

(2014) 02 GUJ CK 0027

In the Gujarat High Court

Case No : Letters Patent Appeal No's. 266 and 595 of 2013 in Special Civil
Application No. 2400 of 2011

Harsukhlal Mohanlal Bhatt

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14 16

Citation : (2014) 02 GUJ CK 0027

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Hasit H. Joshi, No. 1, for the Appellant; P.K. Jani, Government
Pleader and Ms. Vacha Desai, AGP for the Respondent Nos. 1 - 2 and 4 - 6, for
the Respondent

Judgement

J.B. Pardiwala, J.—As common questions of fact and law are involved in both the appeals, those were heard analogously and are being disposed of by this common judgment and order. It is necessary to clarify at the outset that although the Writ Application being Special Civil Application No. 2400/2011 was disposed of by the learned Single Judge in terms of its earlier order passed in Special Civil Application No. 6017/2008 and other allied matters, Mr. Joshi, the learned advocate appearing for the appellant in LPA No. 266/2013 made a statement that he was not praying for any benefits of the Tikku Pay Commission as granted by the learned Single Judge vide order dated 29/10/2012 but he was confining his relief only to the extent of seeking the benefits of higher grade scale in terms of the notification issued by the State Government dated 16/8/1994.

2. Thus, according to Mr. Joshi although his client succeeded so far as grant of the benefits of Tikku Commission is concerned, the learned Single Judge failed to take into consideration the prayer so far as the grant of higher grade scale is concerned. Such is the reason, according to Mr. Joshi, for filing the LPA No.

266/2013. Whereas on the other hand, the Letters Patent Appeal No. 595/2013 has been filed by the State of Gujarat being dissatisfied with the order passed by the learned Single Judge dated 29/10/2012 in Special Civil Application No. 2400/2011 so far as the grant of the benefit of the Tikku Pay Commission in favour of the appellant of LPA No. 266/2013 is concerned.

3. So far as the LPA No. 595/2013 filed by the State of Gujarat is concerned, the issue has been set at rest by this very Bench while deciding a batch of appeals being Letters Patent Appeal No. 295 of 2013 and allied matters filed by the State of Gujarat so far as the grant of the benefits of the Tikku Pay Commission to the Ayurvedic Doctors. Thus, in our opinion no further adjudication is necessary so far as the LPA No. 595/2013 is concerned and the same would be governed by our judgment and order dated 17th January, 2014 passed in LPA No. 295 of 2013.

4. We proceed to consider the LPA No. 266/2013 filed by the appellant one Dr. Harsukhlal Mohanlal Bhatt.

The LPA No. 266/2013 is directed against the judgment and order dated 29/10/2012 passed by the learned Single Judge of this Court in Special Civil Application No. 2400/2011 by which His Lordship disposed of the writ application in terms of the orders passed by His Lordship in Special Civil Application No. 6017/2008 and other allied matters decided on 26/7/2012. The learned Single Judge, vide his order dated 29/10/2012 held that the appellant herein was entitled to the benefit of the Tikku Pay Commission in the matter of Higher Pay Scale. However, in Writ Application the appellant had also prayed for grant of higher grade scale in terms of the Government Resolution dated 16/8/1994. Feeling dissatisfied, the appellant has come-up with this Appeal.

5. The case of the appellant be summarized thus:-

5.1) The appellant was appointed on 20/1/1964 as a Medical Officer (Ayurvedic) Class-III by the State Government.

5.2) During his tenure as a Medical Officer (Ayurvedic) he served at various Ayurvedic Hospitals and dispensaries in the State and attained superannuation on 30/11/1999. It is the case of the appellant that in the year 1982 the State Government up-graded/promoted around 114 doctors working with Government Dispensaries. However, the appellant and other similarly situated doctors forming a part of the same cadre were ignored so far as the appointment/promotion to the posts of Class-II Medical Officers was concerned.

5.3) The appellant and few other doctors similarly situated, feeling aggrieved and dissatisfied with such action on the part of the State Government thought fit to challenge the same by filing Special Civil Application No. 2270/1982 before this Court.

