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**(2004) 02 GUJ CK 0027**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 2329 of 1984

Dhanvantrai Champaklal Kaushik

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 03-02-2004

**Acts Referred:**

**Citation :** (2004) 02 GUJ CK 0027

**Hon'ble Judges :** R.R. Tripathi, J

**Bench :** Single Bench

**Advocate :** J.T. Trivedi, for the Appellant; M.S. Rao, Assistanat Government Pleader for Respondent Nos. 1-2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Ravi R. Tripathi, J.—It is unfortunate that the petitioner who retired on 31.10.1982, had to approach this Court by way of this petition for getting all the benefits flowing from his promotion in question including the back wages, increments and all allowances, etc. Despite there being a letter dated 21.11.1982 addressed to the Director, Government Printing & Stationery Department by an Under Secretary to the Govt. of Gujarat wherein it is stated in no uncertain terms that in the year 1961 when the petitioner was the seniormost Mono Operator and was eligible under the Recruitment Rules for promotion to the post of Compose Foreman, he was not given this promotion and one Mr. N.K. Vora was appointed as Compose Foreman. It is important to note that it is stated in the said letter that in the matter of Mr. N.K. Vora's appointment as Compose Foreman, the Government by its Memorandum dated 5.8.1972 bearing No. EST/ 2371/ 5165 had made certain relaxation in the matter of educational qualifications and the said relaxation was only qua educational qualifications and not in the matter of "mode of recruitment". Thus, a categorical finding of fact is recorded. Taking into consideration the aforesaid facts, it is averred in this very letter that the appointment of Mr. Vora was irregular, but as nobody had objected to the same and now after lapse of so many years, it is felt reasonable not to take any steps

but then to do away with the injustice caused to the petitioner (Mr. Kaushik) the promotion to the post of Compose Foreman be granted with admissible benefits.

2. Thereafter the Manager, Government Central Press issued order dated 05.08.1983 granting deemed date of promotion to the petitioner in both the cadres, i.e. Compose Foreman and Compose Overseer on 03.11.1961 and 19.04.1967 respectively. The order reads as under:

"He will, however, not be entitled to draw any arrears due to above pay fixation for the period from 3.11.1961 to 3.1.1982, i.e. the period from which the pay is notionally fixed and actual date of officiation in the post of Compose Foreman."

3. It is against this non grant of arrears and other benefits, the petitioner approached this Court praying that he should be granted all the benefits flowing from his promotion in question including back wages, increment and all allowances, etc. with running interest at the rate of 12% per annum on such amounts.

4. The matter was fully heard and was disposed of by this Court (Coram: K.M. Mehta, J.) by judgement and order dated 20.02.2002. The learned Judge issued certain directions to the authorities in para 13 of the judgement, which read as under:

"13. As the petitioner has been meted with injustice, the following directions will meet the ends of justice:

A) The petitioner will make a representation to the Secretary to Govt. of Gujarat, Mines and Power Department, Sachivalaya, Gandhinagar by endorsing a copy of the same to the Director, Govt. Printing and Stationery, Govt. of Gujarat, Gandhinagar. Both these authorities will consider the case of the petitioner including the provisions of Bombay Civil Services Rules and the decisions of various High Courts including the Honourable Supreme Court cited in this behalf and also the averments and submissions made by the petitioner in the memo of the petition. If need be the petitioner be heard in person.

B) The authorities thereafter will consider the case of the petitioner kindly and sympathetically and the authorities will decide the representation of the petitioner by a short but a speaking order in this behalf. If the decision of the authorities is adverse to the petitioner, then the petitioner may file a simple note and the matter can be again revived in this behalf.

C) The petitioner will make representation on or before 15.4.2002 and the authorities shall decide the same on or before 30.6.1002 (sic.).

5. The representation filed by the petitioner came to be decided by order dated 30.06.2002 which is placed on record of this case by filing Civil Application No. 5041 of 2002 which was allowed by this Court by order dated 29th July 2002 (Coram: A.L. Dave, J.).

6. Mr. Trivedi, the learned advocate appearing for the petitioner submitted that

the authorities have committed an error in not granting all the benefits flowing from the promotion in question including the back wages, increment and all allowances, etc. Though this Court had recorded a finding in the earlier judgement that, "As the petitioner has been meted with injustice .. .. " and despite the fact that the Under Secretary to the Govt. of Gujarat had written to the Director, Government Printing and Stationery Department a letter dated 21.11.1982 (Annexure "J" to the petition), to do away with the injustice done to the petitioner (Shri Kaushik) requesting that the admissible benefits for the promotion to the post of Compose Foreman be granted. Mr. Trivedi, the learned advocate submitted that the authorities while passing the order under challenge dated 20.06.2002 have erred in harping upon the aspect that in all the cases wherein an injustice is caused in the matter of promotion, the Honourable Court does not grant financial benefits and that the cases are decided on merits of each case. According to Mr. Trivedi the authorities ought to have taken necessary hint from the order of this Court and should have appreciated the underlying spirit of the judgement and order of Justice K.M. Mehta, wherein a categorical finding was recorded that "injustice was meted out to the petitioner" and in view of the letter of the Under Secretary to the Government of Gujarat addressed to the Director, "to do away with the injustice meted out to the petitioner and grant benefits flowing from the promotion to the post of Compose Foreman" should have granted the benefits as prayed for. He further submitted that in order dated 20.06.2002 what is sought to be pressed into service is that at the relevant time, the petitioner had not applied for the post of Compose Foreman and that Shri Vora, Mono Operator of Vadodara Press had made an application and therefore, he was recruited by a valid recruitment procedure. This is just contradictory to the contents of the letter dated 21.11.1982 (Annexure "J").

