
(1993) 03 GUJ CK 0013
In the Gujarat High Court

Dhirajlal Sundarji Thakarar	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 12-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayats Act, 1961 — Section 155, 155, 157, 158, 206(A)

Citation : (1993) 2 GLR 1653

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Judgement

M.S. Parikh, J.—In this petition under Article 226 of the Constitution of India the petitioner has prayed for fixing deemed date of December 30, 1968 for the purpose of fixing his seniority in the cadre of Head Clerk. He has further prayed for acceptance of his option for re-allocation to the State Service in the cadre of Head Clerk in the Education Department of the State Service and for consequential relief by directing promotion to the post of Class-II in the Education Department of the State Service pursuant to the creation of post by the Government of Gujarat vide Government Resolution dated 22nd July, 1981.

2. It is the case of the petitioner that on 13th January, 1955 he was appointed in the Education Department of the then State of Saurashtra and by way of ordinance his services were allocated to the District School Board. By virtue of the order dated 1st August, 1957 he was confirmed as Junior Clerk in the District Education Board and since then till upto 1st April, 1963 he was serving as such in District Education Board which is known as District School Board. With effect from 1st April, 1963 the State of Gujarat established Panchayat Rajya and by virtue of Section 155 of the Gujarat Panchayats Act, 1961 the District School Boards which were governed prior to that date were dissolved and the functions thereof were transferred to Taluka and District Panchayats. Consequently in exercise of the powers conferred on the Authority by virtue of Section 206(1)(2) the petitioner's services came to be allocated as per order dated 31st March, 1963 (Annexure "A") to the District Panchayat, Junagadh. The petitioner has

referred to a Notification dated 5th December, 1964 which will he dealt with at an appropriate place hereafter. It is the case of the petitioner that the petitioner appeared and passed required Departmental examination provided for Accountant and the Supervisors. According to his say he was promoted to the post of Accountant equivalent to the post of Head Clerk on 1st February, 1969 with effect from December 30, 1968. It is his further case that he was promoted to the post of Office Superintendent/Head Clerk on 28th July, 1976. Accordingly his seniority came to be recognised in Education Department (it should be education branch of Panchayat Service). He has accordingly been working as Head Clerk/Office Superintendent in the District Panchayat. According to the petitioner somewhere in the year 1978 the State of Gujarat issued an Ordinance inviting the option from the allocated employees and petitioner submitted and opted for the State Service. This he did by a forwarding letter dated 17th January, 1979. It is further case of the petitioner that in the year 1980 another Ordinance was issued by the State of Gujarat and Section 206 was amended by the said Ordinance and again options were given to the employees who were allocated to the Panchayat services u/s 206 of the Gujarat Panchayats Act. The grievance of the petitioner is therefore that the petitioner's option ought to have been accepted by the respondents, but has not been so accepted till today. It is, therefore, the case of the petitioner that since the petitioner opted for State Service there is no Authority whatsoever in the respondents to deny the petitioner's claim for re-allocation to the State Service where there is a further promotional avenue in the Education Department of the State Service (as distinguished from the Education Branch of the Panchayat Service) from the post of Head Clerk to the post of Office Superintendent is a Class-11 Gazetted Post. Reference, in this connection, is made to Annexure "E" being the Gujarat Panchayat Services (Promotion to the Cadre in the State Service) Rules, 1972.

3. In reply the facts are more clarified. Accordingly, when the Panchayat came into existence from 1st April, 1963 the petitioner was working as Junior Clerk at Ranavav in the District School Board. Upon formation of the panchayat with effect from 1st April, 1963 the petitioner was allocated to Junagadh District Panchayat as Junior Clerk. He passed necessary examination for the post of Clerk in October, 1967. According to the respondents the petitioner was a temporary servant in the School Board and came to be confirmed upon his passing the aforesaid examination in October, 1967 in the Panchayat Service. Reference is made to Section 155 of the Gujarat Panchayats Act, 1961 and other relevant provisions. It is the say of the respondents that State Government did not invite any option from the Panchayat Servants for their absorption as the State servants. According to the Circular dated 25th February, 1980 options were given under Sections 157 and 158 of the said Act. The petitioner having been allocated u/s 155 of the said Act he was not entitled to any option. The petitioner was appointed in Accountant cadre on 1st February, 1969 in the Panchayat Service and his seniority was fixed in that cadre, he was therefore, not entitled to get any promotion on the administrative side. It was submitted that by mistake the

