

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 28465 of 2007****with****SPECIAL CIVIL APPLICATION No. 27626 of 2007****to****SPECIAL CIVIL APPLICATION No. 27629 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE ANANT S. DAVE**

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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 P PARMAR****Versus****STATE OF GUJARAT & others**

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**Appearance :****Mr. Paresh Upadhyay for the petitioners****Mr. Kalpesh Pandit AGP, for the respondents in SCA Nos.28465 of  
2007 & 27626 of 2007****Mr. Vipul Mistry, AGP, for the respondents in SCA Nos.27627 of  
2007, 27628 of 2007 & 27629 of 2007**

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**CORAM : HONOURABLE MR.JUSTICE ANANT S. DAVE**

**Date : 29/02/2008**

**COMMON ORAL JUDGMENT**

1 Rule. Learned Assistant Government Pleaders waive service of Rule on behalf of the respondents in all the matters.

2 All these writ petitions under Article 226 of the Constitution of India involve common question of law and challenge to the impugned orders based on similar grounds and, at the request of the learned advocates for the parties, all these matters are taken up for final hearing today.

3 In these writ petitions under Article 226 of the Constitution of India, the petitioners challenge withdrawal of higher-grade scale granted to them in the year 1988 and the orders of consequential recovery of excess amount of higher-grade scale granted to the petitioners. The relevant details are given in a tabular form:

SCA No. & Name of the petitioner	Date of Retirement	1 <sup>st</sup> Higher scale granted w.e.f	Date of order	Withdrawal	Second order of withdrawal after hearing	Amount of recovery Rs.
28465/07 R.P. Parmar	31.8.06	1.6.87	6.12.91	11/22.11.2005	20.6.07	53,932
27626/07 B.L. Bhavsar	30.9.00	1.6.87	6.12.91	11/22.11.2005	20.6.07	14,215
27627/07 M.S.Joshi	31.10.98	1.1.88	6.12.91	11/22.11.2005	20.6.07	23,607
27628/07 R.P. Master	31.1.05	1.1.88	7.12.91	11/22.11.2005	20.6.07	33,183
27629/07 V.Krishnan	31.1.99	1.1.89	1991	11/22.11.2005	20.6.07	24,960

4 So far as Special Civil Application No. 27628 of 2007 and Special Civil Application No.28465 of 2007 are concerned, the amounts of recovery of Rs.33,183/- and Rs.53,932/- respectively, have already been recovered from the leave encashment due to the petitioners, while, in other cases, though the amount of recovery is determined, the recovery is yet to be effected against the petitioners.

5 Mr. Paresh Upadhyay, learned counsel for the petitioners, has restricted his challenge only against the action of recovery of alleged excess payment from the petitioners in the higher pay-scale and in the cases where the recovery is already made, he prays for a direction to the Authorities to refund the payment of such nature to the petitioners. He has relied on Rule 28 of the Gujarat Civil Service [Pay] Rules, 2002, and submitted that, when promotion or appointment of government employees is found to be erroneous on the basis of facts like incorrect seniority, failure to apply any relevant rules or orders correctly, the pay of such government employee is to be regulated in accordance with the general or special orders issued by the Government in this behalf and in which case, when any rule or order regulating pay is made with retrospective effect, the pay of a government employee affected by such order or rule shall be fixed notionally and no recovery is effected. Proviso to Rule 28 has carved out an exception that, in case of an employee who is given erroneous promotion or appointment on the basis of false information furnished by such government employee, recovery is permitted after taking appropriate departmental action. Mr. Paresh Upadhyay, learned counsel for the petitioners, has further submitted that in case of higher-grade scale granted to the government employee due to mistake or incorrect interpretation of Rule or by applying revision of pay on misnomer and, later on, if higher grade scale is reduced and recovery is effected with retrospective effect, the government authorities are

precluded from taking any action for recovery of the amount granted in the higher grade scale. Mr. Paresh Upadhyay has further submitted that, in the present case, the power is exercised in a mechanical manner, which is evident from the order passed in the case of an employee who is no more in service and expired on 23.2.2006. He has also placed reliance on the Oral Judgment dated 4.4.2001 passed by the Division Bench of this Court in Letters Patent Appeal No.578 of 2000 in Special Civil Application No.2196 of 1999 [I.C. Patel vs. Gujarat Housing Board], in support of his submission that, if higher-grade scale is granted to an employee due to mistake on the part of the respondent-employer or an Authority, upon correcting such mistakes, no order of consequential recovery can be passed. According to Mr. Paresh Upadhyay, the facts of the present case are squarely covered by the above-referred decision of the Division Bench and, therefore, the impugned orders of recovery deserve to be quashed and set aside the Authorities are to be directed to refund the amount of recovery already made.

6 Learned Assistant Government Pleaders appearing for the State Government submit that, so far as correcting the mistake of the Department in re-fixing the pay-scale of the petitioners in the higher grade scale wrongly granted is concerned, the action of the Department cannot be said to be in any manner unjust or arbitrary or violative of principles of natural justice. It is further submitted that the concerned Authorities had given a hearing to the petitioners and after considering the facts of the individual cases, the Authorities have passed the orders which do not deserve any interference. At the same time, the proposition of law laid down by the above-referred decision of the Division Bench is not disputed by the learned Assistant Government Pleaders. According to the learned Assistant Government Pleaders, Revision of Pay Rules, 1987 were applied and relied on by the Authority incorrectly on the issue of

grant of higher grade scale to the petitioners erroneously, corrective measures were taken by the Authorities to place the petitioners in a proper pay-scale.

