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**(1980) 01 GUJ CK 0018**  
**In the Gujarat High Court**

Bhaskerbhai G. Soneji

APPELLANT

Vs

Manager G.S.F.C.

RESPONDENT

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**Date of Decision :** 25-01-1980

**Acts Referred:**

Gujarat Civil Services (Revision of Pay) Rules, 1975 — Rule 2

**Citation :** (1980) 21 GLR 937

**Hon'ble Judges :** M.P. Thakkar, J

**Bench :** Single Bench

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**Judgement**

M.P. Thakkar, J.—Shocking as it sounds to any one having a sense of justice, whether he is a constitutional Pandit or a layman, it has been stubbornly argued with seriousness by a bureaucratic administration that if one of the employees resigns and leaves the service, he can be denied the same salary as is paid to others. Such a die hard bureaucratic approach on the part of the Manager (Administration), Gujarat State Financial Corporation, has given rise to this petition instituted by an ex-employee who has been brazenly discriminated against in the matter of grant of pay-scales in accordance with Gujarat Civil Service (Revision of Pay) Rules, 1975 on an altogether irrelevant ground, namely that he had left the service by tendering resignation. It is unfortunate that this approach should be continued to be adopted notwithstanding the observations made by the Supreme Court from time to time which appear to have fallen on deaf ears. Says the Supreme Court in *Dilbagh Rai Jarry Vs. Union of India (UOI) and Others*, :

The State, under our Constitution undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for, the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an

opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in Court. The lay-out on litigation costs and executive time by the State, and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy.

The Supreme Court further observed;

All these words from the Bench, hopefully addressed to a responsive Government, may, if reasonable reactions follow, go a long way to avoidance of governmental litigiousness and affirmance of the image of the State as deeply concerned only in justice--Social Justice. The pyrrhic victory of the poor appellant in this case is a sad justification for the above observations.

In Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, , the Division Bench speaking through Bhagwati J. observed as under:

It is high time that governments and public authorities accept the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens.

If the Corporation had adopted the "fair play" approach in pursuance to the law laid down by the Supreme Court considerable misery to one of its employees could have been avoided. And the Corporation could have denied to itself the luxury of litigation-cost. But that was not to be. Thanks to the inflexible attitude adopted by the Corporation officials.

2. The following facts are not in dispute. (1) The petitioner joined the service of the respondent Corporation on February 20, 1971. (2) He resigned on May 7, 1975. (3) All those who were in the employment of the respondent Corporation during this period (1973 to 1975) were accorded the benefit of the Gujarat Civil Services (Revision of Pay) Rules which were adopted by the Corporation on January 22, 1976. (4) Even those who had retired before January 22, 1976 were granted this benefit. (5) The petitioner, however, is singled out and is denied similar treatment on the ground that he had "resigned" and had left the service (Is resigning from service a culpable act?). Now it is not in dispute that the rules have been adopted by the Corporation. Rule 2 in terms provides that the rules will have retrospective operation from January 1, 1973.

Nor is it disputed that the Corporation has in fact given retrospective effect in the sense that all those who were in the employment of the Corporation from 1-1-73 till 2-21-75 were also granted the benefit of the pay-scales recommended by the Pay Commission and incorporated in the rules as adopted by the Corporation. The petitioner was in the employment of the respondent Corporation from 1-1-73 till May 7, 1975 on which date he resigned. During this period which is the relevant period he was similarly situated as the other employees. If all the employees who were in employ merit from 1-1-73 till May 7, 1975 were granted the benefit of the pay-scales under the rules, the petitioner was also entitled to be accorded similar treatment and to be paid similar pay-scales. In the matter of employment during the relevant period he was similarly situated as the rest of the employees. The petitioner cannot be singled out and denied the benefit of these pay-scales without inviting the charge of hostile discrimination offending Articles 14 and 16 of the Constitution. What is the justification for denying to him the emoluments offered to his counterparts during the same period i.e. 1-1-73 to 7-5-75? That he had subsequently resigned is no good ground to deny him treatment similar to the one accorded to the rest of the employees in regard to the period during which he was in employment. When he was in employment he was entitled to equal treatment. What he did later on is irrelevant. Moreover, resigning from service is not an obnoxious act.

3. The classification based on this circumstance is wholly irrational and has no nexus with the object. In fact the Corporation has extended the benefit of these rules even to those who had ceased to be in service prior to January 22, 1976 on account of retirement or death. The rules themselves are retrospective with effect from 1-1-73 and make no distinction based on the continuation in service or otherwise. The petitioner is, therefore, entitled to claim the benefit of the revised pay-scales and to be accorded the same treatment as was accorded to his counterparts.

4. The petition is, therefore, allowed. Impugned orders at Annexure "A" 7 dated April 15, 1977 and March 23, 1979 are quashed and set aside. The respondent is directed to pay to the petitioner the difference between the pay scales under the Rules and the pay-scales on the basis of which he has been paid for the relevant period till the date of his resignation on May 7, 1975. The difference shall be paid to the petitioner on or before February, 15, 1980. Rule is made absolute with costs.