

(2022) 10 GUJ CK 0098
In the Gujarat High Court

Case No : R/Special Civil Application No. 11005, 11132, 11159 Of 2022

Parmar Mansinh Jesingbhai		APPELLANT
	Vs	
State Of Gujarat		RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21

Citation : (2022) 10 GUJ CK 0098

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Dipak N Joshi, Nileshkumar H Pipaliya, Kurven Desai, HS Munshaw

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Draft amendment is granted so far as SCA No.11005/2022. It is to be carried out.
2. Rule returnable forthwith. Mr. Kurven Desai, learned Assistant Government Pleader waives service of notice of Rule for the respondents Nos.1 to 4, while Mr. H.S. Munshaw, learned advocate waives service of notice of Rule for the respondent No.5.
3. With the consent of the learned advocates for the respective parties, all these petitions are taken up for final hearing today.
4. Mr. Munshaw, learned counsel for the respondent relies on an affidavit filed in SCA No.11005/2022 in which it is stated that the appointments were time bound contractual appointments on number of terms and conditions including fixed remuneration without following due procedure of recruitment by the competent authority under the Gujarat Panchayat Act, 1993. He would submit that the petitioners are not entitled to any relief prayed for by them by counting their initial service.

5. This Court in SCA No.11291 of 2022 and allied matter, on 7.10.2022 passed the following order:

"1 Leave to amend.

2 Rule returnable forthwith. Mr.Kurven Desai, learned AGP, waives service of notice of rule on behalf of the State respondents Nos. 1 to 4 and Ms.Sejal Mandavia, learned counsel, waives service of notice of rule on behalf of respondent No. 5. With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing.

3 The case of the petitioners is that they are entitled to the direction for consideration of their initial services rendered on a contractual basis along with their regular services pursuant to their appointment on regular basis for all purposes, including for the purposes of Seniority, Pay, Leave and other consequential benefits and make payment of arrears of pay and allowances to the petitioners from the date of their initial appointment.

4 The case of the respondents, according to Ms.Sejal Mandavia, learned advocate, is that they were given appointments on contractual basis and thereafter regularized in the year 2006, and therefore, they were not entitled to the benefits of regularization from the initial date.

5 Mr.Joshi, learned counsel for the petitioners, would rely on several orders passed by this Court in respective petitions. Mr.Joshi, learned counsel, places reliance on an oral judgment dated 21.09.2022 passed by this Court in Special Civil Application No. 11074 of 2022, which read as under:

"1. Rule returnable forthwith. Mr. Joshi, learned Assistant Government Pleader waives service of notice of Rule for the respondent Nos.1 to 4 while Mr. Thakkar, learned advocate waives service of notice of Rule for respondent No.5.

2. With the consent of the learned advocates for the respective parties, the petition is taken up for final hearing today.

3. By way of this petition, the petitioners have prayed to direct the respondents to take into consideration the initial service rendered by the petitioners on contractual basis alongwith their regular service, pursuant to their appointment on regular basis, for all purposes, including for the purpose of Seniority, Pay, Leave and other consequential benefits and make payment of arrears of pay and allowances to the petitioners from the date of their initial appointment.

4. Mr. Thakkar, learned counsel for the respondent – District Development Officer would object the petition on the ground of an inordinate delay in filing the petition and no explanation is given for such delay. Even if the delay is overlooked, the Division Bench while deciding LPA No.85 of 2020, the observations made in such decision which he would rely upon as stated in affidavit.

5. In view of order dated 29.07.2022 passed in SCA No.13873 of 2022, which

reads as under, the petition is allowed.

"1. Rule returnable forthwith. Learned AGP waives service of notice of rule on behalf of respondent State.

2. Heard learned advocates for the parties.

3. It is the case of learned counsel for the petitioners that the case of the petitioners is similarly situated to the petitioners of Special Civil Application No. 12537 of 2011. Learned counsel for the petitioners would submit that the petitioners are entitled to the similar benefits as have been directed by the court in the order dated 23.01.2019 in para 8.1. He would submit that a direction can be given to the respondents to extend similar consequential benefits to the petitioners herein.

4. This court vide order dated 25.07.2018 passed in Special Civil Application No. 12537 of 2011 in case of employees like the petitioners who prayed for a direction to regularize their services and treat them at par with similarly situated persons and grant them regularization from the date of their initial appointments as Multi-purpose Health Workers (Male) with consequential and incidental benefits held as under:

7. It is admitted that initially, petitioners were given contractual appointment for 11 months and thereafter, they have been continued for all these years. Some of these petitioners have joined way back in the year 2004 and 2005 and working on fixed remuneration of Rs.2500/-. The main ground of the respondents in denying the regular appointment to the petitioners and terminating their services is that initial appointment was on contractual basis.

