

(2011) 07 GUJ CK 0090
In the Gujarat High Court

Case No : Special Civil Application No. 5512 of 2004 and Civil Application No. 13555 of 2010 in Special Civil Application No. 5512 of 2004

K.M. Guna Thilaka and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Constitution of India, 1950 — Article 229

Citation : (2011) 07 GUJ CK 0090

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

Bench : Single Bench

Advocate : Paresh Upadhyay, for Petitioners 1-49, for the Appellant; Kamal Trivedi, General, P.K. Jani, Government Pleader, Sangita Vishan, AGP for Respondents 1-3 and GM Joshi, for Respondent 4, for the Respondent

Judgement

K.S. Jhaveri, J.—Heard learned Counsel for the parties.

2. In pursuance of the suggestion of the Court and exercise undertaken by the High Court on its administrative side, certain developments have taken place.

3. Today, Mr. Kamal Trivedi, learned Advocate General and Mr. P.K. Jani, learned Government Pleader appearing on behalf of the State Government submitted that the State Government has issued the notification No. SCA/102008/5512/D dated 10.2.2010 of the Legal Department increasing the posts of Principal Private Secretaries to 50% strength of the feeder cadre of Private Secretaries with retrospective effect from 21.11.2008. Mr. Trivedi has further stated that the State Government has agreed that it is for the Honourable the Chief Justice to fix the eligibility criteria for promotion to the post of Principal Private Secretary under the provisions of Article 229 of the Constitution of India, as stated in Civil Application No. 13555 of 2010 in Special Civil Application No. 5512 of 2004.

4. Mr. Trivedi produced a copy of the Resolution No. SCA/102010/1901/D dated 21.7.2011 and stated that the State Government in consultation with the

Honourable the Chief Justice has issued the said Resolution accepting proposal dated 24.6.2011 made by the Honourable the Chief Justice under the provisions of Article 229 of the Constitution of India. The said Resolution is ordered to be taken on record which reads as under.

The Legal Department, Govt. of Gujarat vide its GR of even No. dated 10.2.2010 resolved that the 50% posts of Stenographer Grade-I in the payscale of Rs. 6500-10500 (pre-revised), revised payscale of Rs. 9300-34800, Grade Pay Rs. 4400) (i.e. Private Secretaries) borne on the establishment of High Court, Gujarat shall be treated to have been upgraded as Principal Private Secretaries (pre-revised payscale of Rs. 10000-15200 and revised payscale of Rs. 15600-39100, Grade Pay Rs. 6600). It was inter-alia mentioned in the GR that it would be effective from 20.11.2008 as also that the benefit of GR would be available to those Private Secretaries who satisfy the eligibility criteria for promotion as Principal Private Secretaries.

The High Court of Gujarat took up the following two issues with the Government which arose from the premises of the said GR LD dated 10.2.2010.

- (i) Doing away with the condition for grant of promotions as Principal Private Secretaries to only those Private Secretaries who satisfy the basic criteria; and
- (ii) Giving retrospective effect to the GR from 1.1.86.

RESOLUTION

After detailed discussions and careful consideration of all the aspects involved in the matter as also keeping in view the contents of the High Court of Gujarat's letter dated 24.6.2011, Government is pleased to amplify the GR LD of even No. dated 10.2.2010 as under.:

(a) In so far as the question of giving promotion to only those Private Secretaries as PPS who satisfy the basic eligibility criteria for such promotions, the Government is pleased to decide that the Hon"ble Chief Justice of the Gujarat High Court is competent to decide about eligibility criteria for grant of such promotions and, therefore, it will be for the Hon"ble Chief Justice of the Gujarat High Court to decide and prescribe such eligibility criteria as may deem fit for grant of such promotions.

(b) As regards the question of grant of retrospective effect to the GR LD of even No. dated 10.2.2010, Government is pleased to upgrade 18 posts of Private Secretaries to the grade of Principal Private Secretaries from 1.1.1986. The High Court of Gujarat can give retrospective promotions to the 18 P Ss to PP Ss against such upgraded posts from retrospective effect as shown below:

Sr. No.

Date of Retrospective Promotion

No. of persons to whom such promotion will be given

1
16.10.1990
1
2
01.09.1991
1
3
16.11.1991
1
4
01.03.1994
1
5
16.04.1994
1
6
14.07.1994
1
7
04.10.1994
1
8
31.12.1994
1
9
31.12.1994
1
10
25.03.1996
1

11

05.05.1996

1

12

01.09.1998

1

13

20.09.1998

1

14

16.08.1998

2

15

01.09.1998

3

TOTAL

18 persons.

The High Court of Gujarat can also give promotion to 3 more Private Secretaries from 1998 onwards against the consequential vacancies i.e. in all 21 P Ss will get the benefit of retrospective promotion to the grade of PPS.

While undertaking the exercise of grant of retrospective promotions as mentioned above, the following aspects will be adhered to:

(I) The upgradation of Private Secretaries as Principal Private Secretaries will be limited to the sanctioned strength of the Hon"ble Judges of the High Court as on 1.1.1986 (i.e. 21) meaning thereby that only 18 posts of Private Secretary will be upgraded as mentioned above, in addition to the 3 posts already upgraded earlier with effect from 1.1.86, to make it equivalent to the strength of Hon"ble Judges in the High Court as on 1.1.86.

(II) The fixation of pay on retrospective promotions will be notional for the period from 1.1.86 to 30.6.2011. The incumbents of the posts of PPS who got the benefit of retrospective promotion as mentioned above, will get the actual benefit of pay and allowances in the grade of PPS from 1.7.2011.

(III) Because of such retrospective upgradation of the posts of PS to the level of PPS and retrospective promotion to the eligible Private Secretaries from 1.1.86,

there should not be any financial burden of arrears, etc. The fixation of pay would be notional only. The actual benefit of upgradation will be available to the concerned Stenographers from 1.7.2011.

This issues with the concurrence dated 6.7.2011 of the Finance Department and dated 4.7.2011 of GAD on this department's file of even No.

5. It is further stated by Mr. Trivedi that the aforesaid resolutions have been issued only looking to the arduous and special nature of duties performed by the Private Secretaries in the High Court of Gujarat. He, therefore, submitted that in view of these developments, the issue in question now stands resolved finally and the petition may be disposed of accordingly.

6. Mr. Gautam Joshi, learned Counsel appearing for the High Court stated that the Honourable the Chief Justice has recently amended the High Court of Gujarat (Recruitment and Conditions of Service of Staff) Rules, 1992 in exercise of powers under Article 229 of the Constitution of India. In the amended Rule, i.e. the High Court of Gujarat (Recruitment and Conditions of Service of Staff) Rules, 2011, in Schedule "D" at Sr. No. 15 the Honourable the Chief Justice has prescribed minimum experience of 8 years of service in the feeder cadre of Private Secretary for promotion to the post of Principal Private Secretary. He further stated that in view of the aforesaid developments, the petition would not survive.

7. In aforesaid view of the matter, as the matter now stands fully resolved by the Notification dated 10.2.2010 issued by the Legal Department, Government of Gujarat, the Resolution dated 21.7.2011 and also the provisions made in the new Rules by the Honourable the Chief Justice at Sr. No. 15 of Schedule "D" to the High Court of Gujarat (Recruitment and Conditions of Service of Staff) Rules, 2011, the petition no more survives and has become infructuous. This may not be considered for parity for any other cadre.

8. Accordingly, Special Civil Application No. 5512 of 2004 and the connected Civil Application both stand disposed of as having become infructuous. Learned Advocate General is relieved from his statement made in Civil Application No. 13555 of 2010. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.