

(2016) 01 GUJ CK 0070
In the Gujarat High Court

Case No : Special Civil Application Nos. 11539 and 11625 of 2014

Sama Alimamad Salemamad

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 229

Citation : (2016) 01 GUJ CK 0070

Hon'ble Judges : Sonia Gokani, J.

Bench : Single Bench

Advocate : V.K. Joshi, Advocate, for the Appellant; Rashesh Rindani, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Sonia Gokani, J.—1. The petitioner of Special Civil Application No. 11539 of 2014 (hereinafter referred to as "petitioner No. 1") has challenged the order dated 05.01.2013 passed by the respondent-authority, whereby the benefit of second higher grade pay scale is rejected. Reliance is placed on two Government Resolutions dated 16.08.1994 and 02.07.2007 for the said purpose.

2. It is the say of petitioner No. 1 that on his completing 9 years of service he was given first higher grade pay scale by order dated 09.12.2009 with effect from 01.09.1993. It is his say that he has continued on the said post for 32 years. Now, he is the senior most in the entire State. He has become entitled to the second higher pay scale from 01.09.2008.

3. The petitioner has sought following reliefs in this petition under Article 226 of the Constitution of India:--

"8. The petitioner, therefore, prays that:--

A) This Honourable Court may be pleased to allow the present petition;

B) This Honourable Court may be pleased to quash and set aside the order dated

5.1.2013 passed by the respondent No. 2 rejecting the IInd Higher Grade Pay Scale of Rs. 9300-34800 (Grade Pay 5400) in favour of the present petitioner and shall be pleased to issue writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing respondent No. 2 to grant the IInd Higher Grade Pay Scale of Rs. 9300-34800 (Grade Pay 5400) w.e.f. 1.9.2008 as early as possible;

C) Pending admission, hearing and final disposal of this petition, this Honourable Court be pleased to direct the respondent No. 2 to fix the IInd Higher Grade Pay Scale of Rs. 9300-34800 (Grade pay 5400) and forward the same before the pay verification unit immediately for necessary approval;

Any other order/s which may be deemed fit and expedient in the interest of justice may kindly be passed by this Honourable Court;"

4. Whereas the petitioner of Special Civil Application No. 11625 of 2014 (hereinafter referred to as "petitioner No. 2") is working as Gujarati Stenographer Grade-II in the District Court-Kutch. He has not been allowed first higher grade pay scale, though he has completed more than 20 years of service. He has been appointed in the year 1999 and so far not received the first higher grade pay-scale.

5. Prayers sought for in this petition are as follows:--

"8. The petitioner, therefore, prays that:--

A) This Honourable Court may be pleased to allow the present petition;

B) This Honourable Court may be pleased to quash and set aside the order dated 5.1.2013 passed by the respondent No. 2 rejecting the Ist Higher Grade Pay scale in favour of the present petitioner and shall be pleased to issue writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the respondent No. 2 to grant the Ist Higher Grade Pay Scale of Rs. 9300-34800 w.e.f. 14-10-2011 as early as possible;

C) Pending admission, hearing and final disposal of this petition, this Honourable Court be pleased to direct the respondent No. 2 to fix the Ist Higher Grade Pay Scale of Rs. 9300-34800 and forward the same before the pay verification unit immediately for necessary approval;

D) Any other order/s which may be deemed fit and expedient in the interest of justice may kindly be passed by this Honourable Court;"

6. Affidavit-in-reply in both the petitions are filed separately, the gist of which is as under:--

"6.1 The High Court of Gujarat has framed vide letter dated 24.3.2006 criteria for promotion to the post of Stenographers Grade-I and II on the establishment of the Subordinate Courts of the State and also directed to keep in mind the instructions issued vide various High Court letters. It is also the say of the

respondent that the recruitment rules have been revised for appointment of English/Gujarati Stenographers Grade-I and II where it is directed to follow the educational qualification for the said posts and the minimum qualification prescribed is graduation from any faculty or other degree recognized as equivalent to it by the Government."

