

(2011) 06 GUJ CK 0080
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1066 of 2010 in Special Civil Application No. 12434 of 2008

Shiela Lilian Benjamin

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Administrative Service (Regulation of Seniority) Rules, 1987 — Rule 3(1), 3(2), 3(3), 4

Citation : (2011) 06 GUJ CK 0080

Hon'ble Judges : S.J. Mukhopadhaya, C.J;K.M. Thaker, J

Bench : Division Bench

Advocate : Dhara M. Shah, for the Appellant; P.K Jani, Government Pleader, for the Respondent

Judgement

K.M. Thaker, J.—The Petitioner had filed present petition seeking below mentioned relief:

9(A) Your Lordships be pleased to issue a writ of mandamus or writ in the nature of certiorari or any other appropriate writ, order or direction, setting aside the order dated 12.3.2008 at Annexure-A. and direct the Respondent to consider the Petitioner eligible for allotment of plot.

9(B) This Hon"ble Court may be pleased to direct the authority to consider her case for grant of plot or residential purpose at concessional rate as per Government policy and be pleased to hold the action of Respondent authority of not allotting plot to her as arbitrary, illegal contrary to the provisions of law.

1.1 The learned Single Judge rejected the petition by judgment and order dated 20.1.2010. Present appeal is directed against the said judgment holding, inter alia, that the Petitioner is not eligible for allotment of residential plot at Gandhinagar at concessional rate as per the Government Policy.

2. The relevant facts which emerge from the record and which need to be considered for appreciating the rival contentions are that, the Petitioner is a

retired Indian Administrative Service Officer (IAS Officer).

2.1 The Petitioner claimed that originally a comprehensive policy to allot plots at Gandhinagar, for construction of houses, to Government employees/officers at concessional rates was adopted by the Government vide its Resolution No. LND/1079-590-III-R dated 29.6.1988. The Petitioner also claimed that she was entitled for allotment of plot at concessional rate at Gandhinagar in view of the policy adopted by the Government.

2.2 In pursuance of the said Resolution dated 29.6.1988, the Government had invited applications for allotment of plots which were required to be submitted to the specified authority, on or before 31.12.1988. It is not in dispute that the Petitioner could not submit her application within specified time.

2.3 Subsequently, in February 1999 the Government issued Resolution dated 10.2.1999 giving second opportunity, on same terms, to make application for allotment of plot to the eligible employees/officers who had missed the opportunity to make application on or before 31.12.1988. The application for allotment of plot was to be submitted on or before 31.5.1999. The Petitioner submitted her application dated 20.3.1999.

2.4 The applications made (pursuant to the Resolution dated 10.2.1999) by several employees/officers remained pending until March 2001 when another Resolution dated 29.3.2001 came to be issued.

2.5 It is relevant to note that the Petitioner was appointed in IAS vide Notification dated 22.2.2001 and vide communication dated 15.3.2001 issued by the Department of Personnel and Training, Government of India, New Delhi whereby the Petitioner was assigned year 1994 as the "year of allotment" as per Indian Administrative Services (Regulation of Seniority) Rules, 1987 [hereinafter referred to as "the said Rules"]. Accordingly, her inter-se seniority came to be fixed by treating the Petitioner as officer of 1994 Batch in the State cadre.

2.6 After sometime, the State Government took a policy decision to cancel the Resolution dated 10.2.1999 and also to treat as cancelled all applications made in pursuance of the Resolution dated 10.2.1999. For declaring the said policy decision, the Government issued aforesaid Resolution dated 29.3.2001 and cancelled the earlier Resolution dated 10.2.1999 and all the applications made in pursuance of the said earlier Resolution dated 10.2.1999 were also treated as cancelled/rejected. Besides this, vide the said Resolution dated 29.3.2001 the Government also prescribed 31.12.2000 as the cut-off date for determining the eligibility criterion viz. "completion of 5 years service".

2.7 In pursuance of the said subsequent resolution dated 29.3.2001, the Petitioner submitted her application dated 8.1.2002 within specified time limit.

