

(1999) 07 GUJ CK 0014
In the Gujarat High Court

Case No : Spl. Civil Application No. 7128 of 1996

Nandu K. Patel and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 26-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) GLR 234

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

Bench : Single Bench

Advocate : Ketty A. Mehta, for the Appellant; V.B. Gharania, for the Respondent

Judgement

1. Heard learned Counsel for the parties.

2. The petitioners in all 5 in number, clerks in Lower Division of the Subordinate Secretariat Service of the State of Gujarat filed this Special Civil Application under Article 226 of the Constitution of India and prayed for declaration to be made that they are entitled to the seniority in the Secretariat services as clerk on the basis of their initial appointment on their selection by the Gujarat Public Service Commission on the same basis as the Typists were given. Further prayer has been made to direct the respondent No. 1 to give them deemed date of promotion as Assistants from the date on which their juniors were promoted as Assistants. The last prayer is made for direction to the respondents to revise the seniority of the petitioners and other clerks viz-a-viz typists on the basis of the date of their appointments and the common seniority list be prepare on the said basis. As usual, the prayer has also been made for the grant of interim relief.

3. This Special Civil Application was presented in this Court on 19-9-96. On the record of this Special Civil Application a combined seniority list of clerks and typists is there at page 46 as Annexure-F. This final list was published on 17-3-1987. This Special Civil Application has been filed by the petitioner after more than 9 years and 6 months of the date of the publishing of the final

seniority list. The petitioners have very artistically made the prayers in this Special Civil Application but in substance the prayer is that this final seniority list be modified by placing them senior to hundreds of the employees. This also clearly exhibits from the Annexure-G filed by the petitioners. From this document I find that the petitioner No. 5 Harishankar R. Gupta claiming the seniority above 79 persons. Shri N. K. Patel, the petitioner No. 1 claiming seniority above 38 persons. Shri D. S. Tikadia, the petitioner No. 4 is claiming seniority above 62 persons. Shri P. M. Badreshia, the petitioner No. 2 is claiming seniority above 61 persons and Mr. M. H. Patel, the petitioner No. 3 is claiming seniority above 61 persons.

4. In the special civil application very conveniently it is not stated on which dates the persons, who are alleged to be juniors to the petitioners were promoted to the next higher post. However, it is an admitted fact and which is also clearly borne out from the pleadings made by the petitioners that many of the persons, who were senior in the seniority list and the petitioner claiming them to be junior have been given promotions. On the record of this special civil application the petitioners have not produced the order of the promotions of the persons, who are senior to them and they are alleging them to be junior.

5. None of the persons above whom the petitioners are claiming seniority have been joined party to this special civil application also.

6. This seniority list is challenged by the petitioners after more than 9 years and 6 months of its publication and the petitioners have not furnished any explanation for this inordinate delay. In this special civil application, in para 8, the petitioners stated that they are expeditiously approaching this Court. But it is absolutely an incorrect statement of fact. In para No. 4 of the special civil application the petitioner stated "The petitioners say that the petitioners and several other clerks working in the Sachivalaya services gave a representation to the Additional Chief Secretary, GAD, pointing out inequality in the fixation of the seniority of the clerks and typists. Hereto annexed and marked Annexure-H is the copy of such representation made by the Sachivalaya Services persons like the petitioners". Annexure-H is the representation filed by the persons named therein in April, 1994. This representation is filed after more than 7 years of the publication of the final list. From the pleadings in the petition it reflects that this representation is not filed by the petitioners but by the Sachivalaya Services persons like petitioners. It is the case where the petitioners at no point of time made any grievance against this final seniority list. Otherwise also representation against final seniority list is difficult to accept. The representation by the Gujarat Sachivalaya Staff Association was also filed in the year 1995 and it is also of little help to the petitioners. This inordinate delay and latches in filing of this special civil application is fatal. Even if it is taken that the petitioners filed representation at Annexure-H on April, 1994 that too is hardly of any help to them for two reasons. Firstly, this has been filed after more than 6 years of the publication of final list and this petition has been filed after more then 2 years and 6 months

thereafter. The final seniority list had been acted upon and many of the persons who are senior to them therein and now they are claiming seniority above them, have been given promotions. The inter se seniority between the petitioners and those persons have been crystallized and attained finality and is conclusive and binding amongst them. The valuable rights have been accrued to those persons on the basis of seniority list of promotions to the next higher posts than on which they have already been promoted. At this belated stage, if this petition is allowed and the reliefs as prayed for by the petitioners is granted, it will result in unsettling of a settled position. The grant of relief in favour of the petitioners will result in lowering down of the number of persons in the seniority list and as a consequence thereof their reversion from the promotional posts as well as deprival of future chances of promotion to the next higher posts on the basis of their accrued seniority. This inordinate delay in filing of this petition as a result of which as well as during this intervening period valuable rights have already accrued to hundreds of the persons, this writ petition deserves to be dismissed only on this ground. The reference here may have to the decision of the apex Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, , where the Court held that,

"It is well settled that the power of the High Court to issue an appropriate writ under Art. 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in it strain new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction."

