
(2010) 04 GUJ CK 0048

In the Gujarat High Court

Case No : Special Civil Application No. 8025 of 1989

Mithileshben L. Sharma

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2010) 04 GUJ CK 0048

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

Bench : Single Bench

Advocate : N.J. Mehta Asso. and Shalin N. Mehta, for the Appellant; Krina Calla, AGP, for the Respondent

Final Decision : Dismissed

Judgement

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

15. In view of the aforesaid premises, the petitioner approaches Your Lordships by way of this petition under Article 226 of the Constitution of India and prays that your Lordships may be pleased to issue a writ of mandamus, certiorari or any other appropriate writ, direction or order:

(A) declaring that the petitioner's reversion from the post of Deputy Mamlatdar to the post of Circle Inspector was illegal, arbitrary and violative of Articles 14 and 16 of the Constitution;

(B) quashing and setting aside the order of reversion of petitioner from the post of Deputy Mamlatdar to the post of Circle Inspector dtd. 1.8.88 at Annexure "G";

(C) quashing and setting aside the impugned order of petitioner's reversion from the post of Circle Inspector to the post of Clerk dtd. 7.1.89 at Annexure "H";

(D) directing the respondent "authorities to continue the petitioner as Circle Inspector and further directing the respondent "authorities to forthwith promote

the petitioner as Deputy Mamlatdar and grant him all consequential benefits as if reversion orders dtd.1.8.88 and 7.1.89 had never been passed;

2. The case of the petitioners is that deceased L.K. Sharma joined the service of the State Government as Clerk on 15.01.1960 and got promotion to the post of Deputy Mamlatdar on 19.03.1974 on which post he worked upto 04.08.1988. The said L.K. Sharma was reverted in the year 1978 against which he filed Special Civil Application No.2649/1978, wherein he was granted stay and the said petition was disposed of by this High Court on 20.06.1986. It is further case of the petitioners that said L.K. Sharma was again sought to be reverted against which he preferred Misc. Civil Application No.198/1984 in Special Civil Application No.2649/1978 which was disposed of on 03.05.1984, on the basis of statement of opponent that Mr. Sharma would not be reverted from the post of Deputy Mamlatdar.

The said L.K. Sharma received a notice on 12.08.1986 informing him that he would be reverted from the post of Deputy Mamlatdar within 15 days. Mr. L.K. Sharma replied to the said notice. Despite the notice he was allowed to function as Deputy Mamlatdar. However, on 31.07.1988, the Collector, Banaskantha passed an order of reversion of L.K. Sharma to the cadre of Clerk with effect from the date of order as he had not cleared the Lower Revenue Qualifying Examination. It is the case of petitioners that L.K. Sharma alongwith some other employees by virtue of order dated 01.08.1988 was reverted from the post of Deputy Mamlatdar to the post of Circle Inspector wherein he stood at Sr.No.23 and he served on the said post of Circle Inspector upto 07.01.1989 from which he was reverted to the cadre of Clerk. Mr. L.K. Sharma addressed letters dated 11.04.1989 and 02.05.1989 requesting the Collector to continue him in the cadre of Circle Inspector against which Collector office wrote a letter to Revenue Department, Gandhinagar on 22.05.1989 recommending to continue him as Circle Inspector as a special case. The Revenue Department, Gandhinagar in reply, addressed a communication dated 10.07.1989 and left it to the discretion of the Collector to decide with regard to continuity of L.K. Sharma as Circle Inspector. It is the case of the petitioners that Collector "respondent No.3 has not used his discretion in cancelling the impugned order of reversion dated 07.01.1989.

Feeling aggrieved, Mr. L.K. Sharma preferred this petition. During the pendency of the petition, Mr. L.K. Sharma passed away and his legal heirs and representatives were brought on record of this petition.

3. The respondent No.3 "Resident Deputy Collector has filed affidavit-in-reply wherein he contended that under the consent terms, it was agreed between the parties that the original petitioner will not be reverted from the post of Deputy Mamlatdar till disposal of litigations pending before the Hon"ble Supreme Court. The respondent No.3 also submitted that the notice for reversion was given to the original petitioner on 12.08.1986 and till 15 days thereafter, no action was taken by the respondents as decided under the consent terms but as the

petitioner failed to obtain any order from the Court against his reversion, he was reverted vide order 31.07.1988. The respondent No.3 has also submitted that due to scarcity of work and abolition of the post of managers of grass depots, no post of clerk was vacant where the petitioner could have been reverted and therefore, the petitioner was reverted to the post of Circle Inspector as a stop gap arrangement. The respondent No.3 has admitted that it was left to the Collector by the Revenue Department to decide about regularizing the petitioner in the cadre of Circle Inspector but it would have led to further litigations by the employees junior to the petitioner as regards their promotions and therefore, petitioner was not regularized in the cadre of Circle Inspector and was further reverted to the post of Clerk.

4. Mr. Shalin Mehta, learned Counsel for the petitioner has contended that the petitioner is entitled for higher pay-scale pursuant to the resolution (Annexure 2) passed in meeting dated 28.12.1992 and it has been resolved that petitioner is entitled for higher pay-scale from 1.6.1987. However, since departmental inquiry was pending, he being at Sr.No.34 was not given the higher pay-scale. Subsequently, an order is passed on 16th April 1994 whereby u/s 6(2) of Gujarat State Services (Disciplinary and Appeal) Rules, 1971, increment of Shri L.K. Sharma, due from the date of passing of the order, was stopped without future effect. Learned Counsel for the petitioner also contended that as per para 3(5) of Resolution dated 16/8/1994, if Shri L.K. Sharma would have been given exemption from departmental examination then, as per the provisions of resolution dated 16/8/1994, he is entitled to get benefit of higher pay-scale. Mr. Mehta also submitted that effect of stoppage of nine increments will end after nine months.

5. I have heard the learned advocates for the parties and perused the relevant record.

6. As regards the reversion is concerned, it is because of the closure of District Depot and the petitioner was required to be accommodated somewhere. It is purely an administrative exigency.

7. Further, in my view nine increments will stop after nine years and therefore, petitioner will be entitled for higher pay-scale from the year 2003 before which he has retired. Therefore, no further benefit of higher pay-scale can be given. Even if it is calculated from 01.06.1987, nine years will end in the year 1996 before which also he has retired. In that premise, no further order is required to be passed.

8. The petition, in the light of the aforesaid discussion, deserves to be dismissed and the same is dismissed accordingly. Rule is discharged with no order as to costs.