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**(1977) 07 GUJ CK 0015**  
**In the Gujarat High Court**

N.C. Dabhi and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision :** 06-07-1977

**Acts Referred:**

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

Gujarat Panchayats Act, 1961 — Section 205(3), 206(1), 206(1), 206(1)(i), 206(1)(iii)

**Citation :** (1978) 19 GLR 393

**Hon'ble Judges :** B.K. Mehta, J

**Bench :** Single Bench

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## Judgement

B.K. Mehta, J.—A question of some importance as to how the seniority of transferred Government servants to the Panchayat Service is to be determined has arisen in this petition. The question arises in the following circumstances:

2. The petitioners joined the services of the State of Gujarat on various dates between 1961 and 1964. They were appointed after interview and necessary test by the District Screening Committee by the State Government. The petitioners have also undergone training prior to the service or while they were in service. They were all appointed in the Revenue Department in Mehsana District. It appears that as a result of the decision of the State Government to close down Civil Supplies Section, which was a part of the Revenue Department, the staff working in Civil Supplies Section was required to go back to their parent Department, namely, the Revenue Department. There arose a likelihood of the petitioners being treated as surplus and consequently the retrenchment. The State Government had under its Memorandum of May, 29, 1968, which is Annexure "C" to the petition, instructed the Collector, Mehsana in reply to the letter of the Collector, of May 15, 1968 that such of the Government servants who are surplus and likely to be retrenched as a result of the closure of Civil Supplies Section in the Revenue Department be absorbed in the other offices of the Revenue Department of Mehsana District and in case after such absorption, if there are surplus servants, appropriate proceedings should initiated for absorbing them in the offices of Collectors of adjoining districts of Sabarkantha,

Ahmedabad and Banaskantha. It appears further that the State Government in its Panchayats and Health Department issued a Circular of July 4, 1968, which is Annexure "B" to the petition, that the services of the State servants who are likely to be retrenched and who are willing to go to the Panchayat Service should be transferred to the Panchayat Services and the post falling vacant in the latter Services as a result of the return of the staff on deputation be filled in by such surplus staff so that the Government can avoid a situation of retrenching the Government servants who had put in service of 6-7 years and at the same time filling in the vacant posts in Panchayat Service by direct recruitment. The State Government, therefore, under the said Circular directed that such surplus staff should be transferred to the Panchayat Service u/s 205(3) of the Gujarat Panchayats Act, 1961. Accordingly, the Collector, Mehsana by his order of May 29, 1968 purporting to act u/s 205(3) of the Gujarat Panchayats Act, 1961, ordered transfers of as many as 25 Government servants who had become surplus in the Revenue Department of the district to the service of Mehsana District Panchayat with effect from the date of their release. The said order further clarified-that the terms and conditions of the services of the said servants in the Panchayat Service would be governed by the Rules made under the relevant sections of the aforesaid Act. It is common ground that all the petitioners are transferred by this order to the Services of Mehsana District Panchayat. The petitioners claim that they were not retrenched in fact nor they were likely to be retrenched. They also claim that their services were transferred to the Panchayat Service in the interest of the Panchayats and not by way of any ex-gratia relief against the apprehended retrenchment. It appears that a question arose about the fixation of seniority of the surplus staff transferred to the Panchayat Service and, therefore, the State Government by its resolution passed in Panchayats & Health Department of May 2, 1971 directed that the Government servants transferred to the Panchayat Service for any reason u/s 205(3) of the Gujarat Panchayats Act would not be entitled for purposes of fixation of their seniority to claim the services which they had put in with the State Government and their services will be reckoned for purpose of fixation of seniority from the dates of their entry in the Panchayat Service. The petitioners, therefore, made a representation to the State Government on June 12, 1971 contending that the aforesaid Government resolution of May, 2, 1971, which is Annexure "E" to the petition, did not apply to them, because, they were non transferred on the ground of sympathy but were transferred in the interest of Panchayat Service and they had put in long service under the State Government and were entitled to count the same for purposes of seniority. This representation of the petitioners had "been turned down by the State Government and the petitioners received an intimation to that effect in or about December, 1971. The petitioners have, therefore, moved this Courts for appropriate writs, orders and directions to quash and set aside the aforesaid Government resolution and to compel the State Government to consider the services put in by the petitioners while they were in the State Government Service for purposes of fixing their seniority in the Panchayat Service.