7. It is further the say of the respondent authority that the requisite educational qualification of graduation from any faculty or any other degrees recognized as equivalent to it by the Government as per letter dated 4.10.2002 is missing in case of the petitioners.

8. As both the petitions involve identical questions of law, they are being decided by this common judgment.

9. Learned advocate Mr. Joshi appearing for the petitioner has urged that the second higher pay-scale of Rs. 9300-34800 with Grade Pay of Rs. 5400/- is required to be given to the petitioner No. 1. The communication received from the respondent authority specifies that the qualification shall be minimum graduation, but that would apply to those to be appointed on the post of English/Gujarati Stenographers Grade-I and Grade-II by way of recruitment. According to him, there are many, who have been given this benefit although they have had educational qualification of only SCC pass. He has submitted that it is discriminatory not to allow the second higher grade pay-scale to the petitioner No. 1 by interpreting some of the circulars and Government Resolutions when the Government Resolutions dated 16.8.1994 and 2.7.2007 are very much in existence. It is his say that the limitations set out can not be made applicable for those who are already in service and to the post of Principal Private Secretary in the High Court the said criteria are not applied. That yet again would be discriminatory and cannot be countenanced.

10. Mr. Mehul Shah learned advocate appearing for the respondent has urged that two instances given by the petitioners are in cases of those employees, one of whom has become eligible in the year 2002, and therefore, that may not be relevant in this case. As far as other person is concerned, he has already been made Principal Private Secretary in the year 2010, therefore, he has been given second higher pay scale. The decision is taken according to him, at the Chamber Meeting on 21.09.2002 that the minimum qualification of incumbent for recruitment to the posts of English and Gujarati Stenographers Grade-I and Grade-II in the Subordinate Courts shall have to be graduation from a recognized university.

11. It is further the say of the respondent authority that the requisite educational qualification of graduation from any faculty or any other degrees recognized as equivalent to it by the Government, as per letter dated 4.10.2002, is missing in case of the petitioners. The resolutions of the Government prescribed that the relevant recruitment/promotion procedure prevailing at the time of recruitment or promotion shall need to be followed. The next higher grade pay-scale of

several stenographers of Kutch District including the petitioner No. 1 was rejected only on account of want of educational qualification. He made representation, which was forwarded to the High Court and on detailed examination of remarks supplied by the then learned Principal District Judge, the same had been rejected vide letter dated 12.8.2013.

12. In rejoinder affidavit filed by the petitioner No. 1 it is urged that he was appointed as Gujarati Stenographer Grade-II on 12.4.1983 and on his completion of 9 years of service in one particular cadre, he has been given the first higher grade pay-scale vide order dated 9.12.2009. His appointment had been made as per the prevalent rules in the High Court as communicated to all concerned District Courts vide letter dated 12.4.1979. It is further the say of the petitioners that the communications dated 4.10.2002 and 24.3.2006 were meant to fill up 50% posts by promoting Junior Clerk(Assistant) who completed 5 years" service, to the post Stenographer Grade-II and from amongst Stenographer Grade-II, who completed 5 years service to the post of Stenographer Grade-I, subject to the eligibility criteria. Therefore, these guidelines would apply to the case of those who are to be recruited freshly and the minimum qualification would be graduate. The same would not apply in case of the petitioner No. 1 who had been appointed in the year 1984 and has already been granted the first higher grade pay-scale with effect from 19.9.1993 vide order dated 9.12.2009. It is, therefore, urged that both the letters dated 4.10.2002 and 24.3.2006 have no concern with the entitlement of the petitioner No. 1 to the second higher grade pay-scale after completion of 15 years from the date on which he was granted the first higher grade pay-scale. Much reliance is placed in Government Resolution dates 2.7.2007 for the said purpose.

