
(2016) 07 SC CK 0018

In the Supreme Court Of India

Case No : Civil Appeal No. 5441 of 2016 (Arising out of S.L.P. (C) No. 2324 of 2010).

Harijan Paniben Dudabhai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

Gujarat Panchayat Service (Appointing Authorities) Rules, 1967 — Rule 2

Citation : (2016) 9 ADJ 2 : (2016) AIR(SCW) 3066 : (2016) AIRSC 3066 : (2016) 2 ApexCourtJudgments(SC) 635 : (2016) 3 CLR 1 : (2016) 6 JT 216 : (2016) 4 KCCR 437 : (2016) 3 LawHeraldSC 1740 : (2016) LIC 3217 : (2016) 3 LLN 287 : (2016) 6 Scale 123 : (2016) 12 SCC 80

Hon'ble Judges : V. Gopala Gowda;Uday Umesh Lalit, JJ.

Bench : Division Bench

Advocate : A. Venayagam Balan, Advocate, for the Appellant; Ms. Hemantika Wahi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Uday Umesh Lalit, J. - Leave granted.

2. These appeals challenge common judgment of the High Court of Gujarat dated 02.07.2009. As Letters Patent Appeal No.1522 of 2004 was considered as lead matter by the High Court, the appeal arising therefrom is also considered as lead matter by us. The facts giving rise to Letters Patent Appeal No.1522 of 2004 are dealt with in detail hereafter.

3. In terms of Gujarat Government Gazette dated 01.07.1961, the then Okha District Municipality got converted into Okha Gram and Nagar Panchayat on and w.e.f. 02.02.1962. Upon such conversion, the existing staff of municipality was allocated to Gram Panchayat and treated as part of Panchayat Service. Gujarat Panchayats Act, 1961 (hereinafter referred to as the "Act") deals with Panchayat Service and various sets of Rules framed pursuant to the power conferred under the Act, deal with matters including classification of Panchayat Service and

conditions of service as regards Panchayat Service.

4. Section 203 of the Act is to the following effect:

"203. Panchayat Service to be regulated by rules - (1) For this purpose of bringing about uniform scales of pay uniform conditions of service for persons employed in the discharge of functions and duties of panchayats, there shall be constituted a Panchayat Service in connection with the affairs of panchayats. Such service shall be distinct from the State service.

(2) The Panchayat Service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such, as the State Government may by order from time to time determine:

Provided that nothing in this sub-section shall prevent a district panchayat from altering, with the previous approval of the State Government, any class, cadre or number of posts so determined by the State Government.

(2A) (a) The cadres referred to in sub-section (2) may consist of district cadres, taluka cadres and local cadres.

(b) A servant belonging to a district cadre shall be liable to be posted, whether by promotion or transfer to any post in any gram or nagar in the same taluka.

(c) A servant belonging to a taluka cadre shall be liable to be posted, whether by promotion or transfer to any post in any gram or nagar in the same taluka.

(d) A servant belonging to a local cadre shall be liable to be posted whether by promotion or transfer to any post in the same gram or, as the case may be, nagar.

(2B) In addition to the posts in the cadres referred to in sub-section (2A), a panchayat may have such other posts of such classes as the State Government may, by general or special order determine. Such posts shall be called "deputation posts" and shall be filled in accordance with the provisions of Section 207.

(3) Subject to the provisions of this Act, the State Government may make rules regulating the mode of recruitment either by holding examinations or otherwise and conditions of service of persons appointed to the panchayat service and the powers in respect of appointments, transfers and promotions of officers and servants in the panchayats service and disciplinary action against any such officers or servants.

(4) Rules made under sub-section(3) shall in particular contain -

(a) a provision entitling servants of such cadres in the Panchayat Service to promotion to such cadres in the State Service as may be prescribed.

(b) A provision specifying the clauses of posts recruitment to which shall be made through the District Panchayat Service Selection Committee and the class

of posts, recruitment to which shall be made by the Gujarat Panchayat Service Selection Board, and

(c) A provision regarding the percentage of vacancies to be reserved for the members of Scheduled Castes, Scheduled Tribes and other backward classes in the Panchayat Service.