3. This petition has been resisted by the respondents and the affidavit of one Shri P.N. Parmar, who happened to be District Development Officer, Mehsana at the relevant time has been filed in reply to the petition contending, inter alia, that with a view to accommodate the petitioners, who were on the list of surplus staff, the concerned District Panchayats agreed to take them in the Panchayat Service even though selected persons were available for the establishment of the District Panchayat and, therefore, the petitioners have been transferred under the provisions of Section 205(3) by the Gujarat Panchayats Act, 1961 on their exercising the option in the form appended to the aforesaid Government Circular of July 4, 1968 in the matter of transfer of surplus staff. The petitioners, according to the affidavit-in-reply of the District Development Officer, have exercised their volition to opt for the Panchayat Service for good by being transferred u/s 205(3) of the said Act and subject to the Rules that may be framed in that behalf u/s 203 thereof and have also agreed, as stated in their options, to sever their connection with the State Government Services with effect from their date of transfer to the Panchayat Service. In other words, the respondents contend that the petitioners have been transferred u/s 205(3) and are not allocated u/s 206(1) of the aforesaid Act, to the Panchayat Service on their request which they expressed in the options which they have made by agreeing to opt for the Services of the Panchayat for good and severing their connection with the State Government Services. It is in this context of the rival contentions that I have been called upon to examine the legality of the impugned Government resolution of May 2, 1971 where it has been directed by the State Government that for purposes of fixation of the seniority of such transferred Government servants their earlier services in the State Government would not be considered and their services would be considered only from the date of their joining the Panchayat Service.

4. Mr. N.J. Mehta, learned Advocate, appearing for the petitioners raised the following three contentions:

1. The petitioners can be said to be staff transferred u/s 158 of the Gujarat Panchayats Act, 1961 and are, therefore, entitled to be treated as located employees u/s 206(1)(i) of the said Act and consequently, therefore, entitled to the benefit of the State Services by virtue of being allocated servants under the provisions of the Gujarat Panchayat Service (Absorption, Seniority, Pay and Allowances) Rules, 1965.

2. In the alternative, the petitioners are the members of the staff who can be said to have been allocated u/s 206(1)(iii) to enable the Panchayats to discharge efficiently their duties and functions and, therefore, entitled to count their State Service by virtue of the afore said Absorption Rules, 1965.

3. In any case, the Panchayat Service being a part and parcel of the State Services, any classifications between the transferred and allocated employees is irrational and without any nexus with the efficiency of the services and the impugned resolution is on that count violative of Articles 14 and 16 of the

Constitution of India in so far as it discriminated between the petitioners who are transferred Government servants and those Government servants who are allocated Government servants.

5. These contentions are sought to be repelled on behalf of the respondents Nos. 1 and 2 by the learned Assistant Government Pleader Mr. Kristi as well as by Mr. M.C. Shah, learned Advocate, who are appearing for the other respondents Nos. 3 & 4 who are allocated Government servants u/s 206(1) of the aforesaid Act. The learned Assistant Government Pleader contended that since no Rules have been framed u/s 203 of the Act governing the conditions of Service of the transferred staff u/s 205(3) of the Act, the petitioners who are admittedly transferred staff are not entitled to avail of the benefit conferred on the allocated Government servants u/s 206(1) of the said Act. In submission of the learned Assistant Government Pleader, there is a clear and intelligible difference between the allocated Government servant and transferred servant to the Panchayat Service u/s 206(1) and 205(3), respectively, and, therefore, there is no question of discrimination. The petitioners cannot, therefore, be without doing violence to the language of the said section be said to be allocated Government servants either u/s 206(1)(i) or Section 206(i)(iii) of the said Act because they are neither allotted nor transferred under Sections 157 and 158 of the said Act nor they could legitimately claim that their services were so necessary to the Panchayat for efficient discharge of their functions. Mr. Shah for respondents Nos. 2 and 4 besides adopting these counter-contentions further submitted that the so-called Government Circular of transfer of July 4, 1968, Annexure "B" to the petition, clearly indicates, as revealed by paragraph 4 thereof which enjoins Collectrates and the State in which the surplus staff was working, to obtain the concurrence of the concerned Panchayats before the services of such surplus staff could be transferred to the agreeing Panchayats. Mr. Shah further contended that the petitioners have by exercising options given to them agreed to sever their connection for good with the State Government since they were faced with dilemma of retrenchment of their services as the alternative course to their permanent transfer to the Panchayat Service.