2.8 It is the case of the Petitioner that her said application dated 8.1.2002 remained pending before the State Government until she retired as Additional Secretary, Agriculture and Cooperation Department to the Government of

Gujarat, w.e.f. 30.9.2007. It was after her retirement that the Petitioner was informed vide impugned communication dated 12.3.2008 that her application for allotment of plot was rejected since she was not eligible for such allotment in view of the prescribed eligibility criterion.

2.9 The Petitioner felt aggrieved by the said communication and decision dated 12.3.2008 and that therefore, she filed the petition challenging the said decision claiming that the decision rejecting her application was ill-founded since it overlooked the year of allotment i.e. 1994 and that there was no justification in rejecting her application.

2.10 The petition was resisted by the Respondent State. The Respondent State contended that the Appellant was not even born as IAS officer as on the cut-off date i.e. on 31.12.2000 and that therefore, there was no scope of considering the Petitioner as eligible for allotment of the plot as per the Resolution dated 29.3.2001 read with Resolution dated 25.6.2007.

2.11 The learned Single Judge considered the rival contentions and held that the Petitioner cannot be considered eligible for allotment. Consequently, the learned Single Judge rejected the writ petition. Hence, present appeal.

3. Mr. Shelat, learned Senior Counsel, has appeared with Ms. Dhara M. Shah, for the appellate-Petitioner and Mr. P.K. Jani, learned Government Pleader, appeared for the Respondent State. We have heard the counsel and perused the record.

3.1 Mr. Shelat, learned senior counsel appearing with Ms. Shah, learned advocate for the Appellant, submitted that the Respondent - State is not justified in ignoring and overlooking the year of allotment assigned to the Appellant. In support of his submission, learned Senior Counsel has heavily relied upon Rule 3(ii), 3(iii) and Rule 4 of the said Rules. He also submitted that the resolution has to be given purposeful meaning and it should not be read in pedantic manner which would result into denying the benefit to the Appellant and lead to discriminatory treatment between the employees borne on the same cadre. Mr. Shelat also relied upon the details mentioned in the additional/further rejoinder affidavits filed by the Appellant wherein names of several officers who have been allotted plots have been mentioned by the Appellant so as to highlight the discriminatory treatment allegedly meted out to her. Mr. Shelat submitted that the interpretation assigned by the State Government to the Resolutions dated 29.3.2001 and 25.6.2007 is incorrect and the learned Single Judge has erroneously held that the Appellant was not born on the IAS cadre on 31.12.2000 because she was appointed vide notification 22.2.2001. He submitted that in view of the said Rules year 1994 is required to be considered as the year of appointment because the year of allotment is relevant for all purposes. He submitted that the decision dated 12.3.2008 and the judgment of the learned Single Judge are erroneous and the Appellant's case for allotment of plot deserves to be considered by the State Government.

3.2 Per contra, Mr. Jani, learned Government Pleader, has heavily relied on the

Resolution dated 29.3.2001 and subsequent Resolutions dated 25.6.2007 and 27.12.2001. He also submitted that there is no error either in the decision of the State Government or the judgment by the learned Single Judge. He submitted that the Appellant has lodged her claim without challenging the said Resolutions and has claimed that she may be allotted the plot as per Government policy whereas, according to the policy, only those officers who had completed 5 years of actual service on the cut-off date i.e. 31.12.2000 are eligible for the allotment of plot. However, since the Appellant was not even born on IAS cadre and came to be appointed in February 2001, the State Government could not have considered her eligible. Mr. Jani, learned Government Pleader, submitted that in view of the policy actual appointment as IAS officer before the cut-off date is relevant and necessary eligibility criterion which the Appellant did not fulfill and the relief prayed for by her in the petition does not deserve to be granted.

3.3 During the hearing before us, reference of one Shri Panchal, another IAS officer, was made and the details of the service history of said Shri Panchal came to be placed on record. In view of the service history of Appellant and Shri Panchal which came on record during hearing before us, the learned Senior Counsel for the Appellant submitted that said Shri Panchal (at Sr. No. 134 in the seniority list) though being junior to the Appellant (at Sr. No. 129 in the seniority list), has been allotted the plot by the State Government. Mr. Jani submitted that the case of Shri Panchal, which was not raised before the learned single Judge, is not comparable with the facts and case of the Appellant inasmuch as said Shri Panchal was appointed on IAS cadre in 1998 and therefore, though he had not completed service of 5 years, the plot was allotted in view of the resolution dated 25.6.2007.