5.4) It appears that the case of the appellant and others before the Single Judge was that under the scheme adopted by the State Government there were many Ayurvedic dispensaries in the villages of the State of Gujarat. The posts were

being filled-up by appointing those who had been qualified to be appointed as Vaidyas. The idea was to promote and encourage the Ayurvedic method of treatment and also to provide such treatment at the door-steps of the poor villagers and to encourage more effective and less expensive Ayurvedic system of medicine. It was submitted before the learned Single Judge at the relevant point of time that under the District Panchayats there were two types of dispensaries, (i) those dispensaries receiving 100% grant from the State Government and (ii) the dispensaries run by the District Panchayats. It was also submitted before the learned Single Judge that all the Vaidyas Incharge of the dispensaries run by the State Government or by the District Panchayat were getting 100% grant from the State Government and those were being run and managed by the Vaidyas having similar qualifications including the duties and the functions. According to the appellant and others, in the Seniority List also they were shown as Vaidkiya Adhikari Class-III. The learned Single Judge also took into consideration various resolutions passed by the State Government in that regard and finally thought fit to allow the petition observing thus:-

Considering the stand taken by the respondent in the present case, there is no manner of doubt that the right of the petitioners to claim for being appointed/promoted was totally overlooked. Under the guise of administrative exigencies, expansion of activities and financial viability, the respondents have initially in the year 1979 upgraded 114 posts and in the year 1983, 114 persons belonging to Government dispensaries were given promotion with effect from 2-11-1979 the day on which the posts were upgraded. As stated above, reading Annexure F wherein it is disclosed by respondent No. 1 that not the dispensaries but the posts were upgraded from Class III to class II, since the rules for promotion were not finalized, no promotions were given. Now, this disclosure was made on 18-4-1981 meaning thereby, on the same day the decision was already taken to upgrade the posts of Vaidyas belonging to Government dispensaries from class III to class II. However, as there were no rules for promotion the posting were not given. The fact that the decision was already taken by the State Government to compound both the cadres of Vaidyas belonging to Panchayats and the Vaidyas belonging to the Government dispensaries and accordingly, a provisional seniority list was published on 4-10-1977 and a final common seniority list was published on 30-11-1981, I fail to understand as what was the necessary of taking a decision to upgrade the posts only of the Government dispensaries and to promote Vaidyas belonging Government dispensaries ignoring the claim of the Vaidyas belonging to Panchayat dispensaries. The answer is clear that the respondents wanted to promote only those Vaidyas belonging to Government dispensaries. The fact that after coming into force of the recruitment rules in 1982 promotion orders were issued to 114 persons in the year 1983 giving retrospective effect from 2.11.1979 would further go to show that a special treatment was given to the Vaidyas belonging to Government dispensaries. This action is nothing but a clear act of discrimination and violative of Article 14 and 16 of the Constitution of India and therefore, it is not possible for this court to

uphold the contention of the respondents that the up-gradation of the posts is entirely an administrative matter and the same is not open to challenge. The respondents have failed to point out any provision which entitled them to upgrade 114 posts in the year 1979. In absence of any such rules, the decision to upgrade the posts in question giving favourable treatment to Vaidyas belonging to Government dispensaries is nothing but a decision taken in colourable exercise of power and, therefore, liable to be quashed and set aside. However, considering the fact that mass promotions to about 114 persons were given in the year 1983 after a long lapse of about 12 years, it is not proper to create further administrative difficulties. In my opinion therefore, ends of justice would be met if the respondents are directed to give similar benefits of upgrading the posts of Vaidyas belonging to Panchayats to class II with effect from 2-11-1979.

In the result, the petition is allowed. The respondents are directed to consider the case of the petitioners for promoting them to class II cadre with effect from 2-11-1979 and fix their seniority accordingly and pay other consequential benefits in accordance with law within a period of three months from the date of receipt of writ of this court. Rule is made absolute to this extent, with no order as to costs.

