

**(2015) 05 GUJ CK 0002**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 7824 of 2015

Rameshchandra Amrutlal Sejpal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

**Date of Decision :** 01-05-2015

**Acts Referred:**

Constitution of India, 1950 — Article 234, 235  
Gujarat Public Trusts Act, 2011 — Section 4, 73

**Citation :** (2015) 05 GUJ CK 0002

**Hon'ble Judges :** Jayant M. Patel and G.B. Shah, JJ.

**Bench :** Division Bench

**Advocate :** M.D. Rana, Advocate, for the Appellant

**Final Decision :** Dismissed

## Judgement

Jayant M. Patel, J.—The petitioner by this petition is seeking appropriate writ to quash and set aside the impugned order dated 31/12/2014 issued by the respondent No. 2 and it is prayed by the petitioner to hold that the petitioner is entitled to be recognized in the post of Joint District Judge and it may further be held by the Court that the petitioner is entitled to re-fixation of arrears on pension from 2006 with interest @ 8%. The petitioner has also prayed for the appropriate writ to direct the respondents to revise the pension and to make payment of interest as if he has retired from the post of Joint District Judge.

2. We have heard Mr. Rana, learned counsel appearing for the petitioner.

3. As such, it appears that the petitioner through the indirect mode is contemplating to agitate the same question which was earlier agitated in Special Civil Application No. 5245 of 2014, which came to decided vide judgment and order dated 10/04/2014 passed by this Court whereby, this Court, for the reasons recorded in the said decision, had found that the recommendations of Padmanabhan Commission as well as the Shetty Pay Commission cannot be made available to the present petitioner either pursuant to the G.R. dated

26/06/2009 or pursuant to the order dated 19/07/2005. It further appears that thereafter, the petitioner preferred Misc. Civil Application No. 2925 of 2014 in Special Civil Application No. 5245 of 2014 for review of the earlier judgment and order dated 10/04/2014 wherein, this Court permitted the petitioner to make representation and such representation was ordered to be decided afresh without being in any manner influenced by any observations made in the earlier judgment and order. It also appears that thereafter, the representation was made by the petitioner dated 21/10/2014 and the same came to be dismissed vide order dated 31/12/2014 passed by the Secretary and RLA, Legal Department of the State Government.

4. As such, if the cadre or the post from which the petitioner retired is considered, the same was Joint Charity Commissioner and as it is, it can be said that the said post was no more under the control of the High Court under Articles 234 and 235 of the Constitution.

4.1 However, Mr. Rana, learned counsel for the petitioner, made two fold submissions, one was that the petitioner was formerly in the judiciary and thereafter, initially he was sent on deputation to the post of Deputy Charity Commissioner and therefore, even he is subsequently regularly appointed as Deputy Charity Commissioner, the parent cadre of the petitioner as that of judicial service, would not be lost. Once the petitioner continued to hold the service in judiciary which is in subordination of the High Court under Article 235 of the Constitution, he would be entitled to the benefit of the Shetty Pay Commission for the purpose of pay-scale as well as the pension consequently.

4.2 In our view, the very aspect was agitated by the petitioner in the above-referred earlier Special Civil Application No. 5245 of 2014 and this Court did not accept the contention. However, Mr. Rana, learned counsel for the petitioner, contended that the said order in the said Special Civil Application, was reviewed and therefore, the Court may independently examine the matter.

4.3 The examination of the said contention would require the consideration of Articles 234 and 235 of the Constitution. Articles 234 and 235 of the Constitution read as under:

"234. Recruitment of persons other than district judges to the judicial service:-- Appointments of person other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

235. Control over subordinate courts:-- The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, person belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person

any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

4.4 The aforesaid shows that if a post is such which falls in subordination to the High Court, may be an appointment after consultation with State Public Service Commission or may after consultation with the High Court, it would fall in the category of the Presiding Officer of the subordinate Court or in the judicial service.

