

(2010) 04 GUJ CK 0112

In the Gujarat High Court

Case No : Special Civil Application No. 6760 of 1995

Administator Barvala Gram Panchayat

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964 — Rule 2
Gujarat Panchayat Service (Appointing Authorities) Rules, 1967 — Rule 3(2), 3(3)
Gujarat Panchayat Service (Pension) Rules, 1976 — Rule 2, 3, 3(1), 3(4)
Gujarat Panchayats Act, 1961 — Section 102, 102(1), 122, 142, 203

Citation : (2010) 04 GUJ CK 0112

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : P.R. Nanavati, for the Appellant; Government Pleader for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of this petition the petitioners have prayed for directions directing the respondents to consider the employees of Barvala Gram Panchayat as the employees of the State Government and to extent all the benefits regarding salary and other perks .

2. The grievance of the petitioner is that the State Government is discriminating amongst the employees of District Panchayat, Taluka Panchayat and Nagar Panchayat in all the benefits of salary and other allowances which are being extended to the District Panchayat and Gram Panchayat are excluded from the said benefit despite the directions of this Court.

3. Heard learned advocates for the respective parties and perused the documents on record.

4. In Letters Patent Appeal No. 1381 of 2004 this Court on 2.7.2009 has passed following order:

1. The question that has come up for consideration in all these cases is whether a person who has been appointed in a Panchayat without following the procedures laid down u/s 203(4)(b) of the Gujarat Panchayats Act, 1961 (for short "the Act"), can be treated as a member of the Panchayat service so as to claim the pensionary benefits under Gujarat Panchayat Service (Pension) Rules, 1976 and the Family Pension Scheme, 1972, and/or such appointee can be treated as an employee retired from the Panchayat service.

2. Ms. Justice Rekha M. Doshit, learned Single Judge while deciding Special Civil Application No. 354 of 2004 has taken the view that a person who has not been appointed in the Panchayat service following the provisions of Section 203 of the Act, cannot be treated as a Panchayat employee so as to claim the pensionary benefits under the Gujarat Panchayat Service (Pension) Rules, 1976 (for short "the Pension Rules") or to claim family pension under the Family Pension Scheme or from the Panchayat itself, in absence of a pension scheme.

Mr. Justice Akshay H. Mehta, another learned Single Judge (as he then was), while deciding Special Civil Application No. 2019 of 1988 has also took the view that merely because Pension Rules have been framed by the State Government, it cannot be saddled with the liability to discharge the burden of the Panchayats with regard to pensionary benefits to the retired servants of the Panchayats. Learned Single Judge however interpreting Section 204 of the Act, held that expenditure towards pay and allowance and other benefits available to an officer or servant of Panchayat shall have to be met by the Panchayat from its own funds and therefore, it is the responsibility of the Panchayat to discharge liability of retiral benefits and the family pension to the petitioner.

Mr. Justice M.R. Shah, another learned Single Judge has felt that there is a conflict between the views expressed by both the Judges and hence, passed an order on 17th February, 2009 in Special Civil Application No. 13990 of 1993, directing the Registry to place all these matters before a Bench for appropriate decision so as to settle the controversy, since large number of cases are pending claiming similar benefits by the retired employees, including family pension. We have therefore, posted all these appeals for a final decision on various issues raised before us for consideration.

3. Heard learned Counsel Mr. Yogesh Lakhani, Mr. P.V. Hathi and Mr. H.S. Munshaw appearing for different Panchayats, Mr. M.D. Rana, Murli Devnani, Mr. Hasit H. Joshi and Mr. A.R. Thacker appearing for the employees of the Panchayat, and also learned Assistant Government Pleader Ms. Monali Bhatt, appearing for the State Government.

4. For disposal of the issue involved in these appeals, we refer to the facts of Special Civil Application No. 354 of 2004, against which Letters Patent Appeal No. 1522 of 2004 has been preferred.

