

(2005) 03 GUJ CK 0048
In the Gujarat High Court

Case No : Special Civil Application No's. 6148 of 2003 and 3111 to 3114 of 2005

Chandubhai Becharbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 03 GUJ CK 0048

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : R.K. Mishra, for Petitioner Nos. 1-5 in Special Civil application No. 6148 of 2003, for the Appellant; Pradip Bhate, Assistant Government Pleader for Respondent Nos. 1 and 4 and H.S. Munshaw, in Special Civil Application No. 6148 of 2003, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—These petitions are filed praying that it be held and declared that the petitioners are entitled to higher time scale grade of Rs.5500-9000 on completion of 9 years of services which is to be computed from the initial date of their appointments and the action on the part of the respondent authorities be held to be illegal, unconstitutional and against the guidelines of the Govt. of Gujarat and the law laid down by this Court as well as the Honourable the Apex Court.

2. Mr. R.K. Mishra, learned advocate for the petitioner has produced a tabular statement showing the date of appointment and place of posting of the petitioners, the date of inter-district transfer, the place along with the date of completion of 9 years. The case of the petitioners is that irrespective of their transfer to another district they should have been held entitled to higher time scale grade on completion of 9 years. Mr. Mishra submitted that this Court in the matter of Ajitsingh Chaturji Rathod v. State of Gujarat and Ors., reported in 2000(4) GLR 3181 has held that the service of 9 years, entitling an employee to higher time scale grade is to be reckoned from the date he renders service in one

and the same cadre and grade. The learned advocate submitted that the Court has further held that on a transfer of an employee from one district to another, even in the matter of request transfer an employee does not lose the length of service, but loses only his seniority viz-a-viz employees already working at the transferred place. The learned advocate submitted that this is the crux of the matter. In the present case the petitioners were not granted higher time scale grade on completion of 9 years of service in the same cadre and grade because before they could complete 9 years of service they were transferred to another district. The learned advocate submitted that the respondents have committed an error in not considering the case of the petitioners for grant of higher time scale grade by treating that an employee loses his length of service on transfer to a different district. Mr. Mishra, learned advocate submitted that decision of the learned Single Judge was approved by the decision of Division Bench of the Court consisting of the Honourable Dr. Justice J.N. Bhatt & Hon''ble Mr. Justice D.P. Buch, J. (as he then was) dated 04.12.2000 in Letters Patent Appeal No. 779 of 2000 in Special Civil Application No. 1367 of 1989. The Division Bench of this Court has reaffirmed this view in another appeal being Letters Appeal No. 91 of 2003 in Special Civil Application No. 928 of 2000 decided by Division Bench of this Court consisting of the Hon''ble Dr. Justice J.N. Bhatt & the Hon''ble Mr. Justice K.A. Puj on 27.01.2003.

Mr. Mishra, the learned advocate for the petitioner submitted that in the second Letters Patent Appeal No. 91 of 2003 the Division bench has relied to the decision of the Honourable the Apex Court in the matter of Dwijen Chandra Sarkar and Another Vs. Union of India and Another, He submitted that the present matters are squarely covered by the aforesaid decisions and therefore, the petitions deserve to be allowed.

3. Mr. Munshaw, the learned advocate appearing for respondents no. 2 and 3 submitted that the District Panchayat was acting according to the understanding of the District Panchayat of the Govt. Resolution which later on is interpreted in the matter of Ajitsingh Chaturji Rathod (supra). He fairly submitted that now that the Govt. Resolution on which the District Panchayat relied upon and acted is interpreted by this Court, the District Panchayat being a public body will abide by the decision of this Court.

4. In view of the aforesaid discussion, all these petitions are allowed. The Respondent authorities are directed to consider the case of individual petitioners and grant them benefit of higher time scale grade from the date they completed 9 years of service in the same cadre and grade. The respondent authorities are directed to complete the exercise which is required to be undertaken by virtue of this order as expeditiously as possible but not later than 2nd May 2005. The petitions are allowed with no order as to costs. Rule is made absolute.