
(2014) 10 GUJ CK 0026
In the Gujarat High Court

Case No : Special Civil Application Nos. 9484 of 2008 and 6623 of 2009

Natvarbhai Dosajji Barot

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Citation : (2015) 2 LLN 114

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : Subhash G. Barot, Advocate for the Appellant; Kashyap Pujara, AGP, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—These petitions are connected. Facts are as under. The petitioner, common in both the petitions, was appointed as a junior clerk after regular selection in the Settlement Commissioner's office on 4.12.1969. He passed the Sub Services Departmental Examination in the year 1976. With effect from 1.1.1977, therefore, he was eligible for promotion to the post of senior clerk. It appears that in the office of the Settlement Commissioner, the seniority lists of the different cadres particularly, that of junior clerks was not fully prepared. For a long period of time, therefore, no promotions could be granted to the employees though vacancies in the promotional posts were available and candidates eligible for being considered for such promotions were also available.

2. The petitioner was promoted to the post of senior clerk by an order dated 14.3.1990, however, by giving him notional date of promotion of 1.1.1977. In other words, he would be considered senior clerk with effect from 1.1.1977 for all purposes except for the difference in salary till his actual promotion. On 13.11.1995, he was promoted to the post of Shirastdar, once again with effect from 21.6.1984 on notional basis (relatable to the date on which he had passed

the necessary departmental examination namely, Land Record Qualifying examination, making him eligible for such promotion). His next promotion from the post of Shirastdar to that of City Survey Superintendent came on 2.12.1996. However, this time around such promotion order did not contain any earlier date for notional promotion. The petitioner therefore, made a representation dated 2.12.1996 and requested for granting promotion from the earlier date. In such representation, he relied on a Government circular dated 1.9.1993 requesting the Settlement Commissioner to grant promotions in his department to the employees from back dates notionally without actual monetary benefits. Such representation was however, rejected by the authorities by an order dated 15.4.1998. In such order, it was conveyed to him that as per the communication of the Revenue department dated 17.2.1998, he was not included in any of the divisions of Land Record department. Therefore, in case of such employees selected through GPSC after considering their internal seniority and looking to the minimum length of qualifying service required for promotion, they were granted promotions in class-III service. No employee was granted deemed date of promotion, therefore, the question of granting him promotion with a deemed date would not arise.

3. Despite such rejection of the representation, the petitioner made a fresh representation on 18.6.1998 and reiterated his request for granting deemed date of promotion as City Survey Superintendent. The department did not reply to such representation. The petitioner therefore, made a fresh representation in May 1999 and repeated his request. Such representations remained dormant for a long period of time until by an order dated 16.4.2008, the Settlement Commissioner rejected his request. It was conveyed that he was granted notional promotion with effect from 1.1.1977 as senior clerk and with effect from 21.6.1984 as Shirastdar bearing in mind his qualification and experience. The petitioner's attempt to link his case with one Shri B.H. Patel who was promoted in class-II post of City Survey Superintendent on 10.7.1990 on the premise that Shri B.H. Patel was junior to him was refuted by pointing out that Shri B.H. Patel was actually promoted by an order dated 10.7.1990. In other words, he was not granted any deemed date of promotion or any earlier date of promotion on notional basis.

4. The petitioner thereupon, filed Special Civil Application No. 9484/2008 and challenged the said communication dated 16.4.2008 of the Settlement Commissioner. After issuance of notice from this Court in such petition, the department issued a show cause notice to the petitioner on 28.8.2008 and called upon him to show cause why his earlier orders of promotion to the post of senior clerk and Shirastdar from back dates be not recalled. In such notice, it was pointed out that deemed date of promotion can be granted only in special circumstances when an employee is deprived of his promotion where his juniors are promoted. Granting of earlier dates of promotion to the petitioner was not backed by any Government circulars.