5. One Vela Keshav was appointed by Okha Gram Panchayat as Safai Kamdar in the year 1964. He died on 6.2.1997 in harness. He was appointed under a

Resolution passed by the Panchayat. Admittedly, he was not appointed following the procedure laid down u/s 203 of the Act. On the death of Vela Keshav, his widow submitted an application for retiral benefits and family pension. District Panchayat Officer as well as the State took up the stand that since Vela Keshav was not appointed by the District Panchayat Selection Committee constituted u/s 211 of the Act, and since he was not a member of the Panchayat service as envisaged u/s 203(1) of the Act, he was not entitled to claim parity with the Government servants and hence, not entitled to get the benefit of Gujarat Panchayat Service (Pension) Rules, 1976 (for short "the Pension Rules") or Family Pension Scheme, 1972. Further it was pointed out that those employees appointed by following the procedure laid down u/s 203 of the Act were given the benefits admissible on par with Government servants. Learned Single Judge accepted the stand of the District Panchayat Officer as well as the State Government and took the view that since Vela Keshav was not appointed following the procedure laid down u/s 203(4)(b) of the Act, he cannot be said to be a member of the Panchayat service as per Section 203(1) of the Act and hence, he was not entitled to get the pensionary benefits. Consequently, it was held that petitioner was not entitled to get family pension under the Family Pension Scheme applicable to the members of Panchayat service.

6. Deputy Secretary, Panchayats Rural Housing and Rural Development Department, State of Gujarat, filed a detailed affidavit in the above mentioned case, stating that Okha Gram Panchayat was originally of Okha Municipality and after coming into force Panchayati Raj, Okha Municipality was converted into Okha Nagar Panchayat, but in view of population existing at the relevant point of time, it was required to be converted into Gram Panchayat and after conversion into Gram Panchayat, the then existing staff of Municipality was allocated to Gram Panchayat and they were treated on par with Panchayat service. It was stated that the allocated employees were therefore, entitled to get pensionary benefits. So far as case of Vela Keshav was concerned, he was not an allocated employee and his appointment was not made in accordance with the provisions of Section 203 of the Act and therefore, he was not entitled to get pensionary benefits available to Panchayat servants or pension under the Pension Rules. Further it was also stated that it was the responsibility of Okha Gram Panchayat to pay pensionary benefits from its own fund, as applicable at the time of appointment of Vela Keshav.

7. Detailed affidavit has also been filed by Mamlatdar, Dwarka, appointed as Administrator of Okha Municipal Borough, stating that Gram Panchayat has never adopted any Pension Scheme, nor was deceased Vela Keshav appointed on such terms and conditions that he would be entitled to get such pensionary benefits. It was also stated that there was no separate and independent Pension Scheme applicable to Gram Panchayat, and the Panchayat employees would be entitled to get pension only by virtue of the Gujarat Panchayat Service (Pension) Rules, 1976, which came into force with effect from 1.4.1963 and applicable to all the cadres in District, Taluka and Local, for which necessary option was asked for

from the employees working in Okha Gram Panchayat as well. Further it was also stated that Vela Keshav was also submitted an option in a prescribed form, though belatedly, but the same was rejected by the Local Fund office since he was not a member of the Panchayat service. Under the circumstances, Panchayat has also taken up the stand that since it is not governed by any Pension Scheme as such, the employees who were appointed otherwise than through regular selection procedure by District Panchayat Selection Committee u/s 203 of the Act would not entitle to get any pension in absence of any Pension Scheme applicable to them.

8. Learned Counsel appearing for the Panchayat submitted that even the Government or the Panchayat have no power to regularise persons like Vela Keshav, who have been appointed only on the basis of resolutions passed by the Panchayat. Counsel submitted that there is no obligation on the part of the Panchayat or the State Government to regularise their service so as to treat them as members of the Panchayat service. Learned Counsel submitted that mere fact that such employees have put in long years of service does not mean that they are entitled to be regularised in service. Reference was made to the Constitution Bench decision of the Apex Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, and the three Judges Bench decision of the Supreme Court in *Official Liquidator Vs. Dayanand and Others*, and the decision of the Apex Court in *State of Karnataka and Others Vs. Sri G.V. Chandrashekar*, Counsel submitted that applying the principle laid down in *Umadevi's* case, service of persons like Vela Keshav cannot be regularised by the Government to make them members of Panchayat service, merely because they have put in long years of service.