6. In this perspective, therefore, I have to determine whether the contentions of Mr. Mehta are warranted in view of the different provisions of the Panchayats Act. It is no doubt true that at one stage these petitioners were treated as surplus staff and were apprehending retrenchment as the State Government closed down the Civil Supplies Section of its Revenue Department. None-the-less it cannot be gainsaid that their services were not retrenched in fact nor a day's break was given to them. The State Government was very much aware of the fact that these petitioners had put in a number of years service in the Revenue Department and if their services were to be terminated on account of the exigencies of service, the State would be deprived of the benefit of the experienced staff. The State authorities were equally aware that in Panchayat Service the vacancies had arisen or were likely to arise as a result of the deputationists, who were sent from the Government service on the constitution

of the Panchayat Raj in the State, desired to return to their parent department. These facts are uncontroverted. These facts are borne out from the Government Circular in the Panchayats and Health Department of July 4, 1968, which is Annexure "B" to the petition. The State Government has clearly mentioned in the aforesaid Circular, Annexure "B" that according to the Government Circular in Panchayats and Health Department of January 16, 1968 those State Government servants who are on deputation in the Panchayat Service and have expressed their willingness to be allocated to the Panchayat Service would be allocated accordingly and those deputationists who have not expressed their desire to be so allocated would be returned to the State Services with the result that the persons working on the posts of Deputationists in the Government Services would be retrenched on one hand and there would be vacancies in the Panchayat Service on the other. The Panchayats would be required to fill in those vacancies by fresh recruitment and that the Government was of the opinion, on consideration in this matter, that such vacant posts in Panchayat Service should not be filled in the first instance by fresh recruitment but should be filled in by those Government Servants whose services are likely to be retrenched for want of posts and who are willing to go to the Panchayat Service on permanent transfer. This will achieve two purposes, according to the Government Circular, viz, the Panchayats will have benefit of experienced staff and the exasperating situation of retrenchment of experienced Government servants and filling in the vacant posts by fresh recruitment could be avoided. According to Section 205(3) of the Gujarat Panchayats Act, the Government can transfer any person from its Government service to the Panchayat service and, therefore, the Government has decided that those Government servants who have become surplus as a result of want of posts or reduction in posts and who are of their own volition willing to exercise their option to be transferred to the Panchayat Service for good, such servants may be appointed by transfer in the Panchayat Service of those Panchayats which concur in such transfer. According to the Circular, the concerned District Officers before passing the orders of transfer should obtain the concurrence of the concerned Panchayats after obtaining the option from the surplus Government staff. This Circular, therefore, clearly establishes three facts, namely:

1. The State Government was aware that some Government servants who are surplus would be required to be retrenched.
2. The return of the deputationists would result in vacancies in the Panchayat Service requiring the Panchayats to fill them by fresh recruitment.
3. This dilemma of the situation could be overcome by transferring such surplus Government servants to the Panchayat service in the interest of both.