8. This Court is of the considered opinion that such stand of the State Government in terminating the services of the petitioners, despite the fact that, petition of similarly situated other petitioners was allowed way back in the year 2011 and 2016. In these proceedings, respondents were party and decision was in the knowledge of the respondents. Case of the petitioners for increasing of remuneration from Rs.2500/- to Rs.9400/- was forwarded by Health and Family Welfare Department for consideration to the Finance Department. Finance Department in place of taking decision in favour of the employees have passed an order vide which the District Panchayats have been directed to terminate the services of the petitioners who have been working for considerable long time.

9. While disposing of Special Civil Application No.6289 of 2011, this Court has held as under. 25. It may be true that in the case of District Rajkot, similarly situated MPHWS(M) have been regularized by the concerned District Panchayat. However, it is obvious that in the case of Sabarkantha District Panchayat, the services of MPHWS (M), who are identically situated to the petitioners, have been regularized, with retrospective effect, by the State Government, itself. The State Government has taken a policy decision in this regard, confined only to the MPHWS (M) of Sabarkantha District. Why all similarly situated MPHWS (M) in other

Districts of the State have not been covered under a uniform policy, is certainly baffling. Multi Purpose Health Worker (Male) such as petitioners, who were appointed on adhoc basis but have been denied the fruits of regular appointment only because the regular selection process was not held until they had crossed the permissible age-limit, from a distinct class of employees. Different categories in a single class cannot be carved out by taking piecemeal decisions benefiting only a section of such employees. This would amount to sub- classification that would not be permissible in law, as there is no rational nexus to the object sought to be achieved by confirming the decision only to MPHWS (M) in Rajkot and Sabarkantha districts. They, therefore, cannot be accorded discriminatory treatment. The respondent authorities are not only trying to take advantage of the situation but are also trying to put the blame on each other which cannot be permitted, to the detriment of the petitioners.

10. From the aforementioned judgment, it is clear that Multi Purpose Health Worker (Male) who have worked continuously for so many years cannot be discriminated by taking one excuse or the other. There is no rationale in discriminating the present petitioners by treating them as employees on contractual basis when initial contract for which they were appointed is over after 11 months and thereafter, without any break, they are continued for all these years. This is particularly so, when clear cut finding has been recorded by co-ordinate Bench of this Court in Special Civil Application No.6289 of 2011 and respondents were party in these proceedings.

11. As a result of aforementioned discussion, termination order dated 6.1.2018 is quashed and set aside and this petition is allowed in the same terms as Special Civil Application No.6289 of 2011 decided on 10th August, 2016. Petitioners will be regularized in the same manner from the same date as in the aforementioned oral order. Rule is made absolute. 5. Further, a co-ordinate bench of this court in Special Civil Application No. 2207 of 2014, relying on the aforesaid decision, considering the submissions of the respective parties held as under vide order dated 23.01.2019: "

7. Having heard learned advocates appearing for the parties and having gone through the material on record, the Court found that respondents have not been able to point out any dissimilarity or discriminatory feature than what has been decided by coordinate Bench of this Court and, therefore, with limited scope of an issue, the Court found that the case is made out by the petitioner. While arriving at this conclusion, the Court is considering the observations which have been made by a decision in case of Special Civil Application No.6289 of 2011 reported in case as referred above [J.N.Jagani vs. State of Gujarat reported in 2016 (0) AIJEL – HC 236643], the relevant paras contained therein are reproduced hereinafter.

"26. It is a settled position of law, that does not require any further elaboration, that equals are required to be treated equally and dissimilar treatment cannot be accorded to the same class of people.

27. The action of the respondent authorities in not regularizing the services of the petitioners, as has been done in the case of other similarly situated MPHWM by the concerned District Panchayats and the State Government in Sabarkantha District, is not only arbitrary but also discriminatory and unjust and is, therefore, in violation of Article 14 of the Constitution of India. The petitioners are being deprived of the fruits of regularization in spite of having worked continuously for a period of about twentyfive years, or more. As such, the action of the respondents is also in violation of the provision of Articles 16 and 21 of the Constitution of India.

