

(2010) 04 GUJ CK 0073

In the Gujarat High Court

Case No : Special Civil Application No. 7775 of 1998

Bhanuprasad Purshottam Vyas

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Citation : (2010) 04 GUJ CK 0073

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

Bench : Single Bench

Advocate : D.A. Bambhania, for the Appellant; Jaswant K. Shah, AGP, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of present petition, the petitioner has prayed for following relief"s:

(A) to issue writ of certiorari quashing and setting aside the orders of promotions to the post of City Survey Superintendent Class II in the cadre of Class II, so far as it require and or permit the respondents to promote juniors to the petitioner and further be pleased to direct the respondents to promote the petitioner to the post of City Survey Superintendent Class II from due date i.e from date the 1st Junior to the petitioner came to be considered and promoted with deemed date of promotion, and seniority and fullback wages.

(B) to quash and set aside the order of punishment so far as it require and permit the petitioner to withhold the right of the petitioner for promotion for a period of three month which has been passed by the Disciplinary Authority and as modified by the appellate authority vide order dated 22.01.1997 and 21.04.1997 respectively.

(C) to direct the respondents to give effect to the original select list and to operate the list by considering the case of the petitioner without taking into consideration any articles of charges which were never framed and served till the

DPC and as on the DPC, and to promote the promotion with full backwages.

2. The petitioner holds the post of Assistant District Inspector, Land Records i.e. the Class III post. In the year 1996 he preferred Special Civil Application No.9404/96 claiming the right of consideration for promotion to the post of City Survey Superintendent. Pending that Special Civil Application No. 9404/96 an order was passed against him on 22.1.1997 imposing upon him the punishment of withholding of 2 increments with future effect. In view of this order of punishment when the Special Civil Application No.9404/96 came up before the Court on 10.4.97 the Court recorded that the petition does not survive and the same was summarily rejected and the Rule was discharged. After the Court's order dated 10.4.1997, in the Departmental appeal filed on 1.2.1997 by the petitioner against the punishment order dated 22.1.1997, an order was passed by the appellate authority on 24.4.1997 whereby the appellate authority set aside the punishment order dated 22.1.1997 and substituted the punishment of stoppage of 2 increments with the penalty of withholding promotion for a period of 3 months from the date of the order i.e. 24.4.1997, in terms of this order the petitioner's promotion could be withheld upto 24.7.1997. Thereafter, the petitioner's juniors about 26 in number were promoted from Class III to Class II post on 21.8.1997 and, thereafter, one more junior was promoted in December 1997. The petitioner's case is that with regard to his promotion to Class II post a proposal had been made to the Gujarat Public Service Commission (for short "GPSC") on 1.8.1997 and, therefore, he submitted a representation to the Revenue Department on 25.2.1998. According to the petitioner, the clearance was given by the GPSC for his promotion on 18.5.98 and yet the promotion was not accorded to the petitioner. Hence, the present petition has been filed by the petitioner.

3. Learned advocate for the petitioner submitted that pursuant to the order dated 13.11.1998 of this Court, the petitioner has already been promoted w.e.f 13.11.1998. Therefore, limited question which has left for consideration is the deemed date of promotion of the petitioner from the year 1996 when juniors were considered. He further relied upon the affidavit-in-rejoinder filed by the petitioner stating that the direction has been issued by this Court on 21.11.1999 which reads as under:

"that the recommendations made by the Departmental Promotion Committee (for short "DPC") with regard to the petitioner's promotion to Class II post had been opened on 06.08.1997 and it has been further stated in Para 5 of the affidavit-in-reply that it is not denied that Public Service Commission vide letter dated 18.05.1998 had recommended with regard to the petitioner's promotion to Class II post.

In other words,

The Public Service Commission vide letter dated 18.05.1998 had cleared the proposal of August 1997 made by the respondents" and also recommended the

promotion to Class II post.

4. Learned advocate for the petitioner further submitted that it is not in dispute that the petitioner has been selected by the Departmental Promotion Committee at serial No. 18 which was convened and met on 18th and 19th March, 1996. The memorandum of show cause notice for the first time was issued on 30.04.1996. Thus, there was nothing adverse against the petitioner prior to selection and placement in the final select list for promotion.

5. As a result of hearing and considering the submissions of learned advocates for the respective parties, it is clear that the recommendations made by the D.P.C with regard to the petitioner's promotion to Class II Post had been opened on 06.08.1997 and the Public Service Commission vide letter dated 18.05.1998 had cleared the proposal of August 1997 made by the respondents" and also recommended the promotion to Class II post. Hence, the petitioner is entitled for promotion of Class II from 06.08.1997.

6. In the premises above, the petition is allowed. The petitioner's promotion to Class II will be considered w.e.f. 06.08.1997 i.e the date on which the sealed cover was opened and the consequential benefits will be granted to the petitioner within a period of four months from today. Rule is made absolute to the aforesaid extent with no order as to costs.

7. With the above observation, petition stands disposed of.