

(2022) 05 GUJ CK 0015
In the Gujarat High Court

Case No : R/Special Civil Application No. 12516, 12824 Of 2020

Mudassir Aziz Ahmed Maniar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Civil Services (Pay) Rules, 2002 — Rule 9(82), 11, 13, 16, 23, 23(2), 24, 53(9), 63
Gujarat Civil Services (Revision Of Pay) Rules, 1994 — Rule 2(53)

Citation : (2022) 05 GUJ CK 0015

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Hunaiza H Qureshi, Ekrama H Qureshi, Surbhi Bhati

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule, returnable forthwith. Ms. Surbhi Bhati, learned Assistant Government Pleader waives service of notice of Rule for the respondents – State.
2. With the consent of the learned advocates appearing for the respective parties, both the petitions were taken up for its final disposal.
3. In both these petitions, under Article 226 of the Constitution of India, the petitioners have prayed for a direction that their services, ad-hoc as well as regular on the diploma side should be treated as continuous alongwith that of the degree side for the purposes of pay, leave, pension and other consequential benefits. The petitioners have also prayed that their pay on being appointed on the degree side as Assistant Professors be protected.
4. In SCA No.12824 of 2020, the respondents by communication dated 19.3.2015, 13.2.2017 and 27.6.2019 have rejected the case of the petitioner for protection of pay on the ground that since the petitioner was appointed from the

diploma side to the degree side, and he was availing higher pay scale in his earlier post at the polytechnic side and by virtue of his appointment in the degree side since he is on lower pay scale post, the benefit of pay protection cannot be granted.

5. For the purposes of this judgment, the facts of SCA No.12824 of 2020 shall be considered.

5.1. The petitioner was appointed as lecturer Class II (Electrical Engineer) at Government Polytechnic in the pay scale of Rs.8,000-13,500/- by order dated 22.3.2002. He was, thereafter, appointed as a regular lecturer Class-II after being selected through the GPSC by order dated 23.5.2005. By an order dated 26.4.2007, the services of the petitioner on ad-hoc basis was regularized and the pay was fixed at Rs.8,825/-. The petitioner was granted senior scale of Rs.10,000-15,200/- on completion of six years of service by an order dated 16.10.2009.

5.2. The petitioner was by an order dated 12.3.2010 selected as lecturer Class II on the degree post and re-designated as Assistant Professor Class II in the scale of Rs.9,300-34800/- and grade pay of Rs.5,400/-. He was, then, fixed in the grade pay of Rs.6,000/-. 5.3. On the 6th pay commission being implemented as per AICTE, the petitioner's pay fixation when he was diploma side was fixed with his basic salary to be Rs.20,610/- with grade pay of Rs.7,000/-. He attained the degree side without any break with effect from 6.4.2010.

5.4. The petitioner made representations from time to time since the petitioner was in the senior scale of Rs.15,600-39,100/- with grade pay of Rs.7,000/- in the diploma side, having got an appointment at the degree side on 6.4.2010 in the scale of Rs.15,600-39,100/-, the grade pay of Rs.6,000/-, is grade pay ought to be protected of Rs.7,000/-. Representations were made by the petitioner pointing out that his services as ad-hoc on the diploma side from 4.4.2001 to 28.2.2005 and regular service on the diploma side from 28.2.2005 to 5.4.2010 be treated as continuous. It appears that by the impugned orders, the representations of the petitioner for pay protection has been rejected on the ground that since the petitioner was appointed in the pay scale, initially, with a grade pay Rs.7,000/- and on being subsequently selected and appointed on the degree side with the same pay scale but with the grade pay of Rs.6,000/-, being an appointment from the higher scale to the lower scale, he cannot get the benefit of pay protection.

6. Mr. Ekrama H. Qureshi, learned counsel for the petitioners would submit that initially both for the lecturers of diploma as well as degree, the pay scales were the same. On interpretation of the 6th pay commission, the AICTE came out with regulation at the degree and diploma side and for the first time, the concept of grade pay was introduced. The pay scales for both; diploma and degree side was fixed that Rs.15,600-39,100/- but the grade pay changed, inasmuch as, for the diploma at the entry level, it was Rs.5,400/- and at the degree side it remained

Rs.6,000/-. The petitioner was drawing the grade pay of Rs.7,000/- on diploma side and when he was appointed on the degree side, he was granted the entry level grade pay of Rs.6,000/-. Reliance on Rule 23 of the Gujarat Civil Services (Pay) Rules, 2002 by the respondent is misconceived.

