

(2023) 06 GUJ CK 0085

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 453 Of 2020, In R/Special Civil
Application No. 13628 Of 2016, Civil Application (For Stay) No. 1 Of
2020

State Of Gujarat

APPELLANT

Vs

Parshottam Hirabhai Chudasama

RESPONDENT

Date of Decision : 21-06-2023

Acts Referred:

Citation : (2023) 06 GUJ CK 0085

Hon'ble Judges : N.V.Anjaria, J;J. C. Doshi, J

Bench : Division Bench

Advocate : Aditya Pathak, Samir B Gohil

Final Decision : Dismissed/Disposed Of

Judgement

J. C. Doshi, J

1. The appellant being State and its departments are in intra Court appeal under clause 15 of the Letters Patent assailing the judgment dated 4.3.2020 passed by the learned Single Judge in Special Civil Application No.13628 of 2016, whereby the learned Single Judge directed the present appellant to consider the case of the respondent herein – original petitioner for grant of second higher grade pay scale w.e.f. 1.6.2002 instead of 6.6.2009 and to pass appropriate orders for releasing the consequential benefits.

2. Facts in brief, the original petitioner Parshottam Hirabhai Chudasama was appointed as Forest Guard in the Porbandar Forest Division in October, 1977. Later on, the original petitioner was dismissed from the services on 20.2.1986. To challenge said dismissal, the original petitioner filed Regular Civil Suit No.507 of 1987 before the Court of learned Senior Civil Judge, Junagadh. Said civil suit came to be allowed on and the dismissal order of the original petitioner was cancelled by judgment and decree dated 29.8.1995. Being aggrieved by the said judgment and decree, the Forest Department preferred Regular Civil Appeal

No.101 of 1995 before the Court of learned Assistant Judge, Junagadh, which also came to be dismissed by judgment dated 22.3.2002 confirming the judgment and decree passed in Regular Civil Suit No.507 of 1987.

3. Both the aforementioned judgments were challenged before this Court by way of preferring Second Appeal No.179 of 2002, which came to be rejected vide order dated 21.12.2013.

4. During the pendency of the aforesaid proceedings, the original petitioner was reinstated in the service on 14.8.2004 and he was retired from the service on attaining the age of superannuation on 30.11.2012.

5. Consequent thereto, the original petitioner filed Special Civil Application No.12645 of 2014 with a prayer that he should be granted full retiral benefits. The Special Civil Application was allowed on 25.2.2015 by directing to pay all the consequential benefits arising thereof for the post of Forest Officer w.e.f. November, 1982. The dismissal period of the original petitioner was also regularized and the original petitioner was granted all payment of the said dismissal period as well as first higher grade pay scale considering the fact that he has completed requisite time period for obtaining first higher grade pay scale. This scale was given w.e.f. 1.6.1987. The Departmental Selection Committee also approved the second higher grade pay scale as it is considered that the original petitioner has also completed the requisite service period for grant of second higher grade pay scale, but it was sanctioned w.e.f. 6.6.2009.

6. Being aggrieved by the said Minutes and decision of the Departmental Selection Committee for grant of second higher grade pay scale w.e.f. 6.6.2009, the original petitioner approached this Court by way of filing Special Civil Application No.13620 of 2016 contending that he should be granted second higher grade pay scale w.e.f. 1.6.2002, as he has completed 15 years on that day. The petition was allowed by this Court vide judgment dated 4.3.2020 in favour of the original petitioner.

7. Being aggrieved, the State and its departments are in intra Court appeal.

8. Heard learned AGP Mr. Aditya Pathak for the appellants and learned advocate Mr. Samir B. Gohil for the respondent herein – original petitioner.

9. Learned AGP Mr. Pathak assailed the impugned judgment mainly on the ground that in view of the notification dated 31.3.2008, the original petitioner was not entitled to higher grade pay scale as he had not passed Higher Secondary Examination. He would further submit that the second higher grade pay scale can be effectuated and actuated only in a circumstance if the original petitioner is promoted to the post of Range Forest Officer in Class III. He would further submit that the original petitioner was required to be appointed and promoted as a Range Forest Officer for getting the benefit of second higher grade pay scale, and for the purpose of promotion and appointment as Range Forest Officer, the petitioner was required to pass Higher Secondary Examination. However, the

petitioner did not pass said examination and as he was not holding the necessitated qualification to be promoted as Range Forest Officer, he cannot be granted second higher grade pay scale.

10. Learned AGP would further submit that the learned Single Judge has totally misread the notification dated 2.7.2007 and 31.3.2008 (Annexure D and E). He would therefore, submit that in the present case, the original petitioner was not entitled for getting the second higher grade pay scale, but the learned Single Judge has erred in allowing the petition and ordered to grant the second higher grade pay scale to the original petitioner. Therefore, he prays to allow this LPA by upturning the impugned judgment passed by the learned Single Judge.

11. On the other hand, learned advocate Mr. Gohil for the respondent herein – original petitioner while supporting the impugned judgment, would submit that the learned Single Judge has rightly interpreted the Rules for granting the second higher grade pay scale to the petitioner. He would further submit that there is no error much less error of interpreting the fact or law crept in the impugned judgment. The learned Single Judge has rightly assessed the fact in background of the provisions of law. He would further submit that since the original petitioner had fulfilled all the requirements for getting the second higher grade pay scale, he was rightly granted the second higher grade pay scale by the learned Single Judge and therefore, he prays to dismiss this LPA.

