

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CIVIL APPLICATION No. 15584 of 2003**  
**With**  
**SPECIAL CIVIL APPLICATION No. 15945 of 2003**  
**To**  
**SPECIAL CIVIL APPLICATION No. 15967 of 2003**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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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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**AG TRIVEDI & 23 - Petitioners**  
**Versus**  
**GUJARAT MINERAL DEVELOPMENT CORPORATION LTD. - Respondent**

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**Appearance :**

MR IS SUPEHIA for Petitioners : 1 - 24.  
NOTICE SERVED for Respondent : 1,  
MR KM PATEL for Respondent : 1,

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**CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

**Date : 28/12/2007**

**CAV - COMMON ORAL JUDGMENT**

1. The petitioners in this group of petitions under Article 226 of the Constitution of India have challenged denial of equal treatment and pay scale of Rs. 1640 -2900, granted to those 12 employees who were treated to have been promoted ignoring the seniors and other eligible employees like present petitioners.
2. This group of Special Civil Applications involves common points and prayers hence they were heard together and are being disposed of by this Common Judgment & Order.
3. The facts in brief deserves to be narrated in order to appreciate the controversy involved in this group of petitions:

The petitioners who were serving as Senior Assistants at the relevant time under the respondent Corporation have approached this Court as the Corporation did not accord equal treatment to them. The petitioners were initially appointed as Assistant in the Corporation during period 1979 - 1982. Thereafter they were promoted to the post of Senior Assistant by order dated 13/8/1993 and since then till the time of filing of the petitions they worked as such. It is averred by the petitioners in the memo of the petition that vide order dated 13/8/1993 some 129 persons came to be promoted. In fact this promotion was termed to be change of designation in the same pay scale and with same responsibilities, and therefore, it was not a promotion in fact, but it was re-designation of the posts, which they held at the relevant time. The order dated 13/8/1993 contains name of the petitioners at various serial numbers, which have been specifically mentioned in the petition. In the same order 12 employees are also figuring at various serial numbers, whose names are also given in the petition and the serial number the Corporation by different

orders in respect of aforesaid 12 employees decided to change their designation from Assistant to that of Senior Assistant (now designated as Assistant Superintendent) with pay scale from Rs.1200-2040 to Rs.1640-2900 w.e.f. 1/9/1990. One such specimen order is produced in the compilation being order dated 19/8/1995 in respect of one Shri. V.B. Patel.

4. When the petitioners came to know that aforesaid 12 employees have been thus promoted ignoring their claims, they started making representations individually and collectively. Copies of the representations have been annexed to the memo of the petition. The respondent Corporation replied to the representation vide their letter dated 20/3/2003 that the officiating pay rise to be given to the above 12 employees as per the settlement arrived at between the Unions and management and therefore petitioners were not adversely affected by said order on the seniority. Since revised pay scale have been implemented after 5<sup>th</sup> Pay Commission Report, nothing new can be done without prior approval of the State Government for which the proposal had been sent. The petitioners on receiving said reply made further representation on 1/9/2003 pointing out the loss caused to them on account of the fact that juniors at least 12 employees had been drawing higher emoluments than petitioners though petitioners are seniors. In the representation it was submitted that since the seniority list was published or circulated, copy of the seniority list was also requested. Corporation issued letter dated 20/9/2003 indicating discussion on behalf of the representatives held on 18/6/2003 and informing that the individual representation would not be entertained. This anomaly in the pay scale is the subject matter of challenge before this Court.

5. The respondent resisted these petitions on the grounds of

delay, latches, acquiescence and estoppel. It was sought to be justified that some persons who had been officiating at far off place at Panendra, district Kutch were required to work in an adverse condition where civic amenities were not available and it was very difficult for the Corporation to direct sufficient number of qualified persons to work at that project. In order to overcome this difficulty the Corporation decided to pay emoluments at 20 % of the basic pay to the employees who were willing to work at Panendra project and this work was carried out smoothly between years 1983 to 1990. The Corporation adopted 4<sup>th</sup> Pay Commission recommendations vide settlement dated 5/9/1990 and Corporation discontinued the payment of officiating allowance as per the recommendation of the Pay Commission. The Corporation therefore decided to change designation of the four employees who were officiating on higher post and were paid higher pay scale and accordingly their designation was changed and they were given corresponding scale also. This change in designation in respect of four employees led to rise of demand by 14 other employees who were also holding charge on the post of officiating on the higher post. The Charter of Demands dated 18/10/1994 was submitted raising 19 demands including demand for change of designation for those remaining employees who were officiating on the higher post of Senior Assistant. Representatives of both the Unions were called for negotiations on 20/10/1994 and decision was taken, minutes were drawn on 19/10/1994. In this negotiation Corporation agreed that those employees officiating on higher post would be given post and pay as has been done in the case of four employees. As this decision could not be implemented Union gave call of strike from 25/1/1995 to 31/1/1995. The Corporation could not take any decision because of the announcement of election program by the Election Commission. After completion of election process Corporation took a decision of changing designation in respect of