13. Learned advocate for both the sides have been heard at length in support of their respective contentions.

14. At the outset, it is to be noted that on 12.4.1979 a communication was addressed by the Registrar, High Court of Gujarat to all the learned Presiding Officers of the City Court in Ahmedabad and the District Courts in the State that pending framing/amendment of Recruitment Rules for appointment of Stenographers Grade-I, II and III, such appointment should be made on the basis of the proposed rules as provided in the said letter. Along with this, those instructions issued by the communications dated 24.10.1977 and 6.2.1979, which concern the production of Government Commercial Examination Certificate for requisite speed in short-hand and typing are to be looked into. The qualification prescribed for English Stenographers is SSC examination and or examination recognized by the Government as equivalent to it. Likewise, for Gujarati Stenographers Grade I and II also, SSC examination or equivalent examination recognized by the Government is prescribed.

15. It would be apt to reproduce the qualifications prescribed for English and Gujarati Stenographers Grade-I,II and III.

"QUALIFICATION FOR ENLISTMENT OF THE CANDIDATES FOR THE POST OF STENOGRAPHERS (GRADE-I AND II):--

ENGLISH STENOGRAPHERS:

- (i) He must have passed the S.S.C. Examination or an examination recognised by Government as equivalent to it, and
- (ii) He must possess a speed in Short-hand of not less than 120 words per minute (for appointment to Grade-I post) and not less than 100 words per minute (for appointment to Grade-II post) and he must possess a speed of 40 words per minute in English Type-Writing.

GUJARAT STENOGRAPHERS:

- (i) He must have appeared at the S.S.C. Examination or an examination recognized by Government is equivalent to it, and may or may not have passed that examination.
- (ii) He must possess a speed in Short-hand of not less than 100 words per minute (for appointment to Grade-I post) and not less than 80 words per minute (for appointment to Grade-II post) and he must possess a speed of 25 words per minute in Gujarati Type-writing.

QUALIFICATIONS FOR ENLISTMENT OF THE CANDIDATES FOR THE POST OF STENOGRAPHER GRADE-III:--

ENGLISH STENOGRAPHERS:--

- (a) He must have passed the S.S.C. Examination or an examination recognized by Government as equivalent to it, and
- (b) He must possess a speed of not less than 80 words per minute in Short-hand and 40 words per minute in Type-writing.

GUJARATI STENOGRAPHERS:--

- (a) He must have appeared at the S.S.C. Examination or an examination recognized by Government as equivalent to it even though he may or may not have passed that examination, and
- (b) He must possess a speed of not less than 60 words per minute in Short-hand in Gujarati and 25 words per minute in Type-writing in Gujarati."

16. The age limit prescribed was between 18 and 35 years for Stenographers of all grades.

16.1 A communication dated 4.10.2002 addressed by the officer on Special Duty and in-charge Additional Registrar, High Court to all learned District Judges and Principal Judge City Court specifies that the appointment of English and Gujarati Stenographers Grade-I and II should be made of those persons, who are graduate of any faculty or possessing any degree recognized by the Government.

The same is to be done bearing in mind the instructions issued by the High Court vide its orders dated 24.10.1977, 6.2.1979 and 12.4.1979 as far as production of Government Commercial Examination Certificate for requisite speed in short-hand and typing, age limit etc. are concerned. In other words, for appointment to the post of Stenographers Grade-I and II, educational qualification has been enhanced from SSC to minimum graduation or other equivalent degree recognized by the Government. However, for the purpose of production of Government Commercial Examination Certificate for the speed in short-hand and typing, the age limited etc. the earlier communications and directions govern the field.

