

(2012) 12 GUJ CK 0083
In the Gujarat High Court

Case No : Special Civil Application No. 11597 of 2012

Dave Arvindaben Mansukhlal

APPELLANT

Vs

State of Gujarat and 3

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Citation : (2012) 12 GUJ CK 0083

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Hasit H. Joshi, for the Appellant; Rahul Dave, Ld. AGP for the Respondent. No. 1, Notice Not Recd Back for the Respondent. No. 1-2, 4 and Notice Served for the Respondent(s) No. 3, for the Respondent

Judgement

1. Heard learned advocates for the parties. As the entire controversy is in a narrow compass, and as the advocate for the petitioner submitted that the result of this petition be made explicitly subject to outcome of main matter being Special Civil Application No. 24233 of 2005, Learned AGP Mr. Dave was called upon to answer as to whether he would waive the service of rule and as he said that he would waive, Rule. Service of rule is waived by Shri Dave. At the request of learned advocates for the parties, rule is fixed forthwith. The petitioner by way of this petition approached this Court with following prayers:-

(A) Admit this petition.

(B) Quash and set aside order dated 28.4.2011 Annexure G and fresh order dated 18.8.2011 annexure I passed by respondent authorities and further be pleased to direct Respondents herein to sanction first higher grade of pay while keeping in view the date of her joining service 22.9.1988 and grant her 1st Higher Grade of Pay w.e.f. 22.9.1997 with all other consequential benefits.

(C) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to direct respondents grant benefit of first higher grade to the petitioner as interim or ad interim relief as prayed for in Prayer (B) of para 13 in

the interest of justice.

(D) This petition be ordered to be heard and decided along with Special Civil Application No. 24233 of 2005 pending for final hearing which is relating to the pay scale.

(E) Grant such other and further reliefs deemed just and proper in the facts and circumstances of this case.

2. The petitioner is serving as High Secondary Assistant Teacher and drawing salary in the pay scale of Rs. 1640-2900. The original appointment of petitioner was as Assistant Teacher in a secondary school in the pay scale of Rs. 1400-2600 w.e.f. 15/9/1988. Subsequently on account of transfer of the post vide order dated 22/9/1988 petitioner came to be appointed as Assistant Teacher in Higher Secondary in the scale of Rs. 1640-2900. This grant of scale is sought to be withdrawn and it was withdrawn vide order dated 25/11/2005 on the ground that the salary in the scale of Rs. 1640-2900 was not admissible to the petitioner as she had not been entitled for the said scale for the reasons stated there under. This order was assailed by the petitioner by filing Special Civil Application No. 24233 of 2005 with following prayers.

(A) Admit this petition.

(B) Quash and set aside orders dated 25.11.2005 and 1.12.2005 by declaring them as illegal, unjust, improper, bad in law and against the principles of natural justice and further declare that the petitioner shall continue as Higher Secondary School Teacher with all benefits which she has been enjoying from the date of her appointment and posting.

(C) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to suspend operation of the order dated 25.11.2005 and 1.12.2005 (Annex. A) by directing the respondents not to implement the said orders till the final disposal of this petition.

(D) Grant such other and further reliefs deemed just and proper in the facts and circumstances of the case.

3. In that petition the petitioner has produced copy of the order at pages 19''& 20 dated 22/9/1988 issued by the District Education Officer, unequivocally indicating that the petitioner was transferred and appointed as Assistant Teacher in Higher Secondary. Thus, this Court while admitting the petition granted interim relief, staying operation & implementation of the order dated 25/11/2005. The interim relief was granted in terms of para 6(C) vide order dated 29/11/2006, which is required to be reproduced as under:-

Heard the learned advocate Mr. HH Joshi on behalf of the petitioner, learned AGP Mr. Dave appearing for respondent. I have considered the reply filed by the respondent. Before passing the order dated 25/11/2005 no reasonable opportunity of hearing has been given to the petitioner. Therefore, this Court is

already issued rule and interim relief in terms of para 6(C) is granted. Now after considering the submission, this interim relief is confirmed till final disposal of the petition.

4. Thus the petitioner is receiving salary in the pay scale of Rs. 1640-2900 and in that scale she had completed almost 24 years. The higher pay scale is also given on account of stagnation removal policy where under an employee is given higher pay scale on employee's fulfilling all eligible criteria and condition of not yet been promoted. This policy promulgated in 1994 is squarely applicable to the petitioner also. However said benefit was declined to her as could be seen from the communication dated 1/4/2011 of the petition. Hence the present petition.

5. This Court is of the considered view that ordinarily there was no requirement of filing substantive petition and petitioner could have been entitled to take out an additional application in the main matter itself. However when she has chosen to take out this petition, it has been dealt with accordingly.

6. This Court is of the considered view that the case of the petitioner as could be seen from the main matter which is filed and wherein stay order is operating, is as such considered and relief is granted. When this relief is granted, mere pendency of the petition cannot be held out to the petitioner for denying her the benefit based there upon or else, it would amount to giving opportunity to the respondents to circumvent the effect of order which is existing as on date. Therefore the present petition is allowed. Respondents are directed to accord benefit of higher pay scale in terms of policy of 1994, if she is otherwise fulfilling all the eligibility criteria to receive the higher pay scale in the pay scale of Rs. 1640-2900 from 22/9/1988 and also to grant one more higher pay scale, on condition that she should be fulfilling all the eligibility criteria and it may not be denied to her only on the ground of pendency of Special Civil Application No. 24233 of 2005. However it goes without saying that the benefit if granted to the petitioner of her higher pay scale, the same will be subject to the result of main petition being Special Civil Application No. 24233 of 2005 and petitioner shall file an undertaking to this effect to this Court and to the other side also. The petition is accordingly disposed of. Rule made absolute to the above said extent. However, there shall be no order as to costs.