

(2011) 10 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 6993 of 1998

Kamlesh N. Meherchandani and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 03-10-2011

Acts Referred:

Citation : (2011) 10 GUJ CK 0008

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Paresh Upadhyay, for the Appellant; Shruti Pathak, AGP, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of this petition, the Petitioner has prayed for the following reliefs:

A. "quash and set aside the communication of the Government dated 03.03.1998, and

B. quash and set aside the impugned order dated 15.11.1996 so far as it states that, the services of the Petitioner is regularized w.e.f. The date of issuance of the said order, and

C. direct the Respondent Government to place the Petitioner immediately after the candidates who are shown in the order dated 02.03.1995 and further direct the Government to regularize the services of the Petitioner w.e.f. 06.06.1986 and,

D. direct the Respondent Government to grant all consequential benefits to the Petitioner.

2. Learned Counsel Mr. Paresh Upadhyay appearing for the Petitioners has submitted that on 30.10.1984, the Petitioners were appointed as Assistant Engineer (Civil) in the Narmada & Water Resources Department on ad hoc basis subject to availability of GPSC candidates. GPSC issued public advertisement on

30.06.1984 for the direct recruitment of Assistant Engineers. However, the Petitioners could not clear the said examination. Thereafter, this Court in Special Civil Application No. 2692, 2070 & 2137 of 1992 by its judgment and order dated 7-9.02.1994 allowed the said Special Civil Applications and issued certain directions.

3. Pursuant to the said directions issued by this Court in the above mentioned Special Civil Applications, an order dated 02.03.1995 came to be passed by the Respondent whereby the services of Assistant Engineers (Civil) who had qualified in the GPSC exam but were shown in the waiting list were regularized from the date of their appointment i.e. 06.06.1986 and the order passed by the Learned Single Judge of this Court was complied with. However, as per the said order of the Learned Single Judge, the candidates who did not clear the GPSC exam but had continued to work as Assistant Engineer (Civil) were to be shown in the seniority list just after those who were in the waiting list. However, vide order dated 15.11.1996 passed by the Respondent, the services of the Petitioners and similarly situated persons came to be regularized with effect from the date of the order i.e. 15.11.1996 and not from 06.06.1986.

4. Hence, the Petitioners challenged the said order dated 15.11.1996 so far as it stated that the services of the Petitioners were regularized w.e.f. the date of issuance of the said order.

5. Learned Assistant Government Pleader Ms. Shruti Pathak appearing for the Respondent has submitted that in view of the fact that the Petitioners were appointed on ad hoc basis subject to availability of GPSC candidates, their services were rightly regularized w.e.f. the date of issuance of the impugned order. Hence, the Petitioners cannot claim that their services be regularized w.e.f. 06.06.1986 in view of the fact that they could not clear the examination conducted by GPSC.

6. Having heard Learned Counsel for the parties, I am of the view that the directions issued by the Learned Single Judge of this Court in Special Civil Application No. 2692, 2070 & 2137 of 1992 by judgment and order dated 7-9.02.1994 are very clear. The relevant directions are extracted below:

The fact situation prevailing in the case before this Court is more or less identical to fact situation prevailing before the Supreme Court in the case of Dr. M.A. Haque (Supra). In the aforesaid fact situation, the Supreme Court held that the Petitioners were entitled to be regularized pursuant to the orders dated 24.09.1987 and 1.11.1988 of the Supreme Court. The order dated 24.09.1987 of the Supreme Court, inter alia, directed that services of the doctors appointed either as Assistant Medical Officers or Assistant Divisional Medical Officers on ad-hoc basis upto 1.10.1984 shall be regularized in consultation with the Union Public Service Commission on the evaluation of their work and conduct based on their conduct reports. Such evaluation was directed to be carried out by the Union Public Service Commission. Doctors so regularized were ordered to be

appointed as Assistant Medical Officers with effect from the date from which they have been continuously working as Assistant Medical Officers / Assistant Divisional Medical Officers. On the aforesaid line, it is permissible for this Court to issue direction to the Respondents to regularize the services of this class of Assistant Engineers (Civil) so that equal treatment is meted-out to them and no exception is made to the requirement of consultation with the Gujarat Public Service Commission. It is true that ordinarily no exception can be made to the recruitment rules and requirement of consultation with Public Service Commission can not be permitted to be arbitrarily by-passed. It is also true that no back-door entry is to be entertained or permitted by the Courts. At the same time, when under administrative exigencies executive itself has resorted to a large scale ad-hoc and temporary appointment of employees which is continued for 7 to 10 years, in the opinion of this Court, a strong case is made out for regularization of services of such employees, subject of course, to such candidates being regularized in consultation with the Gujarat Public Service Commission as was done by the Supreme Court. All other factors being equal, in the opinion of this Court, this petition is also required to be allowed so as to direct the Respondent - State to regularize the services of this class of Assistant Engineers (Civil) in consultation with Gujarat Public Service Commission on the evaluation of their work and conduct based on their conduct reports in respect of period of last 7 years. Such evaluation should be done by the Gujarat Public Service Commission within two months preferably by May 31, 1994. The Assistant Engineers (Civil) so regularized in consultation with Gujarat Public Service Commission shall take bottom seniority, i.e. the seniority below the wait-listed candidates. In the result, all the petitions succeed and rule in each petition is made absolute accordingly with no order as to costs.

7. Furthermore, it is relevant to mention here that against the above referred decision, GPSC preferred Letters Patent Appeal No. 419 of 1996 which also came to be dismissed by the Division Bench of this Court by judgment and order dated 30.04.1997. Hence, the judgment rendered by the Learned Single Judge became final and the same was also accepted by the State Government and implemented by issuing order dated 02.03.1995 whereby the services of Assistant Engineers (Civil) who had qualified in the GPSC exam but were shown in the waiting list were regularized from the date of their appointment i.e. 06.06.1986. However, while regularizing the services of the Petitioners vide order dated 15.11.1996, the Respondent has given the effect to the said order from the date of issuance of the said order i.e. 15.11.1996 and not from 06.06.1986. This is contrary to the directions issued by the Learned Single Judge while delivering the judgment in Special Civil Application No. 2692, 2070 & 2137 of 1992. It goes without saying that while considering the conduct reports in respect of period of last 7 years, the Respondent was directed to regularize the services of this class of Assistant Engineers (Civil) i.e. Petitioners in consultation with Gujarat Public Service Commission on the evaluation of their work and conduct. Since the Respondent while issuing order dated 05.03.1995 regularized the services of one

class of Assistant Engineers (Civil) w.e.f. 06.06.1986, the other class of Assistant Engineers (Civil) cannot be denied the same by saying that it has to be w.e.f. the date of issuance of the said order i.e. 15.11.1996. Hence, the contentions raised by the Petitioner deserves to be accepted and the petition deserves to be allowed.

8. In the result, the petition stands allowed. The impugned order dated 15.11.1996 so far as it states that services of the Petitioner is regularized w.e.f. the date of issuance of the said order is quashed and set aside and the Respondent is directed to regularize the services of the Petitioners w.e.f. 06.06.1986. Rule is made absolute to the above extent. No order as to costs.