7 Heard learned advocates for the parties and perused the relevant Rules applicable to the facts of the present case.

8 The issue raised in this group of petitions is no more res-integra. The Division Bench of this Court, in the Oral Judgment dated 4.4.2001 rendered in Letters Patent Appeal No.578 of 2000 in Special Civil Application No.2196 of 1999 [I.C. Patel vs. Gujarat Housing Board], held as under:

“We have heard learned Counsel Mr. H.S. Munshaw appearing for the Board, who has strongly supported the decision of the learned Single Judge and the action of the Board in recovering the excess payment of salary made to the appellant. After hearing the learned Counsel for the parties, we are of the opinion that the appellant should not be made to suffer for the mistake committed by the Board. As is mentioned above, the mistake is not merely clerical/arithmetical. Before implementing the scheme of upgradation the appellant was holding the post of Sub-Engineer and he was given the up-gradation and pay-scale of Rs. 2200-4000 prescribed for the post of Deputy Executive Engineer. Under the scheme, at the relevant time it was found that he was entitled to the pay-scale of Rs. 2200-4000 and not to the interim scale of Rs. 1640-2900. It is only when an audit objection was raised that the Board reconsidered its earlier decision that the higher pay-scale granted to the appellant as an interim-scale was clearly a mistake. The difference of amount of salary payable on fixation in the higher

grade scale was duly credited in the Provident Fund Account. So far as correction of the mistake is concerned, the Board was right in rectifying the mistake by reducing the scale granted to the appellant in the upgraded post from 2200-4000 to 1640-2900. However, recovery of the amount excess paid to the appellant at this point of time amounts to imposing a sort of penalty or punishment. The mistake was committed by the Board, for which the appellant should not be penalised. Recovery of the excess payment made to the appellant for no fault on his part appears to be wholly unjustified.

For the reasons aforesaid, we partly allow this appeal. The impugned order dated 25.1.2000 passed by the learned Single Judge is set aside in so far as direction for recovery of excess amount paid to the appellant is concerned. The action of the respondent Board in giving the Higher Grade Scale of Rs. 1640-2900 is upheld, but the Board is restrained from making any recovery of excess payment made to the appellant on his earlier upgradation and fixation in the pay-scale of Rs. 2400-4000. Any recovery effected so far pursuant to the decision of the Board and on refixation of his pay in the pay-scale of Rs. 1640-2900, be refunded or readjusted suitably in favour of the appellant within a period of 3 months from today. In view of the fact that the appellant has already retired - the parties shall bear their own costs of these proceedings.”

8.1 In another case of PH Reddy vs. NTRD, reported in 2002 (2) SLR 694, the Apex Court has held that the employee who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn and the Apex Court accordingly set aside that part of the order of the authority by which the

recovery was directed for the excess amount.

9 When an employee is granted higher pay-scale by the Authority by placing reliance on a particular rule in incorrect manner or by applying revision of pay-scale wrongly or erroneously and the employee has not represented or misrepresented rather, submitted incorrect facts or given false information, it is always open to the Authorities to correct such mistakes, but, recovery of excess payment made to the employee cannot be effected. The interpretation put forth by the Authorities about inapplicability of Rule 28 in case of withdrawal of higher grade scale, since it relates to grant of promotion or appointment to the employees is nothing, but, in appropriate exercise of powers by the authorities in as much as if promotion or appointment given to an employee erroneously by the authorities and no recovery can be ordered with retrospective effect, the very same analogy and reasoning will apply in case when an employee is granted higher grade scale, may be through mistake by the authorities, but not based on any misrepresentation or incorrect information furnished by the petitioners.

10 As a result of foregoing reasons and following the law laid down by the Apex Court in n P H Reddy (supra) and by the Division Bench of this Court in the Oral Judgment dated 4.4.2001 rendered in Letters Patent Appeal No.578 of 2000 in Special Civil Application No.2196 of 1999 [I.C. Patel vs. Gujarat Housing Board], the impugned orders in these petitions where challenge is restricted only to the recovery aspect, are quashed and set aside to that extent only and the recovery in each of the cases is held erroneous. The respondents are directed not to effect recovery of any amount towards grant of higher grade scale to the petitioners and determine further issues including retiral dues of the petitioners.

11 So far as Special Civil Application No.27628 of 2007 and Special Civil Application No.28465 of 2007 are concerned, where amount of Rs.33,183/- and Rs.53,932/- are already recovered from the leave encashment due to superannuation of the petitioners from the service, the Authorities are directed to refund the said amounts to the petitioners within eight weeks from the date of receipt of writ of this order.

12 With the aforesaid observations and directions, all these petitions are allowed. Rule is made absolute in each petition with no order as to costs.

(ANANT S. DAVE, J.)

(swamy)