

(2010) 12 GUJ CK 0136

In the Gujarat High Court

Case No : Special Civil Application No. 8560 of 2010

Ramanbhai K. Dabhi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0136

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : A.S. Supehia, for the Appellant; Moxa Thakkar, learned Asst. Government Pleader for Respondents 1-4, for the Respondent

Judgement

Abhilasha Kumari, J.—This petition under Article 226 of the Constitution of India, has been filed with the following prayers:

A) Quashing and setting aside the letter dt.2.1.2010 and 21.4.2010 and further directing the Respondents to grant the first higher grade scale to the Petitioner from 2.3.2000 subject to passing of departmental examination and pay the consequential arrears with interest of 8%

B) During the pendency and final disposal of this petition, the Respondent No. 2 may be directed to grant the 1st Higher grade scale to the Petitioner.

(C) to grant such and further relief as may be deemed fit and proper.

2. Briefly stated, the facts of the case are that the Petitioner was appointed as Junior Clerk vide order dated 27-12-1990 and was placed under the District Superintendent, Kutch-Bhuj. The Petitioner became eligible for 1st Higher Grade Scale after completion of 9 years service in the cadre of Junior Clerk with effect from 27-12-1999, as per the Scheme of Higher Grade Scale. The Petitioner has passed the pre-service training examination for Junior Clerk. Thereafter, the Petitioner appeared for the departmental examination meant for Senior Clerks, in the year 2002 and 2004, in which he failed. No departmental examination for

Senior Clerks has been held by the Respondents, after 2004. The case of the Petitioner is that he became eligible for Higher Grade Scale for the post of Senior Clerk after completion of 9 years of service with effect from 2-3-2000, but as no departmental examination for Senior Clerks has been held by the Respondent after 2004, this benefit is denied to him on the ground that he has not cleared the examination meant for Senior Clerk. It is further the case of the Petitioner, that as he belongs to the Scheduled Caste category, he is entitled to four chances, and having failed in two attempts, there are still two chances left for him to pass the said examination. Meanwhile, Respondent No. 1, by letter dated 2-1-2010 informed Respondent No. 2 that the benefit of Higher Grade Scale cannot be granted since it is against the Rules. Being aggrieved by this decision, as also letter dated 2-1-2010 of the Respondent No. 3 addressed to Respondent No. 4 to the same effect, the Petitioner has approached this Court by filing the present petition.

3. Mr. A.S. Supehia, learned advocate for the Petitioner has submitted that by Resolution dated 14-9-2007 the State Government has clarified the aforesaid dispute of non-passing of departmental examination and grant of Second Higher Grade Scale on completion of 24 years service. As per Para 1(1) of the said Resolution an employee who has not passed the Departmental Examination can also be granted the Higher Grade Scale from the date on which he becomes eligible. It is further submitted that paragraph 2 states that after the grant of Higher Grade Scale, the same employee should be sent to training and the concerned Department shall make arrangements for conducting departmental examination. It is, therefore, submitted that on the same principle and analogy, the Petitioner is also entitled to Higher Grade Scale. It is further submitted that as the Petitioner belongs to the Scheduled Caste category, he is entitled to four chances and even if he has failed in two chances, he can still attempt the examination in the remaining two chances, but as no departmental examination has been conducted by the Respondents after 2004, the remaining chances of the Petitioner will go in vain.

4. The learned advocate for the Petitioner has drawn the attention of this Court to judgment dated 31-3-2009 rendered in Special Civil Application No. 2146 of 2009, the relevant extract of which is reproduced herein-below:

14. Even otherwise, considering the fact that when since 1991, the departmental promotional examination has not been conducted by the Respondent-State and when the Petitioner was always ready and willing to appear in the examination and had twice filled up the form, Petitioner cannot be denied the benefit of higher grade scale on completion of 9 (nine) years service solely on the ground that Petitioner has not passed departmental promotional examination, which is not conducted by the State since 1991. To deny the benefit of higher grade scale to the Petitioner on the ground that Petitioner has not passed departmental promotional examination would be penalizing the Petitioner/employee for their no fault. It is also required to be noted that even in the present Special Civil

Application also, in paragraph 13 of petition, Petitioner undertakes to appear and pass the examination within the prescribed trials whenever it is held. Under the circumstances, Petitioner can be extended the benefit of first higher grade scale subject to Petitioner appearing and passing the examination within the prescribed trials whenever it is held.

15. For the reasons stated above, petition succeeds. Respondents are directed to grant the actual benefit of first higher grade scale as per the order dated 10.12.2004 from the date of completion of 9 (nine) years as Head Constable, Driver Mechanic Grade-I subject to the Petitioner appearing and passing the examination for the post of Police Sub Inspector- Motor Transport within the prescribed trial(s) whenever it is held. Petitioner shall be paid the arrears within a period of 2 (two) months from today and is continued to pay the benefit of first higher grade pay scale.

16. Accordingly, Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, no order as to costs.

5. On the basis of the above judgment, it is submitted by the learned advocate for the Petitioner that the Respondents can be directed to consider the case of the Petitioner along similar lines, and the interest of justice would be met if the Petitioner is permitted to approach Respondent No. 2 by filing a representation, which may be considered in the light of Government Resolution dated 14-9-2007 and judgment dated 31-3-2009, rendered in Special Civil Application No. 2146 of 2009.

6. Upon the above statement being made by the learned advocate for the Petitioner, the following order is passed:

The Petitioner is permitted to make a representation within a period of two weeks from today to Respondent No. 2, who is directed to consider and decide the same, in light of Government Resolution dated 14-9-2007 and judgment dated 31-3-2009, rendered in Special Civil Application No. 2146 of 2009, which, according to the Petitioner, is applicable to him. Respondent No. 2 may take a decision, in accordance with law, as expeditiously as possible and preferably, within a period of six weeks from the date of receipt of a copy of this order.

7. It is clarified that this order has been passed without entering into the merits of the case.

8. The petition is disposed of, in the above terms. Rule is discharged. There shall be no orders as to costs. Direct service is permitted.