

(2019) 06 GUJ CK 0026

In the Gujarat High Court

Case No : ??R/Special Civil Application No. 9712 Of 2019

Kasundramrugesbhai Maheshbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 06 GUJ CK 0026

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Ekrama H Qureshi, Krina Calla

Final Decision : Allowed

Judgement

N.V.Anjaria, J

1. In the facts and circumstances of the case and having regard to the consent and request of the parties appearing through their respective learned

advocates, the petition was taken up for final consideration today.

1.1 Rule returnable forthwith. Learned Assistant Government Pleader Ms.Krina Calla waives service of notice of Rule on behalf of the respondents.

1.2 Heard learned advocate Mr.Ekrama Qureshi for the petitioner and learned Assistant Government Pleader for the respondents.

2. This petition is filed seeking following prayers,

(i) To release the increments with arrears (under the fifth pay and sixth pay as applicable from its respective dates) from the date of the initial

appointment of the petitioner with interest and all other consequential benefits.

(ii) To direct the respondents to treat the petitioner who is appointed as Ad Hoc Lecturer (ClassÂII) after May 2008 at par with the ad hoc lecturers

appointed prior to May 2008 and to grant the pay and pay scales and annual increments and salary benefits at par with them and also to give the

arrears of salary (under the relevant pay commission as become applicable from its respective dates) with interest.

3. The petitioner was appointed as ad hoc Lecturer (Class II) in K.D. Polytechnic College, Patan, by order dated 29.07.2008 of the Commissioner of

Technical Education – respondent No.2 herein, in the pay scale of Rs.8000-275-13500. It is the grievance of the petitioner that his salary was kept

stagnant and the increments were not released. It was the case that though the work discharged by the petitioner was of the same kind and level as

was done by the similarly situated ad hoc Lecturers who were appointed prior to May, 2008, the petitioner was denied the equal basic pay, increments,

vacation leave, medical, LTC and other benefits.

4. Learned advocate for the petitioner submitted that when all the identically situated Lecturers appointed prior to May, 2008, were granted the

benefits, non-granting of the same to the petitioner was manifestly arbitrary and in violation of Articles 14 and 16 of the Constitution.

4.1 Learned advocate for the petitioner submitted that the issue involved in this petition was already answered by this Court in *Jain Soniya*

Rajeshkumar vs. State of Gujarat, being Special Civil Application No.3919 of 2018, decided by judgment dated 03.04.2019.

4.2 Learned Assistant Government Pleader could not dispute the law laid down by this Court in *Jain Soniya Rajeshkumar (supra)* and the applicability

thereof to the facts of the present case.

5. Similar to the petitioner of *Jain Soniya Rajeshkumar (supra)*, the petitioner herein is also ad hoc Lecturer appointed after May, 2008. They are being

paid only basic pay of Rs.8,000/- in the aforementioned pay scale and they are not given any other benefits.

5.1 The contention could be countenanced that by not extending to the petitioner the pay scale and other identical benefits as are given to the class

of ad hoc Lecturers appointed prior to May, 2008, the respondents have created a class within class and they have divided the homogeneous class of ad

hoc Lecturers.

5.2 In *Jain Soniya Rajeshkumar (supra)*, the Court relied on the decision in *Acharya Madhavi Bhavin and 115 vs. State of Gujarat*, being Special Civil

Application No.8152 of 2015 and allied petitions, decided on 07.09.2016. In the said batch of petitions also the petitioners were similarly situated who

had raised identical grievance that the ad hoc Lecturers appointed prior to May, 2008, are granted the regular pay scale and those appointed

subsequent to May, 2008, are being deprived of the regular pay and the incidental service benefits.

5.3 In the decision rendered in Acharya Madhavi Bhavin (supra), this Court in the operative paragraph 65 held as under,

“In the result, all the writ applications succeed in part. The State is directed to put the ad hoc Lecturers appointed after May 2008 on par with the

ad hoc Lecturers appointed prior to May 2008. The ad hoc Lecturers appointed after May 2008 shall be paid the salary and other allowances on par

with the same received by the ad hoc Lecturers appointed prior to May 2008. Such benefits shall be granted to them with effect from January 2015

onwards. It is directed that the contractual Lecturers shall be paid the minimum of the pay scale so far as the post of Lecturer is concerned with all

other allowances attached to the same with effect from January 2015.”

5.4 The aforesaid decision was carried in Letters Patent Appeal No.1184 of 2017 along with other cognate petitions. The said challenge was directed

to the aspect that the benefits came to be directed to be granted to the petitioners from the year 2015 onwards and not from their initial appointments.