4.5 It is true that the petitioner was sent on deputation from the judiciary to the post of Deputy Charity Commissioner but thereafter, he was regularly appointed as Deputy Charity Commissioner after consultation with GPSC together with Mr. H.L. Desai. The moment the petitioner was regularly appointed as Deputy Charity Commissioner, he had ceased to be in judicial service within the meaning of Articles 234 and 235 of the Constitution. The another aspect is that the aforesaid regular appointment as Deputy Charity Commissioner came to be made in the year 1985 and the petitioner, thereafter, retired in 1994 and the grievance is raised in 2015 or in any case, in 2014.

4.6 Once there was regular appointment as Deputy Charity Commissioner, his earlier cadre in the judiciary had ceased and therefore, it cannot said that he would continue to hold the status in judicial service so as to get the benefit of the revision in the pay-scale and consequently, the pension as per the recommendations of the Shetty Pay Commission.

4.7 The second limb of argument by Mr. Rana, learned counsel for the petitioner, was that even otherwise also, the post of Deputy Charity Commissioner is a post where judicial functions were to be discharged by the petitioner. Subsequently, he was promoted to the post of Joint Charity Commissioner where also, similar judicial functions were to be discharged by him. In his submission, as per the decision of the Apex Court in case of State of Kerala v. Renjith Kumar and Others, reported in AIR 2009 SC (supp) 465 whether his appointment is made by the State Government would not matter for his function as judicial function. In his submission, once it is held that the petitioner was discharging the judicial functions, he would be entitled to the benefit of the Shetty Pay Commission for the fixation of the pay-scale and consequently, the pension, as has been made effective for the other persons in the judicial service from 2006 onwards. Mr. Rana, learned counsel for the petitioner, in furtherance to his submission, relied upon the provisions of Sections 4 and 73 of the Gujarat Public Trusts Act for showing the qualification and the nature of the work at par with the persons in judicial service. He also contended that similar was the position for the Industrial Courts and the judges of the Labour Courts and the Apex Court has held that they would fall in the subordination of the High Court under Articles 234 and 235 of the Constitution. He submitted that, there is no reason as to why the post of Deputy or the Joint Charity Commissioner should not be included in the judicial service. He, therefore, contended that, on that count, the petitioner would be

entitled to the benefit of Shetty Pay Commission for revision and consequently, pension in service.

4.8 We may record that so far as judges of the Industrial Courts and the Labour Courts are concerned, the issue is no more *res integra* because the Apex Court, in the case of *The State of Maharashtra Vs. Labour Law Practitioners' Association and Others*, has already ruled that they fall in the subordination of the High Court under Articles 234 and 235 of the Constitution. Such is not the position in the case of the a person holding the post of Deputy or the Joint Charity Commissioner. The attempt to contend that the qualification and the nature of function is a judicial function and therefore, he be treated in subordination of the High Court under Articles 234 and 235 of the Constitution cannot be countenanced for the simple reason that the mode of appointment, the mode of recruitment, the hierarchy for the posts of Assistant Charity Commissioner to the post of Charity Commissioner are altogether different. If the contention is accepted, the resultant effect would be that large number of statutory tribunals though exercising quasi judicial powers may fall under the subordination of the High Court. Such has been neither declared nor the mechanism of the Gujarat Public Trusts Act has been examined accordingly. We are not inclined to consider such a larger question as to whether the post of the Deputy Charity Commissioner or the Joint Charity Commissioner, in view of the scheme of the Act, can be said as falling in subordination to the High Court under Articles 234 and 235 of the Constitution that too, at the instance of the petitioner, who has retired long back in the year 1994 and during the tenure of his service, he never raised such a contention nor pursued the matter whatsoever.

4.9 Even otherwise also, it is not possible for us to accept the contention that the post of Deputy Charity Commissioner or the Joint Charity Commissioner could be said as falling in subordination of the High Court under Articles 234 and 235 of the Constitution. Once the post is not in the subordination of the High Court under Articles 234 and 235 of the Constitution the contention that the benefit of the revision of pay-scale and consequently, pension as per the recommendations of the Shetty Pay Commission, would not be available to the petitioner.

5. If the aforesaid aspect is considered with the reasons recorded by the officer in the impugned order dated 31/12/2014 at Annexure "H", we do not find any case is made out for interference. Hence this petition is not entertained and is dismissed.