3.4 We have heard the learned Counsel for the contesting parties and have carefully considered the record.

4. The rival contentions are required to be considered in light of the dates of appointment and promotion of the Appellant and the terms contained in the above referred resolutions.

(A) The relevant resolutions are, (1) Resolution dated 29.3.2001, (2) Resolution dated 27.12.2001, (3) Resolution dated 25.6.2007, (4) Resolution dated 20.6.1998, and (5) Resolution dated 10.2.1999.

(B) The relevant dates are:

1. 1975 The Appellant was appointed as direct recruit Mamlatdar in the service with the State Government.
2. 1981 The Appellant was directly recruited as Dy. Collector, Class - I officer in Gujarat Administrative Service.
3. 1995 The Appellant was appointed to the selection grade as Additional Collector.

4. Feb.-2001 The Appellant was appointed vide notification dated 22.2.2001 to the IAS cadre.

5. April-2001 By the communication/decision of the Government of India, the Appellant was assigned 1994 as the year of allotment in accordance with Rule 3(3)(ii) of the said Rules.

4.1 It was in 1988 that the Respondent State Government announced a comprehensive policy for allotment of plots at Gandhinagar at concessional rates to the employees/officers in the service of the State Government. As per the said policy, the only eligibility criterion or the qualifying condition for the purpose of making application was that the applicant employee/officer must have completed 5 years of service as on the date of the application.

4.2 It is not in dispute between the parties that in 1988 the Appellant was eligible for making application for allotment of plot as per the terms in the Resolution dated 20.6.1998, however, she had not submitted her application within the specified time. Subsequently, when the State Government gave another opportunity, vide Resolution dated 10.2.1999, the Appellant submitted her application on 20.3.1999. However, in view of the policy decision declared vide Resolution dated 29.3.2001 whereby the State Government cancelled the Resolution dated 10.2.1999, all applications, including the application of the Appellant, which were submitted pursuant to the Resolution dated 10.2.1999 stood cancelled.

4.3 Now, what is relevant for present matter is that by virtue of the aforesaid Resolution dated 29.3.2001, the State Government also prescribed eligibility criterion i.e. completion of service of 5 years as on 31.12.2000 for making application for allotment of plot which, inter alia, provided that:

1. The non-transferable permanent/temporary officers/ employees of Government of Gujarat serving at Gandhinagar and the officers of Gujarat cadre of Indian Administrative Service will be allotted plot at Gandhinagar at concessional rate without auction and for this purpose, he should have completed five years of service as on 31-12-2000.

(free translation from Gujarati)

4.4 The said Resolution dated 29.3.2001 considered employees of two categories viz. (i) the "non-transferable permanent/ temporary" State Government employees/officers working at Gandhinagar; and (ii) the All India Service officers born on the State cadre, eligible for allotment of plot at concessional rate at Gandhinagar, and it further prescribed a common eligibility condition for both the categories of employees/officers viz. completion of service of 5 years as on 31.12.2000. The term "non-transferable permanent/temporary employee/officer" used in Resolution dated 29.3.2001 came to be explained vide Resolution dated 27.12.2001.

4.5 It is not in dispute that the Appellant never challenged any resolution.

Furthermore, the Appellant acted in pursuance and furtherance of the said Resolutions dated 29.3.2001 and 27.12.2001 and submitted her application dated 8.1.2002 seeking allotment of plot as per Government's policy. The said application remained pending for almost 6 years until the Resolution dated 25.6.2007 came to be issued. The Government has relied on the provision contained in clause No. 1 of the said Resolution dated 25.6.2007. the clause Nos. 1 and 2 read thus:

1. The officers who were really appointed in All India Services after dt. 1-1-1996 and have not really completed five years service in the All India Services as on cut off date i.e. 31-12-2000 would be eligible for allotment of plots if they have put in continuous service of 5 years or more in State Service and if such previous service was treated as continuous for the purpose of leave/pay/pension.

2. Those who have joined Secretariat cadre after dt. 1-1-1996 and as such not completed 5 years of service as non-transferable would be considered eligible for allotment of plots if they have put in continuous service of 5 years in State service and if such previous service was treated as continuous for the purpose of leave/pay/pension.