6. The State of Gujarat, feeling dissatisfied with the above referred decision of the learned Single Judge thought fit to challenge the same by filing L.P.A. 937/1995. A Division Bench of this Court vide order date 17/1/2005 dismissed the Appeal thereby affirming the order passed by the learned Single Judge by observing as under:--

4. This brings us to the main LPA. It is filed by the Appellants - State of Gujarat and others against the Judgment and order dated 14.6.1995, passed by the learned Single Judge, allowing the main Special Civil Application No. 2270 of 1982. It is clear from the Judgment of the administrative exigency they had initially up-graded 114 posts in 1979 and given promotion to 114 persons in 1983 to those persons who were working in the Government Dispensaries with effect from 2.11.1979, the day on which the posts were up-graded by overlooking the claim of the original petitioners who were also similarly situated to those 114 persons also. It is clear from the fact that the decision was already taken by the State Government to combine both the cadres of Vaidyas belonging to Panchayats and the Government Dispensaries. In fact, provisional seniority list was published on 4.10.1977 and a common seniority list was published on 30.11.1981. In that view of the matter, in our considered opinion, the learned Single Judge was absolutely right in holding that there was no necessity nor any reason to take decision to promote Vaidyas belonging to Government Dispensaries ignoring the claim of Vaidyas belonging to Panchayat Dispensaries.

5. Having gone through the judgment and order passed by the learned Single Judge, allowing the main writ petition in favour of the original petitioner, even the learned AGP Shri Dave was not in a position to assail the same in view of the

solid and cogent reasons assigned in it. Once the decision was taken to combine both the grades belonging to the Government Dispensaries and Panchayat Dispensaries and the combined seniority list was also prepared then there was no reasons on the part of the State Government to ignore the claim of Vaidyas in Panchayat Dispensaries. In that view of the matter we have no reason to interfere with the Judgment and order passed by the learned Single Judge allowing the writ petition in absence of interim relief granted in the Civil Application and that the appellants have already given effect to the Judgment and order passed by the learned Single Judge. It may be that Appellants State Government and others have given effect to the Judgment of the learned Single Judge subject to the out come of the Appeal, but that would not make any difference as we are more than convince that the Appellants have no case on merit in this Appeal.

6. In view of the above discussion, this main LPA fails and is hereby dismissed. Once the main Appeal is dismissed then Civil Application No. 2361 of 1995 for stay has to be rejected and accordingly it is rejected. Once, we have dismissed the Appeal there is no question of passing any further orders on Civil Application No. 232 of 1998, filed by the original petitioners No. 3 & 5 seeking implementation of the judgment and order passed by the learned Single Judge. If the Judgment is not fully complied with then it is the duty of the State Government and others to fully comply with the same. Not complying the judgment and order passed by the learned Single Judge, confirm in LPA, may constitute Contempt. With this observation, Civil Application No. 232 of 1995 is also disposed of. No order as to costs.

7. It also appears that the matter was carried by the State of Gujarat to the Supreme Court by filing SLP No. 12407/2005. A two judge Bench of the Supreme Court vide order dated 13/7/2005 dismissed the Special Leave Petition.

7.1 Thus from the above, it is evident that the claim of the appellant herein and other identically situated Vaidyas was accepted and the State Government vide order dated 2/12/2005 extended the benefits to the appellant and others in the form of promotion as Class-II with effect from 2/11/1979.

7.2 On 8/2/2008, the State Government issued a resolution relating to the Senior Scale benefits to be extended in favour of the appellant and others in terms of the resolution dated 16/10/1999.

7.3 It also appears that thereafter there was no progress in that regard and ultimately on 25/1/2011, the appellant had to file a representation with the State Government for grant of Senior scale. However, no heed was paid by the State Government to such representation filed by the appellant. On 11/7/2013, the respondent No. 3 herein i.e. the Director of Ayurved, Indian System of Medicine & Homeopath, Gandhinagar forwarded a proposal to the State Government for grant of Senior Scale to the appellant and others. Such proposal as on today is pending with the Finance Department.