(5) Such rules may provide for inter district transfers of servants belonging to the Panchayat Service and the circumstances in which and the conditions subject to which such transfers may be made.

(6) The promotion of a servant in a cadre in the Panchayat Service to a cadre in the State service in accordance with the rules made under clause (a) of the sub-section (4) shall not affect-

(a) any obligation or liability incurred or default committed by such servant during the period of his service in a cadre in the Panchayat Service while acting or purporting to act in the discharge of his duties as such servant, or

(b) any investigation, disciplinary action or remedy in respect of such obligation, liability or default and any such investigation, disciplinary action or remedy may be instituted, continued or enforced in accordance with the law applicable thereto during the said period of service by such authority as the State Government may, by general or special order specify in this behalf."

5. In *State of Gujarat and another v. Ramanlal Keshavlal Soni and others*, (1983) 2 SCC 33 a Constitution Bench of this Court held that Panchayat Service constituted under aforesaid Section 203 of the Act is a Civil Service of the State and the members of the Service are government servants.

6. Coming to the facts of the lead matter, one Vela Keshav, deceased husband of the appellant was appointed by Okha Gram Panchayat as Safai Kamdar on 04.02.1964. After having put in 33 years of service, he died in harness on 06.02.1997. The record indicates that monetary benefits such as Rs. 14525.50 towards leave encashment, Rs. 26,042/- towards Group Insurance and Rs. 54,221/- towards General Provident Fund were paid to the appellant as legal representative of the deceased. The appellant represented that the family of Vela Keshav was also entitled to family pension and gratuity which claim having not been accepted, the appellant moved the High Court by filing Special Civil Application No. 354 of 2004.

7. Affidavits in opposition were filed by Deputy District Development Officer, District Panchayat, Jamnagar as respondent no.3 and by Sarpanch of Okha Gram Panchayat as respondent No.5. It was submitted by them that since the deceased was not recruited by the Gram Panchayat in accordance with the Statutory Rules, the appellant was not entitled to claim family pension. The matter came up before a Single Judge of the High Court who by her order dated 15.07.2004 dismissed the Special Civil Application. The submission advanced on behalf of the respondents that since the deceased was not appointed by the

District Panchayat Service Selection Committee constituted under Section 2(11) of the Act, was not a member of the Panchayat Service as envisaged by Section 203 of the Act and as such the appellant was not entitled to claim any family pension or gratuity, was accepted by the Single Judge.

8. The appellant being aggrieved carried the matter further by filing Letters Patent Appeal No.1522 of 2004. At the appellate stage affidavit in reply filed by District Development Officer, District Panchayat, Jamnagar reiterated the earlier stand. An affidavit in reply on behalf of the State Government was filed by Deputy Secretary, Panchayats, Rural Housing and Rule Development Department, Gandhi Nagar which dealt with the matter in issue in following terms.

"In the present case, since appellant has not undergone any selection procedure and he has obtained the employment only on the strength of passing resolution in panchayat, Okha Gram Panchayat has not made any proposal to regularize such unauthorized recruitment and appointment of petitioner's husband. Therefore, he cannot be treated as an employee of local cadre of panchayat service and since he cannot be considered as a member of panchayat service, he is not entitled for any pensionary benefits from government treasury. It is the responsibility of Okha Gram Panchayat to pay pensionary benefit from its own fund as per the terms and conditions at the time of petitioner's husband appointment by Okha Gram Panchayat....."

However what was the procedure which was prevalent in 1964 and how the appointment was bad or illegal, was not specified

9. The reply filed on behalf of respondent no.5 by the Administrator of Okha Municipal Borough was as under:

"The appointment of deceased Vela Keshav was made by the Gram Panchayat by passing a Resolution and he was holding the post within the sanctioned set up of Safai Kamdars (Sweepers). The said Resolutions of the Gram Panchayat making the appointment of the deceased are not available at present. However, the necessary entry made in the Service Book of the deceased employee showing the other details in the Service Record is available.

.....

The deceased employee was appointed as a Full time employee on the sanctioned set up of the Gram Panchayat getting regular salary.

.....