(free translation from Gujarati) 4.6 A glance at the said Resolution dated 25.6.2007 in juxtaposition with Resolution dated 29.3.2001 shows that the State Government introduced the concept of "actual service" (or "real service" as per Respondent's free translation from vernacular) by inserting the word "actual" as prefix to the words "five years service", and simultaneously provided that previous service with the State Government would be taken into account for consideration of completion of 5 years of service provided the person was appointed in I.A.S. after 1.1.1996 and prior thereto he served with State service. It also emerges from conjoint reading of the Resolutions dated 29.3.2001 and 25.6.2007 that the Resolution dated 25.6.2007 is not issued in supersession of or on cancellation/withdrawal of the Resolution dated 29.3.2001. The said Resolution dated 29.3.2001 subsists as the main and parent Resolution and contains the basic policy.

4.7 It is in light of the provisions/conditions contained in the Resolution dated 29.3.2001 read with the Resolutions dated 25.6.2007 and 27.12.2001 and by emphasizing the words "actual service" that the Government considered the Appellant as not eligible for allotment of plot (considering the fact that the Appellant was appointed as IAS officer in February-2001) and rejected her application.

4.8 As against the decision of the State Government, on one hand, the Appellant claims that according to the Resolution dated 29.3.2001, she is eligible for allotment of plot and that for all practical purposes, the "year of allotment" i.e. 1994 has been taken into account and she has been treated as having been appointed in 1994 and that therefore, there is no reason or justification to ignore the said year for the purpose of considering the eligibility for allotment of plot.

On the other hand, the Government claims that in view of the policy declared vide resolution dated 25.6.2007, it is the "actual appointment" which is relevant and the year of allotment has no relevance.

4.9 In the aforesaid context, it would be relevant to take into account the provision contained under Rule 3(3)(ii) and other relevant provisions of the said Rules.

The sub-Rule 1 of Rule 3 reads thus:

1. Every officer shall be assigned the year of allotment in accordance with the provisions hereinafter contained in these Rules.

2.....

3. The year of allotment of an officer appointed to the Service after the commencement of these rules shall be as follows:

Rule 3(3)(ii) read thus:

(ii) The year of allotment of a promotee officer shall be determined with reference to the year for which the meeting of the Committee to make selection, to prepare the select list on the basis of which he was appointed to the Service was held and with regard to the continuous service rendered by him in the State Civil Service not below the rank of a Deputy Collector or equivalent, up to the 31st day of December of the year immediately before the year for which meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service,....

a. "for the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;"

b.....

Explanation-....

Provided that....

Rule 3(3)(iii) read thus:

(iii) the year of allotment of an officer appointed by selection shall be determined with reference to the year for which the meeting of the Committee to make the selection to prepare the select list, on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in a post equivalent to the post of Deputy Collector or a higher post, up to the 31st December of the year immediately before the year for which the meeting of the Committee to make the selection was held to prepare the select list on the basis of which he was appointed to the service,....

(a) for the service rendered by him up to twenty one years, he shall be given a

weightage of one year for every completed three years of service, subject to a minimum of four years;

(b)....

Explanation -....

Provided that....

Provided further that....

The Rules also provide for certain weightage for completed years of service in cases of appointments by "promotion" and by "selection" from amongst the employees in service of State.

5. The Government has right to prescribe conditions - including eligibility criterion - while granting any benefit over and above usual service conditions. However, in present case, the legality or justiciability or propriety of the new/ additional conditions is not in issue before us since the said Resolutions and/or their applicability and/or their justiciability, etc. have not been challenged by the Appellant. Even the prayer clause gives out that the Appellant claims the allotment of plot "as per the policy" of Government.

5.1 It is, therefore, not necessary for us to pronounce anything about the justiciability, legality or propriety of Resolutions dated 29.3.2001 and/or 27.12.2001 and/or 25.6.2007 and the Appellant's claim shall have to be examined in light of the said Resolutions because neither addition of the requirements or the eligibility criteria are challenged by the applicant; nor their legality, competence, justiciability and applicability are challenged.