petitioner was placed as Office Superintendent. The objections were raised in that respect and the D.D.O. Junagadh heard the objections and cancelled the above post of Office Superintendent and decided to put the petitioner again on his original post. The petitioner filed one Suit in the Junagadh Court and obtained stay against the implementation of the aforesaid order of the D.D.O. Consequently the petitioner was not put to his original post of Accountant and he is still continued as Head Clerk. In reply to the case of Mr. Bathia set up in para 27 of the petition it has been asserted that Mr. Bathia was a confirmed Government Servant and was allocated to the Panchayat u/s 157 of the Panchayat Act and therefore the petitioner's case could not be compared with the case of Mr. Bathia. This petition is, therefore, sought to be dismissed.

4. The petitioner has filed Affidavit in Rejoinder meeting with the various averments contained in the Affidavit in Reply.

At the outset it may be observed that the petitioner's cause in substance is with regard to exercise of his option, acceptance of such option and consequently re-allocation to the State Government Service as distinguished from the Panchayat Service.

5. In order to find out whether the petitioner was entitled to have option of for exercise of such option and get himself re-allocated to the State Service, it would be necessary to set out the relevant provisions. It may at once be stated that it is an admitted position that when Panchayat Service was formed with effect from 1st April, 1963 the petitioner was in service of District School Board as Junior Clerk. It has, therefore, to be seen whether Section 155 would be applicable to the case of the petitioner or whether he would be covered by Section 157 and/or 158 of the Gujarat Panchayats Act, 1961 (Act No. 6 of 1962)(hereinafter referred to as the Act). Section 155(1) reads as under:

Section 155. (1) Notwithstanding anything contained in the Bombay Primary Education Act, 1947 and the Saurashtra Primary Education Act, 1956 or any other corresponding law for the time being in force, on and with effect from such date as the State Government may, by Notification in the Official Gazette, appoint every district school board constituted under the Bombay Primary Education Act, 1947 or, as the case may be, the Saurashtra Primary Education Act, 1956 functioning immediately before the said date shall stand dissolved and on such dissolution, the following consequences shall ensure, that is to say-

(a) to (d) xxx xxx xxx (e) the employees of the existing school board shall stand transferred to the taluka panchayats and the district panchayat in accordance with the distribution made in that behalf and on such terms and conditions as may be provided, in the said order:

Provided that the terms and conditions of service of any such employee shall not be less favourable than those applicable to him while in service of the existing school board:

Provided further that nothing in this clause shall entitle any employee to claim the same cadre or designation on such transfer.

6. Section 157 of the Act deals with transfer of persons of State Government to Panchayat including the persons of the State Government to enable the District Panchayat to exercise the power and discharge the functions and duties so transferred.

Section 158 deals with transfer to Panchayat, functions performed by the Government before the commencement of the Act.

7. The question of allocation is treated by Section 206 of the Act. Section 206 reads as under:

Section 206. (1) The State Government shall by a general or special order allocate to the Panchayat service-

(i) such number of officers and servants out of the staff (allocated or) transferred to a panchayat under Sections (157, 158 and 325) as it may deem fit.

(ii) all officers and servants of the municipalities dissolved u/s 307.

(ia) all officers and servants in the service of district local boards and district school boards immediately before their dissolution under this Act and transferred to the Panchayats under Sections 155 and 326.

(iii) such other officers and servants employed in the State Service as may be necessary to enable (the panchayats) to discharge efficiently their functions and duties under this Act.

On a plain reading of the aforesaid provision a clear distinction appears between the terms with regard to transfer or allocation of the servants under Sections 157, 158 and 325 and transfer or allocation of the servants in the service of District Local Boards and District School Boards immediately before their dissolution under the Act and transferred to the Panchayat under Sections 155 and 326 of the Act. It is not in dispute and it cannot be disputed that, the petitioner came to be transferred u/s 155 of the Act as he was in the service of the District School Board immediately prior to such transfer. Therefore the contention that the petitioner came to be allocated and/or transferred to the Panchayat Service by virtue of Section 157 of the Act, has no force on the face of it. The distinction is clear and apparent if Sub-section (2) of Section 206 is borne in mind. Accordingly Section 206(A) of the Act which speaks of reallocation can hardly be to one who is covered by Sub-section (2) of Section 206.

8. Section 206(A) deals with reallocation of the servants allocated u/s 157 or 158 of the Act and such reallocation was to be effected within a period of 4 years from the allocation into Panchayat Services.

