

(1984) 11 GUJ CK 0027
In the Gujarat High Court

Gopal T. Madnani

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 07-11-1984

Acts Referred:

Citation : (1985) 1 GLR 490

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—The petitioner herein was appointed as a Junior Clerk on and from 9th March 1962 in the office of the Deputy Inspector General of Police, Rajkot Range, Rajkot. Subsequently he was continued on the same post by an order dated 28th May 1962. The petitioner together with other Junior Clerks was discharged from service by the order dated 27th November 1968 on the ground that he and other Junior Clerks had failed to pass the S.S.D,. Examination within the specified period of four years. On the representations made by the Junior Clerks in police and other departments, the Government of Gujarat rein-stated the petitioner and other Junior Clerks in service on condition that they pass the S.S.D. Examinations to be held immediately after their reinstatement. It is petitioner"s case that he passed the examination in June 1976. Even after the reinstatement, there was a question with regard to the break in service which lasted for nearly four years. After giving due thought to the representations made by the affected persons, the Government of Gujarat by its Resolution No. EST-1074-1206-S, dated 25th July 1979 (Annexure-E) decided that the break in service of the petitioner and other Junior Clerks would be condoned and they would be treated as having continued in service on condition that they pass the S.S.D. examination held immediately after the reinstatement. It was further provided in the said Resolution that the period of break would be treated as leave without pay and that the service will be treated as continuous service. The petitioner made a representation dated 16th June 1980 to the police officer concerned at Rajkot requesting him to fix his seniority and claimed that on the basis of his seniority he was entitled to be promoted as a Senior Clerk. The police

officer concerned by his reply dated 18th March 1981 held that the aforesaid Government Resolution regarding the condonation of break in service, applied only to the question of leave and pay and that it did not apply to the question of seniority. According to the said reply, the break in service was condoned only for a limited purpose of leave and pay and not for any other benefits of the continuity of service. Against the reply of the police officer concerned, the present petition is directed.

2. Mr. P.M. Thakker, the learned Counsel for the petitioner has urged that the interpretation put by the department on the aforesaid Government Resolution is not correct. According to him, the condonation of break in service would mean continuity for all purposes and not merely for leave and pay as contended by the department. Mr. Thakker has urged that by putting this interpretation on the aforesaid Government Resolution, the department has sought to read into it something which is not stated. Mr. B.D. Desai, the learned Assistant Government Pleader has urged that the petitioner and other Junior Clerks, not having passed the examination within the stipulated time, their services had come to an end and that (heir reinstatement was in effect appointing them afresh. To rein-force this argument, Mr. Desai has relied on the order No. B1307.GTM 11972-1460, dated 30th August 1972, wherein it was expressly stated that the appointment after the break would be treated as fresh appointment.

3. It is no doubt true that there was a clear break in service and therefore the appointment thereafter was a fresh appointment. But the Government having reconsidered the whole question as a result of representations made by the affected persons, decided to give the continuity in service which means that the service continued as if there was no break at all. The break having been condoned it ceased to exist and therefore the service became continuous. The Government was aware of this situation and therefore to avoid the liability for payment of salary for the break period, it, also provided for the break period to be treated as leave without pay. When there is a leave without pay there cannot be any question of discontinuation of service or re-appointment. It is a continuity in service for all purposes including the question of seniority.

4. It is surprising that the department chose to put an interpretation on the aforesaid Government Resolution which is wholly untenable and contrary to even common sense. By no stretch of imagination could it be said that the break was condoned and the continuity of service was granted only for the purpose of leave and salary. In fact it is other way round. The continuity of service is for all other purposes except the salary and the leave for which there is an express provision that the break period would be treated as leave without pay. If there was no express provision to this effect, the department would have been liable to pay the salary for the break period also because that would be the natural result of condoning the break and granting the continuity in service.

5. In the result, the petition is allowed. A writ of certiorari shall issue Quashing and setting aside the communication No. K/2/0/2-634, dated 18th March 1981

(Annexure-G). The respondents shall consider the question of seniority of the petitioner on the basis of his joining the service initially and grant him such other benefits regarding seniority and promotion as if he has been continuously in service without a break within a period of three months from today. Rule made absolute. In the circumstances of the case, there shall be no order as to costs.