7. In this case, no doubt the apex Court observed that the rule of the laches and delay is not a rigid rule, ultimately it would be a matter of discretion of the Court, which must be exercised reasonably and justly so as to promote justice and not to defeat it. The exercise of discretion by the Court does not mean only with the object and purpose to promote justice for the petitioner only. The Court is equally concerned to see that while exercising its discretion it has to take care of the fact that the exercise of the same may not result in deprival of accrued rights to others by lapse of time. In this case, the petitioners have permitted things to be settled in favour of the persons, who are senior to them in the final seniority

list to the extent where they permitted the respondents herein to act upon the seniority list by giving promotions to those persons. By this, those persons have acquired the right to hold higher post as well as seniority in that cadre. The learned counsel for the petitioners contended that the petitioners have got very strong case and the seniority given to them is contrary to the decision of this Court in the case of *Safimiya G. Malek v. State of Gujarat* 33(1) GLR 74 (sic). Be that as it may, Even if we go by this contention, in fact, there is a considerable delay made by the petitioners in approaching the Court. The decision in the case of *Safimiya G. Malek v. State of Gujarat* (supra) was delivered by this Court on 24-3-92. This judgment has also been reported in Law Report. But this writ petition has been filed by the petitioners after about 4 years 6 months. So if the matter is looked from any angle. I find that at all the stages there is considerable inordinate unexplained delay on the side of the petitioner to approach to this Court.

8. The reference may also have to the latest decision of the apex Court in the case of *Union of India (UOI) and Another Vs. S.S. Kothiyal and Others*, where the apex Court in para No held that;

In our opinion, the admitted facts of this case alone are sufficient to reverse the judgment of the learned single Judge as well as that of the Division Bench of the High Court. According to the version of respondent 1 himself, his representation against non-promotion as Deputy Commandant was rejected on 10-6-1971, the second such representation made on 19-8-1971 was rejected on 4-11-1974 and the third representation made on 12-4-1977 was rejected on 11-7-1977. It is obvious that on rejection of his representation in June, 1971, there was no occasion for Respondent 1 to wait any longer to challenge his non-promotion and, therefore, the filing of the writ petition 8 years thereafter in December, 1978, was highly belated and deserved to be rejected on the ground of laches alone in view of the settled principles relating to interference in service matters of this kind in exercise of the power of judicial review. The learned single Judge as well as the Division Bench of the High Court completely overlooked this aspect. The fact that Respondent 1 waited for several years till he was actually promoted as Deputy Commandant in 1971 and even as Commandant in 1975 and more than three years elapsed even thereafter before he has filed the writ petition, is itself sufficient for the rejection of the writ petition".

9. Taking into consideration the totality of the facts of this case as well as the law on the point, the petitioners have failed to make out a case where despite of this inordinate delay and laches in filing of this petition, this Court has to exercise its discretion to entertain this petition and that too to the extent to grant the relief in their favour. The writ petition deserves to be dismissed only on the ground of delay and laches.

10. The petitioners in this special civil application have not impleaded the persons above whom they are claiming the seniority. It is not the gainsay that any order passed in this special civil application in favour of the petitioners, it will

result in loss of seniority, secondly loss of promotion to the next higher posts as well as future chances of the promotion to those persons, who are not before this Court. The relief of the nature as prayed for by the petitioners is granted, it will result in causing prejudice to the accrued rights of those persons behind their back. This decision may also be in violation of principles of natural justice. Those persons are necessary parties in this case and behind their back otherwise also this question of the inter se seniority vis-a-vis those persons can be decided by this Court. It is difficult to accept that this basic requirement of the law would not be known by the petitioners, who have filed this petition through the advocate practising in this Court. The petitioners in fact have made an attempt to get a decision on such vital and important issue which if is decided in their favour will adversely effect the rights of those persons in the service matters, in the absence of them. It is not the case where large number of persons of that category are there. If we go by the number of the petitioners and number of those persons above whom they are claiming seniority, it is not too large to make difficult to join them as a party individually. Otherwise also the petitioner could have joined them in a representative capacity which is also not done. This writ petition suffers from the defect of non-joinder of necessary parties.

11. In the result this special civil application fails and the same is dismissed. Rules discharged with no orders as to costs.

12. Before pronouncement of this judgment the learned counsel for the petitioner passed a slip and a xerox copy of a Government resolution and prayed for withdrawal of this Special Civil Application. Even if this prayer is accepted, result will also be dismissal of this special civil application. This slip and resolution be kept on the record of this case.

13. Application dismissed.