

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 12737 of 2016**

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GITABEN RAJNIKANT BHATT

Versus

STATE OF GUJARAT

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Appearance:

HCLS COMMITTEE for the PETITIONER(s) No. 1

MR JEET J BHATT(6154) for the PETITIONER(s) No. 1

GOVERNMENT PLEADER for the RESPONDENT(s) No. 1,2

NOTICE SERVED(4) for the RESPONDENT(s) No. 3,4

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**CORAM: HONOURABLE MS JUSTICE SONIA GOKANI****Date : 09/11/2016****ORAL ORDER**

1. By way of present petition preferred under Article 226 of the Constitution of India, the petitioner has prayed for granting her the benefits of the higher grade pay-scale counting her earlier services rendered at Surat City and, thereby, granting her the first higher pay-scale with effect from June 01, 1987 and all the consequential benefits emanating therefrom.

2. The petitioner had sought for inter-district transfer in the year 1985 from Surat to Vadodara as the petitioner's husband was working in Vadodara District, which ultimately came to be

granted on July 23, 1985 on the condition of her giving up her seniority. Thus, since July 23, 1985, the petitioner has been working as a Junior Clerk in the office of the City Surveyor, Vadodara. The respondent-authority by considering the Government Resolution dated October 16, 1993, had granted the benefit of higher pay-scale to the petitioner on her completion of 9 years from the date of her joining at the transferred place as per the condition of transfer order and not from the original date of her appointment. Being aggrieved by the same, the petitioner is before this Court praying for the following reliefs :

*"17(i) Be pleased to issue a writ of mandamus or any other writ, direction or order granting the benefits of higher grade pay scale counting the earlier service at Surat City Surveyor and therefore granting the first higher grade pay w.e.f. 1.06.1987 and all consequential benefits be paid within a period of three months with interest @ 18% per annum;*

*(ii) Be pleased to issue a writ of mandamus or a writ in the nature of*

*mandamus or any other appropriate writ, order or direction directing the respondent no 2 to consider the representations made by the petitioner and to grant the benefit in accordance with the direction given in Special Civil Application No.1446 of 1994 and allied matters;"*

3. The petitioner has sought to rely upon a decision of the Apex Court in the case of **State of Maharashtra v. Uttam Vishun Pawar**<sup>1</sup>, as also a decision of this Court (Coram : M.R. Shah, J.) in the case of **Naynaben Manubhai Vyas and others v. State of Gujarat and others**<sup>2</sup>. This Court in the said decision has held that those employees who were transferred on the request are entitled to get the benefit of higher grade pay-scale considering 9 years /18 years' service counting their seniority from the date of their initial appointment i.e. the period prior to their request of transfer also and the respondent-State and the other authorities were directed to grant the benefit of higher grade pay-scale to

<sup>1</sup> 2008 AIR SCW 937

<sup>2</sup> Unreported decision of this Court (Coram : M.R. Shah, J.) rendered on March 12, 2009, while dealing with Special Civil Application No.1446 of 1994 and allied matters.

the respective petitioners in accordance with law. The case of the present petitioner being selfsame to the one which has been decided by this Court, the petitioner will also be entitled to the benefit rendered in the case of **Uttam Vishun Pawar (supra)** as well as in the case of **Naynaben Manubhai Vyas (supra)**.

Apt would it be to regurgitate the relevant observations of the said decision of this Court in the case of **Naynaben Vyas (supra)**, which read as under :

*"13. Considering above decision inclusive of decision of the Hon'ble Supreme Court in the case of State of Maharashtra v/s. Uttam Vishun Pawar [2008 AIR SCW 937], all these petitions deserve to be allowed and it is held that seniority of the respective petitioners for the purpose of grant of benefit of higher grade pay scale is required to be considered from the date of their initial appointment (past service / seniority also) and the respondents are to be directed to consider the case of the respective petitioners for grant of benefit of higher grade pay scale counting their past service /seniority i.e. prior to their*

request transfer also. Consequently if there is any recovery same also deserves to be quashed and set aside.

14. For the reasons stated above, all the petitions succeed. It is held that all the petitioners who were transferred on their request transfer are entitled to get benefit of higher grade pay scale considering 9 years / 18 years counting their seniority from the date of their initial appointment i.e. (period prior to their request transfer also) and concerned respondents are directed to grant benefit of higher grade pay scale to the respective petitioners in accordance with law and scheme considering their total seniority from the date of their initial appointment i.e. counting seniority / period prior to their request transfer. Any recovery by any of the respondents by holding that such petitioners are entitled to seniority for the purpose of granting benefit of higher grade from the date of their joining transfer place is hereby quashed and set aside. If any of the petitioners are not granted benefit of higher grade pay scale on the ground that they have not completed nine years of service (ignoring their past service), to be given benefit of higher grade pay scale by the concerned

*respondents considering their past seniority (prior to their request transfer) and necessary calculations and actual payment should be made within 3(three) months from today. Rule is made absolute in each of the petitions. In the facts and circumstances of the case there shall be no order as to costs."*

4. Thus, it transpires that the case of the present petitioner is squarely covered by the above cited decisions, especially the decision of this Court in the case of **Naynaben Vyas (supra)** and, therefore, the present petitioner deserves to be granted the benefit of the higher grade pay-scale as prayed for. Hence, the present petition deserves to be allowed.

5. For the foregoing reasons, the present petition succeeds and the same is, accordingly, allowed. The petitioner who was transferred on her request transfer is entitled to get the benefit of higher grade pay scale considering 9 years / 18 years counting her seniority from the date of her initial appointment i.e. period prior to her request of transfer also. The respondent-

authority is directed to grant the benefit of higher grade pay scale to the petitioner in accordance with law and scheme considering her total seniority from the date of her initial appointment i.e. counting seniority/period prior to her request transfer. The petitioner be paid the amount of difference within a period of three months from the date of receipt of a copy of this order.

Disposed of accordingly. There shall be, however, no order as to costs.

**(MS SONIA GOKANI, J)**

*Aakar*