9. Gujarat Panchayats Act, 1961 was enacted to consolidate and amend the law relating to village Panchayat and district local Boards in the State of Gujarat with a view to reorganise the administration pertaining to local Government in furtherance of the object of the democratic decentralisation of powers in favour of different classes of Panchayats. For the purpose of the said Act, there shall be in each district a Gram Panchayat for each Gram, a Nagar Panchayat for each Nagar, a Taluka Panchayat for each Taluka and a District Panchayat for the District, as per Section 3 of the Act. Section 102 of the Act deals with officers and servants of the Panchayat. It says that subject to the provisions of this Act and the rules made thereunder, there shall be a Secretary for every Gram Panchayat and Nagar Panchayat, who shall be appointed in accordance with the rules. Section 102(b) of the Act states that a Gram Panchayat or as the case may be, Nagar Panchayat, shall have such other servants as may be determined u/s 203 and such servants shall be appointed by such authority and their conditions of service shall be such as may be prescribed. Section 122 of the Act deals with Officers and Servants of Taluka Panchayat. Section 142 of the Act deals with Officers and servants of District Panchayat. Chapter XI deals with provisions relating to Panchayat service. Section 203 of the Act falls under that Chapter. The relevant portion of Section 203 of the Act is extracted hereunder for easy

reference.

203. (1) For the purpose of bringing about uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions and duties of panchayats, there shall be constituted a Panchayat Service in connection with the affairs of Panchayats. Such service shall be distinct from the State Service.

(2) The Panchayat Service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such, as the State Government may by order from time to time determine:

Provided that nothing in this Sub-section shall prevent a district panchayat from altering, with the previous approval of the State Government, any class, cadre or number of posts so determined by the State Government.

(2A)(a) The cadres referred to in Sub-section (2) may consist of district cadres, taluka cadres and local cadres.

(b) A servant belonging to a district cadre shall be liable to be posted whether by promotion or transfer to any post in any taluka in the district.

(c) servant belonging to a taluka cadre shall be liable to be posted, whether by promotion or transfer to any post in any gram or nagar in the same taluka.

(d) A servant belonging to a local cadre shall be liable to be posted whether by promotion or transfer to any post in the same gram or, as the case may be, nagar.

(2B) In addition to the posts in the cadres referred to in Sub-section (2A), a panchayat may have such other posts of such classes as the State Government may by general or special order determine. Such posts shall be called "deputation posts" and shall be filled in accordance with the provisions of Section 207.

(3) Subject to the provisions of this Act, the State Government may make rules regulating the mode of recruitment either by holding examinations or otherwise and conditions of service of persons appointed to the panchayat service and the powers in respect of appointments, transfers and promotions of officers and servants in the Panchayats Service and disciplinary action against any such officers or servants.

(4) Rules made under Sub-section (3) shall in particular contain --

(a) a provision entitling servants of such cadres in the Panchayat Service to promotion to such cadre in the State Service as may be prescribed.

(b) a provision specifying the classes of posts recruitment to which shall be made through the District Panchayat Service Selection Committee and the class of posts, recruitment to which shall be made by the Gujarat Panchayat Service Selection Board, and

....

10. Section 323 of the Gujarat Panchayats Act, enables State Government to make Rules, and as per the powers conferred u/s 323 of the Act, Government of Gujarat framed Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964. Definition 2 (vi) says "Panchayat Service" means service as constituted by an order made by Government from time to time u/s 203 of the Act. Section 211 of the Panchayat Act, 1961 says that there shall be District Panchayat Service Selection Committee in each district for selecting candidates for recruitment to such posts of the Panchayat service and to advise the panchayats in such matters and to perform such other functions as may be prescribed. "Selection Committee" has been defined under Rule 2 (ix).

11. The Government in exercise of powers conferred by Section 323 read with Clause (b) of Sub-section (1) of Section 102, Clause 3 of Section 122 and Clause (3) of Section 142 of the Gujarat Panchayats Act, 1961, made Gujarat Panchayat Service (Appointing Authorities) Rules, 1967.

