(2002) 11 GUJ CK 0033

In the Gujarat High Court

Case No : Special Civil Application No. 3732 of 1987

D.M. Oza APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 21-11-2002

Acts Referred:

Citation : (2003) 23 GLH 208

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : Sunil K. Shah, for the Appellant; Sonal D. Vyas, AGP for respondents Nos. 1-2, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—The petitioner before this Court was appointed as a Clerk in the Revenue Department. In course of time he has passed the departmental examination and has earned promotion to the post of Deputy Mamlatdar. Petitioner''s seniority has been determined from the date of his absorption in the Revenue Department under order dated 25th February, 1981. Feeling aggrieved, the petitioner has preferred the present petition. It is the claim of the petitioner that he was selected and appointed as a clerk by the District Collector, Jamnagar under the Gujarat Non-Secretariat Clerks, Clerk-Typists and Typists (Direct Recruitment Procedure) Rules, 1970 (hereinafter referred to as ''the Rules of 1970'') (popularly known as Centralised Recruitment Scheme). He was appointed and posted as Clerk in the Revenue Department on 3rd June, 1973. Since then, on account of administrative exigencies, the petitioner''s service was transferred to the Irrigation Department. From Irrigation Department the petitioner was brought back to the Revenue Department under the Government order dated 25th February, 1981. Thus, the petitioner''s transfer from the Revenue Department in the year 1977 and retransfer in the Revenue Department in year 1981 was on account of administrative exigencies. The petitioner has, therefore, claimed seniority from the date he was initially appointed in the Revenue

Department (i.e. from 3rd June, 1973).

2. In answer to the notice issued by this Court, the respondent No. 2, the District Collector, Jamnagar, has filed counter-affidavit and has contested the petition. It is denied that the petitioner was appointed under the Rules of 1970 on 3rd June, 1973 as claimed by the petitioner. It is stated that in the year 1973 the petitioner had been given temporary appointment as a Clerk on temporary post created to meet scarcity relief works. The petitioner was regularly appointed as a Clerk in accordance with the Rules of 1970 in the year 1975. After his selection under the Rules of 1970, the petitioner was appointed as a Junior Clerk in the Revenue Department with effect from 10th March, 1975. However, on account of closer of certain departments in the Revenue Department, certain Junior Clerks serving in the Revenue Department were rendered surplus. Such surplus Junior Clerks were relieved from service in order of their seniority (on the principle of last come first go). On peitioner''s being rendered surplus, under order dated 5th December, 1977, the petitioner was reallocated as Junior Clerk to the Irrigation Department. Since then, the petitioner has been making representation for transfer to the Revenue Department. The said request was initially turned down under communication dated 19th May, 1978 by the District Collector, Jamnagar and under order dated 5th September, 1979 by the State Government. However, by later order dated 25th February, 1981, the petitioner was reallocated to the Revenue Department. Since then, the petitioner has been serving in the Revenue Department and has passed, the departmental examinations. He has also been promoted to the higher post of Deputy Mamlatdar.

3. Mr. Shah has relied upon the judgment of this Court in the matter of Safimiya G. Malek and Others Vs. State of Gujarat and Others, . He has submitted that the Division Bench of this Court has, after considering the scheme under the relevant rules, held that the seniority of the Revenue Clerks should be determined on the basis of the continuous service.

4. There can not be any dispute as to the principle of seniority laid down by the Division Bench of this Court in the above referred matter of Safimiya G. Malek and ors. v. State of Gujarat and ors. However, the question in the present case is a bit different. The question is, whether on reallocation of the petitioner as a Junior Clerk in the Irrigation Department and reallocation in the Revenue Department the petitioner should be permitted to retain seniority of his earlier service. The petitioner was initially allocated to the Revenue Department. The petitioner had been rendered surplus in the Revenue Department. He was, therefore, reallocated as Junior Clerk in the Irrigation Department. It is indisputable that the petitioner was reallocated to the Revenue Department under order dated 25th February, 1981 at his request.