5. The petitioner desired to have access to certain information before he could reply to the said show cause notice. He therefore, applied to the Government under the Right to Information Act on 24.8.2009. Before supplying such information, the Settlement Commissioner passed an order dated 4.11.2008. In such order, he directed withdrawal of the petitioner's promotion to senior clerk from back date. Such order covered not only the petitioner but four other employees of the department who were similarly granted back dated promotions. Consequently, the petitioner and other employees would also lose the back dated promotion to the post of Shirastdar. Their pay would be re-fixed accordingly. It was however, clarified that since they were granted salary on the promotional posts against actual service, the salary for such period would not be recovered. This order the petitioner challenged by filing fresh Special Civil Application No. 6623/2009.

6. Learned advocate Shri Barot for the petitioner vehemently contended that the department erroneously denied the deemed date to the petitioner for class-II post of City Survey Superintendent. The petitioner's junior Shri B.H. Patel was granted promotion with effect from 10.7.1990. The fact that Shri B.H. Patel was junior to the petitioner was undisputed.

With respect to the order of the Settlement Commissioner recalling the earlier promotions of the petitioner, he submitted that the action was wholly mala fide. Only after the petitioner filed the petition claiming further benefits in the cadre of City Survey Superintendent, action was initiated. The same was belated. The order was passed without following the principles of natural justice. The petitioner was not supplied necessary documents though were asked for. In any case, there was no justification for withdrawing the promotional orders passed long back.

7. The respondents have filed no reply in either of the petitions. Learned AGP Shri Pujara however, made an attempt to defend both the cases. He submitted that the petitioner has not made out any case for being granted deemed date for promotion in post of City Survey Superintendent. In case of Shri B.H. Patel, he was granted promotion prospectively. The petition is highly belated.

With respect to the order of the Settlement Commissioner recalling the earlier back dated promotions, he submitted that the same were granted erroneously, were de-hors the rules and regulations and, therefore, could be withdrawn when the same came to the light of the authorities. In this respect he relied on the decision of the Supreme Court in case of Vinod Kumar Vs. State of Haryana and Others, .

8. Having heard the learned counsel for the parties, I may split my discussion in two parts.

9. Insofar as Special Civil Application No. 9484/2008 is concerned, the petitioner has not made out any case for interference. We may recall in this petition, the petitioner has challenged the department's action of not granting him earlier

date of promotion in the cadre of City Survey Superintendent. Firstly, the order of regular promotion was passed on 29.11.1996. The petitioner thereupon immediately made representation dated 2.12.1996 seeking notional promotion from the earlier date. This representation was rejected by a speaking order by the Settlement Commissioner on 15.4.1998. The petitioner thereupon filed a fresh representation on 18.6.1998 and another one in May 1999. Thus for the action by which the petitioner was aggrieved right from December 1996, the petition came to be filed in the year 2008. In the meantime, the petitioner made one representation which was rejected by the department. He followed this up by two more representations which remained pending for years together. Merely because almost 10 years later the department chose to wake up from the slumber and reject such representations again would not mean that the petitioner would get a fresh lease of limitation. If the petitioner was aggrieved by the department's action taken in the year 1996, the petitioner should have moved the High Court within a reasonable period. At any rate, once the petitioner's representation was rejected on 15.4.1998, there was no further need for fresh representation or to waste nearly 10 years thereafter, for such representations to be disposed of. Only on the ground of gross delay and laches, this petition must fail.

10. Even on merits, the petitioner has not made out any case for interference. He was granted promotion to the post of City Survey Superintendent prospectively. No other employee was granted promotion with deemed date or notionally. The petitioner's attempt to link his case with that of Shri B.H. Patel was also not quite valid. Shri B.H. Patel, as is apparent from the order dated 16.4.2008, was granted actual promotion by order dated 10.7.1990. This was not a case of promotion being granted later but with a back date. The petitioner therefore, cannot compare his case with that of Shri B.H. Patel. In fact, in the petition, no ground is raised on this issue.

11. It may be that Shri B.H. Patel was junior to the petitioner in the lower post of Sheristadar. If the petitioner was aggrieved by his non promotion in the year 1990 when Shri B.H. Patel was promoted, he ought to have taken appropriate steps in this regard. Why Shri B.H. Patel was promoted and the petitioner was not, is not known from the record. In absence of any pleadings and in absence of any challenge at the relevant time, it is not possible to link the petitioner's promotion date to that of Shri B.H. Patel. In absence of any other basis on which the petitioner's promotion to the post of City Survey Superintendent can be back dated, even on merits, his prayer must fail.