8. Mr. Hasit H. Joshi, the learned Advocate appearing on behalf of the appellant submitted that as there was no promotional avenue so far as the Medical Officer (Ayurvedic) Class-II is concerned, the Government vide Resolutions dated 20/3/1991 and 21/3/1991 respectively, decided to provide Senior Scale of Rs. 3000-4500 to 1/3rd officers of the original posts according to the sanctioned set-up of Medical Officers (Ayurvedic) Class-II receiving the pay scale of Rs. 2200-4000 in Class-II. According to Mr. Joshi, vide resolution of the Finance Department dated 6/10/1999 it was decided that the 1/3rd Officers in the Cadre of Medical Officers (Ayurvedic) Class-II receiving the pay scale of Rs. 8000-13500 were to be given the benefits of Senior Scale of Rs. 10000 -15200 w.e.f. 1/1/1996.

8.1 Mr. Joshi submitted that his client as on 1/1/1991 was at Sr. No. 12 in the Seniority List of 315 eligible Medical Officers (Auyurvedic) Class-II published at the relevant point of time and 1/3rd thereof would come to 105 eligible Medical Officers for grant of Senior Scale. According to Mr. Joshi, since his client being placed at Sr. No. 12, he is entitled for the Senior Scale w.e.f. 1/1/1991 and such fact has been completely overlooked by the learned Single Judge while disposing of the writ application being Special Civil Application No. 2400/2011.

9. On the other hand Mr. P.K. Jani, the learned Government Pleader appearing with Ms. Vachha Desai, the learned AGP for the State Government opposed this appeal and submitted that the appellant has already been granted the necessary pay and admissible benefits in terms of the directions and order passed by the learned Single Judge of this Court in SCA No. 2270/1982 referred to above. It was submitted that the District Ayurved Officer vide Office Order dated 2/12/2005 granted the benefits from 2/11/1979 in a scale of Rs. 650-12000 and in a pay scale of Rs. 2200-4000 w.e.f. 1/1/1986 and thereafter in the scale of 8000-13500 with the admissible increment. It was also submitted that according to the resolution passed by the Finance Department dated 16/10/1999, the senior scale is admissible for degree holders in Ayurved/Homeopathy of Rs. 10000-15200 to 1/3rd of the existing Medical posts and the persons who are having required qualification i.e. Degree in Ayurved/Homeopathy. Mr. Jani submitted that the appellant possesses the degree of DSAC (Diploma in Siddh Ayurved Course) which is not at par with the degree course and, therefore, the name of the appellant has not been included in the order so far as grant of senior scale is concerned. In such circumstances referred to above, Mr. Jani would submit that there being no merit in the claim of the appellant the appeal deserves to be dismissed.

10. Mr. Joshi, the learned Advocate appearing for the appellant in rejoinder submitted that his client has been given benefit during his entire service career only once w.e.f. 2/11/1979 till the date of his retirement on 30/11/1999. He submitted that no benefits of promotion or senior scale or the benefits of the Government Resolution dated 16/8/1994 had been extended. Mr. Joshi submitted that his client retired only as Class-II and had not been promoted as Class-I

Medical Officer.

10.1 Mr. Joshi submitted that the submissions canvassed on behalf of the State Government that the appellant is not fulfilling the requirements for the grant of senior scale according to the G.R. dated 16/10/1999, is complete misinterpretation of the G.R. dated 16/10/1999.

10.2 Mr. Joshi gave instances of two such Medical Officers, one Shri K.N. Bhatt and other Shri I.M. Jani who were possessing Ayurved Visharad, but still retired as Class-I Medical Officer. Mr. Joshi also submitted in the rejoinder that as his client was not promoted as Class-I Medical Officer and therefore, he is entitled for Senior Scale.

10.3 Mr. Joshi in support of his submissions has placed strong reliance on a decision of the Supreme Court in the case of S.L. Sachdev and Another Vs. Union of India (UOI) and Others,

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our determination in this appeal is whether the appellant is entitled to draw Higher Grade Scale in terms of the Notification issued by the State Government dated 16/8/1994.

