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**(1999) 09 GUJ CK 0004**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 1231 of 1987**

R.J. Vala

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 22-09-1999

**Acts Referred:**

**Citation :** (2000) GLR 715

**Hon'ble Judges :** S.K. Keshote, J

**Bench :** Single Bench

**Advocate :** A.J. Yagnik, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.K. Keshote, J.—This special civil application had come up for preliminary hearing in the Court on 1-4-1987, on which date, notice has been issued to the respondents returnable on 16-4-1987. Thereafter, this matter has been placed on Board for three times and ultimately on 24th June, 1988, it was admitted. The petitioner subsequently prayed for amendment of the special civil application which has been granted by this Court on 26th March, 1998.

2. The respondents have not cared to file reply to the special civil application as it stand originally as well as to the amended petition and worse is that nobody is present on their behalf to make oral submissions also.

3. Heard the learned counsel for the petitioner and perused the special civil application. The petitioner was promoted to the post of District Health Officer in the month of November 1981. The seniority list of District Health Officers was published vide notification dated 16th December, 1986 in which the position was shown as on 1-9-1980. Naturally, as the petitioner was promoted on this post in the month of November 1981 his name is not there. A copy of the said seniority list has been submitted on the record of this special civil application.

4. The petitioner by this special civil application is praying for direction to the

respondents to grant him all the benefits of promotion, seniority, pay fixation available to the scheduled castes candidates as per the roster with effect from the date of inclusion of Mochi community in scheduled castes.

5. Under the notification dated 20th September, 1976, annexure 'A' on the record, the Mochi community has been included in the list of scheduled castes and which has been published in the Government Gazette on 10th March, 1977. It is the case of the petitioner that his case against the roster point for promotion to the post of District Health Officer, Class I Services should have been considered and accordingly promotion should have been given.

6. Learned counsel for the petitioner submits that in case it would have been done then the petitioner would have been promoted in the year 1977 and his name should have been placed immediately below Sr. No.17 and above Sr. No.18 in the seniority list of Class I Officers published on 16th December, 1986. Subsequently, further seniority list of Class I Officer has been published on 20th April, 1987 in which the name of the petitioner is at Sr. No.25 whereas one Shri Itnal is at Sr. No.32 and by amendment of the special civil application, the petitioner is praying for direction that his name has to be placed in between the serial number 14 and 15 in that seniority list and as a consequent thereof all benefits are to be given to him. This amendment has been granted but it is not carried out in the special civil application. However, on this technical ground, I do not consider it to be appropriate to discard the amendment.

7. The relief prayed for by the petitioner cannot be granted for the reasons, firstly, that the Mochi community has been included in the list of Scheduled castes in 1977 but the petitioner has not filed any writ petition before this court for his promotion against the roster point. He was given promotion in November 1981 and he has not come up before this Court to claim his promotion from the back date. This special civil application has been filed by the petitioner in this Court on 31st March, 1987 and in which he is praying for this relief for considering his case for promotion against two roster points. Even in this special civil application, the seniority list of 16th December, 1986 has not been challenged. Similar is the case where the seniority list which has been published on 20th April, 1987 has not been challenged. The seniority list, annexure 'I' has been stated to be produced on the record but learned counsel for the petitioner admits that this has not been filed on the record of this special civil application.

8. Leaving apart, whether this claim of the petitioner on merits is sustainable or not, in case this prayer is accepted and he is given promotion from 1977 then what it will result that the seniority list will be disturbed and possibly on the basis of that list many of the persons would have been promoted to the next higher post and their promotions are to be disturbed. Moreover, the petitioner is claiming the seniority above many of the persons who are senior to him in the seniority list of 16th December, 1986 as well as the seniority list of 20th April, 1987 but none of them has been impleaded as party to this petition. Those persons are necessary party to this special civil application and the grant of the

relief of the nature as prayed for by the petitioner may result in lower downing their seniority as well as their reversion from the promotional post where they have been promoted and further their seniority in the next higher post.

9. Taking into consideration the totality of the facts of this case, in the absence of such persons, no such relief can be granted and similarly the petitioner is claiming the relief for cause of action which is accrued to him in the year 1977 by filing the petition in the year 1987, which cannot be granted.

10. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. However, in the facts of this case, no order as to costs.