6. The same was the position before the learned Single Judge as well. The learned Single Judge, therefore, decided Appellant's claim in light of the conditions in the Resolutions and held that the Appellant was appointed in February, 2001 thus, since she was not "actually appointed" before 31.12.2000, she did not fulfill the requirement prescribed vide Resolution dated 25.6.2007 and that therefore, she was not eligible for allotment of plot.

6.1 We have noticed that the said view has been taken in absence of any other details or material, particularly the details and material indicating discrimination which resulted (as per Appellant's allegations) on account of the Respondent's decision i.e. discrimination in the Respondent's decision granting plots to other employees/officers who also did not fulfill the requirement of completion of actual service of 5 years as on 31.12.2000 and/or who happened to be junior/s to the Appellant. It appears that the Appellant had laid the foundation even before the learned Single Judge, however, the relevant details, it appears, were not placed on record by the Respondent.

7. The emphasis has been on the word "actual" (or the word "real" as translated by the Respondent); the said term came to be prescribed as a prefix to the words "service period of 5 years" by the State Government vide resolution dated

25.6.2007. It is necessary and relevant to recall that in accordance with the Rules the Appellant was assigned year 1994 as the "year of allotment".

7.1 The Appellant claims that the said aspect of her service history is very crucial and relevant because upon taking the "year of allotment" into account, the requirement of 5 years service as on 31.12.2000 as prescribed vide Resolution dated 29.3.2001 would stand fulfilled and the said year for allotment has been taken into account for all purposes including fixation of pay, grant of increment, fixing seniority, etc. for all practical purposes.

7.2 However, the State Government has, relying on the Resolution dated 25.6.2007 contended that what is required for being eligible for allotment of plot is completion of "actual" service and since the Appellant was appointed in February-2001, she cannot be said to have "completed "actual" service" of 5 years as on 31.12.2000 and therefore, the Appellant is not entitled for allotment of plot.

8. In view of the Government's said submission and to counter it, the Appellant focused her submissions and substantiated her claim in light of the Rule 3(3)(iii) and 3(3)(ii) and the Appellant concentrated on and emphasized the ground of discrimination and equity.

8.1 So as to support the submission, the Appellant asserted that the State Government has allotted plot/s to other employee/s who did not fulfill the condition of "completion of "actual" service" of 5 years as I.A.S. officers as on 31.12.2000 and that therefore, there is no justification in rejecting her application on such ground though she had put in about 25 years of service with the State Government as on 31.12.2000 and almost 19 years of service as on 31.12.2000 as an officer in Gujarat Administrative Service.

8.2 One of the instances cited by the Appellant, in support of her said contention, is the name of one Shri A.B. Panchal. She claimed that:

(a) like her, even said Mr. Panchal also had not completed "actual" service of 5 years as on 31.12.2000 and that (b) Mr. Panchal was junior to her inasmuch as he was placed at Sr. No. 134 in the seniority list while she was at Sr. No. 129, and yet a plot has been allotted to him; and (c) the Appellant also claimed that after the notification dated 22.2.2001 appointing her in IAS cadre for all purposes, the year of allotment was taken as the base.

8.3 The Appellant submitted that (a) under the order dated 22.1.2003, her pay was fixed by considering her year of allotment i.e. 1994; and (b) by order dated 5.1.2007 she was also granted selection grade by taking into account her year of allotment i.e. 1994; and (c) that her seniority was also fixed as per the year of allotment; and (d) when she retired w.e.f. 30.9.2007 as Additional Secretary in Agriculture & Cooperation Department, she had put in total service of about 30 years with the State Government; and (e) for all purposes related to service, the "year of allotment" was taken into account. So as to support the submissions

reliance was placed on letters/orders dated 15.3.2001, 21.3.2001, 10.4.2001 and 22.1.2003.

9. In view of her submissions, the details related to said Mr. Panchal was called for (since it was not available on record, as it was not placed before learned Single Judge) from the Respondent - State.

9.1 So far as Mr. Panchal is concerned, it is claimed that he was appointed in IAS in 1998. It is pertinent that even going by the said assertion also Mr. Panchal had not completed service of 5 years as on 31.12.2000, much less "actual service" of 5 years.

