the respondent and effecting recovery from his pay on the ground of violation of rules of natural justice.

A perusal of the record shows that the respondent joined service as Sales Tax Inspector on 1.2.1973. In furtherance of Resolution dated 5.7.1991 passed by State Government, Commissioner of Sales Tax, Ahmedabad issued order dated 7.11.1992 and fixed the respondent's pay in the higher scale. After two years and about nine months the State Government vide Resolution dated 16.8.94 amended the earlier resolution and revised the criteria for grant of higher grade. As a sequel to the last mentioned resolution, Commissioner, Sales Tax, passed order dated 11.12.95 for re-fixing the pay of the respondent and recovery of the alleged excess paid to

him.

The respondent challenged the re-fixation of his pay and consequential withdrawal of higher grade in Special Civil Application No.3/96 on various grounds, including the one that the action taken by non-applicants (appellants herein) is vitiated due to violation of the rules of natural justice.

In the reply affidavit on behalf of the appellants it was not disputed that the pay of the respondent had been re-fixed without giving him notice and opportunity of hearing, but an attempt was made to justify the impugned action on the basis of revised policy decision taken by the State Government.

The learned Single Judge held that the action taken by the competent authority to re-fix the respondent's pay was vitiated due to violation of the rules of natural justice. He, accordingly, quashed the revised fixation of the respondent's pay with liberty to the appellants to pass fresh order after complying with the rules of

natural justice.

We have heard Shri A.Y.Kogje, learned Assistant Government Pleader, and with his assistance gone through the records.

Since it is an undisputed position that before re-fixing the respondent's pay and ordering recovery of the alleged excess amount paid to him, the appellants did not give any notice or opportunity of hearing, we have no hesitation to hold that the appellants had violated rule of audi alteram partem and the learned Single Judge did not commit any illegality by quashing order dated 11.12.95.

In Sayeedur Rehman's case (Supra), a somewhat similar question was considered by the Supreme Court in the backdrop of the fact that the management of the school had, after giving financial benefits to the appellant for the period during which he remained under suspension reviewed its decision without giving him notice and opportunity of hearing. Their Lordships held that even though action taken by the management was purely administrative in nature, the appellant was required

to be heard before being deprived of the financial benefits given to him in pursuance of the earlier decision.

In the present case, it can not be denied that as a result of grant of higher grade the respondent had acquired the right to receive higher emoluments. Therefore, no order adversely affecting his right to be paid salary in the higher grade and/or for recovery of the amount already paid to him could have been passed without issuing him notice incorporating the basis of the proposed action and giving him a reasonable opportunity to put forward his defence. This having not been done, the learned Single Judge, in our opinion, rightly nullified the action taken by the appellant.

For the reasons stated above, Appeal is dismissed."

11.1 Recently, the Apex Court has considered the question of principles of natural justice in case of Suresh Chandra Nanhorya v. Rajendra Rajak & Ors., reported in 2006 (9) Scale 264. The relevant observations are in Para.8 to 11, which

are quoted as under :

"8. Natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary.

9. In the celebrated case of Cooper v. Wandsworth Board of Works, 1963(143) ER 414, the principle was thus stated :

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. 'Adam', says God, 'where art thou' has thou not eaten of the tree whereof I commanded thee that 'thou should not eat.'"

10. Since then the principle has been chiselled, honed and refined, enriching its content. In Mullooh v. Aberdeen 1971 (2)

All E.R. 1278, it was stated:

"the right of a man to be heard in his defence is the most elementary protection."

11. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice."

12. The facts before this Court is not much disputed between the parties. It is not the case of the respondent that opportunity was given by the respondent to the petitioner before passing adverse order to the petitioner. The respondent-State Government has re-fixed the salary of the petitioner on the basis of G.R. Dated 21/12/2005 which itself is contrary to the last part of item no.4 of the said resolution. However, it is also necessary to note that Government Resolution dated 09/05/2002, para 2(3) has been cancelled by

Government Resolution dated 21/12/2005 meaning thereby, that it having prospective effects. So long para no.2(3) is not cancelled, the petitioner is entitled to the benefit of said para of G.R. dated 9/5/2002. Therefore, the State Government has illegally implemented the G.R. dated 21/12/2005 with retrospectively which cannot be as petitioner has already accrued his legal right in his favour to remain continued in service up to period 30/9/2006 on the basis of same terms and conditions when he was appointed by respondent-State Government vide order dated 02/08/2005. Such condition of appointment on contractual basis as mentioned in Resolution dated 02/08/2005 cannot be unilaterally, adversely changed by respondent-State Government without giving any opportunity to the petitioner. The State Government is estopped to change terms and conditions. So, according to my opinion, the order which has been challenged before this Court dated 08/02/2006 is contrary to the principles of natural justice and also on merits which contrary to last part of Para.4 of Government Resolution

dated 21/12/2005. The petitioner is entitled to get the salary as per order dated 19/10/2005 as per earlier G.R. dated 09/05/2002, as para.2(3) which has been illegally reduced by way of fresh re-fixation as per G.R. dated 21/12/2005 which is contrary to the principles of natural justice and last para of part 4 of GR dated 21/12/2005.

13. In view of this, the contention raised by learned A.G.P. Mr.Dabhi is not accepted. The averments made in affidavit in reply is also contrary to the Government Resolution dated 21/12/2005 and is also based on misunderstanding/misinterpreting the Government Resolution dated 21/12/2005. Therefore, accordingly the order passed by respondent-State Government on 08/02/2006 is required to be quashed and set aside.

14. In view of the above observation, the order passed by the respondent-State Government dated 08/02/2006 is hereby quashed and set aside. It is directed to the respondent-State Government to



continue to pay the salary which has been fixed by order dated 19/10/2005 based on GAD GR date 9/5/2002 till 30/09/2006 and accordingly whatever benefit available to the petitioner, same shall have to be paid by respondent without fail.

15. This Court has made clear that now the petitioner is retiring on being terms over on 30/09/2006, therefore, question of hearing and further to pass such order does not require in light of the fact that petitioner is retiring tomorrow-30/09/2006, so no further exercise is necessary in the interest of justice. This Court has examined the merits also. So, on merits, the petitioner entitled the pay fixation as per order dated 19/10/2005 based on GR dated 9/5/2002. Therefore, question of now giving opportunity to petitioner does not arise.

16. It is directed to the respondents that whatever the benefit is available to the petitioner because of quashing and setting sided

the order dated 08/02/2006 same may be paid immediately. Considering the fact that the petitioner is retiring/contractual appointment is over on 30/09/2006, therefore, no further procedure is required to be initiated against the petitioner and this chapter may considered to be closed and not required to open it. Rule made absolute. No order as to costs.

**(H.K.RATHOD,J.)**

(vipul)