

(2008) 01 GUJ CK 0068
In the Gujarat High Court

Case No : Special Civil Application No's. 10428 and 10434 of 2007

Rajesh L. Shukal

APPELLANT

Vs

Gujarat Water Supply and Sewerage Board and Others

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Citation : (2008) 01 GUJ CK 0068

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Nalin K. Thakker, for the Appellant; Rituraj M. Meena, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—In both the petitions, the petitioners have challenged the order dated 10.3.2005--Annexure ""F"" and the letter dated

5.2.2007, whereby the benefits of higher pay-scale to the petitioners have been withdrawn.

2. Heard Mr. Thakker, learned Counsel for the petitioners and Mr. Meena, learned Counsel for the respondents.

3. Upon hearing the learned Counsel appearing for the petitioners it appears that the petitioners were given higher pay-scale pursuant to the

Government Resolution dated 16.8.1994 and as per Condition No. 3(20) of the Government Resolution, such benefits were to be withdrawn, if

the concerned employee has not accepted the promotion avenue offered to the petitioner. It is not in dispute that the petitioners pursuant to the

Government Resolution of 1994 gave undertaking to the respondent authority, copy whereof is produced at Annexure ""C"" and as per the said

undertaking, they have agreed to abide by the promotion avenue offered to them, failing which they have admitted that they may be placed in the lower pay-scale.

4. It appears that vide order dated 16.12.2004 (Annexure D), the petitioners were transferred and rather promoted as Sr. Clerk (Accounts)

based on the seniority in the cadre of Sr. Clerk and it was also stated in the said order that if any of the employee, who has taken any benefits of

the higher pay-scale as per the Government Resolution, fails to accept the offer, such benefits shall be withdrawn. It is also an admitted position

that the said order dated 16.12.2004 is not challenged by the petitioners concerned at the relevant point of time, nor stayed by higher authority

than the issuing authority.

5. However, it appears that thereafter vide order dated 10.3.2005 since the petitioner did not accept the aforesaid posting of Sr. Clerk

(Accounts), the benefits of higher pay-scale has been withdrawn. The petitioners made representation, which also has been rejected vide order

dated 5.2.2007--Annexure ""H"" and under these circumstances, the present petition.

6. It deserves to be recorded that more or less similar point came to be considered by this Court in its decision in case of Krishnakant Maganlal

Brahmbhatt v. State of Gujarat (SCA No. 10579 of 2002) reported in 2005(0) GLHEL 216099, which was a case against the order of the

Gujarat Civil Service Tribunal confirming the decision of the authority for not granting the benefit of the higher pay-scale upon the person, who was

posted as Sr. Clerk (Accounts). In that case, it was observed by the Tribunal that if the person had not resumed the duty at the transferred place,

which was found by the Tribunal as that of a promotional avenue, and thereafter sticks to the post and claims only higher pay-scale conferring of

such benefits, the same would be a mockery. Therefore, the Tribunal had not accepted the same. This Court in the said decision, inter alia,

observed at para 4, 5, and 6 as under:

4. Mr. Brahmbhatt, learned Counsel for the petitioner, submitted that the order by which the petitioner was posted as Sr. Clerk (Accounts) cannot

be said as promotion avenue, but can be said as a transfer order. He submitted that, therefore, the Tribunal has not properly considered the said

aspect.

5. In my view, even if the order is treated as that of transfer order, then also the fact remains that there was express stipulation in the order that if

the petitioner fails to join at the transferred place as Sr. Clerk (Accounts) or if he abandons the post at that place, he would not be entitled for the

benefits of the Government Resolution dated 16.8.1994 and, therefore, when the aforesaid conditions were expressly provided and in spite of the

same, the petitioner did not join at the transferred place and if the authority has declined the benefits of Government Resolution dated 16.8.1994

for giving higher pay-scale, such an action on the part of the authority cannot be said to be unreasonable or arbitrary. The Tribunal has also

recorded that it is on the basis of the seniority the regular posting was being made. Further, in any case, the order dated 3.1.1996 is accepted by

the petitioner and not challenged before any authority and thereafter when the benefit is not conferred upon the petitioner in pursuance of the order

dated 3.1.1996 read with the Government Resolution dated 16.8.1994, the petitioner cannot contend that such condition could not have been

incorporated.

7. It may be recorded that the benefits as per the resolution dated 16.8.1994 of the Government are with a view to enable the employee to get

higher pay-scale and to avoid stagnancy, more particularly when the posts are not available. Such benefits cannot be conferred upon the employee

who is not desirous to abide by the discipline in the employment. The petitioner when did not join the duty in pursuance of the order dated

3.1.1996, voluntarily run the risk of the consequence of the order and such consequence has fallen when the petitioner applied for giving of the

higher pay-scale and, therefore, the final view taken by the Tribunal, in view of the aforesaid observations of this Court, does not deserve to be

upset even if the order dated 3.1.1996 is treated as that of a transfer order.

