
Rajan Husainbhai Juneja Vs State Of Gujarat

R/Special Civil Application No. 13821 Of 2019

Court: Gujarat High Court

Date of Decision: Oct. 10, 2022

Acts Referred:

Constitution Of India, 1950 " Article 226

Hon'ble Judges: Biren Vaishnav, J

Bench: Single Bench

Advocate: Harshal N Pandya, HS Munshaw, Utkarsh Sharma

Final Decision: Allowed

Judgement

Biren Vaishnav, J

[1] Rule returnable forthwith. Mr. Utkarsh Sharma, learned Assistant Government Pleader waives service of notice of Rule for the respondent No.1

" State while Mr. H.S. Munshaw, learned advocate waives service of notice of Rule for the respondent No.2.

[2] With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

[3] Heard Ms. Harshal Pandya, learned advocate for the petitioners, Mr. Utkarsh Sharma learned AGP for the respondent-State and Mr. H.S.

Munshaw learned counsel for the respondent No.2.

[4] The case of the petitioner is that on death of his mother in harness on 25.10.1990 who was working as Female Health Worker with Respondent

No.2, he applied for compassionate appointment on 21.07.2001 after attaining the majority. Application of the petitioner was considered by respondent

No.1 permitting respondent No.2 to give appointment on compassionate ground in Class-III cadre in fix pay of Rs.2,500/- vide order dated 6.1.2005.

By following instruction, respondent No.2 issued an order dated 11.4.2005 appointing petitioner as Talati-cum-Mantri in fix pay for five years and on

completion of that period, he was given appointment in regular pay-scale vide order dated 28.7.2010.

[5] The prayer of the petitioner is that the respondents be directed to consider the application dated 29.6.2019 as forwarded vide proposal dated

3.7.2019 treating his appointment in regular pay scale instead of fixed pay from the date of joining his duty and take appropriate decision in light of

judgment and order dated 6.9.2013 in SCA No.30154/2007, judgment dated 5.4.2007 in SCA No.23384/2006 and order dated 10.01.2002 in SCA

No.6813/200 of this Honorable Court.

[6] Similar issue came up for consideration before this Court in group of petitions being Special Civil Application Nos.14642 of 2019 and this Court on

18.04.2022, passed the following order:

1. Rule, returnable forthwith. Learned Assistant Government Pleaders as well as learned advocates waive service of notice of Rule on behalf of the

respective parties.

2. Heard learned advocates Mr.Bhargavi G. Thakar and Ms. Harshal Pandya for the petitioners, learned Assistant Government Pleaders Mr. Kurven

Desai, Ms. Surbhi Bhati and Mr. Krutik Parikh for State-respondents as well as learned advocates Mr. H. S. Munshaw, Mr. Devang D. Dave and

Mr. Kalpesh N. Shastri for the respective Panchayats in all these petitions.

3. With the consent of the learned advocates appearing for the respective parties, all these petitions are taken up for final hearing today.

4. In all these petitions, under Article 226 of the Constitution of India, the prayer of the petitioners is to hold and declare that they are entitled to the

regular scale to the respective posts on which they were appointed on compassionate grounds.

5. For the purposes of this common oral judgment, the facts of Special Civil Application No.14642 of 2019 are considered.

5.1. The case of the petitioner is that on the death of her mother who expired on 5.8.1997 while working as a Primary Teacher under the control of

the District Panchayat, Banaskantha. The petitioner applied for appointment on compassionate ground. By an order dated 25.7.2004, the State

appointed the petitioner on fixed pay of Rs.2,500/- on Class-III post under the District Panchayat, Banaskantha.

