

(1983) 11 GUJ CK 0010
In the Gujarat High Court

Nagindas J. Mehta

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-11-1983

Acts Referred:

Citation : (1984) 1 GLR 423

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

Bench : Single Bench

Judgement

S.A. Shah, J.—The petitioner who had been allocated to the bilingual State of Bombay on 1-11-1956 is agitating for getting his proper

seniority in the cadre of Aval Karkun and though he has retired as Deputy Collector, his seniority in the cadre of Aval Karkun has not been fixed

by the authorities. He has been thrown from pillar to post for getting the relief. Ultimately, he has approached this Court for the fixation of his

seniority in the cadre of Aval Karkun and for consequential reliefs.

2. Some facts will be relevant for the purpose of deciding the issue. The petitioner was recruited as Accounts Clerk in the Office of the then

Development Commissioner of the former State of Saurashtra on 24th August 1954 where he was confirmed as such on 1st August 1956. The

Saurashtra State merged with the bilingual State of Bombay on 1st November, 1955 and there was no cadre of Accounts Clerk of the office of the

Development Commissioner to which the petitioner could be equated and, therefore, the petitioner remained in lurch and he was posted in the

office of the Commissioner at Rajkot.

3. Ultimately, by an order dated January 20, 1959, the post of Accounts Clerk of the Office of Development Commissioner, Saurashtra was

equated with the post of Aval Karkun in the Bombay State in the scale of Rs. 100-8-140 and the petitioner was absorbed in the said cadre. The

order appears to have been passed by the then Government of Bombay and the material portion thereof being relevant is reproduced as under:

...the posts of Accounts Clerk on the scale of Rs. 80-5-95-7-130, allocated from the office of the Development Commissioner in the former State

of Saurashtra, should be deemed to be equivalent to the post of Aval Karkun on the scale of Rs. 100-8-140 in the former Bombay State and that

the absorption and appointment of the incumbent should be regulated accordingly.

4. Mr. N.B. Thakkar, Under Secretary to the Government of Gujarat, Revenue Department, has filed an affidavit. In paragraph 2 thereof, he

mentions as follows:

The petitioner though absorbed as Aval Karkun has not been either allotted to any of the districts and hence, he does not hold seniority in the

A.K.'s cadre of any district. Government Resolution dated 14-6-74 would not, therefore, be attracted in the matter of the fixation of seniority of

the petitioner.

Though the deponent has admitted that the petitioner was absorbed in the cadre of Aval Karkun, it is difficult to understand the statement that the

petitioner was not holding seniority in Aval Karkun's cadre of any district. If the petitioner is absorbed as Aval Karkun, it was the obligatory duty

of the State Government to post him in suitable district. By inaction of the State Government, the State cannot be permitted to state that the

petitioner remained without seniority. This statement itself is sufficient to show that the officers of the Government are totally indifferent and instead

of amending the mistake, they are creating confusion. Under the Reorganisation Act and the A.G.S. Rules of 1957, the State Government is

enjoined to equate the post. If the, same post is not available in the new State, then it has to absorb the allocated servant to the equated cadre and

then grant him seniority maintaining his inter se seniority of the former State. These are the obligatory duties both under the statute and the statutory

rules, and how a person like the Under Secretary to the Government says that the petitioner was not holding any seniority for their own inaction

and failure of duties?

5. It appears to be an admitted position that in the former State of Saurashtra, the cadre of Aval Karkun was a State cadre and it appears that the

petitioner was found to be at serial No. 17 amongst the Aval Karkuns of Saurashtra. It, therefore, necessarily follows that the petitioner is entitled

for the consideration of the next higher promotion when his next junior, i.e. the Aval Karkun at serial No. 18 or any of the juniors in the said

Seniority List was promoted to the higher cadre of Mamlatdar.

6. Again, the cadre of Mamlatdar is a State cadre and, therefore, the State Government was bound to consider the petitioner for the inclusion of

his name in the Select List of the Aval Karkuns entitled to be promoted to the cadre of Mamlatdar. The petitioner has in terms mentioned in his

representation dated 27th January 1977, Annexure-"E" at page 31, addressed to the Joint Secretary to the Government of Gujarat, Revenue

Department, that he had also passed R.Q.E. at the first available opportunity and trial held in December 1960 and, therefore, was a qualified Aval

Karkun eligible and entitled to be considered for promotion to the post of Mamlatdar in preference to those who were junior to him on the basis of

continuous officiating service in the cadre of Aval Karkuns according to Rule 7 of the A.G.S. Rules of 1957. In November 1961 three Aval

Karkuns junior to the petitioner in length of service were promoted, viz. G.N. Sheth on 21-11-1961, J.D. Servaiya on 29-11-61 and C.M.