7. Ultimately the decision of the Tribunal was not interfered with.

8. As such, similar is the fact situation so far as the conferment of the benefits of the higher pay-scale is concerned. The only distinction is that in the

said case, as the person concerned did not accept the post as Sr. Clerk (Accounts), which is a promotion avenue, the benefits of higher pay-scale

was not conferred upon him. Whereas, for the present case, the benefits of the

higher pay-scale was already conferred prior to the offering of the promotion avenue as Sr. Clerk (Accounts) and since the offer was not accepted of the promotion avenue, the benefits of higher pay-scale are withdrawn. In my view, so far as the application of the principles is concerned, it would not make much difference. The pertinent aspect in the present case is that the petitioner had given undertaking to accept the lower pay-scale if he denies the promotion offered to him of the higher post.

9. As observed by this Court in the above referred decision, the essential purpose of the policy is to see that there may not be any stagnancy and

the person concerned may get higher pay-scale if the posts are not available, but such benefits can be conferred upon the employee, who is

desirous to abide by the discipline of the employment. As per the respondents, the promotion to the post of Divisional Accountant can be made

from amongst the Sr. Clerks/the Deputy Accountants. The post of Dy. Accountant is re-designated as Sr. Clerk (Accounts). Therefore, one of the

avenues for promotion to the post of Divisional Accountant is from the post of Sr. Clerk (Accounts). As the petitioner was offered posting, which

is not accepted and, therefore, would consequently affect the final promotion to be given to the post of Divisional Accountant. As a consequence

thereof, the benefits conferred of the higher pay-scale has been withdrawn.

10. Mr. Thakker, learned Counsel appearing for the petitioners contended that the Recruitment Rules provide for the promotion to the post of

Divisional Accountant from the post of Deputy Accountant (Sr. Accounts Clerk) and it can also be from the post of Sr. Clerk and, therefore, in his

submission, it is not a case of non-acceptance of the promotion, but is a case of non-acceptance of the transfer order.

11. So far as non-acceptance of the transfer order is concerned, the issue is as observed earlier covered by the decision of this Court in case of

Krishnakant Maganlal Brahmbhatt v. State of Gujarat (supra). Further, the perusal of the order dated 16.12.2004--Annexure ""D"", which is

considered by the petitioner as a simplicitor transfer order, shows that it specifically provided, vide last but third para, that if any of the employees

declines to accept the order, the benefits of higher pay-scale conferred upon him shall be withdrawn. Therefore, the said aspect was expressly

provided in the order when the petitioner was posted as Sr. Clerk (Accounts).

Further, as observed earlier, the post of Sr. Clerk (Accounts) was formerly known as Deputy Accountant and is feeding cadre for the promotion to the post of Divisional Accountant. Therefore, it is not a case of simplicitor transfer order.

12. Further, the action cannot be said as in contravention to the statutory rules as sought to be canvassed, because unless the person is posted as

Sr. Clerk (Accounts), he cannot be considered for promotion to the post of Divisional Accountant and the reason being that for the post of

Divisional Accountant, vacancy is to be filled up by selection through Departmental Selection Committee from the cadre of Sr. Clerk/Sr. Clerks

(Accounts).

13. Mr. Thakker, learned Counsel appearing for the petitioners also contended that there is no amendment in the Government Resolution and,

therefore, the higher pay-scale conferred upon the petitioners cannot be withdrawn. It is only when the promotion is offered to the petitioners and if

denied to the post of Divisional Accountant, then only the benefits can be withdrawn.

14. In my view, such contention is on misconception inasmuch as it would run counter to the spirit of the policy of the Government. The essential

purpose of the policy is to see that there may not be stagnancy in the post on account of non-availability of the higher post. If one is eligible for

promotion and the higher posts are not available, stagnancy may be created and, therefore, with a view to remove such stagnancy, the Resolution

provides for conferment of the higher pay-scale. The resolution itself makes it clear that if the promotion is offered and not accepted by the person

concerned, the benefit of higher pay-scale shall be withdrawn. Even the undertaking is also required to be given and which was given by the

petitioners for such purpose. Therefore, all actions, which are incidental to the promotion, are deemed as included for enjoying the benefits of the

higher pay-scale pursuant to the said resolution. Unless the petitioner accepts the post of Sr. Clerk (Accounts), he cannot be considered to the

post of Divisional Accountant as per the stand of the respondents. Therefore, there is no question of amendment of the Government Resolution,

but the action can be said as in accordance with the spirit of the resolution for conferring higher benefits.

15. Mr. Thakker, learned Counsel for the petitioners also contended that since it was a case of non-acceptance of transfer, it would not ensue the withdrawal of higher of pay-scale.

16. On the said aspects, the matter is also considered and the observations are already made as referred to herein above. Therefore, it can only be

said that the interpretation of the order dated 16.12.2004 is not correct on the part of the petitioners, more particularly when it is an admitted

position that the order dated 16.12.2004 is not challenged at the relevant point of time, nor stayed by any higher authority.

17. In view of the above, it cannot be said that the impugned decision is arbitrary or unreasonable for withdrawal of the higher pay-scale conferred

to the petitioners.

18. Hence, no case is made out for interference. Therefore, both the petitions are rejected.