

(2022) 12 GUJ CK 0065
In the Gujarat High Court

Case No : R/Special Civil Application No. 11969 Of 2022

Minaxi Nishikant Chakranarayan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-12-2022

Acts Referred:

Citation : (2022) 12 GUJ CK 0065

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Meet D Pansuria, Aditya S Pathak

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. The present writ petition has been filed for the following relief:

"8A. The Hon'ble Court be pleased to issue appropriate writ, order or direction for quashing and setting aside (a) order dated 13.06.2003 (Annexure J herein) passed by the Additional Secretary, Education Department, Government of Gujarat; (b) both orders dated 30.05.2001 (Annexure F Collectively herein) passed by the District Education Officer; (c) Order dated 23.04.2001 (Annexure E herein) passed by the Gujarat Secondary Education Tribunal and (d) the order dated 06.12.1999 (Annexure D herein) passed by the District Education Officer.

B. The Hon'ble Court be pleased to issue appropriate writ. Order or directions for approving the appointment of the petitioner from the date of their appointment i.e 21.06.1999 so as to enable the petitioners to obtain consequential benefit of their service for the period from 21.06.1999 to 31.08.2001."

2. Thus, as the prayer clause suggests that the petitioners are seeking quashing and setting aside of the orders dated 13.06.2003 passed by the Additional Secretary, Education Department, 30.05.2001 passed by the District Education Officer and the order dated 23.04.2001 passed by the Gujarat Secondary

Education Tribunal (Tribunal) and the order dated 06.12.1999 passed by the District Education Officer after a delay of almost 22 years.

3. The entire case of the petitioners hinges on subsequent judgement dated 06.05.2013 passed by this Court in Special Civil Application No.6126 of 2001, in the case of some other employee.

4. It is not in dispute that the petitioners had approached the Tribunal by filing Application Nos.269 and 270 of 2000 challenging the objection raised by the District Education Officer dated 06.12.1999, wherein the D.E.O. has refused to accord approval to the appointments of the petitioners and also seeking declaration that they are entitled to receive salaries in the pay-scale of Rs.5000-8000 with effect from 21.06.1999 under D.P.S. Scheme.

5. By the judgement and order dated 23.04.2001, which is impugned in the present petition, the Tribunal has rejected the applications filed by the petitioners. The Tribunal has refused to interfere with the order by observing that due to the ban imposed by the Government on recruitment, the officers of the department have not accorded approval to the appointments for the purpose of grant.

6. The petitioners challenged the said order by filing a writ petition being Special Civil Application No.6852 of 2001 and by the order dated 28.11.2001, this Court disposed of the writ petition by reserving liberty in favour of the school to file a representation before the State authority. Liberty was reserved in favour of the School to challenge adverse order that may be passed on the representation. The judgement and order passed by the Tribunal was not quashed, however direction was issued to the DEO, Ahmedabad to sanction salary of the petitioners and pay arrears.

7. Thereafter, it appears that the respondent-School made a representation dated 18.12.2001 to the Secretary, Education Department, asking for approval for placing the petitioners in the Direct Pay Scheme for the period from 21.06.1999 to 31.08.2001.

8. By the order dated 13.06.2003, the representation dated 18.12.2001 of the School was also rejected. Neither the School challenged the said decision nor the petitioners.

9. Subsequently, it appears that in case of some another employee of the same School, who filed Special Civil Application No.6126 of 2001, this Court, by the judgement dated 06.05.2013 allowed the said writ petition partly and directed the respondents to accord approval to the appointment of the said petitioner for the purpose of grant and further directed to pay regular salary to the petitioner under the Direct Payment of Salary Scheme by treating appointment of the petitioner admissible to grant from the date of the appointment. The petitioners herein, taking clue of the aforesaid judgement, has filed the present writ petition being Special Civil Application No.11969 of 2022.

10. Learned advocate Mr.Pansuria has placed reliance on the judgement of the Apex Court in the case of Rushibhai Jagdshbhai Pathak Vs. Bhavnagar Municipal Corporation, 2022 S.C.C. OnLine S.C. 641 and has submitted that the petitioners would also be entitled to the same benefits, which have been ordered to be given to the petitioner of Special Civil Application No.6126 of 2001 by the judgement dated 06.05.2013. He has submitted that the benefits can be restricted for a period of three years as envisaged by the judgement and order of the Apex Court. Thus, the petitioners are seeking the same benefits, which have been extended to one of the employees of the School in view of the judgement dated 06.05.2013 passed in Special Civil Application No.6126 of 2001. It is thus submitted that in view of the subsequent judgement, the impugned decision as well as the order of the Tribunal may be quashed.

11. The facts, as narrated hereinabove, are not in dispute. All the legal proceedings, including the proceedings before the Tribunal have become final in the year 2001 when the applications of the petitioners challenging the action of the D.E.O., Ahmedabad in refusing to accord approval to the petitioners was rejected vide judgement and order dated 23.04.2001. The writ petition being Special Civil Application No.6852 of 2001 filed by the petitioners against the order dated 23.04.2001 passed by the Tribunal was also disposed of, by reserving liberty in favour of the School to file a representation before the State authority. Liberty was also reserved in favour of the School to challenge any order that may be passed on the representation that was to be made by the authority. Pursuant to the order passed in Special Civil Application No.6852 of 2001 dated 28.11.2001, the School had made a representation to the respondent authority, which was also rejected by the order dated 13.06.2003 by observing that the petitioners are not entitled to any benefit from 21.06.1999 to 31.08.2001 and cannot be accommodated in Direct Pay Scheme. Neither the petitioners nor the School challenged the order dated 13.03.2003 before any forum, though, in the order dated 28.11.2001, liberty was reserved in favour of the school to challenge adverse order, the school did not challenge the same. The petitioners also accepted the order passed by this Court as well the order dated 13.06.2003 passed by the State authority. Hence, once the orders have become final, the petitioners cannot be allowed to take volte face and again challenge the judgement passed by the Tribunal dated 23.04.2001. The proceedings have become final. Merely because there is subsequent decision in case of another employee, such decision cannot resurrect the legal proceedings, which have become final. The present writ petition is thus barred by the principle of res judicata. In case, the contention or approach of the petitioners is accepted, the same will lead to a very anomalous and perilous situation, since every litigant whose dispute has become final and has been laid to rest by a court of law, will approach the Court again after a new law is enunciated by the courts of law on the same set of facts and issue.

12. The petitioners should have further challenged the impugned judgement of the Tribunal or of Coordinate Bench of this Court before the higher forum. It was

also open for them to seek review or recall of the orders, however nothing was done by them and they remained dormant for all these years. Having accepted the orders passed by this Court and the impugned order dated 13.06.2003, the petitioners cannot take benefit of the judgement dated 06.05.2013, which is passed subsequently in case of some employee that too after a period of nine years of passing of such judgement. The judgment of the Tribunal has merged with the order passed by this Court, hence the same cannot be challenged now. Thus, the orders which have become final cannot be again questioned after a period of almost 22 years by filing the present writ petition.

13. The judgement, on which the petitioners have placed the reliance in case of Rushibhai Jagdshbhai Pathak (*supra*) will not apply in the facts of the case since in the present case, the petitioners having accepted the judgement and order of the Tribunal confirmed by this Court as well as the order passed by the authority, hence they are not entitled to any benefit arising out of subsequent judgement, passed in favour of another employee.

14. The present writ petition is ill-conceived, hence it is summarily rejected.