It is no doubt true that the District Officers concerned have been directed to obtain concurrence of the concerned Panchayats before effecting the transfers. None-the-less, the surplus Government servants were transferred in the interest of the Panchayat service where a number of vacancies had arisen as a result of

the decision of the deputationists to return to their parent Department. Mr. Mehta was, therefore, right when he contended, in the first instance, that these petitioners who were surplus Government servants and who had put in 56 years service in the Revenue Department were transferred Government servants u/s 158 of the Panchayats' Act. Section 158 provides as under:

158 (i) Any functions and duties relating to any of the matters specified in the Panchayat Functions List performed before the commencement of this Section by the State Government through its officers within a gram, nagar, taluka or district shall, subject to such exceptions as the State Government may by order in writing specify be transferred to the district Panchayat together with the funds provided and the staff employed therefor.

There cannot be any dispute that certain revenue functions of the State Government were transferred to the Panchayats. When these functions are transferred to the Panchayats, the Government can simultaneously with the transfer of such functions put the funds provided for such functions as well the staff employed in connection therewith at the disposal of the Panchayats. I have not been able to appreciate the contention urged on behalf of the State Government that the cases of these petitioners would not fall u/s 158(1) and that they can only be within the clause mentioned in Section 205(3) of the Panchayats Act. I have not been able to read in Section 158(1) that only those members of the staff, who are transferred simultaneously with the transfer of functions of the Panchayats, could be within the terms of Section 158 and not those members of the staff who are transferred subsequently in connection with such functions. If Section 158 (1) does not restrict the power of the State Government to transfer the staff at the time of transfer of the functions only, and I do not think that there is any justification for riding such a restriction in the Section, the conclusion is inescapable that those members of the staff, subsequently put at the disposal of the Panchayat, who were in connection with the transferred functions would also be the staff transferred u/s 158. If that view is correct, and I do not feel any doubt in my mind about it, Mr. Mehta was right when he contended that such staff is also allocated to the Panchayat Service u/s 206(1)(i) of the Act. Mr. Mehta also, alternately, pleaded his case that the State Government is entitled by a general or special order to allocate to the Panchayat Service such servants employed in the State services as may be necessary to enable the Panchayats to discharge their functions and carry out their duties efficiently under the Act and in the facts and circumstances of this case, the State Government has found that it would be necessary for enabling the Panchayats to discharge their functions and carry out their duties efficiently to transfer the surplus Government servants as it would relieve the Panchayats of the difficult situation of filling in their number of vacant posts arising as a result of the return of the deputationists by fresh recruitment. It may be that the object of the Government in transferring these petitioners along with other surplus staff must be to help these unfortunate Government servants who, for no fault of theirs, were facing the retrenchment as a result of the want of posts or reduction

in posts. The Government in transferring this surplus staff was also acting in the interest of the Panchayats themselves and putting the services of the surplus staff must be held to be necessary to enable the Panchayats to discharge their functions and duties efficiently because without filling in the number of vacant posts which had arisen, the Panchayats could not have carried out the functions and discharged the duties efficiently. In that view of the matter also these petitioners would be allocated Government servants u/s 206(1)(iii). If this position is correct, and I do not feel any doubt in my mind about it, the petitioners, as rightly contended by Mr. Mehta, can claim benefit of the Gujarat Panchayat Service (Absorption, Seniority, Pay and Allowances) Rules, 1965, which prescribed that for purposes of fixation of seniority, the principle of continuous officiation as from the date of the joining of service would be borne in mind.

