

(2022) 01 GUJ CK 0005

In the Gujarat High Court

Case No : R/Special Civil Application No. 18954 Of 2021

Saberabibi Mohammadbhai Malek

APPELLANT

Vs

District Development Officer

RESPONDENT

Date of Decision : 03-01-2022

Acts Referred:

Citation : (2022) 01 GUJ CK 0005

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : DP Joshi, Meet Thakkar

Final Decision : ?Dismissed

Judgement

Biren Vaishnav, J

1. Draft amendment granted.
2. Heard learned advocates for the parties.
3. The petitioner is a classic example of a litigious perseverance for approaching various forums for appropriate reliefs which on the basis of the reasons that follow are totally misconceived.
4. The prayer in this petition prayed for by the petitioner is to direct the respondents to consider the present petitioner at the post of Mukhya Sevika from 21.08.2007 and to pay all monetary benefits like regular pay and other consequential benefits.
5. By virtue of a chart in this petition, it is the case of the petitioner that she though being senior was not promoted as Mukhya Sevika. In the year 2007, admittedly one junior who was listed at Sr. No. 19 i.e. Patel Neelaben was promoted. The prayer in the petition therefore is that she deserves to

be promoted as Mukhya Sevika in 2007.

6. It appears that the petitioner had initially filed Regular Civil Suit No. 174 of 2010 before the learned Principal Senior Civil Judge, Godhra. Pending

the civil suit, it appears that interim order was passed in the suit on 11.02.2011. The petitioner thereafter approached this court by filing Special Civil

Application No. 1625 of 2015 for a direction to pay regular salary. This court by an order dated 03.10.2019 in that petition observed as under:

â??3. It appears that the petitioner has been promoted to the post of Mukhya Sevika by the order dated 11/7-8 of 2014. It is the case of the petitioner

that she was entitled to be included in the merit list since 22.08.2007 after completion of 5 years of service. It is the case of the petitioner that she has

become eligible to get the full salary, however she has not granted the same and instead of that she has been put on a honorary salary of Rs. 4,500/-

per month.

4. Learned advocate Mr. Kharadi for the petitioner has submitted that despite the order passed by the Civil Court on 11.02.2011, the respondent

authorities took their own time in preparing the seniority list and because of the same she has been denied the benefits of regular pay scale from 2012.

5. Thus, the case of the petitioner is premised on the interim relief dated 11.02.2011 passed below exhibit 5 in Regular Civil Suit No. 174 of 2010,

wherein, the respondent authorities have directed to put the petitioner at serial no. 25 in the merit list dated 22.08.2007.

6. Learned advocate Mr. Kharadi for the petitioner has submitted that subsequently the petitioner has withdrawn the aforesaid civil suit in view of the

aforesaid order. By the order dated 23.05.2011, the name of the petitioner was placed in the merit list at serial no. 25. The merit list dated 22.08.2007

was prepared for appointment to the post of Mukhya Sevika by way of nomination.

7. By the communication dated 16.07.2013 passed by the Panchayat Gram Gruh Nirman and Gram Vikas Department, the District Development

Officer was informed that the appointment of the petitioner as a Mukhya Sevika is made subject to the result of the Regular Civil Suit No. 174 of 2010

filed by the petitioner.

8. It appears that thereafter when the turn of the petitioner came, by the order dated 11.07/08.2014, the District Development Officer appointed the

petitioner to the post of Mukhya Sevika by way of nomination in the fixed pay of Rs. 4500/-.

9. In the considered opinion of this Court, it is not found that any illegality is committed by the respondent authorities in the appointment of the

petitioner vide order dated 11.07/08.2014. It is pertinent to note that her initial appointment was made subject to the result of the Regular Civil Suit No.

174 of 2010 filed by the petitioner and the same was withdrawn by her unconditionally. No order regarding withdrawal of the civil suit has been

produced before this Court. Thus, the petitioner cannot claim regular salary on this basis of interim order passed below exhibit 5 of placing her in the

merit list at serial no. 25.

10. Be that as it may, it is not the case of the petitioner that no other person junior to her has been appointed for the said post and has been conferred

the benefit of regular pay scale.

11. In this view of the matter, the present writ petition fails. Rule discharged.â??

7. Apparently, therefore, the court found no illegality in appointing the petitioner with effect from 11.07/08.2014. Not satisfied with that claim, the

petitioner again approached this court by filing Special Civil Application No. 3022 of 2021. The suit at that point of time was pending. With a view to

withdraw the suit, the petitioner withdrew the petition being Special Civil Application No. 3022 of 2021 filed before this court. The order dated

15.02.2021 reads as under:

â??Heard Mr.Dwijen Joshi, learned advocate for the petitioner and Mr.Krutik Parikh, learned AGP for the respondentsState. Mr.Joshi, learned

advocate for the petitioner seeks permission to withdraw the present petition with liberty to file fresh petition after withdrawing Regular Civil Suit

No.174 of 2010 pending in the Court of learned Principal Senior Civil Judge, Godhara. Permission as sought for is granted. The petition stands

disposed of as withdrawn with above liberty.â??

8. Mr. Joshi would submit that his claim for agitating non-promotion from the year 2007 stands because of the liberty reserved by the order of this

court on 15.02.2021. Apparently, in view of the order passed by this Court in Special Civil Application No. 1625 of 2015, it is not open for the

petitioner to reagitate and reopen the issue once it was settled by way of the said order.

9. In view of the above, being devoid of any merits, this petition is dismissed. No costs.