7. He further submitted that the authorities have erred in recording that, "when Mr. Vora was appointed as Compose Foreman on 03.10.1961 the petitioner had not raised any objection and even thereafter, the petitioner had not made any clear representation in the matter". The authorities have missed the important aspect of the matter that right from the beginning the petitioner was pursuing the matter, not only that even in the matter of fixing of seniority, injustice done to the petitioner was brought to the notice of the concerned authorities. The petitioner was though transferred from Rajkot to Ahmedabad in public interest, while fixing seniority the said transfer of the petitioner was treated to be at his own request. It was his persuasion which was accepted belatedly by the higher authorities, namely, the Government and the Government wrote a letter dated 21.11.1982 to the Director, Government Printing and Stationery Department. In fact the authorities ought to have taken into consideration the contents of letter dated 21.11.1982 and ought to have passed an order on the same lines.

8. Mr. Trivedi next submitted that to put forward a plea that in the matters of granting deemed date the employee has not really discharged duties and therefore, he is granted notional benefits and on the basis of that he gets pension and gratuity is totally misplaced. In view of the two judgments which

were placed before the authorities in the matter, i.e. (i) Special Civil Application No. 1761 of 1978 in the matter of Shri D.S. Sawant Vs. the State of Gujarat, decided by the Honourable Mr. Justice N.H. Bhatt on 26.02.1981; and (ii) in the matter of Shri K.K. Patel Vs. State of Gujarat and others, decided by the Honourable Mr. Justice N.H. Bhatt on 03.02.1982. The Court has held therein that when it is a case of injustice done to an employee popularly expressed by the phrase, "for no fault of the employee", the benefits are normally ordered. The authority while passing order dated 20.06.2002 has not taken into consideration the aforesaid two decisions and the law laid down by the learned Judge of the Kerala High Court in the matter of Alappat Narayana Menon Vs. State of Kerala, reported in 1977 (2) SLR 656, wherein the learned Judge relied upon a decision of this Court and also that of the Honourable the Supreme Court reported in Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, . The learned Judge was pleased to hold that when the petitioner is ignored for promotion because of the mistake committed by the Government, notional promotion given with retrospective effect without material benefit is not proper because the petitioner cannot be penalised for no fault of his, as he cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault of his.

9. Mr. Trivedi rightly submitted that the facts of the present case are squarely covered by those cases and in view of the contents of letter dated 21.11.1982 wherein it is specifically mentioned that appointment of Mr. Vora was irregular and to do away with the injustice done to the petitioner it was requested that the benefits available on account of promotion to the post of Compose Foreman be granted to the petitioner. The relief sought for is required to be granted.

Mr. Trivedi also relied upon a judgement of the Honourable the Apex Court in the matter of Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, .

10. Mr. M.S. Rao, the learned Assistant Govt. Pleader submitted that order dated 20.06.2002 is in accordance with law and on a general principle a person having not worked on the post is not entitled for the actual benefits. Mr. Rao could not explain as to how the authority was right in not taking into consideration the aforesaid two judgements of this Court, the judgement of the Kerala High Court, and the decisions referred therein of the Gujarat High Court and the Honourable the Supreme Court.

11. Taking into consideration the fact that this Court has recorded a finding to the effect that the petitioner has been meted out with injustice and taking into consideration the contents of the letter dated 21.11.1982 the authorities ought to have granted benefits to the petitioner. In the result, the order dated 20.06.2002 is hereby quashed and set aside and the authorities are directed to pay all the consequential benefits to the petitioner of granting him the deemed date of promotion by order dated 05.08.1983 (Annexure "K" to the petition). The authorities shall work out the benefits payable to the petitioner on account of the deemed date for promotion to the post of Compose Foreman with effect from

03.11.1961 and the promotion to the post of Overseer with effect from 19.04.1967 and pay the same within three months from the date of receipt of the writ of this Court.

12. While parting with the matter it may be noted that the petitioner is aged about 80 years as on today. He retired from service on 31.10.1982. Therefore, there is no question of anybody being prejudicially affected by this order. Taking into consideration the advance age of the petitioner it is hoped that the aforesaid direction to make payment of the benefits payable to the petitioner will be complied with within the stipulated time. It is further directed that in case the authorities do not pay the aforesaid benefits within the stipulated period the same shall be paid with interest at the rate of 12% per annum from the date on which it became payable.

13. The petition is allowed accordingly. Rule is made absolute. No order as to costs. Direct service is permitted.