7. The learned Assistant Government Pleader as well as Mr. Shah, both, appearing for the respondents, contended that the transfer of the petitioners cannot be said to be transfer in the interest of the Panchayat service for two reasons. In the first place, the petitioners have opted for the Panchayat service by agreeing to sever their connection with the State Government and accepting the transfer to the Panchayat service for good, and in the second place, this was no transfer at all, because it has been clearly enjoined in paragraph 5 of the aforesaid Government Circular of July 4, 1968 that the District Officers before effecting the orders of transfer should obtain the concurrence of the concerned Panchayats for such transfers and, therefore, by necessary implication, these transfer orders should be treated as orders of fresh appointment by the Panchayats. In this connection, reliance was placed on the order of appointment by the District Development Officer of Mehsana District Panchayat of July 29, 1968, of some of the petitioners which is to be found at Annexure "X" to the petition wherein it has been stated that the concerned Panchayat has given its concurrence to the transfer of the" surplus staff including some of the petitioners. I am afraid, this is too broad a contention, which can be sustained. This argument overlooks the nature and the scope of the Panchayat service as explained by the Division Bench of this Court in G.L. Shukla and Another Vs. The State of Gujarat and Others, . The Division Bench, consisting of; Bhagwati and Bakshi JJ. (as they then were) considered the scope and nature of the Panchayat Service as envisaged in the Gujarat Panchayats Act, 1961. The Division Bench has, after elaborately considering the scheme contained in the Act, while negating the contention urged on behalf of the petitioners before it that termination of service of a public servant holding substantially a permanent post by making an order of allocation u/s 206 would amount to removal of such public servant within the meaning of Article 311(2) and since such power is granted to the State Government without complying with the requirement of Article 311(2) it was violative of the constitutional guarantee contained in the said Article and, therefore, invalid, held as under in paragraph 9 of its judgment:

The conclusion which emerges from this discussion that is that the Panchayat

service is a distinct and separate service set up for serving the Panchayat Organisation of the State and it is as much a civil service of the State as the State service. The State can have many services such as State service, police service, engineering service, etc. and Panchayat service is one of them. In the Panchayat service, as in the State service, the State is the master and every officer or servant employed in the Panchayat service is the servant of the State and not of the Panchayat under which he may be serving for the time being. The Panchayat service is one single service with the State as the master. There is, therefore, no termination of service when an officer or servant of the State service is allocated to the Panchayat service. On allocation he is merely transferred from one civil service of the State to another, his master remaining the same, namely the State. His service under the State continues unbroken and uninterrupted, the only difference being that whereas prior to the order of allocation he was a member of one civil service of the State, namely, the State service, he is, after the order of allocation, a member of another civil service, of the State, namely, the Panchayat service. The order of allocation does not. Therefore, bring about termination of service of the officer or servant of the State who is allocated to the Panchayat service and Section 206 cannot be assailed as authorizing or permitting violation of the constitutional guarantee contained in Article 311(2).

Mr. Christi, the learned Assistant Government Pleader, tried to distinguish this decision by urging that the ratio of this decision is applicable in cases of the allocated Government servants and not transferred Government servants. Now, this argument will not hold good, if we refer to the view of the Division Bench expressed in paragraph 8 while considering the scheme of the constitution of the Panchayat Service. The observation is to be found in paragraph 8 at page 847 which is in the following terms:

...Section 205 lays down the modes of appointment to posts in the Panchayat service and one of the modes provided is by transfer of a member of the State service to the Panchayat service. The word used is "transfer" and that clearly indicates that when appointment by this mode is made, there is no termination of one service and commencement of another: it is a transfer from one service to another, both the services being under the same master, namely, the State.

It should be recalled that though there was apprehension of the retrenchment so far as these petitioners and other surplus Government servants were concerned, in fact no retrenchment was made nor a day's break was given in their service. It is a transfer pure and simple. If it is a transfer pure and simple u/s 205(3), it cannot be urged successfully that there is a termination of one service and commencement of another, because, as held by the Division Bench, the Panchayat Service is a part of the State service and, therefore, the services of the transferred Government servants must be considered to be continuous and unbroken. The decision of the Division Bench in G.L. Shukla's case (supra) has been followed in number of decisions of this Court. This Court had many

occasions to consider the said decision and it has been approved by a Full Bench in *Shamji Karsan v. The State of Gujarat* (1975) 16 GujLR 313. The last decision in the point of time is rendered by a Division Bench of this Court in *Ramanlal Keshavlal Soni and Ors. v. State of Gujarat and Ors.* A.I.R 1977 Guj. 76 where the Division Bench was required to consider the availability of the benefit of the Third Pay Commission's Report in case of transferred municipal employees to Panchayat Service when admittedly the benefit was extended to the transferred District Local Board and School Board employees to the said service. Before the Division Bench in that case, on behalf of the State, it was strenuously urged that the decision in *G.L. Shukla's case* (supra) as affirmed in *Shamji Karsan's case* (supra) by the Full Bench required reconsideration. The Division Bench, consisting of D.P. Desai and P.D. Desai JJ, did not agree and held as under:

...We are unable to persuade ourselves to accept such a course. In the first place, we have already indicated earlier that we are in entire agreement with the view expressed in *O.L. Shukla's case* as well as in *Shamji Karsan's case*. In the next place it is well-settled that the binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided.... The decision in both the said cases reveal that the Court has carefully examined the scheme of the Act in all its relevant perspectives and having given an anxious consideration to the points involved the conclusion was arrived at. In the last place, the decision in *G.L. Shukla's case* was rendered as far back as on March 13, 1967. It has been followed in many other decisions rendered by this Court ever since and rights of several persons have been adjudicated upon in the light of the pronouncement made in the said decision. The State Government as well as (he different Panchayats have acquiesced in the view which this Court expressed in the said decision. The said decision has even been affirmed by a Full Bench on May 2, 1974.

In view of this settled legal position, therefore, the contention on behalf of the State Government that the option exercised by the petitioner to deprive them of the benefit of their earlier service with the State Government cannot prevail. The option exercised by the petitioners is in the following terms:

I hereby voluntarily exercise option to go to the Panchayat Service By transfer. I understand that my option shall be subject to the Rules framed in Section 235(3) and Section 203 of Panchayat Act. I also understand that my connection with the State services shall be severed with effect from the date of my transfer to the Panchayat service.

8. The option would not bear out the extreme proposition which has been sought to be canvassed on behalf of the Government and the Panchayat. The sum and substance of the option is that the Government servant exercised the option for transfer to the Panchayat service by severing his connection with the State Government service. The effect would be that he would not be entitled to claim for return to the State service as a matter of right. This option cannot be pressed

in service for substantiating the contention that the Government servant concerned exercising the option agrees to forego the benefit of his State service. There is also another aspect of the question that the Division Bench of this Court rendered the decision in G.L. Shukla's case (supra) on 13th March, 1967 and this decision has been reported in 8 GujLR 833. The petitioners, who are junior Clerks in the Revenue Department could not be said to be fully aware and conscious of the implications of this decision and when they were faced with the situation of retrenchment, they might have thought fit to exercise their option by agreeing to be transferred to the Panchayat service and severing their connection with the State service. None-the-less, the position in law remains unaltered as enunciated by the Division Bench in G.L. Shukla's case (supra) and confirmation thereafter by the Full Bench in Shamji Karsan's case (supra). The position is that the Panchayat Service is as good as police service or Public Works Department Service. Transfer from one department to another department cannot result in deprivation of the service which a Government servant might have put in the Department from where he is transferred. The only conclusion, therefore, to which I can reach is that if the State Government tries to prescribe two sets of Rules-one for the allocated Government servants and another for the transferred servants by providing that so far as the transferred servants are concerned, they would not be entitled to the benefit of their earlier service and so far as the allocated Government servants are concerned they would be entitled to the benefit of continuous officiation, such a provision by the State would offend the rule of law as it is violative of Articles 14 and 16 of the Constitution as there will be irrational classification which has no nexus with efficiency of the service. In that view of the matter, therefore, the impugned resolution of the State Government of May 2, 1971 Annexure "E" to the petition in so far as it deprives the transferred staff in the matter of fixation of seniority the counting of their earlier service with the State Government should be held to be violative of Articles 14 and 16 of the Constitution of India and is liable to be quashed and set aside.

9. The result is that this petition is allowed and a writ of certiorari is issued quashing and setting aside the resolution of the Government dated May 2, 1971, Annexure "E" to the petition and the State Government is directed to fix the seniority of the petitioners" according to the correct legal principles as indicated in this judgment. Rules made absolute accordingly with no order as to costs.