6.1. Mr. Qureshi would submit that apart from Rule 23, there are other Rules which also would be applicable and merely because the Rule 23 uses the word pay scale of the post would not itself dis-entitle the petitioner from pay protection. He would submit that the concept of grade pay was introduced after the 6th pay commission and from the pay fixation order of the petitioner, it is clear that as on 1.7.2019, the pay of the petitioner was Rs.20,610/- with AGP Rs.7,000/- which became Rs.15,600/- after joining degree side with grade pay of Rs.6,000/-.

6.2. Mr. Qureshi would submit that the Central Government after the concept of introduction of grade pay came out with an office memorandum dated 5.11.2012, wherein, it was specifically provided that having been implemented of the revised pay structures, the government servants who were on posts carrying lower grade pay will have their pay fixed in the pay band at a stage equal to the pay in the pay band drawn by him prior to his appointment. He will be granted the grade pay of a lower post. Such amendment has not been made as far as the State is concerned.

7. Ms. Surbhi Bhati, learned AGP for the respondent – State would submit that the benefit of pay protection have been granted to those who are getting grade pay of Rs.5,400/- to put them in the grade pay of Rs.6,000/-. She would submit that the petitioners are not entitled for counting their past ad-hoc and regular services rendered in the polytechnic side alongwith that of the degree side for the purposes of pay, leave, pension and other consequential benefits. She would submit that the petitioners were appointed as Assistant Professors in the pay scale of Rs.15,600-39,100/- with grade pay of Rs.6,000/-. Their initial appointment was in the grade pay of Rs.7,000/-. The benefit of pay protection is rightly denied because the petitioner was availing higher pay scale in his earlier post at the polytechnic side and now the petitioner is at lower pay scale post after selection through GPSC on degree side. She would rely on Rule 23 of the Rules, 2002.

7.1. Ms. Bhati would also rely upon the judgment of the Honorable Supreme Court in the case of Divisional Manager, Aravali Golf Club v. Chander Hass and others reported in 2007(14) SCALE 1 on the ground that once the literal interpretation of the Rule is unambiguous, the decision taken be interpreted in any other manner. She would also rely on the decision in the case of CIT v. T.V. Sundaram Iyyengar reported in 1975(101) ITR 764 (SC).

8. Having heard learned advocates for the respective parties, the case of the petitioners is that when they were appointed on the diploma side, their pay scale was that of Rs.15,600-39,100/- (Pay Band III) + Rs.7,000 Grade Pay. In that

scale, they were drawing basic pay of Rs.20,610/-. On being appointed as Assistant Professors on the degree side, they were in the pay scale of Rs.15,600-39,100/- (Pay Band III) + Rs.6,000/- grade pay on appointment w.e.f. 6.4.2010. By virtue of their appointment in the degree course, by virtue of reduction of grade pay of Rs.6000/- their actual pay got reduced. It was under these circumstances that a request was made for pay protection.

9. Prior to the introduction of the 6th pay commission, both in the diploma as well as degree, the pay scale was the same. It was only on the introduction of the 6th pay commission and the AICTE regulation that the concept of grade pay was introduced. The post of Assistant Professor on the degree side is not a post lower than the post of the lecturer at the diploma side. Both are Class II posts, having the same pay scales. The only difference is that the post of Assistant Professor on the degree side is higher inasmuch as, the qualification of Masters in Engineering is a pre-requisite and mandatory. In the diploma side, the entry level grade pay is Rs.5400/- and that on the degree side is Rs.6000/-. The stand of the government that as per Rule 23 of the Pay Rules, 2002 if service of an employee is from lower pay scale to higher pay scale only then the pay can be protected is misconceived. Rule 23 would apply only when it is for appointment made on a higher post. The concept of pay scale is not relevant as per Rule 23 of the Pay Rules. Rule 23 of the Gujarat Civil Services (Pay) Rules, 2002 reads as under:

Rule 23: Pay on new appointment :

(1) Where the Government employee is selected for appointment to a service or cadre or post under the Government through the Gujarat Public Service Commission, Centralized Recruitment Scheme or any other method approved by the Government and if the service rendered prior to and after such selection is continuous and the appointment is on a higher post as compared to the pay scale of the post on which the employee was working prior to his appointment before selection; his pay shall be fixed as per rule-13.

Explanation : For this purpose the service shall be treated as continuous one even if there is a physical break not exceeding twenty four hours.