9.2 One of the relevant facts which emerged from the details placed on record by the State is that while it is claimed that Mr. Panchal was "appointed" in 1998 and while in case of Appellant what is insisted is "actual" appointment in case of Mr. Panchal in 1998 his name was included in the select list approved by UPSC in November 1998 on the basis of inclusion of name in select list prepared by the Selection Committee, the State claims that Mr. Panchal was appointed in 1998. Even if State's reply about the year of Mr. Panchal's appointment (i.e. 1998) is presumed to be proper and justified then also Mr. Panchal had not, and cannot be said to have, completed "actual" service of 5 years as on 31.12.2000.

9.3 From the details made available on record before us, it has emerged that:

(i) both i.e. Shri Panchal and the Appellant served with the State Government prior to their appointment in I.A.S.; and (ii) so far as Resolution dated 25.6.2007 is concerned, both were, and can be said to have been, appointed in IAS after 1996; and (iii) upon their appointment in IAS both were assigned 1994 as the "year of allotment; and (iv) in view of the relevant Rules, the Appellant was placed above said Shri Panchal in the seniority list. Accordingly, the Appellant was considered senior to said Shri Panchal; and (v) in November 1998 UPSC had simply approved the "select list" prepared by the Selection Committee which contained name of Mr. Panchal; and (vi) On the strength of such inclusion of name in the said "select list" Mr. Panchal is treated and considered as "actual" appointment; and (vii) both had not completed "actual" service of 5 years as on 31.12.2000.

9.4 The Appellant has claimed that despite such facts, the Government allotted plot in 2008 to said Shri Panchal, but rejected, in 2008 her application (made in 2002).

10. The said discrepancies and anomalies cited by the Appellant are not such which can be casually brushed aside or lightly overlooked, since they demonstrate and indicate discrimination and/or non-consideration of several relevant aspects while rejecting Appellant's claim.

11. It is true that these facts were not placed before the learned Single Judge. It is also equally true that the view and decision taken by the learned Single Judge is arrived at in absence of or due to the absence of the details. Since the

Respondent State had not placed the facts related to Mr. Panchal before the learned Single Judge and consequently, the learned Single Judge did not have the benefit of the said details and facts. More important is the fact that the Respondent State Government also did not take into account the details related to the service history of Mr. Panchal and also did not take into account the position which would emerge when both cases were considered in juxtaposition.

12. Actually, on careful consideration of facts and particularly the details of the service history of the appellate and Mr. Panchal and the scope and construction of the Resolutions and in light of the foregoing discussion, it seems that the Appellant's claim and her case deserves reconsideration. However, the Respondent - State tried to explain the discrepancy by stating some other fact. We would, therefore, consider the Respondent's explanation before reaching any conclusion.

12.1 The State Government has tried to explain the discrepancy by stating that while it is true that said Shri Panchal has also been assigned 1994 as year of allotment and while it is also true that in the seniority list the Appellant is senior to said Mr. Panchal, and yet said Shri Panchal has been allotted the plot (though the Appellant is not allotted any plot) because he was appointed as I.A.S. officer in 1998.

12.2 In view of the facts regarding service history of both the officers, the explanation is neither easily palatable nor fully satisfactory, particularly because as per Notification of November, 1998 in 1998 name of Mr. Panchal was included in the select list prepared by the Selection Committee and the said select list was "approved" by UPSC in November, 1998. The Notification does not mention "actual appointment" as is being insisted by the State in case of Appellant. Even if the explanation that said Shri Panchal was appointed in 1998, which is made on the strength of inclusion of his name in the "select list" prepared in 1998 by the Selection Committee, is presumed to be proper and just and is taken into account then also (even by taking 1998 as year of "actual" appointment) it would not establish compliance, by said Mr. Panchal, of the requirement of completion of "actual" service of 5 years as on 31.12.2000, which is being applied and insisted upon in case of the Appellant, inasmuch as Mr. Panchal is claimed to have been appointed only in 1998 and that therefore, he also had not completed "actual service" of 5 years in IAS (the cadre in which he was at the time of making application) as on 31.12.2000 i.e. "actual" service of 5 years cannot be said to have been completed as on 31.12.2000 by said Shri Panchal as well. Since, said Shri Panchal also did not fulfill the condition prescribed by Resolution dated 29.3.2001. Thus, as per the Appellant, the plot could not have been granted to said Shri Panchal.