9. This very provision has been considered by This Court and thereafter by Supreme Court in the case of Ratilal B. Soni and others Vs. State of Gujarat and

others, . There the appellants were sent on deputation as Circle Inspectors in the State Cadre from their cadre of Talati-cum-Mantri (Patwari) in the Panchayat Service of the State of Gujarat. The question for consideration was whether in the facts of that case they had a right to be absorbed in the cadre of Circle Inspector in the State Service. It has been observed that on 1-4-1963 there was a cadre of Circle Inspectors in the State Service which was bifurcated and 50% of the posts continued in the State Service and remaining 50% were transferred to the Panchayat Service. The appellants in that case were sent on deputation as Circle Inspectors in the said cadre as stated above. In January, 1986 qualified officials became available for promotion to the post of Circle Inspector in the State Cadre and as such the appellants were reverted to their parent cadre of Talati in the Panchayat Service. That was challenged before This Court primarily on the ground that there the options for absorption in the State Government were pending with the State Government which the State was bound to decide in their favour. The Court dismissed that petition by holding that there was nothing on the record to show that they gave any option to be absorbed in the State Cadre. It was also found that they being on deputation had no legal right to be absorbed in the State Service. The matter was carried to the Supreme Court. Reference has been made to Section 206(A) of the Act, according to which any officer or servant who is not reallocated under Sub-section (1) and continued in the Panchayat Service immediately before the expiry of the aforesaid period of four years, shall on such expiry, be deemed to be finally allocated to the Panchayat Service. The Supreme Court held that Panchayat Servant who was not reallocated within a period of four years from 1-4-1963 would be deemed to be finally allocated to the Panchayat Service. The appellants were not in a position to show that they gave any option before 31-3-1967. Even on the assumption that the options were given before that date the same were not accepted before that date, i.e., 31-3-1967 and therefore the appellants were held to have been finally allocated in the Panchayat Service. The case of the petitioner stands entirely on a different footing, namely, he would squarely be covered u/s 155 referred to in Clause (2) of Section 206(1) of the Act. Section 206(A) dealing with reallocation refers to Sections 157 and 158 of the Act. Consequently the stand taken by the petitioner is not supported by the aforesaid provision of reallocation. Section 206(A) would not apply to the petitioner's case.

10. Mr. Sampat, learned Advocate placed reliance upon the Notification, which Mr. Sampat fairly conceded, also refers to Sections 157 and 158 of the Act. He then made reference to para 8 of the Notification dated 16-9-1974 appended at Annexure "E" at page 32 of the petition. The relevant item pressed into service is item No. 8 at page 35. It is with regard to Office Superintendent or Head Clerk allocated from the Government Department. The second column speaks of post and cadre in the State Service to which eligible for promotion. Item No. 8 referring to column 2 speaks of Class II post in Government Department from which such officer was allocated. Apparently the reference is to the allocation of the Government servants by virtue of the provisions contained in Sections 157

and 158 of the Act. In my opinion the petitioner cannot get any benefit of item 8 on page 35 at Annexure "E". The petitioner never came to be allocated from the Government Department. He was allocated from the District School Board which came to be dissolved upon the formation of District Panchayat under the Gujarat Panchayats Act.

11. Mr. Sampat made reference to the decision of the Honourable Supreme Court in case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, . I fail to say how this decision can have any application to the cause of the petitioner. The broad principle laid down in this decision is that the Panchayat Service constituted u/s 203 of the Gujarat Panchayats Act, is a Civil Service under the Act and the members of the service are Government Servants. However, the Panchayat Service is distinguished from the State Service because the Panchayat Institution whom it serves together Constitutes an almost parallel but subsidiary Government. It is only in that sense that the Panchayat Service is distinguished from a State Service. That is why by maintaining that distinction it is held that the Panchayat Service is a Civil Service of the State and the members of the service are the Government Servants. There is no question of discrimination at all between the Government Servant transferred u/s 155 of the Act and the Government Servant allocated under Sections 157 and 158 of the Act.

12. In above view of the matter the petition deserves to be dismissed. However, it has been submitted by Mr. Sampat that although the petitioner retired on 31-10-1992 his terminal benefits have yet not been finalised by the respondent Nos. 3 & 4. It has, therefore, to be observed that the process with regard to the finalisation of the petitioner's retirement benefits should to completed, if not completed by this time, within a period of 2 months from the receipt of writ in this regard.

13. With the aforesaid observation Rule is discharged with no order as to costs.