5.5 The Division Bench in the Letters Patent Appeal, observed and held as under,

“[8.3] Now, so far as Letters Patent Appeal No.1184/2017 preferred by the original petitioners of Special Civil Application No.8152/2015

challenging the impugned common judgment and order passed by the learned Single Judge insofar as granting the reliefs fully with effect from January

2015 onwards only and not granting the reliefs from their initial appointment is concerned, at the outset it is required to be noted that as such the

learned Advocate appearing on behalf of the original petitioners before the learned Single Judge heavily relied upon the decision of the Bombay High

Court in the case of Sachin Ambadas Dawale (Supra) in Writ Petition No.2046/2010 in support of their submission that their services must be

regularized from the date of their initial appointment. However, the learned Single Judge though observed that he could have followed the decision of

the Bombay High Court, which came to be affirmed by the Honble Supreme

Court, and could have issued the directions in tune with the one issued by the Bombay High Court as regards regularization of service, however, he was not inclined to issue any mandamus in that regard. The learned Single

Judge in para 64 has observed as under:

“64. I am of the view that the aforementioned Notification is in no manner helpful to the writ applicants and could hardly be said to be in line with the

suggestion of this Court referred to above. I could have followed the Division Bench decision of the Bombay High Court referred to above, which

came to be affirmed by the Supreme Court, and could have issued directions in tune with one issued by the Division Bench of the Bombay High Court

as regards regularisation in service. However, for the present, I am not inclined to issue any mandamus in this regard. At the same time, I am of the

firm view that the ad hoc Lecturers appointed after May 2008 should be put on par with the ad hoc Lecturers appointed prior to May 2008 and should

be paid the pay scale and other benefits accordingly. In the same way, I am of the view that the contractual Lecturers should be paid the minimum of

the pay scale so far as the post of Lecturer is concerned with all other allowances attached to the same.”

There is no further justification at all by the learned Single Judge to grant the benefits after putting them at par with those appointed prior to May 2008

from January 2015 onwards only. However, at the same time considering the decision of the Honble Supreme Court in the case of Shiv Dass (Supra),

the original petitioners shall be entitled to the benefits at par with those adhoc lecturers appointed prior to May 2008 from the last 3 years preceding

filing of the petition. There is no justification at all in granting such benefits with effect from January 2015 onwards only. Once it is held that all those

adhoc lecturers / Assistant Professors appointed after May 2008 shall be put at par with the adhoc lecturers appointed prior to May 2008, they are

entitled to such benefits for the period even prior to filing of the petitions. However, they can be granted the benefits of last 3 years from the date of

filing of the petition only. Therefore, to the aforesaid extent the impugned common judgment and order passed by the learned Single Judge is required

to be modified and Letters Patent Appeal No.1184/2017 is required to be partly allowed to the aforesaid extent. Considering various decisions of the

Honble Supreme Court as well as this Court, the original petitioners who as such

are appointed as adhoc lecturers and till the regular selected GPSC

candidates are available, the learned Single Judge has right not granted the relief of regularization, however at the same time has rightly put them at

par with other similarly situated employees insofar as the salary and other benefits are concerned. The impugned judgment and order passed by the

learned Single Judge is absolutely in consonance with the decision of the Honble Supreme Court in the case of Jagjit Singh (Supra). In the aforesaid

decision the Honble Supreme Court in para 42.2, 42.3, 42.6 and 42.7 has observed and held as under:

42.2 The mere fact that the subject post occupied by the claimant, is in a different department vis-à-vis the reference post, does not have any

bearing on the determination of a claim, under the principle of equal pay for equal work. Persons discharging identical duties, cannot be treated

differently, in the matter of their pay, merely because they belong to different departments of Government (see Randhir Singh case⁷ and D.S. Nakara

case).

42.3 The principle of equal pay for equal work, applies to cases of unequal scales of pay, based on no classification or irrational classification (see

Randhir Singh case⁷). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being

functionally equal, should be of the same quality and sensitivity (see Federation of All India Customs and Central Excise Stenographers case⁹, Mewa

Ram Kanojia case¹¹, Grih Kalyan Kendra Workers Union case⁶ and S.C. Chandra case).

42.6 For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a

regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see Orissa

University of Agriculture & Technology case).

42.7 Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as a selection

grade, in the same post. But this difference must emerge out of a legitimate foundation, such as merit, or seniority, or some other relevant criteria (see

State of U.P. v. J.P. Chaurasia)¹²

[9.0] In view of the above and for the reasons stated above, Letters Patent

Appeal Nos.1354/2017, 1359/2017 and 2148/2017 preferred by the appellant original respondents State Authorities deserve to be dismissed and are, accordingly, dismissed. Letters Patent Appeal No.1184/2017 in Special Civil Application No.8152/2015 preferred by the original petitioners of Special Civil Application No.8152/2015 is hereby partly allowed and the impugned judgment and order passed by the learned Single Judge in Special Civil Application No.8152/2015 is hereby modified to the extent it is held that the original petitioners shall be entitled to the salary and other benefits at par with those adhoc lecturers appointed prior to May 2008 and they shall be granted such benefit from the last 3 years preceding the filing of the petition i.e. from 2012 onwards. No costs.â??

6. Thus, the Division Bench partly allowed the Letters Patent Appeal against the judgment in Special Civil Application No.8152 of 2015, and directed that the petitioners shall be entitled to salary and other benefits at par with those adhoc Lecturers appointed prior to May, 2008 and that they shall be granted such benefits from the last three years preceding the filing of the petition, that is from 2012 onwards.

6.1 The present petitioner constitutes the same class and is entitled to the same relief by treating him with parity. Accordingly, the present petition is allowed by directing the respondents to grant to the petitioner the pay and pay scale as well as the annual increments and other incidental benefits at par with the other adhoc Lecturers appointed prior to May, 2008 from 2012 onwards. The relief and the directions given by this Court in Acharya Madhavi Bhavin (supra), as modified by the Letters Patent Bench in Letters Patent Appeal No.1184 of 2017 shall govern the present petitioner also.

7. The present petition is allowed accordingly. Rule is made absolute to the said extent.