12.3 The State Government has then further tried to explain the said discrepancy by stating that said Shri Panchal was appointed after 1996 hence his past service as State Government employee was taken into account and was clubbed with his service in IAS on the strength of, and by giving benefit of, Resolution dated

25.6.2007 and on that basis Shri Panchal has been allotted the plot at Gandhinagar. Thus, according to the Respondent - State in case of Mr. Panchal credit of his service with the State Government prior to his being taken up in IAS has been given and the said earlier service is clubbed with his service in IAS and by allowing such credit and clubbing of service in two cadres, Mr. Panchal is allotted the plot and according to the State the Resolution dated 25.6.2007 provide for such credit and clubbing of service with State Government (to determine/calculate service of 5 years) with service in IAS in case of persons appointed in IAS after 1996. However, what is pertinent, but is ignored, is the fact that even the Appellant was appointed after 1996.

13. It is pertinent that the details with reference to Mr. Panchal were not placed by the State Government on record before the learned Single Judge. It is only during the hearing of appeal (and that too pursuant to certain discussions and inquiry by the Court in light of the annexures to the petition) that the State Government came out with the said details and "explanations" with reference to Mr. Panchal. Now, when the details pertaining to Mr. Panchal have come on record, it becomes clear that the Appellant's claim is required to be, and at the relevant time it should have been, examined by the Respondent State in light of those details and even now it is necessary to examine Appellant's case in light of and from the perspective of those details more so because if senior officer is denied the benefit despite junior having been granted the benefit, then there could hardly be any justification the benefit to the Appellant. The Government, therefore, ought to reconsider its decision.

14. While rejecting the Appellant's application-claim, the Respondent - State does not appear to have kept in focus and does not seem to have considered, the details and facts related to the service of Mr. Panchal and they are not taken into account in proper perspective.

14.1 According to the Appellant, the said lapse and error have resulted into discrimination. It has been emphasized that:

(a) notification dated 12.11.1998 shows that a select list which was prepared by the Selection Committee contained the name of Mr. Panchal and said list was approved by UPSC;

(b) such approval of select list is not treated as "appointment" but is also treated as "actual" appointment and Mr. Panchal is considered as "actually" appointed in November 1998;

(c) even if such submission and construction of the said Notification and such assertion is presumed to be proper and just, then also, it will not make total service of 5 years as on 31.12.2000 (i.e. from November 1998 to 31.12.2000); and (d) said Shri Panchal also, like the Appellant, had not completed "actual" service of 5 years as on 31.12.2000 (as he is claimed to have been appointed in 1998) and thus the plot could not have been granted to said Shri Panchal also, if the said condition/requirement of "completion of "actual" service" is to be

considered and applied equally to all and in the same manner as it is sought to be applied to the Appellant and yet said Shri Panchal has been allotted the plot by taking into account past service as employee of the State Government;

(e) (i) both i.e. Shri Panchal and the Appellant had served with the State Government prior to their appointment in I.A.S., and (ii) both were appointed after 1996, and (iii) upon their appointment both were assigned 1994 as the "year of allotment, and (iv) the Appellant was placed above (at Sr. No. 129) and said Shri Panchal (at Sr. No. 134) in the seniority list.

(v) thus, as per the Rules, the Appellant was senior to said Shri Panchal, and yet Appellant has not been allotted plot; and (f) though both had served as State Government's employees/officers before being taken-up in IAS, only in case of Mr. Panchal credit of such past service is given and clubbing of service in two cadres is done but such credit and clubbing is being denied to the Appellant; and (g) the ineligibility of Mr. Panchal (as he had also not completed "actual" service of 5 years as on 31.12.2000) is sought to be, and it has been actually, wiped out with the aid of and by giving credit of and by clubbing his past service (i.e. his service with State Government before being taken in IAS) with his service in IAS cadre. Whereas, in case of the Appellant not only the credit and clubbing of her past long service with State Government is denied but even the "year of allotment" (though available in view of the provisions of the Rules) in the very same cadre is not taken into consideration;

(h) so far as the question of taking into account past service with the State Government is concerned, even the Appellant-Appellant also had put in, as on 31.12.2000 service for about 25 years with State Government since 1975 and in fact, she was an officer in State Administrative service w.e.f. 1981; and (i) the assignment of "year of allotment" is done in compliance of the requirement as per the Rules and it was on account of such assignment that both i.e. the Appellant (who is an officer appointed by promotion) and said Shri Panchal (who is an officer appointed by selection), have been assigned 1994 as the year of allotment and the Appellant is considered senior to Mr. Panchal; and for all purposes her service in IAS is considered from 1994.

