

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 810 of 2000****For Approval and Signature:****HONOURABLE MR.JUSTICE G.B.SHAH**

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<b>1</b>	Whether Reporters of Local Papers may be allowed to see the judgment ?	
<b>2</b>	To be referred to the Reporter or not ?	
<b>3</b>	Whether their Lordships wish to see the fair copy of the judgment ?	
<b>4</b>	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
<b>5</b>	Whether it is to be circulated to the civil judge ?	

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**RAJIV DILIP MEHTA - Petitioner(s)****Versus****GUJARAT URJA VIKAS NIGAM LTD & 1 - Respondent(s)**

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**Appearance :**

MR IS SUPEHIA for Petitioner(s) : 1,

MS RV ACHARYA for Respondent(s) : 1 - 2.

MR VT ACHARYA for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE G.B.SHAH****Date : 30/03/2012****ORAL JUDGMENT****1. RULE.**

The petitioner has filed this petition challenging the order dated 17.12.1999 passed by the Superintending

Engineer, Gujarat Electricity Board-respondent No.2 cancelling the appointment letter dated 12.2.1999 passed in favour of the petitioner without any reason. The uncontroversial facts leading to this petition between the parties are as under:

2. The petitioner had made an application to the Executive Engineer of the respondent Board for the post of vehicle Driver on the vacant posts in the Kachchh Circle under respondent No.2. Pursuant to that the petitioner was called for interview by call letter dated 5.5.1998 and he was interviewed on 21.5.1998. The petitioner was issued appointment letter dated 12.2.1999 requiring him to report on duty to the Office of Dy.Engineer (O & M) of the Gujarat Electricity Board at Nalia sub Division before 22.2.1999. However, due to administrative reasons, the appointment of the petitioner and others were kept in abeyance and they were informed by letter dated 18.2.1999 and thereafter the said appointment order was cancelled vide order dated 17.12.1999. By the present Special Civil Application No.810 of 2000 dated 9.2.2000, the petitioner has challenged the said order dated 17.12.1999. Thereafter during the pendency of this petition as the petitioner was likely to get a job of Helper with the respondent, the said petition was withdrawn by him.

Accordingly by order dated 19.7.2001 this Special Civil Application No. 810 of 2000 was disposed of as withdrawn and liberty was reserved to revive the petition in case of difficulty.

The said order dated 19.7.2001 reads as under:

*“Rajiv Dilip Mehta-petitioner has filed this petition challenging the order dated 17.12.1999 passed by the Superintending Engineer, Gujarat Electricity Board-respondent No. 2 cancelling the appointment letter dated 12.2.1999 passed in favour of the petitioner without any reasons. The said petition has been filed on 9.2.2000. During the pendency of the petition, the Executive Engineer has addressed a letter dated 5.7.2001 in which it is stated that the petitioner is likely to get job of helper if the petitioner withdraws Special Civil Application No. 810 of 2000 and produces a copy of the order before the Gujarat Electricity Board. In view of the same, the learned advocate for the petitioner prays for withdrawal of the petition. The petition is accordingly disposed of with no order as to costs. In case of difficulty, liberty is given to revive Special Civil Application No. 810 of 2000. The letters are taken on record.”*

2.1. It is also not in dispute that thereafter the petitioner was appointed as Helper on 31.7.2001 on regular basis and till today he is working as Helper.