12. Above mentioned Rules clearly indicate that the appointments in the district cadres, taluka cadres and local cadres shall have to be made after following provisions laid down u/s 203 of the Act and persons so appointed would fall within the Panchayat service constituted u/s 203(1) of the Act. Once selection of an incumbent is made following the procedure laid down u/s 203 of the Act, appointments are effected by the appointing authorities under the Gujarat Panchayat (Appointing Authorities) Rules, 1967 framed by the Government in exercise of the powers conferred u/s 323, read with Clause (b) of Sub-section (1) of Section 102, Clause (3) of Section 122 and Clause (3) of Section 142 of the Act.

13. Sub-section (2) of Section 203 of the Act says that Panchayat Service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such, as the State Government may by order from time to time determine. In exercise of the powers conferred under Sub-section (2) of Section 203 of the Act, the State Government issued an order dated 2.1.1967 indicating respective cadres to which different posts in the Panchayat service belong. Yet another Departmental order was issued on 30.3.1977 dealing with district cadre, taluka cadre and local cadre. Part-I deals with district cadre, Part-II deals with taluka cadre and Part-III deals with local cadre. Service conditions of a Panchayat servant is governed by the Gujarat Panchayat Service (Conditions of Service) Rules, 1977. The word "Panchayat service" is defined as a Panchayat service constituted u/s 203 of the Act. Vela Keshav was never appointed by following above mentioned Rules or statutory provisions by way of selection made by the Staff Selection Committee constituted u/s 211 of the Act. Only those persons who are appointed in the Panchayat Service following the recruitment procedure laid down u/s 203(4)(b) of the Act, can be treated as members of Panchayat service.

14. Government of Gujarat in exercise of powers conferred u/s 323 read with Section 203 of the Act, made Gujarat Panchayat Service (Pension) Rules, 1976. Rule 3 of the Pension Rules says that Pension Rules shall apply to all Panchayat servants. "Panchayat Servant" has been defined under Rule 2(d) to mean any person who belongs to Superior Panchayat service or, as the case may be, the Inferior Panchayat service. Rule 2(c) defines "Inferior Panchayat Service" to mean the Inferior Panchayat service as constituted by Clause (d) of Sub-rule (2) of Rule 3 of the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967. Rule 2(e) defines "Superior Panchayat Service" to mean the Superior Panchayat service as constituted by Clause (a) of Sub-rule 3 of the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967. Gujarat Panchayat Service Rules, 1967 would apply to only those Panchayat servants, and shall not apply to certain categories of Panchayat servants. For easy reference, Rule (3) of the Gujarat Panchayat Service (Pension) Rules, 1976 is extracted hereunder:

3. Applicability and option-- (1) Save as otherwise provided in these rules, these rules shall apply to all the Panchayats Servants, but shall not apply to:

- (a) a panchayat servant not in the whole time employment of the panchayat;
- (b) a panchayat servant paid out of contingencies;
- (c) a panchayat servant paid otherwise than, on monthly basis, including those paid only on piece rate basis.
- (d) a panchayat servant appointed on workcharged establishment or on daily rate basis or employed casually;
- (e) a panchayat servant entitled to the benefit of a Contributory Provident Fund; other than that who opts to take the benefit of these rules in accordance with the provisions of Sub-rule (4) of Rule 3.
- (f) a panchayat servant employed on contract except when the contract provides otherwise:

Provided that any such panchayat servant to whom these rules shall apply, have the right to opt to continue to be governed by any pension rules applicable to him immediately before the coming into force of these rules. Such of option shall be exercised in writing case Form in "A" before the 9th May, 1976. The option once exercised, shall be final.

(2) The option exercised under Sub-rule (1), shall be communicated by the panchayat servant, to the Head of his office. This option when received from a Panchayat Servant should be countersigned by the Head of office and posted in the Service Book or, as the case may be Service Roll of the panchayat servant concerned.

(3) It shall be the responsibility of the Head of Office to acknowledge the option and the panchayat servant concerned shall ensure that the receipt of his option

is acknowledged by the Head of Office and that he receives an intimation that it has been duly recorded by the Head of Office.

