

**(2012) 12 GUJ CK 0052**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 2191 of 2002**

PM Bedheka

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision : 18-12-2012**

**Acts Referred:**

**Citation : (2012) 12 GUJ CK 0052**

**Hon'ble Judges : Paresh Upadhyay, J**

**Bench : Single Bench**

**Advocate : Vilas G. Goswamy, for the Appellant; Jyoti Mehta, AGP, for the Respondent**

## **Judgement**

Honourable Mr. Justice Paresh Upadhyay

1. Heard Mr. Vilas Goswamy, learned advocate for the petitioner and Ms. Jyoti Mehta, learned AGP for the respondents State. The petitioner was appointed as daily wager karkoon (clerk) on 17.09.1981 in the office under the administrative control of the respondent no. 3 - Executive Engineer. The service of the petitioner as daily wager was discontinued on 08.10.1986, which was challenged and the same was held to be illegal and the petitioner was reinstated in service with continuity of service, which is not the subject matter of this petition. The said reinstatement was effected on 08.07.1993. The petitioner continued to work with respondents authorities thereafter.

2. There is no dispute about the fact that the petitioner was working as a daily wager karkoon (clerk) since 17.09.1981. Subsequently, the petitioner was taken on the work charge establishment as karkoon (clerk), in the pay-scale of Rs. 950-1500 by the respondents vide order dated 28.07.1998, which is on record. It is the case of the petitioner that he ought to have been taken in the said pay-scale much earlier, but since the petitioner was terminated at that time, the said office order was delayed. It transpires that from the post of work charge karkoon (clerk), the next higher post is that of work charge assistant. An employee,

junior to the petitioner viz., Mr. P.B. Jadeja, was taken as work charge assistant in the pay-scale of Rs. 4000-6000 vide order dated 15.10.1999, which is on record. It is the case of the petitioner that the name of the petitioner should also have been included in the said office order as work charge assistant along with person junior to him, which was not done and it is this action, which is under challenge in this petition. There is no dispute that Mr. Jadeja was junior to the petitioner and his date of appointment as work charge assistant is 15.10.1999 in the pay-scale of Rs. 4000-6000 then prevailing. It is reported that the petitioner has retired on attaining the age of superannuation on 30.09.2012 and even at the time of retirement, he was continued as work charged karkoon (clerk).

3. The petition is contested by the authorities and learned AGP Ms. Jyoti Mehta, by referring to the affidavit in reply filed by the respondent - Executive Engineer, has contended that the petitioner could not have been inducted in the cadre of work charge assistant since the training, which is required for such post was not taken by him and therefore, the action of the authorities of not granting the said pay-scale is legal and valid.

4. From the record, it transpires that the same Executive Engineer, who has taken this stand, had, time and again, written to his higher authority i.e. Superintending Engineer, that it is we, the authorities, who have to send the employee for training. Reference in that regard can be made to the letter dated 08.01.2002, written by the Executive Engineer to the Superintending Engineer, which is on record. Even in absence of any such communication, it is for the respondent authorities to send the employee for training and the employee cannot, on his own, go for training. That question need not be gone into further, on the face of this communication dated 08.01.2002, which is on record. Thus, it is inaction on the part of the respondent authorities with regard to sending the petitioner for training, which is sought to be used as the defence, for not granting the pay-scale of work charge assistant to the petitioner, which needs to be rejected.

5. It is the settled position of law that authorities cannot be permitted to take advantage of their own wrong. Reference in this regard can be made to the judgment of Hon'ble Supreme Court of India in the case of Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another, Keeping this principle in mind, I find that the action of the respondent authorities of not including the name of the petitioner in the office order dated 15.10.1999, granting the pay-scale of Rs. 4000-6000 then prevailing, of the post of work charged assistant w.e.f. 15.06.1998, is illegal and arbitrary and if the stand of the authorities is accepted, it would amount to grant of premium for the illegality, which is already committed by the authorities.

6. Considering the totality of the facts and circumstances and for the reasons recorded above, the petition is allowed and it is he was entitled to the pay-scale of Rs. 4000-6000 w.e.f. 15.06.1998, at par with his junior. It is directed that the petitioner shall be paid all consequential benefits, considering the pay-scale of

Rs. 4000-6000 then prevailing, of the post of work charged assistant w.e.f. 15.06.1998 within a period of three months from today. Pay on the subsequent revision of pay, shall also be refixed and arrears flowing therefrom shall be paid to the petitioner within a period of three months from today. Retirement benefits of the petitioner shall also be calculated accordingly and difference thereof shall be paid to the petitioner within a period of six months from today. Rule is made absolute with no order as to costs.