The Okha Gram Panchayat appointed him as Safai Kamdar on the terms and conditions as its own employee where there were no rules. However, the fact remains that the deceased was holding the post on the set up sanctioned by the Development Commissioner and had continued till his retirement[2*] as a regular full time employee. Further, it cannot be said that his appointment was

not made in accordance with the provisions under Section 203 of the Panchayat Act because no such rules of recruitment were as such framed on the date on which the deceased was appointed on 4.2.1964."

[2* The Affidavit wrongly mentioned that the employee had continued till he retired. As a matter of fact, Vela Keshav had died in harness.]

10. The Division Bench of the High Court by its judgment and order under appeal dismissed Letters Patent Appeal No.1522 of 2004 and other connected matters. It was observed that only those employees who had been appointed following the procedure laid down in Section 203 of the Act and the rules framed thereunder, would alone be members of Panchayat Service, apart from the allocated employees from the municipality to the Panchayats at the time of formation of the Panchayats or such other employees who had been recognized as members of Panchayat Service by the State Government, or by the District Panchayat Selection Committee. It was further observed that merely because Panchayat had paid salary and other benefits to the deceased, it did not mean that he was member of Panchayat Service so as to get the benefits available to members of Panchayat Service like family pension and gratuity.

11. In the present case the deceased was appointed as Safai Kamdar on 4.2.1964 by Gram Panchayat by passing an appropriate resolution. It is true that Section 203(3) of the Act empowers the State Government to make rules regulating mode of recruitment. Our attention in that behalf was invited to Gujarat Service (Appointing Authorities) Rules, 1967. Rule 2 of the said Rules stipulates, inter alia, that the Appointing Authority in respect of posts under the Gram Panchayat, which are included in the "local cadre" is Gram Panchayat itself. The term "local cadre" finds elaboration in Part III of Gujarat Panchayat Service (Conditions of Service) Rules, 1977 (hereinafter referred to as "the 1977 Rules"). Part III captioned "Local Cadre" is to the following effect:

"I. Secretary of a Nagar Panchayat

II The following posts under the Nagar or as the Case may be, Gram Panchayat, namely -

1. Chief Officer (Nagar Panchayat)
2. Head Clerk
3. Senior Clerk
4. Junior Clerk
5. Vasulati Clerk
6. Typist
7. Octroi clerk
8. Accountant

9. Cashier
10. Tax Inspector
11. Shop Inspector
12. Octroi Inspector
13. Overseer
14. Power House Manager
15. Driver
16. Cleaner
17. Posts required for schools run by the Panchayat
18. Posts required for dispensaries run by the Panchayat
19. Posts required for libraries run by the Panchayat
20. Posts required for dispensaries run by the Panchayat

III All posts belonging to the inferior panchayat Service under Gram Panchayat or Nagar Panchayat.

IV All other technical and non-technical posts under the Gram Panchayat or Nagar Panchayat."

12. Item III of aforementioned Part III deals with "Inferior Panchayat Service" under Gram Panchayat or Nagar Panchayat which term is defined inter alia in Rule 2(h) of the 1977 Rules, as under:

"2(h) "Superior Panchayat Service" and "Inferior Panchayat Service" means respectively the Superior Panchayat Service and the Inferior Panchayat Service as constituted respectively by clause (a) and clause (d) of sub- rule (2) of Rule 3 of the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967."

Sub-rule (2) of Rule 3 of the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967 deals with Panchayat Service and stipulates that it shall consist of two classes, namely, "Superior Panchayat Service" and "Inferior Panchayat Service".

13. The statutory provisions as mentioned above and the clear assertion by Respondent No.5 in his affidavit in reply, shows that in the year 1964 when deceased Vela Keshav came to be appointed, there were no rules governing the appointment in question. The rules regulating `Superior Panchayat Service" and `Inferior Panchayat Service" in the form of Gram Panchayat Service (Classification and Recruitment) Rules, 1967 came on the statute book in the year 1967. Going by the Gujarat Panchayat Service (Appointing Authorities) Rules, 1967, Gram Panchayat is the appropriate authority in respect of posts included in the Local Cadre. Thus, we do not find any infraction in the

appointment of Vela Keshav, who was appointed pursuant to a resolution passed by Panchayat. Nothing has been pointed out how Gram Panchayat was not competent to make such appointment or that at the relevant time in question the power to make appointments was vested in an authority other than Gram Panchayat or that there was any separate modality or procedure prescribed for effecting such an appointment.