11.1 In the first round of litigation which had commenced in the year 1982, the appellant succeeded before the learned Single Judge of this Court and in view of the judgment and order dated 14/6/1995, the appellant was promoted as Medical Officer, Class-II w.e.f. 2/11/1979. The Seniority was also accordingly fixed and all other consequential benefits which accrued on account of promotion to Class-II cadres were also given to the appellant. The Government lost before the Division Bench of this Court as well as before the Supreme Court.

12. It is not in dispute that after being promoted to Class-II w.e.f. 1979 and grant of all consequential benefits thereto, the appellant remained at the same position till the date of his superannuation i.e. 30/11/1999. The only objection at the end of the State Government so far as grant of Senior Scale is concerned, is with regard to the qualifications. According to the State Government the senior scale is admissible for degree holders in Ayurved/Homeopathy whereas the appellant does not possess the degree of Ayurved but holds a degree of DSAC (Diploma in Siddh Ayurved Course) which is not at par with the degree course. This is the only reason assigned by the State Government in not releasing the senior scale in favour of the appellant.

13. We are of the opinion that the stance of the State Government is not tenable in law, more particularly in view of the decision of the Supreme Court relied upon by Mr. Joshi, the learned Advocate appearing for the appellant. Before we proceed to discuss the decision of the Supreme Court it is necessary to take note of the fact that the Cadre of Ayurved possessing degree in Ayurved/Homeopathy and those possessing the degree of DSAC (Diploma in Siddh Ayurved Course) is

one and the same. The other objection raised by the State Government, so far as grant of the benefit of G.R. dated 17/10/1994 is concerned, is that the Ayurved Doctor working under the Director of Indian System of Medicine and Homeopathy is not entitled to the benefits of the Tikku Pay Commission. This issue has been set at rest by this very Bench as noted above and we have already taken the view that the Ayurvedic Doctors are entitled to the benefits of the Tikku Commission. Therefore, we are now left with only one objection and i.e. with regard to the qualification.

14. In such circumstances, the observations made by the Supreme Court in *S.L. Sachdev and another (Supra)* are worth noting. The observations made by the Supreme Court are as under:

Apart from the injustice in specific cases where UDCs drawn from the Audit Offices are attached to comparatively smaller Circles, the classification made for the purpose of determining the promotional opportunities seems to us unreasonable and arbitrary. It is contended by the learned Attorney-General that persons drawn from different sources were not integrated into a common service in the instant case and therefore different rules of promotion can be applied to the two classes. We are unable to accept this contention. The duties, functions and responsibilities of all the UDCs in the new Organization are identical. They are all in the same cadre and they draw the same pay in the same grade. There is no reason then why different tests should be prescribed for determining their respective promotional opportunities, and that too solely in reference to the source from which they are drawn. The test of educational qualifications can conceivably be an intelligible differentia bearing nexus with the object of ensuring greater efficiency in public services. But once a cadre is formed by recruiting persons drawn from different departments of the government, there would normally be no justification for discriminating between them by subjecting one class to more onerous terms in the matter of promotional chances. The impugned directives are therefore unconstitutional.

15. In view of the above, we have no hesitation in arriving at the conclusion that there is justification in the claim put forward by the appellant and the same deserves to be granted.

16. In view of the above, LPA No. 266 of 2013 stands partly allowed. We hold that the appellant is entitled to the Senior Scale w.e.f. 1991 in terms of the Notification of the State Government dated 16/8/1994. We are informed that the respondent No. 3, Director of Ayurved, Indian System of Medicine and Homeopathy has already forwarded the proposal to the Government for grant of Senior Scale and the same is pending before the Finance Department.

17. We direct that the proposal of the respondent No. 3 be taken-up for consideration within a period of four weeks from today and necessary orders as regards the grant of Senior Scale w.e.f. 1991 be passed within two weeks thereafter. So far as LPA No. 595 of 2013 filed by the State is concerned, the

same is ordered to be dismissed. In the facts and circumstances, there shall be no order as to costs.