(j) and for the purpose of fixation of pay scale and/or for granting selection grade and/or for the purpose of fixing seniority etc. i.e. for all purposes related to their service, the year of allotment i.e. 1994 is taken into account/taken as the base; and (k) on the other hand, if the year of allotment (i.e. 1994) is taken into account, then, both i.e. the Appellant as well as said Shri Panchal would stand eligible for allotment of plot inasmuch as both can be said to have completed 5 years of service as on 31.12.2000; and (l) in view of the provisions under the said Rules, the Appellant and Shri Panchal were granted weightage of 6 years and 4 years respectively and accordingly, they were assigned year 1994 as the year of allotment and it is on account of such weightage that Mr. Panchal could be assigned year 1994 as year of allotment; and (m) in the seniority list, the Appellant is shown at Sr. No. 129 whereas said Shri Panchal is at Sr. No. 134.

15. The aforesaid discussion would go to show that the application of the Appellant should have been considered keeping in focus the facts and details related to the service history of Mr. Panchal and the said details should have been (and now they need to be) taken into account so as to arrive at a just and equitable decision and also to eliminate non-consideration of relevant facts and/or any chance of discrimination.

15.1 The foregoing discussion, and the details of service history of Mr. Panchal coupled with the fact that though being junior to the Appellant he has been allotted the plot while the plot is denied to the Appellant, despite being senior, which has resulted into heart-burning, also demonstrate element of discrimination and justify the need for re-consideration of Appellant's case.

15.2 When (a) in the matter of inter-se seniority, the Appellant is, as per the said Rules, undisputedly senior to said Shri Panchal and when (b) as per the Notification dated 12.11.1998 the "select list" prepared by the Selection Committee which contained name of Mr. Panchal (approved in November 1998 by the UPSC) is treated as "appointment" and that too "actual" appointment in case of Mr. Panchal and as against the aforesaid treatment in case of Mr. Panchal when (c) consideration of assignment of "allotment of year" is being denied to the Appellant (though such assignment is a prescribed requirement as per the said Rules) and when (d) both have been assigned same year i.e. year 1994 as the year of allotment and when (e) as per the Resolution dated 29.6.1988 read with Resolution dated 5.11.1988, the Appellant was eligible for allotment of plot (however, she was not allotted the plot since she could not submit the application within prescribed time i.e. on or before 31.12.1988) and even according to the resolution dated 10.2.1999, the Appellant was eligible for allotment of plot, and when (f) the resolution dated 29.3.2001 does not expressly provide for the condition/requirement i.e. "completion of "actual" service" and/or (g) when the resolution dated 29.3.2001 does not bar or exclude consideration of the year of allotment for the purpose of calculating years of service completed by the officer-applicant; and when (h) Mr. Panchal is allowed the aid of past service (i.e. clubbing/crediting past service) with State Government for completion of 5 years" service but the Appellant is denied aid of year of allotment in such fact-situation, the Appellant's case, in our view, demonstrates that her case is infected or vitiated by discrimination and/or non-consideration of relevant facts as well as details and material aspects and that therefore, her case deserves reconsideration in light of the various aspects noted in present decision.

Hence, we consider it appropriate and in the interest of justice to remit the case to the Respondent - State with direction to reconsider the case of the Appellant in light of relevant facts and particularly the foregoing discussion and also the service history and record of said Shri Panchal and to allot the plot subject to her otherwise complying all other applicable conditions and criterion and of course subject to the availability of plots and fulfilling all other conditions and criteria including the conditions about payment. In view of the aforesaid direction, the

decision of the learned Single Judge would not survive. The fresh decision may be taken and appropriate order may be passed, as early as possible, preferably within 3 months. The appeal is, accordingly disposed with above clarifications and directions, however, there shall be no costs.