Dhruve on 30-11-1961. In paragraph 10 of the petition, the petitioner has in terms reproduced these facts that the aforesaid three Aval Karkuns

junior to him were promoted in November 1961 on the basis of continuous officiation as Aval Karkun. In reply to paragraph 10 of the petition, the

Under Secretary to the Government, in paragraph 8 of the affidavit-in-reply stated as under:

The permission to appear at Revenue Qualifying Examination was granted on the basis of the quota fixed for district. The petitioner was an

Accounts Clerk in the year 1954. The post of Accounts Clerk was equated with the post of Aval Karkun (now Dy. Mamlatdar). The petitioner

passed Revenue Qualifying Examination in December 1960. Since he was working in the post equivalent to that of Aval Karkun (now Dy.

Mamlatdar) since 1954 he may not claim deemed date of passing Revenue Qualifying Examination in 1954 because he did not belong to the

Revenue Department on that date. The persons are admitted to Revenue Qualifying Examination by the quota system on the basis of seniority.

Even if the petitioner might have been an Aval Karkun in the year 1954, he would hardly get a chance for appearing in the Revenue Qualifying

Examination in 1954. The persons who have passed Revenue Qualifying Examination earlier than December 1960 have been continuously

officiating as Aval Karkuns upto and prior to 1954. In view of this factual position the petitioner was not likely to get chance for appearing in

Revenue Qualifying Examination in 1954, even if he may have been Aval Karkun from 1954.

The submission of the deponent is based upon hypothetical arguments. Firstly, the deponent has not shown whether the petitioner who was

allocated and permanently absorbed in the cadre of Aval Karkun was under any obligation to pass the R.Q.E. and secondly, the petitioner is

admittedly senior to the said three officers because the entry of the said three officers in the cadre of Aval Karkun is from 1-11-1954 to 1-7-1955,

whereas the petitioner's deemed date of entry as Aval Karkun is 20-7-1954. Therefore, he is senior to the aforesaid officers in the cadre of Aval

Karkuns.

7. The second argument of the respondent that the Government Resolution dated 14-6-1974, Annexure-"C is not applicable to the petitioner has

no merit. Clause 3(B)(v)(b) thereof reads as under:

Seniority of A.K.S. promoted prior to 1-11-56 and absorbed as A.K.S. under the A.G.S. (Absorption, Seniority, Pay and Allowances) Rules,

1957 should be fixed on the basis of continuous officiating service in the cadre of A.K. according to Rule 7 of the said Rules and not according to

the date of passing revenue qualifying examination. Even though they will be confirmed A.K.S. they will not be entitled to the promotion as

Mamlatdar, if they have not passed the Revenue Qualifying Examination.

It is not disputed that the petitioner was absorbed as Aval Karkun and, therefore, under this instruction his seniority should be fixed on the basis of

continuous officiating service under Rule 7 irrespective of the date of passing the R.Q.E. It appears that by a resolution dated 5-8-1977 at

Annexure-"F, the Government has amended Clause 3(B)(v) of Government Resolution dated 14-6-1974, Annexure "C by substituting the new

clause which runs as under:

The seniority of clerks promoted to the post of Aval Karkuns (now Dy. Mamlatdars) before 1-11-56 but not absorbed as Aval Karkuns or not

deemed to have been absorbed as per Allocated Government Servants" (Absorption, Seniority, Pay and Allowances) Rules, 1957 and those

promoted between 1-11-1956 to 1-5-1960 should be fixed in the post of Aval Karkuns (now Deputy Mamlatdar) on the basis of instructions

contained in para 3 of G.R., R.D. No.EXM-1061/96540-N dated 28-12-1962 i.e. on the basis of the date of passing the R.Q.E. and if the date

of passing the R.Q.E. is the same, on the basis of the rank obtained therein.

This resolution in terms excludes the Aval Karkuns promoted before 1-11-1956 but not absorbed as Aval Karkuns or not deemed to have been

absorbed as per A.G.S. Rules. It is nobody's case that the petitioner is not absorbed or deemed to be absorbed in the cadre of Aval Karkuns

prior to 1-11-1956 and, therefore, the seniority of the petitioner is not dependent upon passing of the Revenue Qualifying Examination.

8. If an officer is equated with the equivalent post in the new State and absorbed in the said post, then he is deemed to be qualified and eligible

officer belonging to that cadre, no further condition can be imposed. His seniority or absorption is not dependent upon any existing rule which

prevents him from acquiring permanent status of that cadre. In the case of Sumanlal Prabhulal Shukla v. State of Gujarat and Anr. 1976(2) S.L.R.