12. With respect to department's action of withdrawing earlier promotion granted to the petitioner with retrospective effect notionally, however, the issue stands on a vastly different footing. As recorded, the petitioner's first promotion to the post of senior clerk was granted on 14.3.1990 but with effect from 1.1.1977, the date on which the petitioner was eligible for such promotion and the promotional posts were also available. The petitioner had by that time,

cleared the departmental promotional examination and has also worked as a junior clerk for nearly seven years. Such promotion from the earlier date was without actual monetary benefits. Similarly, on 13.11.1995, the petitioner was promoted as Sheristadar again with effect from 21.6.1984, the date on which he cleared necessary examination. Such promotions were granted with conscious application of mind, not only to the petitioner but to other employees of the department. The circular of 1.9.1993 throws some light on the need for granting such promotions. In such circular, the Government conveyed to the Settlement Commissioner that the Government has decided to grant promotion to clerks and typists in the department of the Settlement Commissioner on the basis of their eligibility and experience as per the rules. On such basis the promotions may be granted notionally without any monetary benefits for the earlier period. As noted earlier, presumably, this was so because the question of fixing seniority of staff of class-III employees recruited through GPSC in the office of Settlement Commissioner was unclear. Be that as it may, the department granted such benefits after conscious decision nearly 25 years back. It was thereafter, not open to reopen such issue merely because the petitioner approached the High Court claiming further benefits. In the order dated 4.11.2008 impugned in the later petition also, all that has been stated for withdrawing such benefits is that such notional promotions were not in consonance with the Government rules and regulations and circular.

13. It is not the case of the department that such promotions were granted by any attempt on part of the petitioner or other employees to mislead the benefits. Such notional permissions were granted consciously and suo motu by the department. In the order dated 4.11.2008, the Settlement Commissioner even suggested that proper seniority was not fixed for these employees and that therefore, such back dated promotions could not have been granted. If full effect of this logic is given, even prospectively promotions of these employees would become vulnerable. Surely, it is not even the case of the department that for whatsoever internal reason, the department could not finalise the question of seniority of these staff members. They were deprived of their rightful promotion though promotional posts were available and eligible candidates were also available with sufficiently long service in senior cadres.

14. The contention that only upon error being noticed by the department, it was corrected and therefore, permissible to do so after any length of time is wholly erroneous. Even the Governmental actions must confirm to the reasonability of time period within which a decision howsoever erroneous can be corrected. I am not referring to a decision which is without the authority of law but one which the Government thinks was incorrectly taken. To suggest that such error came to the light of the Settlement Commissioner in the year 2008, is wholly incorrect. Such promotions were granted from time to time by the then Settlement Commissioner. Even in order dated 16.4.2008 rejecting the petitioner's representation, for being granted deemed date in the promotional post of City Survey Superintendent, the Settlement Commissioner referred to the reasons

why he was granted deemed date for notional promotion in the cadre of senior clerk and Sheristadar respectively to distinguish the case of promotion to the post of City Survey Superintendent. All along therefore, the decision to grant notional promotion with earlier dates to the petitioner and other similarly situated staff members of the Settlement Commissioner was consciously taken. The need for such decision arose on account of flux in the seniority position of the employees. Be that as it may, such decision cannot be corrected at this distant point of time. It can have far reaching adverse consequences to the staff members who have retired or died long back. The petitioner himself retired in the year 2007. Order itself records that three other employees who are subject matter of the same treatment have long since died. Consequential effect of the order would be to re-fix the pay of the petitioner withdrawing notional benefits of earlier promotions. Such adverse consequences cannot be allowed to fall after decades together when Government itself had without any misrepresentation from the petitioner acted on its own to grant such benefits. On all counts, therefore, such decision is wholly erroneous and is therefore, required to be quashed.

15. In the result, Special Civil Application No. 9484/2008 is dismissed. Rule is discharged.

16. Special Civil Application No. 6623/2009 is allowed. Impugned order dated 4.11.2008 is quashed and set aside. Petition is disposed of. Rule made absolute to above extent.