5. The question of determination of seniority of Clerk appointed under the Rules of 1970 in one department and on such Clerk being rendered surplus, his allocation in another department has been considered by the Division Bench of this Court in the matters of S.S. Thakore and Another Vs. State of Gujarat and

Others, and of State of Gujarat and Others Vs. H.C. Vora and Others, . In the matter of S.S. Thakore (supra), the Bench has considered the scheme under the Rules of 1970 and has held that "...There is no indication in any of these Rules that, persons appointed in one department, which has its own cadre of clerks, could be transferred to any other department in normal course. It was, therefore, rightly not disputed at the time of the hearing that there was no inter-transferability of the clerks of the various departments and that the cadres were department-wise, directorate-wise and district-wise.... However, such transfer is limited to equivalent post in the same cadre and in the same department.... Those employees, on being declared surplus in the respective departments, had no right under any Rule to be posted in the Directorate of Civil Supplies (Accounts) which was brought within the purview of the Centralised Recruitment Scheme. They were brought into the cadre of clerks in the Directorate of Civil Supplies (Accounts) only after the coming into force of the Centralised Recruitment Scheme which laid down the procedure for recruitment to the cadre of clerks inter alia in respect of offices named in Appendix ''B'' including Directorate of Civil Supplies (Accounts) with effect from 17-4-1970." The Bench further held that "it was not even disputed that the original respondents Nos. 3 to 7 (including the appellants) were rendered surplus and their services were liable to be terminated. It is clear that, instead of terminating their services, a compassionate view was taken to accommodate them in the Directorate of Civil Supplies (Accounts) by treating them as fresh appointees. Therefore, they could claim seniority in the cadre of clerks in this Directorate only from the date of their entry in that cadre on their fresh appointment being made in the said Directorate."

6. Similar is the view expressed in the matter of H.C. Vora (supra). It has been held that "...It is not disputed fact that the Depratment wherein the petitioner was originally appointed and serving came to be closed and, therefore, he was declared as surplus. Ordinarily, his services could have been terminated and he would have been sent home. Instead, fresh appointment was given to him. Apart from the fact that he was specifically informed that the said appointment would be treated as fresh appointment and his seniority in the parent service would not be taken into account, even otherwise also this circular cannot help the petitioner, admittedly, this cannot be said to be a transfer."

7. Further, in the matter of B.I. Ghasura and Ors. v. The Collector and Ors. (Special Civil Application No. 3922 of 1982, decided on 1st March, 1983; Coram : G.T. Nanavati, J. as he then was) a claim for reallocation to Revenue Department was rejected. In the said matter, the petitioners were appointed under the Rule of 1970 and were allocated to the Revenue Department. After passing the departmental examination in the Revenue Department, the petitioners were rendered surplus and were reallocated to different departments. However, they preferred the above petition and claimed a right to reallocation to Revenue Department. The claim was rejected. The said judgment has been confirmed in Letters Patent Appeal No. 348 of 1984 (decided on 6th February, 1991; Coram:

G.C. Ray; C.J. and S.B. Majmudar, J. as they then were).

8. Thus, a Junior Clerk appointed under the Centralised Recruitment Scheme is rendered surplus and is reallocated to some other department, his seniority shall be counted from the date of his reallocation in the later department. In the present case, it is more than evident that the petitioner was, after his allocation in the Revenue Department, rendered surplus and was reallocated to the Irrigation Department. The petitioner, therefore, cannot claim seniority on the basis of the services rendered in the Revenue Department before his reallocation to the Irrigation Department. Ordinarily, after reallocation the petitioner would not be entitled to further reallocation to the Revenue Department. However, at his request, under order dated 25th February, 1981, the petitioner was reallocated to the Revenue Department. The order dated 25th February, 1981 is clear that it was an order of reallocation and not that of transfer.

9. In that view of the matter, the petitioner should claim his seniority in the Revenue Department from the date he was reallocated in the Revenue Department under order dated 25th February, 1981 pursuant to his request. In my view, therefore, the District Collector, Jamnagar has rightly considered the seniority of the petitioner from the date of his reallocation to the Revenue Department under order dated 25th February, 1981. Hence, the petition is dismissed. Rule is discharged. There shall be no order as to costs.