Note 1 : If the new appointment is in the same station, for the purpose of computing "physical break" (of more than twenty four hours), Sunday and/or a Public Holiday declared by the State Government shall be excluded.

Note 2 : If the new appointment involves movement from one station to another, for the purpose of computing "physical break" (of more than twenty four hours) the maximum period to cover actual journey inclusive of Sunday and/or a Public Holiday declared by the State Government shall be excluded.

(2) The provisions of sub-rule (1) shall not apply in the case of a Government employee who is so appointed after a physical break exceeding twenty four hours following resignation, removal, dismissal or discharge on reduction of

establishment or after invalidation out of service. Such an appointment amounts to a fresh appointment.”

. Pay is defined with the pay Rules under Rule 2(53) to mean the basic pay the revised scales of pay prescribed under the Gujarat Civil Services (Revision of Pay) Rules, 1994.

10. Rule 63 defines ‘Personal Pay’ which reads as under:

“(63) “Personal Pay” means additional pay granted to a Government employee-

(a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or due to any reduction of such substantive pay otherwise than as a disciplinary measure; or

(b) in exceptional circumstances, on other personal considerations.”

11. Pay fixation can be on first appointment, on an appointment to another post involving assumption of duties or responsibility of greater importance or fixation of pay of an employee who held the same post or another post on the same or identical pay scale.

12. Rule 16 of the Rules, 2002 reads as under:

16. Fixation of pay of a Government employee who had held the same post or another post on the same or identical pay scale:

Notwithstanding anything contained in rules-11 and 13, if a Government employee had previously held the same post or another post on the same or identical time-scale than save as provided in sub-rule (2) of rule-23, his initial pay shall not be less than the pay other than the special pay, personal pay, or emoluments classed as pay by Government under rule-9 (53) which he drew, on the last such occasion, and the period during which he drew that pay on such last and any previous occasion shall be counted for increments in the stage of the time-scale equivalent to that pay;

Note 1: Where a Government employee has held a post in the cadre or class prior to the introduction of a new scale, and has drawn during the period pay equal to a stage or intermediate between two stages, in the new scale, then such period may be counted for increment in the same stage, or if the pay was intermediate between two stages, in the lower stage of that scale.

Note 2: For the purpose of this rule and rule-24 a temporary post on a certain rate of pay (fixed or time-scale) which is converted into a permanent post on different rate of pay is not the "same post", even though the duties remain the same. In other words, in view of rule-9 (82), the temporary post is to be regarded as having ceased to exist and to have been replaced by the permanent post. The incumbent of the temporary post is thus entitled only to the pay of the permanent post if it is on a fixed rate of pay or to a minimum of the time-scale of the permanent post if it is on a time-scale unless his case is covered by this rule.”

. Reading the Rule makes it clear that notwithstanding Rule 23, benefit of pay protection to the petitioners can be given under the said Rule read with Rule 11 and 13.

13. Mr. Qureshi, learned counsel for the petitioners is right in contending that the concept of "grade pay" was never defined under the Pay Rules, 2002. It is only after the commencement of the 6th pay commission that the concept of grade pay is involved. What is evident from the facts in case of the petitioners is that as on 1.7.2009 the petitioners were drawing pay to the tune of Rs.20610/- with AGP Rs.7000/-, but after joining the degree side, their pay is Rs.15600/- and it was only in the year 2016 that they reached the pay of Rs.20620/-. It is under these circumstances that the Central Government issued an office memorandum on 5.11.2012 providing that consequent upon implementation for the revised pay structure comprising grade pays and running pay bands w.e.f. 1.1.2006 in cases of appointment of government servants to posts carrying lower grade pay, the pay in the pay band of the government servants will be fixed at a stage, equal to the pay in the pay band drawn by him prior to his appointment against the lower post. However, he will be granted grade pay of lower post.

14. It is therefore clear that the Gujarat Government has not come out with such an office memorandum and, therefore, the stand of the respondent with regard to denying the benefit of pay protection only on the ground that the appointments were found from higher post to lower post is misconceived.

15. Both these petitions are allowed. The respondents are directed to consider the past ad-hoc services rendered by the petitioners with regular services of the petitioners at diploma side alongwith that of the degree side for all purposes including purposes of pay, leave, pension and other consequential benefits and pass necessary orders considering their services as continuous and award pay protection to the petitioners as requested by them in the representations made from time to time. Such exercise shall be carried out within a period of ten weeks from the date of receipt of copy of this order. Rule is made absolute to that extent. No costs.