17. On 24.3.2006, the Registrar(Inspection) addressed a communication to all learned Presiding Judges of the City Courts in Ahmedabad and the District Courts in the State, categorically mentioning that the question of prescribing rules and criteria as regards promotion to the post of Stenographer Grade-I and Grade-II on the establishment of Subordinate Courts in the State was under consideration. And, it is communicated that while filling up 50% posts by promotion Junior Clerk/Assistant, who completed 5 years of service may be promoted to the post of Stenographer Grade-II and from amongst Stenographers Grade-II, who completed 5 years of service can be posted as Stenographer Grade-I, subject to their fulfilling eligibility criteria and of course subject to finalization of revised recruitment rules. Once again, it is reiterated that the instructions issued by the High Court letters dated 24.10.1977, 6.2.1979, 12.4.1979, 11.4.1980, 16.1.1982 and 4.10.2002 are to be borne in mind. That would mean that for the promotion to the post of Stenographer Grade-II, 50% of the posts can be filled in by those Assistant/Junior Clerks, who completed 5 years of service and who otherwise fulfill the eligibility criteria, whereas on the post of Stenographer Grade-I, those Stenographer Grade-II, who completed 5 years of service with all other eligibility criteria can be promoted.

18. The Government Resolution of the Finance Department dated 16.8.1994 is meant for all Government employees, who have no chance of being promoted to the post of next higher grade, therefore on account of steep rise in price, the policy of grant of higher grade pay-scale has come into effect which specifically provides for grant of higher grade pay-scale to those employees who have completed 9/18/27 years in the very cadre. Those employees who have already received two promotions may not be entitled for the second and the third higher grade pay-scale.

19. The new Government Resolution dated 2.7.2007 made an improvisation over the Government Resolution dated 16.8.1994 and instead of grant of higher grade pay-scale on completion of 9/18/27 years, it provides for higher grade pay-scale on completion of 12/24 years. This later resolution would be applicable in case of those employees who have continued in the same cadre and in the same place for 12 years. While getting this first higher grade pay-scale the employee should not have received the promotion more than once. The second higher pay-scale

would be available on completion of 12 years from the receipt of the first higher grade pay-scale and he should not have received more than one promotion.

20. Before the said Government Resolution dated 2.7.2007 is made effective, the employee would be entitled to the higher grade pay-scale on completion of 9 years. If such higher grade pay-scale has been received, already by the time the resolution is implemented such employees would get the second higher grade pay-scale after 15 years of receipt of the 1st higher grade pay-scale. In other words, if the Government employee has not completed 9 years on 2.7.2007, the first higher grade pay-scale would be applicable on completion of 12 years of service in the very cadre, whereas for those employees, who have already completed the period of 9 years in the very cadre before 2.7.2007 and received the benefit of 1st higher grade pay scale, they would be entitled to get the second higher grade pay-scale on completion of 15 years. And if period of 9 years is not completed by the time this resolution dated 2.7.2007 is made effective, employee requires to complete 12 years" period to avail the benefit of the first higher grade pay scale.

21. At the time of grant of higher grade pay-scale, his last 5 years" service, Annual Confidential Report need to be considered and prevalent rules of appointment would also have bearing. The overall purpose, educational qualification and on clearance of examination, employee is to be given the same.

22. Reference is also needed at this stage of the decision of this Court on which petitioner has relied upon in the case of Ranchhodbhai Somabhai Valand v. Secretary Narmada Water Resources & Water Supply Department and another decided on 21.9.2006 in Special Civil Application No. 14260 of 2005, where the petitioner was denied the second higher grade pay-scale on the post of clerk and this Court relying on the decision rendered in Special Civil Application No. 19691 of 2006 (dated 15.9.2006) in the case of State of Gujarat and another v. Haribhai Sankarlal Raval and others had allowed the petition.

23. The employee had completed continuous 9 years of service in one post and one scale and in between had not received any promotion. On finding and holding that he fulfilled the criteria prescribed in the Government Resolution dated 16.8.1994, the Court allowed the same to the employee.

24. In light of the discussion held hereinabove, the question that would arise is as to whether petitioner No. 1, who after being in service continuously for 9 years has been given only first higher grade pay-scale with effect from 1993 (on completing 9 years), would be entitled to the second higher grade pay-scale after 24 years of service. And, whether petitioner No. 2 would be entitled to the higher grade pay-scale as nothing has been granted to him after his service of 12 years.