14. As detailed in the affidavit in reply on behalf of Respondent No.5, the deceased Vela Keshav was holding the post within the sanctioned set up of Safai Kamdars and that he was a full time employee getting regular salary. The deceased Vela Keshav had put in 33 years of service and died in harness. At no stage, while he was in service any objection or even a doubt was raised that he was not validly appointed. In our view, Vela Keshav must be held to be one who was regularly appointed and we do not find any infirmity or illegality in his appointment so as to disentitle the family of the benefits of family pension and gratuity.

15. At this stage, Circular dated 26.02.2008 issued by Government of Gujarat, Panchayat Rural Housing and Rural Development on 26.02.2008, which was placed on record by way of Additional Documents, may be adverted to. This Circular after considering cases of those who were appointed between 1.04.1963 and 5.05.1984, stated as under:

"It is, therefore, informed to all the District Development Officers to initiate proceedings in accordance with the instructions given vide letters cited at preamble for regularizing services of the employees appointed/recruited under the converted gram/nagar panchayats during the period from 1.4.1963 to 10.7.1978 and 10.07.1978 to 5.06.1984 and to decide their other service related matters accordingly. Further, it is also hereby informed to submit proposal of posts of remaining employees as per item no.1 of letter at preamble 1 who have been recruited/appointed promoted during the period from 10.07.1978 to 5.06.1984 and on other aspects of the aforesaid letters also, if guidance/approval is required, DDO shall have to submit proposal through Development Officer's office within six months after examining service record of each employee with their clear opinion."

16. In the totality of circumstances, we find that the appellant cannot be denied the benefits in question. We, therefore allow this appeal and set aside the judgments and orders rendered by the Single Judge and the Division Bench and allow Special Civil Application No.354 of 2004. We direct the respondents to pay to the appellant all the arrears of pensionary benefits and gratuity with simple interest at the rate of 9% per annum within two months from the date of this Judgment.

17. In appeal arising out of SLP(C) No.8896 of 2010, the appellant was appointed as a Peon on 4.4.1964 and in due course of time was promoted to the post of Sanitary Mukadam and later to the post of Octroi Clerk. He retired in the

year 2001 after having put in 37 years of service and all through he was paid all the benefits including those under 4th Pay Commission as a regular employee would receive. His case was dealt with on the strength of the Judgment in the lead matter by the High Court and since we have set aside the view taken by the High Court in the lead matter, this appeal also deserves to be allowed. While condoning the delay and allowing the appeal, the respondents are directed to pay the arrears of pensionary benefits and the amount of gratuity to the appellant along and gratuity with simple interest at the rate of 9% per annum within two months from the date of this Judgment.

18. In appeal arising out of SLP(C) No.9756 of 2011, the deceased husband of the present appellant was appointed as Sanitary Inspector by Okha Gram Panchayat on 14.12.1964 and the said appointment was later confirmed by Development Commissioner vide order dated 5.4.1973. In accordance with the view taken by us in the lead matter, this appeal also deserves to be allowed. Allowing the appeal, we direct the respondents to pay to the appellant all the arrears of family pension and the amount of gratuity with simple interest at the rate of 9% per annum within two months from the date of this Judgment.

19. In appeal arising out of SLP(C) No.1305 of 2011 the appellant, 55 per cent physically handicapped, was appointed as Typist-cum-Clerk on 13.10.1969 and retired from service in the year 2001. It is true that his appointment was after the Gujarat Panchayat Service (Appointing Authorities) Rules, 1967 and other set of Rules came into force. But nothing has been placed on record indicating any prevalent procedure which was allegedly infringed or any reason why his appointment could be termed as illegal or invalid. All through his service till he retired, he was paid all the emoluments and salary like any regular employee. We see no reason why the appellant could be denied the pensionary benefits and gratuity. We allow this appeal and direct the respondent to pay to the appellant family pension and the amount of gratuity with simple interest at the rate of 9% per annum within two months from the date of this Judgment.

20. All the appeals are allowed in the aforesaid terms without any order as to costs.