14 employees also on certain terms & conditions including withdrawal of Recovery Application filed by them. The Corporation therefore issued letter/ orders on 19/8/1995 changing designation of 14 employees and giving them pay scale of Senior Assistant on the post whereon they were officiating earlier. In view of this amicable decision the dispute did not survive and ALC vide its communication dated 22/11/1995 reported to the Government that the dispute was settled in view of the settlement amongst 14 employees in parity with four employees.

6. The petitioners also put up rejoinder wherein they have contended that no option of choice was given to the petitioners to work at Panendar project. No willingness was sought from any one as to whether they were ever interested to work at Panendar and at least in case of petitioners namely Mr. I.A. Dandhukia, Pravin Surala had in fact worked at Panendar since 1989 and till date, petitioner no.2 Narendrabhai from 1993 to 2003 and AG Trivedi worked as such from 1979 to 1988. Thus the say of the corporation that 14 persons were working at Panendar and therefore given designation with pay scale is belied. Petitioners have also made statement in rejoinder paragraph no.3 (page 89) that Mr. P.K. Sharma, V.B. Parke the beneficiaries whose name appear at Sr. No. 12 and 11 of the waiting list were never worked at Panendar while they were given benefit of continuous officiating. They were some time at Ambaji project and some time at Panendar project. Thus even persons at Ambaji project were also given benefit of higher-grade pay scale and designation.

7. Mr. Supehia for the petitioners submitted that this being hostile discrimination it deserves to be quashed and set aside. Shri. Supehia invited this Court's attention to the averments

made in the petition as well as in the rejoinder and submitted that the stand taken by the Corporation of granting designation and scale only to those who actually officiated is not borne out from the record. Shri. Supehia submitted that in view of this the petitions deserve to be allowed.

8. Shri. Patel has submitted that the petitioners have no case for seeking parity with 14 persons. As stated herein above 14 persons were governed by the settlement, which is extensively relied upon by the Corporation and submitted that in view of the settlement, was binding upon the present petitioners, also petitioners have no case to seek parity with those 14 persons. Shri. Patel has in support of his submissions relied upon following authorities.

9. AIR 1999 SC 1801; AIR 1977 SC 2246; AIR 80 SC 1894; and submitted that the petitioners can not be granted parity. In the alternative Shri. Patel has submitted that it is always open to the Court to strike an illegal action rather than giving relief on the basis of the illegal action to the petitioners. Shri. Patel though could not specifically say that their action in granting pay scale & designation to the 14 persons was illegal. However in the alternative Shri. Patel has stated in his submissions that assuming for the sake of arguments that the Corporation could not have granted stepping up and or re-designation of the pay scale to 14 employees then also at the best said action can be said to be an action not in consonance with law, and in that case same can not be perpetuated by this Court by allowing the petitions and grant prayers to the present petitioners also. Shri. Patel has submitted that, as stated above said action came to be done in a peculiar facts & circumstances of that case and that benefit can not be accorded to the present petitioners. Shri. Patel has relied upon various settlements with the parties and

submitted that in view of those settlements also it can well be said that the petitioners have given up their right as they have accepted settlement in its totality.

10. This Court heard learned counsels of the parties. The fact remains to be noted in this case is that the Corporation has no specific Recruitment Rules for promotion. At the same time the fact remains to be noted is that present petitioners had never been afforded an opportunity of option for work at Panender or any other adverse place as it is sought to be made out by the respondent Corporation. As against this, the fact further remains to be noted that in the year 1993 it was only the designation, which came to be changed without change in the pay scale. For the first time in year 1995 in respect of some 12 persons whose names have been mentioned by petitioners in the petition change was effected which included change in the designation as well as in that of pay scale also. Now the Corporation has remained silent as to whether it was a change in designation because of promotion nor has it said specifically that there was an exercise of considering name of the petitioners and petitioners were not found eligible and persons in whose case the change were found more meritorious to petitioners. In any event change is again said to be a change only and said change could not have been made keeping in mind that the other employees would be adversely affected.