15. We may indicate that Vela Keshav had submitted an application exercising his option under the proviso to Rule 3 of the above Rules, but the same was rejected by the Local fund office stating that he was not a member of the Panchayat service. We are therefore, clearly of the view that only those employees who have been appointed following the procedure laid down u/s 203 of the Act and the Rules framed thereunder, u/s 323 of the Act would alone be a member of the Panchayat service, apart from the allocated employees from the Municipality to the Panchayats on its formation, or other employees who have been recognized as member of the Panchayat service by the State Government, or by the District Panchayat Service Selection Committee. Since Vela Keshav was never a member of Panchayat service, in our view he is not entitled to get pension under the Gujarat Panchayat Service (Pension) Rules, 1976 or any Pension Scheme framed by the Government for grant of Family Pension or otherwise for members of the Panchayat service.

16. We may indicate that the view taken by us is in consonance with the view expressed by the Apex Court in State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, in which decision the Hon"ble Supreme Court in paragraph 24 referred to the Gujarat Panchayat Service (Absorption Seniority Pay and Allowances) Rules, 1965 which provided for the equation of posts, fixation of seniority, scales of pay and allowances of "allocated employees". It was noted that the Rule provided that every allocated employee holding a corresponding post immediately before the appointed day, shall be appointed to the equivalent post. It was observed that unless equivalence of posts is first determined, by order, by the Government, the said Rules could not be effectively applied. The Government however, did not make any order regarding equation of posts of the staff in the local cadre and the fixation of their scale of pay although such orders were made in respect of posts of other cadres.

17. Circular issued by the Government bearing No. NPM/1083-964-K(1) dated 25.8.1983 would indicate that Gram and the Nagar Panchayats have no power or authority u/s 102 of the Act to recruit, fix pay scales or prescribe qualifications for recruitment of the employees.

18. We are also of the view that learned Single Judge (Akshay Mehta, J.) was not justified in giving a positive direction to the Gram Panchayat to pay pensionary benefits to Vela Keshav and family pension to his widow by holding that u/s 203, read with Section 204 of the Gujarat Panchayats Act, Panchayat has got a statutory obligation to pay pensionary benefits. In our view, the learned Single Judge has completely misunderstood the scope of Section 204 of the Act. Section 204 of the Act says that subject to the rules, which the State Government may make in this behalf, the expenditure towards the pay and allowances of and other benefits available to an officer or servant of the Panchayat Service serving for the time being under any panchayat shall be met by that panchayat from its own

fund. In our view, Section 204 of the Act would apply to the officers and servants of Panchayat service which says that their pay and allowances be met by the Panchayat from its fund. Panchayat may give salary and other benefits including Gratuity, Provident Fund etc. to persons like Vela Keshav, appointed on the basis of resolutions passed by the Panchayat and not by following the procedure laid down u/s 203 of the Act. Mere fact that Panchayat has paid salary and other benefits to Vela Keshav does not mean that he was a member of the Panchayat service so as to get the benefit available to members of Panchayat service. Panchayat, in its counter affidavit has stated that they have not framed any Pension Scheme for employees like Vela Keshav. In the absence of any Pension Scheme, in our view, the learned Single Judge was not justified in directing the Panchayat to pay pensionary benefits to Vela Keshav and family pension to his widow. Needless to say that all the statutory benefits such as Provident Fund, Gratuity etc. may be available to such persons and not the pensionary benefits or the family pension unless there is a Pension Scheme available to such employees.

19. Under the circumstances, we are inclined to dismiss Letters Patent Appeal Nos. 1522 of 2004, 1523 of 2004 and 614 of 1998 and allow Letters Patent Appeal No. 1381 of 2004, declaring that only those employees who have been appointed in the Panchayat service following the procedure laid down u/s 203 of the Gujarat Panchayats Act, can be treated as member of the Panchayat service entitled to get pensionary benefits under Gujarat Panchayat Service (Pension) Rules, 1976 and Family Pension Scheme, 1972. We further hold that those persons who have been appointed by the Panchayat in their service otherwise than following the above mentioned statutory procedure are entitled to get pensionary benefits and family pension only if there is a Scheme available with the respective Panchayats. We make it clear if any pensionary benefits including Family Pension have already been paid to the petitioners on the strength of the judgments of the Court, they shall not be recovered from them, but they are not entitled to any future payments.

20. Appeals are disposed of. Connected Civil Application also stands disposed of.

5. In view of the above, this petition can not be entertained. Hence petition stands disposed of accordingly. Rule is discharged with no order as to costs.