

(2010) 04 GUJ CK 0086

In the Gujarat High Court

Case No : Special Civil Application No. 1642 of 2010

Ashok J. Nayak

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 04 GUJ CK 0086

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

Bench : Single Bench

Advocate : B.S. Brahmhatt and H.M. Jadeja, for the Appellant; Krina Calla, Asst. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—Rule. Ms. Krina Calla, learned AGP appearing for the respondents waives service of rule.

2. The petitioner herein has prayed to quash and set aside the impugned order dated 21-24.08.2009 and further to direct the respondent authority to refix the seniority of the petitioner on the basis of the date of appointment on 02.01.1963 and thereby to grant entire service benefits like difference of pay and other allowances till retirement date.

3. The petitioner was appointed as Jr. Clerk at District Treasury office, Mehsana on 01.08.1963 and subsequently regularized by the respondents on 21.05.1966. Pursuant to the regularization order, the petitioner was required to clear pre-service examination which he cleared on 18.12.1967.

3.1 It is the case of the petitioner that on 08.07.1996, the seniority list came to be published by the department in which the petitioner found that his seniority was wrongly considered being 20.12.1967 instead of 01.08.1963. The petitioner made number of representations and finally after he retired in the year 2000, the petitioner received communication dated 21-24.08.2009 from the respondent authority refusing the deem date as claimed by the petitioner. Being aggrieved

by the said order, the present petition is filed.

4. Mr. B.S. Brahmbhatt, learned advocate appearing for the petitioner has submitted that after the seniority list was published on 08.07.1996, the petitioner immediately submitted his objections but the respondents without application of mind declined to refix the seniority of the petitioner from his appointment date which is 02.01.1963.

4.1 Mr. Brahmbhatt has submitted that as per the relevant resolution the employee was required to pass the examination within three trials and his seniority was to be counted from the date of his appointment, however, without correct interpretations, the respondent counted the same from the date of passing the examination which is erroneous.

5. Ms. Krina Calla, learned AGP appearing for the respondents has drawn the attention of this Court to the Gujarat Non-Secretariat Clerk and Clerk Typists (Training & Examination) (Amendment) Amending Rules, 1994 and submitted that the respondent department has rightly considered the date of seniority of the petitioner as he has not passed the examination within the stipulated time.

5.1 Ms. Calla has further submitted that even if it is assumed that the petitioner has passed the examination within the stipulated time, in view of the decision of the Apex Court in the case of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, and the decision of this Court in the case of *P.K. Vasavda and Ors. v. State of Gujarat and Ors.* reported in 2007(3) GLR 2373, the period of service rendered as ad hoc/temporary appointee, cannot be counted for seniority purposes.

6. This Court has heard learned advocates for the either side and perused the documents on record. It is not disputed that the petitioner joined the services of the respondent department on 01.08.1963 on temporary basis. The petitioner was required to pass pre-service examination for him to be regularized in the service. The petitioner cleared the pre-service examination on 18.12.1967 and the department vide order dated 20.12.1967 regularized the service of the petitioner.

7. At this stage, it would be relevant to peruse the rules, wherein Sub-rule (3) reads as under:

(3) Notwithstanding anything contained in Clause (a) of Sub-rule (1) of Rule 21 of the Gujarat Non-Secretariat Clerks Typists and Clerk Typists and Typist (Direct Recruitment Procedure) Rules, 1970, a candidate who is appointed as a clerk or clerk-typist subject to undergoing training and/or passing the examinations shall get seniority from the date of joining service, if he completes the post training and passes the examination as prescribed in Rule 7 within three chances.

Provided that seniority of a candidate as referred to above shall be counted from the date of passing the post training examination, if he fails to pass the examination as prescribed in Rules 7 within three chance (four in case of a

schedule castes or schedule tribes candidate)

7.1 In the present case, it appears that the petitioner did not pass the pre-examination training in the first three attempts itself. Learned advocate for the petitioner is not in a position to show the court that the petitioner has cleared the pre-examination training within three chances. In that view of the matter, the view taken by the respondent department is just and proper.

8. Even otherwise, in view of the decisions of the Apex Court and this Court, it is well settled that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

8.1 In the present case, the petitioner was a temporary employee till the time he was regularized which happened in the year 1967 pursuant to the passing of pre-service examination. The petitioner was therefore given seniority with effect from 20.12.1967 which is just and proper. This petition is devoid of any merits and the impugned order does not call for any interference by this Court.

9. In the premises aforesaid, petition is dismissed. Rule is discharged.