25. As noted hereinabove, both of them have been denied respectively the second and the first higher grade pay-scale, although they continued in the same cadre without any promotion and without being availed of any benefit of higher grade pay-scale. On 2.7.2007 the petitioner No. 1 since had already completed 9

years of service and had also received first higher grade pay-scale with effect from the year 1993. Therefore, in his case, he would be entitled to the benefits of second higher grade pay-scale on completion of 24 years of service, as per Government Resolution dated 2.7.2007. However, those employees who have already received their first higher grade pay-scale before such Government Resolution came into effect, his next entitlement would be after 15 years from the grant of first higher grade pay-scale which in case of petitioner No. 1 would be in the year 2008. No promotion admittedly has been given to the petitioner in the interregnum, his entitlement to get second higher grade pay scale as per the said Government Resolution is challenged by the respondent authority on the ground of his not having possessed the requisite educational qualification of graduation.

26. In case of petitioner No. 2, he has been appointed on the post of Gujarati Stenographer Grade-II on 13.10.1999 in the pay-scale of Rs. 1640-2900 and in the revised pay-scale of Rs. 5520-9000. As per Government Resolution dated 2.7.2007, the petitioner would be entitled to get the higher grade pay-scale with effect from 14.10.2011, as he has continued for all the 12 years in the same cadre without being given any promotion and other benefits. He too is denied the same for want of graduation as his qualification.

27. Both of them thus have been denied the benefit of higher grade pay-scale despite the Government Resolutions dated 16.08.1994 and 02.07.2007 on the sole ground that the subsequent communication of respondent No. 3 insisted graduation as minimum educational qualification for Stenographer Grade-II.

28. It is rightly pointed out by the learned advocate Mr. V.K. Joshi that as per communication dated October, 4, 2002 only freshly appointed English/Gujarati Stenographers Grade-I and Grade-II need graduation as educational qualification. Even for that matter, the communication dated 24.3.2006 is in respect of the employees who are already working as Junior Clerks (Assistant) and who are to be promoted as Stenographer Grade-II or Stenographer Grade-I on completion of 5 years subject to the eligibility criteria. 50% of all such posts are to be filled in by way of promotion. To employ the said criteria in case of the petitioners, who admittedly at the time of their appointment were possessing requisite eligibility including educational qualification would amount to stagnating them for the entire life.

29. It is to be noted that even if an employee is desirous of pursuing further studies, it is eventually the discretion of the employer to permit or not to permit the same with certain conditions. This issue may not be further dilated as neither the petitioners have sought for any such permission nor has there arisen any cause for the respondents to grant or reject the same.

30. Denial of higher pay-scale only on the ground that the educational qualification required for being appointed as Gujarati Stenographer Grade-II has changed subsequently would surely result into stagnating the employee for the

entire life time although there is nothing adverse against them nor is their performance dissatisfactory. Assuming that it is prerogative of every establishment to set out better criteria and performance for grant of promotion, communication sought to be relied upon is neither in the form of rules nor regulations. Even if it is meant to govern the field till rules on the subject are framed, guidelines are acting as pre-judicia to the interest of petitioners and is discriminatory as some of the employees similarly situated have been already granted such benefits. The same being prejudicial to their interest also deserves indulgence.

31. Reference needs to be made of Suo Motu Review No. 6 of 2009 on administrative side with Departmental Appeal No. 4 of 2009. Mr. D.V. Patel against whom Suo Motu Review No. 3 of 2009 was initiated was serving with the establishment of District Court, Anand as English Stenographer Grade-II. He was provisionally and temporarily promoted as English Stenographer Grade-I, Class-II by the learned Principal District Judge, Anand on account of creation of new Court of Second Additional District Judge, Anand whereas Mr. J.A. Limbachia of Departmental Appeal No. 9 of 2009 was serving as English Stenographer Grade-II in the establishment of District Court and he came to be promoted as English Stenographer Grade-I (Class-II) on temporary and ad-hoc basis in the new Court of Presiding Officer, 5th Fast Track Court, Anand.