873, it was the contention of the State Government that the absorption of the petitioner's service on the post of Research Officer which did not

require any training qualification in an isolated category was done because the petitioner did not possess required training qualification, even though

it was admitted that the post of Planning Officer which the petitioner held in the ex-Saurashtra State was equated with a post in the intermediate

category between Class-I and Class-II officers of the Bombay Education Service (Admn. Br.). Rejecting the contention of the State Government,

the Division Bench of this High Court observed as under:

Therefore, even if it is presumed that all the officers of Class I and Class II of the Bombay Education Service required training qualification, the fact

that the petitioner was absorbed in an intermediate category between Class I and Class II posts shows that, looking to other qualifications,

equipment and experience of the petitioner, the authorities concerned did not find it necessary that the petitioner should possess any training

qualification for the purpose of getting a post in Class I or Class II of the Bombay Education Service (Admn. Br.). The very fact of the petitioner's

absorption in intermediate category of the Bombay Education Services shows that his services were integrated without insisting upon the training

qualifications. Thus, the training qualifications having been once dispensed with, cannot be insisted upon for his future promotions. The whole

process of equation, absorption and fixation of seniority, which is contemplated by the above referred Rules, shows that after a servant is absorbed

as a result of proper equation in a particular post of a particular cadre, his services become an integral part of the main stream of that cadre.

It is, therefore, clear that once the petitioner is equated and absorbed in the cadre of Aval Karkun he cannot be required to pass the Revenue

Qualifying Examination for the purpose of his absorption or integration in the cadre of Aval Karkun and he has a right to be considered for further

promotion on the basis that he is a qualified Aval Karkun, entitled for further promotion to the cadre of Mamlatdar.

9. Mr. Hathi produces the Government order dated 18-9-1962 issued by the Commissioner, Rajkot Division and a provisional combined seniority

list of qualified and substantive Aval Karkuns of the Division showing the position as on 16-9-1960. The said Government order is taken on

record. The integrated seniority list of Aval Karkuns shows the following particulars regarding the petitioner:

The petitioner is shown at serial No. 17. The date of confirmation as Aval Karkun is 1-8-1956. The date of continuous officiation is shown as 24-

8-1954. The deemed date is shown as 20-7-1954, that is to say, the date of his entry as Accounts Clerk. The date of passing the R.Q.E. is

December 1960 and in the column of district it is shown that he has been absorbed as Aval Karkun but the name of district is not shown.

This order proves two things, viz. (1) that his deemed date of absorption as Aval Karkun is shown as 20-7-1954 and not only he has been

absorbed but he has been confirmed as Aval Karkun on 1-8-1956. It, therefore, follows that the persons who have been confirmed thereafter and

the persons who have officiated as Aval Karkun after the petitioner are junior to the petitioner. The affidavit filed by the Under Secretary shows

complete non-application of mind. He has not tried to meet with the averments made by the petitioner in the petition and has not shown reasons as

to why the petitioner's name was not included or why the petitioner was not posted in any district since according to Mr. Bukhari, the cadre of

Aval Karkuns was a district cadre. It is a settled position of law that nobody should be allowed to suffer on account of inaction, negligence or

indifference of the State Government. Till the petitioner is retired, according to the affidavit his position is not shown in any district.

10. Mr. Bukhari, learned Counsel appearing on behalf of the State Government and who is instructed by some officers who are present in the

Court, says that one Mr. Joshi who was similarly situate was shown as Aval Karkun in Rajkot District. Therefore, I asked Mr. Bukhari and the

officers who are present to produce the Seniority List of Aval Kurkuns of any district in which the name of the petitioner has been shown, though

the affidavit says that the petitioner was not shown in any district. Unfortunately, neither Mr. Bukhari nor the officers were able to produce such

Seniority List, it being not available with them in the Court. It is very unfortunate that inconsistent stands are taken from time to time. The petition

has been filed in 1978 and if the State is not in a position to file a correct affidavit even though the matter is part-heard since yesterday, it is not

possible to take into consideration some oral statement made by Mr. Bukhari.

11. In view of the aforesaid circumstances, the petitioner is entitled for his proper placement in the cadre of Aval Karkun and fixation of his

seniority from 1-11-1956 on the basis of his permanent absorption in the cadre of Aval Karkun. It is hereby ordered that the State Government

will carry out its obligation and fix the seniority of the petitioner in the cadre of Aval Karkun from 1-11-1956 on the basis that he was absorbed in

that cadre and was confirmed with effect from 1-8-1956 within two months from the receipt of the writ of this Court and if the petitioner gets his

seniority earlier, he will be considered for further promotion as Mamlatdar on the basis of his new seniority and thereafter he will be considered for

further promotion as Deputy Collector on the basis of his seniority that may be fixed in the cadre of Mamlatdar. The petitioner will be also entitled

for all the consequential reliefs, viz. fixation of his pay scales, promotions and superannuation benefits based upon his latest position that may be

fixed by the authorities concerned and will be given all the benefits including the difference in salary, if available, in accordance with the rules that were in existence at the relevant time.

The petition is allowed. Rule is made absolute with costs.