31. In the present case as well, the action of the respondents District Panchayat as well as the State Government is required to be tested on the principle of reasonableness in executive action. In the view of this Court, the action of respondent No.3 in not issuing the advertisement for the regular selection procedure expeditiously, especially after imposing a condition in the appointment orders of the petitioners that they have to undergo the regular selection process and then not conducting the selection process for years together until the petitioners cross the permissible age limit, is highly unreasonable. Respondent No.3 bided time for a period of six years before initiating the regular selection process ensuring, by this action that the petitioners become age barred in the meanwhile. The initiation of the selection process was not in the hands of the petitioners and they cannot be blamed for the plight they find themselves in.

33. As held by this Court in the above judgment, aging is a process which nobody can stop. This aspect ought to have been considered by respondent No.3 while including Condition No.10 in the appointment orders of the petitioners and while issuing the advertisement for regular selection in the year 1996. It was not in the hands of the petitioners to have stopped the clock from running. However, it was very much in the hands of respondent No.3 to have held the selection process well in time, so that persons such as the petitioners, who have been appointed by it subject to the condition that they would have to participate in the regular selection process, would have got a fair chance. The petitioners cannot be made to suffer for the totally unconcerned and casual approach on the part of the District Panchayat.

34. At the same time, the Court cannot overlook the fact that the State Government is supposed to be a model employer. It would have behoved the State Government to have framed a uniform policy for MPHWM such as the petitioners, covering the entire State of Gujarat, instead of confining the decision only to those MPHWM working in Sabarkantha District, as has been done vide the order dated 13.10.2009. This would have ensured equal treatment to all similarly situated MPHWM throughout the State, irrespective of the District in which they are working. The fact that a decision has not been taken for all MPHWM but only for those working in a particular District, has caused a great deal of anguish and heartburning to the petitioners, which is quite understandable, considering that they have been discriminated for no fault of

their own. 35. As a result of the above discussion and for the aforesaid reasons, this Court is of the view that the petitioners deserve to be granted the benefits of regularization with retrospective effect, as have been granted by the order dated 13.10.2009, passed by the State Government in the case of similarly situated persons in Sabarkantha District."

8. The Court also found that similar observations have been considered by yet another coordinate Bench in a decision delivered on 25.07.2018 in Special Civil Application No.12537 of 2011. The Court is also taking note of said decision while coming to this conclusion in the present case on hand. From the aforesaid observations and in view of the fact that here also the petitioner is a Multipurpose Health Worker (Male) and the dissimilarity is not reflecting at all, the case is made out by the petitioner for seeking the benefit of regularisation with retrospective effect. Accordingly following order would meet the end of justice while disposing of the petition.

8.1 The respondents are directed to consider the case of petitioner for regularisation of their services from the initial date of appointment as has been done in similarly situated cases with all consequential benefits and the needful to be done by the concerned authorities within a period of three months from the date of receipt of this Court.

9. With the above observation and direction, petition stands allowed, with no order as to costs."

6. Accordingly, the respondents are directed to consider the case of the petitioners for their entitlement to regular pay-scale on the post of Multi-purpose Health Workers (Male) from their original date of appointment and consequential benefits which have been paid to the similarly situated employees namely petitioners of Special Civil Applications No. 12537 of 2011 and 2207 of 2014. The petitioners shall be granted such benefits as referred to hereinabove within a period of ten weeks from the date of receipt of the writ of the order of this court. The petition is accordingly allowed. Rule is made absolute. Direct service is permitted."

6. Accordingly, the respondents are directed to consider the case of the petitioners for their entitlement to regular payscale on the post of Multi-purpose Health Workers (Male) from their original date of appointment and consequential benefits which have been paid to the similarly situated employees namely petitioners of Special Civil Applications No. 12537 of 2011 and 2207 of 2014. The petitioners shall be granted such benefits as referred to hereinabove within a period of ten weeks from the date of receipt of the writ of the order of this court. Rule is made absolute. Direct service is permitted."

6 Accordingly, the respondents are directed to consider the case of the petitioners for their entitlement to regular payscale on the post of Multi-purpose Health Workers (Male) from their original date of appointment and consequential benefits which have been paid to the similarly situated employees namely

petitioners of Special Civil Applications No. 12537 of 2011 and 2207 of 2014. The petitioners shall be granted such benefits as referred to hereinabove within a period of ten weeks from the date of receipt of the writ of the order of this court. Rule is made absolute. Direct service is permitted.”

6. Accordingly, these petitions are allowed in terms of paragraph No.6 of the Oral Judgment dated 07/10/2022 passed in Special Civil Application No.11291 of 2022 and allied matter. The petitioners shall be granted such benefits as referred to hereinabove within a period of ten weeks from the date of receipt of the writ of the order of this Court.

7. Rule is made absolute to that extent. Direct Service is permitted. No order as to costs.