2.2. It is also not in dispute that the petitioner, thereafter had preferred Special Civil Application No.9002 of 2004 for seeking appointment as vehicle Driver. The said petition came up for hearing before this court and the same was summarily rejected by order dated 26.7.2004. The Hon'ble Court had in turn stated in the order that the petition for identical relief which was prayed in Special Civil Application No.810 of 2000

was not maintainable as earlier the said Special Civil Application No.810/2000 was withdrawn by the petitioner. It was also mentioned in the order that the petitioner himself gave up his claim for appointment as vehicle driver. Para 3 of the said order dated 26.7.2004 passed in Special Civil Application No.9002 of 2004 reads as under:

*“3. In my view the present petition for the identical relief which was prayed in Special Civil application No. 810 of 2000 is not maintainable. The petitioner had preferred the said petition and had prayed for appointment as vehicle driver. He withdrew the petition when he was offered appointment as helper. Thus the petitioner gave up his claim for appointment as vehicle driver. The petitioner, therefore, cannot agitate the same issue and claim appointment as vehicle driver. The petition is, therefore, summarily rejected.”*

3. Thereafter the petitioner has filed Misc. Civil Application No.501 of 2005 in Special Civil Application No.810 of 2000 for revival of the Special Civil Application and vide order dated 29.4.2005 the present petition i.e. Special Civil Application No.810 of 2000 has been revived.

4. According to the submission made by the learned Advocate for the petitioner, this Special Civil Application No.810 of 2000 was withdrawn and while withdrawing the same, liberty was granted by the Court to the effect that in case of difficulty the main petition can be revived. Learned

Advocate submitted that vide order dated 17.12.1999 the appointment orders as Vehicle Driver relating to four persons including the present petitioner were cancelled and out of the said four persons, Mr A.K Jat at sr.no. 4 was appointed on his original post of vehicle driver vide order dated 15.11. 2001. Likewise S.P. Sevak at sr.no.2 who had filed Special Civil Application No.12081 of 2001 which was allowed by this court on the ground that the appointment order was cancelled without hearing the petitioner of the said petition. Learned Advocate for the petitioner vehemently submitted that the pay scale of vehicle driver is Rs.3400-8300 whereas pay scale of Helper is Rs. 2750-5215. Thus the present petitioner is also entitled to be appointed as vehicle driver instead of Helper on the ground of parity and as such for removing this difficulty, the liberty to revive the petition reserved was applied for and accordingly the present petition should be allowed.

5. Learned Advocate for the respondents has submitted that this is the third round of litigation and it is nothing but misuse of liberty by making misconceived submissions by the learned Advocate for the petitioner and there should be end and limit to everything and further she requested to dismiss the petition.

6. I have considered the rival submissions made by the learned Advocates for the parties as well as the affidavit-in-reply filed by the respondent and the affidavit-in-rejoinder filed by the present petitioner. From the above, it is clear that while withdrawing this Special Civil Application No.810/2000 on 19.7.2001, the Executive Engineer of the respondent had addressed a letter dated 5.7.2001 in which it has been stated that the petitioner is likely to get a job of Helper, if he withdraws the Special Civil Application No.810 of 2000 and accordingly while disposing the said petition, liberty was granted to revive the petition in case of difficulty. In my view, after the withdrawal of the petition if as per the assurance referred above the Executive Engineer would not stick to his assurance and if he was unable to give job of Helper to the petitioner, then in that situation, the petitioner could have said that he had been put in difficulty after the withdrawal of the petition and he could have exercised the liberty and he could revive the present petition but he cannot revive this petition on the ground of applying principles of parity as the others had been appointed as vehicle driver he should also be appointed as vehicle driver because the pay scale of vehicle driver is much higher than that of the post of Helper. As decided

earlier on the second round of litigation vide order dated 26.7.2004 passed in Special Civil Application No.9002 of 2004, once the petitioner has given up his claim as vehicle driver, by this way he could not have moved for revival of this petition as he had suo motu withdrawn the petition by his own, on 19.7.2001.

8. By reviving this petition as referred above, in my view the petitioner wants to start 3<sup>rd</sup> round of litigation and it is nothing but misuse of liberty granted to the petitioner while passing order dated 19.7.2001 referred above, which is against the settled principles of law. Under the above discussed circumstances the present revived Special Civil Application No.810 of 2000 deserves to be dismissed and the same is accordingly dismissed. Rule is discharged.

**[G. B. SHAH, J.]**

*msh*