

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

**SPECIAL CIVIL APPLICATION No. 1620 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE V. M. SAHAI**

**HONOURABLE MR.JUSTICE G.B.SHAH**

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	<b>NO</b>
2	To be referred to the Reporter or not?	<b>NO</b>
3	Whether their Lordships wish to see the fair copy of the judgment?	<b>NO</b>
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?	<b>NO</b>
5	Whether it is to be circulated to the civil judge?	<b>NO</b>

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**UNION OF INDIA & 1 - Petitioner(s)**

**Versus**

**DEVIKABEN KALPESHKUMAR CHAUHAN - Respondent(s)**

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**Appearance :**

MR SHAKEEL A QURESHI for Petitioner(s) : 1 - 2.

RULE SERVED BY DS for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI**

**and**

**HONOURABLE MR.JUSTICE G.B.SHAH**

**Date : 30/10/2012**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)**

1. We have heard Mr. Shakil A. Qureshi, learned counsel for the petitioners. The respondent herein filed Original Application (OA) before the Tribunal claiming that petitioners herein may pay her the salary and allowances for the post of Manager RLO HSG-I, which was held by her w.e.f. 01/12/2004. It could not be disputed by the petitioners herein before the Tribunal that whenever the respondent herein was officiating, she was paid difference of pay admissible for the pay of HSG-I. The Tribunal has held in Para 4 & 5 as under:

*“4. It is apparent from the reply of the respondents that the post of Manager RLO in HSG-I grade was held by Mr. N. T. Patel on regular basis and on Mr. N. T. Patel proceeding on leave, during several occasions the charge of that post was held by Mr. Momin, the senior most officer and on the retirement of Mr. N. T. Patel, Mr. Momin was asked to work as Manager RLO in HSG-I. According to the respondents, Mr. Momin was paid difference of*

*pay admissible for the pay of HSG-I for the period from 22-4-2002 to 21-5-2002 and from 2-6-2003 to 16-6-2003. He was however not paid any salary of the HSG-I or difference after Mr. N. T. Patel retired and he was asked to hold the charge. Mr. Momin had thereupon moved this Tribunal by way of OA. 131/2005 for claiming the pay and allowances of the higher post of Manager, RLO HSG-I for the period from 1-9-2004 to 30-11-2004. The same contention of Mr. Momin not being eligible to claim the salary of HSG-I and having been appointed only to hold the charge till the post was filled up by regular appointee were advanced by the respondents in that case. The Tribunal after considering all the contentions raised by the respondents vide order dated 20-9-2005 had quashed and set aside the order dated 17-1-2005 of the respondents rejecting the representation of Mr. Momin for the pay and allowances of the promotional post of Manager, RLO. This Tribunal has while concluding observed as under:*

*“22. Summing up we find that the post of Manager (RLO) has been upgraded to HSG-I w.e.f. 26-7-01 and one post of PA is abolished. A perusal of the recruitment rules*

*establishes that posts of LSG/HSG-II officials in the RLO is to be filled up by clerks with 10 years/I SG officials with 3 years service working in that office. The department hopefully must have come with some policy for filling up Manager (RLO)'s post when no HSG-II exists in the office. The earlier incumbent superannuated on 31-8-2004. The department had ample time to plan for his successor. The order posting the applicant does not show as to what duties he should discharge and what duties he should not discharge as required under DOPT circular. His representation was rejected solely on the ground that he has not put in three years service as HSG-II. Other aspects have not been considered.*

*The Apex Court decision in Hari Om Sharma and Selvaraj's case makes it absolutely clear that the applicant is entitled to the salary of the post.”*

5. *The above observations will apply with full force to the facts of the instant case also as the applicant has succeeded Mr. A. M. Momin as RLO and she is also asked to hold the charge of that post. Since the respondents have not made*

*any attempt to fill up the post of Manager, RLO by a regular appointee, they cannot be heard to deny the payment of the salary of that post to the applicant when she has carried out the duties of that post. In view of this position, and following the decision in the case of Mr. Momin in OA No. 131/2005, we allow this OA and direct the respondents to pay the salary and the allowance of the post of Manager, RLO HSG-I to the applicant from the date of her assuming the charge of Manager RLO, HSG-I i.e. 1-10-98 till she retained that post. This exercise shall be carried out within four months from the date of receipt of a copy of this order and the arrears etc. be paid to the applicant. If the payment is not made within four months period, the same shall be payable with interest at the rate of 9% per annum from the expiry of the above period. The OA stands disposed of. No order as to costs.”*

2. We agree with the view taken by the Tribunal that the respondents – petitioners herein are required to pay difference in pay scale of higher post on which the respondent herein was officiating, as was being paid to her in the past.

3. For the aforesaid reasons, we do not find any merits in this petition. This writ petition fails and is accordingly dismissed. Rule is discharged. No order as to costs.

**[ V. M. Sahai, J. ]**

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

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