32. On account of cessation of Court of Presiding Officer, Mr. Limbachia was reverted to the post of English Stenographer Grade-II on 15.9.2008. Once again by Notification dated 7.5.2009 post of 2nd Additional District Judge, Anand was created. Mr. Limbachia requested to learned Principal District Judge, Anand to promote him to the said post of English Stenographer Grade-I. The Advisory Committee felt that he was not possessing graduation. Therefore, he was not entitled to the promotion to the post of English Stenographer Grade-I while Mr. D.V. Patel was having degree of B. Com, LL.B. However, he did not possess five years of experience as English Stenographer Grade-II. Therefore, in wake of sub-rule 2, Clause (b) of Rule 11A of the Gujarat Civil Services (Classification of Recruitment (General) Rules, 1967, the person who had 2/3 of the experience can be promoted on such posts, and therefore, Mr. Limbachia's request had been turned down, whereas Mr. D.V. Patel was promoted.

33. This was challenged on judicial side. The petitioner preferred to be relegated to the Departmental Appeal, and therefore, the same was considered at length. After due consideration it was decided that Mr. Limbachia did not fulfill the educational qualification laid down by letter dated 4.10.2002 read with letter dated 24.3.2006 and the Appellate authority was of the opinion that the Advisory Committee had taken into consideration Annual Confidential Reports and other factors regarding merits and efficiency, and therefore, on that count alone, his request was not considered. There is nothing on record to indicate that there was subsequent challenge on judicial side or whether the matter had settled there and then only.

34. Be that as it may, the fact remains that the petitioners herein are claiming the higher grade pay-scale for want of any promotion for all these years. In the opinion of this Court, to insist on their possessing. Graduation as the minimum qualification although at the time of their appointment, minimum qualification prescribed under the rules was Secondary School Board Certificate, deserves to be interfered with.

35. Petitioner No. 1, as mentioned hereinabove, was already granted the first higher grade pay-scale in the year 1999 after the Government Resolution dated 16.8.1994. It was given with effect from 1993 as he had completed 9 years of service by then, whereas in the case of the petitioner No. 2 he did not complete 9 years before the resolution of 16.8.1994 and his appointment has been made after 1994 and the guidelines were issued on 4.10.2002. In such view of the matter, both the petitioners are right in contending that they cannot be denied the higher pay-scale.

36. It is also argued by the learned advocate for the petitioner that there are instances in the High Court also where some of the employees occupying the post of PPS have not obtained the degree of graduation and yet, they have been given not only the higher grade pay-scale but the promotion to the higher post. In any case, it has also pointed out that in the High Court also after Rules were amended in the year 1998, the requisite education qualification for Stenographer Grade-II had been graduation and those of them who had been already appointed earlier continued to enjoy the benefit of higher grade pay-scale and promotion both.

This issue, according to this Court is incomparable as the rules which are governing staff and officers of the High Court are framed under Article 229 of the Constitution of India and the employees and staff members of the District Courts are governed by different rules.

37. In wake of the discussion hereinabove, the petitioners have succeeded in establishing their respective case and are held entitled to the higher pay-scale. It is being clarified at this stage that had there been any other issue raised by the respondent authority with regard to capability and efficiency of the petitioners, this Court would have directed the concerned Principal District Judge to consider their respective cases applying other yardsticks. As there is no whisper with regard to the same, respondents are directed resultantly to grant the second higher grade pay-scale with effect from 2008 to the petitioner No. 1 and petitioner No. 2 shall be granted the first higher grade pay-scale from 14.7.2011. Both the petitioners shall be also awarded the interest at the rate of 9%, if not released within three weeks from the date of receipt of the copy of this order.

38. Petitions are allowed in above terms. Rule is made absolute accordingly.