12. No other and further submissions are canvassed by learned advocates appearing for both the parties.

13. Although, it is argued by learned AGP that the original petitioner was not entitled or eligible for the second higher grade pay scale as he had not completed the necessitated qualification of passing the Higher Secondary Examination, the record speaks that he had been given the benefit of second higher grade pay scale, however, w.e.f. 6.6.2009. The Principal Conservator of Forest, Gandhinagar, by letter inward No.MHK/8/B/830/2016-2017 dated 21.5.2016, granted the second higher grade pay scale to the original petitioner w.e.f. 6.6.2009. Now, only question remains that whether the petitioner was entitled to get the second higher grade pay scale w.e.f. 1.6.2002 or he was to be granted w.e.f. 6.6.2009.

14. It is undisputed that the second higher grade pay scale is to handi for an employee after completing 15 years of service from the date of grant of first higher grade pay scale in view of clause 2(4)(b) of the GR dated 2.7.2007. In the present case, it is nobody's contention that the original petitioner was not given first higher grade pay scale. In fact, resolution dated 14.3.2016 indicates that the original petitioner was given the benefit of first higher grade pay scale reckoning from 1.6.1987. Thus, in view of the Rules, he could earn and can be entitled for the second higher grade pay scale after 15 years in absence of any other eventualities. The mathematical calculation of completing 15 years comes to 1.6.2002, as first higher grade pay scale was given on 1.6.1987. Learned AGP

did not point out any other eventuality, which prevents the appellants from granting the benefit of second higher grade pay scale, after completion of 15 years of service from the date of granting first higher grade pay scale.

15. The submission of learned AGP is that grant of second higher grade pay scale is governed by the Rules that he has to pass the HSC examination. Perusing the Rules, it transpires that these Rules are for the purpose of recruitment for the post of Range Forest Officer. Such Rules cannot be intermixed with the provisions and entitlement for grant of higher grade pay scale. The Recruitment Rules operates in different arena as against the Rules of higher grade pay scale.

16. On what bastion, the appellants have passed the order of granting second higher grade pay scale w.e.f. 6.6.2009 to the original petitioner is not clear from the said order. Learned AGP has failed to point out that why the appellants have taken four more years i.e. total 19 years for granting second higher grade pay scale instead of following the Rules to take 15 years of service from the date of granting of first higher grade pay scale.

17. At the cost of repetition, it can again said that the appellant had not been denied the benefit of higher grade pay scale to the petitioner, but has been granted the same w.e.f. 6. 6.2009. Learned Single Judge, in order to grant relief in favour of the original petitioner for extending the benefit of second higher grade pay scale w.e.f. 1.6.2002, recorded following reasons in para 8 to 10.

"8. It is an undisputed fact that an employees become eligible for second higher pay scale after completing fifteen years of service from the date of grant of first higher pay scale in view of Clause 2(4)(B) of the Government Resolution dated 02.07.2007. It is also an undisputed fact that the petitioner was granted first higher pay scale with effect from 01.06.1987. Accordingly, he became eligible for grant of second higher pay scale with effect from 01.06.2002.

The respondent No.3 therefore rightly moved a proposal dated 14.03.2016 for grant of second higher pay scale with effect from 01.06.2002. However, the respondent No.2 by order dated 21.05.2016 granted the same with effect from 06.06.2009. At this juncture, worthwhile to note that the order dated 21.05.2016, granting second higher pay scale with effect from 06.06.2009 instead of 01.06.2002 does not indicate any reason as to why the second higher pay scale is not granted with effect from 01.06.2002 and it is granted with effect from 06.06.2009.

9. Be that as it may, as it emerging from paragraph No.12 of the Affidavit-in-reply that the petitioner is denied benefits of second higher pay scale with effect from 01.06.2002 solely on the ground that when DPC met in 2016 to consider his case for grant of second higher pay scale Notification dated 06.06.2009 of the Forest and Environment Department was holding the field which requires that an employee should be possessing requisite qualification of Higher Secondary Certificate.

10. In my considered view, the stand taken by the respondent No.2 to deny the benefits of second higher pay scale with effect from 01.06.2002 and to grant it with effect from 06.06.2009 on the ground that the petitioner was not holding Higher Secondary Certificate qualification is solely misconceived and unacceptable. In the first place, a plain reading of Notification dated 06.06.2009 makes it vividly clear that by this Notification an amendment is inserted in the recruitment Rules 2008 for Range Forest Officer (Class III), to provide for the minimum educational qualification of Secondly School Certificate examination conducted by the Secondary and/or Higher Secondary Education Board or equivalent qualification recognized by the State Government. Thus, the amendment in the recruitment rules is for the initial entry in the Class II Range Forest officer cadre and not for the purpose of granting the benefits of higher pay scale to those employees who are already in service. Conversely the Notification dated 06.06.2009 nowhere contemplates that the higher pay scale shall be granted to only those in service employees who are holding Higher Secondary Certificate qualification. In that view of the matter, the denial of benefits of second higher pay scale with effect from 01.06.2002 to the petitioner is unsustainable and the same cannot be maintained."

18. Close perusal of the above findings in background of the reasons stated herein above, we are in agreement with the findings stated by the learned Single Judge and thus, we do not find any illegality in the impugned judgment, which may persuade us to interfere with the impugned judgment under limited jurisdiction.

19. In the result, this LPA fails and stands dismissed. Notice discharged. Interim relief stands vacated. Connected Civil Application also stands disposed of.