

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14697 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 14783 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 15740 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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 or any order made thereunder ?	

DIPAKBHAI PUNJABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT P BHATT(169) for the Petitioner(s) No. 1,2,3,4

MR JEET J BHATT(6154) for the Petitioner(s) No. 1,2,3,4

MR KURVEN DESAI, AGP for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2,3,4,5,6

CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 31/03/2022

COMMON ORAL JUDGMENT

1. *Rule* returnable *forthwith*. Mr. Kurven Desai, learned Assistant Government Pleader waives service of notice of Rule for respondent-State.
2. With the consent of the learned advocates for the respective

parties, all these petitions are taken up for final hearing today.

3. Heard Mr. Jeet Bhatt, learned counsel for the petitioners in SCA Nos.14697 of 2021 and 14783 of 2021, Mr. Swapneshwar Goutam, learned counsel for the petitioners so far as SCA No.15740 of 2021 and Mr. Kurven Desai, learned AGP for the respondents.
4. Learned advocates for the respective parties agree that the issue is covered by a decision rendered by this Court in SCA No.6543 of 2019 and allied matters dated 28.2.2022. They further requested this Court to pass a similar order in these matters too. The order dated 28.2.2022 reads as under:

1. RULE returnable forthwith. Mr. Kurven Desai learned AGP waives service of notice of Rule on behalf of the respondent State.

2. With the consent of learned advocates for the respective parties, the petition is taken up for final hearing.

3. For the purposes of brevity, we may take Special Civil Application No.6543 of 2019 as a lead matter.

4. By way of this petition under Article 226 of the Constitution of India, the petitioners were working as Senior Clerks with the Technical Education Department. They have prayed that their cases for promotion and higher pay scale to the post of Head Clerk be considered on the basis of the Rules in vogue at the time of their appointment known as the Gujarat Technical Education Department (Conditions of Service relating to Clerk's examinations) Rules, 1976.

5. Mr. Abhisst Thaker learned advocate for the petitioners would submit that the respondents are not considering the case of the petitioners for promotion to the post of Head Clerk on the ground that in accordance with the Rules, the petitioners are required to pass the departmental examination in accordance with Rule 3.

6. The examinations under the Rules of 1976, Sub-Rule (3) would support the case of the petitioners inasmuch as any person, who, before the appointed date, has passed the relevant departmental examination, then he is not required to pass the departmental examination under the Rules of 2015.

7. A specific averment is made in the petition that the petitioners having undertaken the examinations in the year 1976 pursuant to the 1976 Rules, they have been

exempted from passing the examination in accordance with Rule 3(3) of 2015 Rules. If that be so, particularly in view of the fact that it is the case of the petitioners that they were appointed as Senior Clerks prior to 2015 and Rules of 1976 are applicable, the case of the petitioners be considered in accordance with law for the purposes of promotion and higher pay scale within a period of 10 weeks from the date of receipt of copy of this order.

8. The petition is disposed of accordingly. Rule is made absolute to the aforesaid extent."

5. In view of the above, the present petitions shall also be governed by the order dated 28.02.2022 passed in SCA No.6543 of 2019 and allied matters and are disposed of in the same terms as observed in paragraph Nos.6 and 7 of such decision.
6. *Rule is made absolute to the aforesaid extent. Direct Service is permitted. No order as to costs.*
7. *Liberty to move in case of difficulty.*

(BIREN VAISHNAV, J)

VATSAL S. KOTECHA