11. In fact the representations of the petitioners calling upon respondent to produce seniority list has also met with no result and therefore on the contrary petitioners' stand gets further substantiated on the ground of lack of seniority list. Shri. Patel has submitted that the action of the Corporation was not deliberate but after discussions with the Unions. Shri. Patel's this submission even if deserves to be considered, does not found to

be correct in view of the language employed in the settlement. The question arise as to whether the language employed in the settlement could be said to be so clear as to deny the equal treatment to the petitioners. Would it be permissible to a State Agency or instrumentality to accord benefit of higher grade and pay scale to some of the employees ignoring others and seniors. The impugned action would amount to discriminating seniors squarely hit by the provisions of Article 14 of the Constitution.

12. The settlements are part & parcel of management process and they have been placed on record. In light of the settlement the controversy deserves to be examined in its true perspective. The settlement indicated that the issue with regard to change in designation was at large at all the time. However if that settlement is agreed upon then the question would arise as to what extend the petitioners were justified in claiming the parity with those 14 persons. These settlements go to show that there was serious demand for higher pay scale to the similarly situated employees. The settlement dated 13/9/1995 carries an item under the head of Officiating Allowance, which talks about the employees who have been working for, continues 2 years on higher post shall be given the designation. The settlement signed on 5/7/1990 talks about no obligation of the Corporation to automatic grant of up-gradation to employees who were officiating on the post and the issue of up-gradation policy was acted upon and to be governed by Government guidelines.

13. Shri Patel for the corporation submitted that in fact all the settlement arrived at between the parties were binding on all of them. The employees have submitted undertakings that for availing the benefit of facilities and advantages they have given up their earlier demands hence it would not be now open to these petitioners to ask for equal treatment qua those 14 employees.



Shri Suphehiya counsel for the petitioner submitted that in fact no such undertaking or consent could be held against the petitioners as there could be no waiver of fundamental rights and the petitioners have fundamental rights to be treated equal by the State or its instrumentality.

14. The terms of the settlement do indicate that question of getting higher pay scale and change of designation was in fact subject matters of some of the settlement and while ultimately signing it the unions have in unequivocal terms given up their other demands and accepted the settlement as it was agreed upon. The Court is aware of the Hon'ble Supreme Courts various decisions in respect according directions to the State or its instrumentality in the matters of higher pay scales.

15. The Respondent Corporation has not pointed out any justifiable reason for not according the benefit of higher pay scale and upgradation which was granted to some of the employees except on the ground that the employees representatives have consciously while signing the settlement given up all the demands except those which were consciously agreed upon in the settlement. The Respondent Corporation has not pointed out any cogent reasons for giving benefit of up-gradation and higher pay scale to those 14 employees while many seniors and similarly situated employees were left high and dry. In absence of any justifiable reasons and grounds for perpetrating discrimination qua employees like petitioners the Corporation is under obligation to give positive consideration to the claims of the petitioners. This Court is of the view that benefit of upgradation as well as that of higher pay scale given to those 14 employees ignoring the claim of other eligible employees like petitioner was violative of Article 14 and 16 of the Constitution of India The petitioner were entitled to the equal treatment.

16. In view of the aforesaid discussions this court is inclined to issue the following directions to the corporation :-

- (1) The Respondent Corporation is directed to consider the claim of the petitioners and other similarly situated for grant of Higher Pay Scale and up-gradation with appropriate effect as it granted the said benefit to those 14 employees after taking into considerations all the relevant aspects like seniority, and if other wise they were found to be eligible for such benefit.
- (2) The Respondent Corporation would be at liberty to deny the benefit to those petitioners who could not have been other wise also promoted on account of some departmental proceedings or other handicaps.
- (3) The Respondent Corporation shall record reasons and communicate the same to the petitioner if in his case the claim was not acceptable.
- (4) The corporation shall undertake this exercise as soon as possible and accord the benefit with appropriate dates.

17. In the result the petitions are allowed accordingly. Rule made absolute to the aforesaid extent only. No cost.

[ S.R. BRAHMBHATT, J ]