5.2. Consequently, the Banaskantha District Panchayat issued a separate order dated 12.10.2004 appointing the petitioner on fixed pay as Panchayat

Sahayak under the District Panchayat, Banaskantha. He was subsequently transferred to Gandhinagar. On completion of five years of service, he

was appointed on regular pay scale vide an order dated 13.3.2011 with effect from 16.10.2009 in the regular pay scale. Thereafter, in the year 2016,

he was promoted as Senior Clerk. The case of the petitioner is that he is entitled to be appointed on compassionate ground on regular scale of pay

from his initial date of appointment i.e. from 25.7.2004 effective from 12.10.2004 and not so appointed as on regular pay scale from 16.10.2009.

6. Ms. Thakar, learned counsel for the petitioners would submit that one Mr. Manharbhai Ramanbhai Naik was approached this Court by filing Special

Civil Application No.1579 of 2002 assailing his rejection of appointment on compassionate ground, where the Court looking to the change in policy and

doing away with the income contrary directed the appointment of that petitioner on compassionate ground. By an order dated 23.7.2004, Mr.

Manharbhai Ramanbhai Naik was appointed on fixed pay like the present petitioners under the relevant District Panchayat. Mr. Manharbhai

Ramanbhai Naik, then approached this Court by filing Special Civil Application No.22169 of 2017 praying that he be granted the benefit of

appointment on regular pay scale since the State had passed an order on 12.6.2019 modifying his order of appointment of 23.7.2004 placing him in

regular pay scale, similar benefits ought to be granted to the present petitioners of all these petitions.

7. Learned AGPs for the State in all these petitions would submit that the petitions are barred by delay and laches. The appointment of the petitioners

was made as is evident from the order dated 25.7.2004 on condition and while relying on the Resolution dated 15.6.2004, which granted such

appointment on fixed pay, Mr. Kurven Desai, learned AGP would draw the attention of the Court to the GR dated 15.6.2004 which categorically

provided that appointment on compassionate grounds shall be made for candidates on fixed pay for a period of five years. The petitioner having

accepted the condition of appointment cannot now turn around and challenge the same. He would further submit that even the petition of Manharbhai

Ramanbhai Naik was filed in the year 2002 and in the year 2017, whereas, the present petitioners have come to this Court only in August, 2019.

8. Learned advocates appearing for the respective Panchayats have relied on the affidavits-inreply filed by them and opposed the petitions on the

ground of delay. Mr. H.S. Munshaw, Mr. Devang D. Dave and Mr. Kalpesh N. Shastri, learned advocates appearing for the respondent authorities

drawing the attention of the Court to the replies and opposed granting of any relief in favour of the petitioners on the ground that once having accepted

the terms of appointment, it is not open for them now to turn around and challenge these appointment conditions.

9. Ms. Harshal Pandya, learned counsel appearing for the petitioner so far as SCA No.14953 of 2020 would submit that though the application for

appointment on compassionate ground on the death of the father on 29.10.1999, was made immediately on 25.11.1999. The application remained

unattended and in the meantime, the policy of 15.6.2004 came into operation. The petitioner was issued an appointment order on 12.8.2004 based on

the policy of 15.6.2004. She would also rely on a decision of this Court in Special Civil Application No.30154 of 2007 dated 6.9.2013, wherein,

considering the prayers of similar nature, this Court extensively dealing the policy of 15.6.2004 directed the respondents to issue modified order of

appointment, which order was implemented by the State Government on 28.1.2014.

10. Considering the submissions made by the learned advocates for the respective parties, it appears that Mr. Manharbhai Ramanbhai Naik, who was

denied appointment on compassionate ground as a result of the ceiling of income limit prevalent at the time of his application, approached this Court

when his case for appointment was rejected. Considering the policy as per the GR dated 10.3.2000 and 7.9.2002, the Court set aside the stand of the

State Government in not considering the case of the petitioner for appointment on compassionate ground. The relevant portion of the order dated

7.10.2002 passed in Special Civil Application No.1579 of 2002 reads as under:

“4. At the hearing of the petition, the learned counsel for the petitioner relies on the Government Resolution dated 7-9-2002 laying down that the

Government Resolution dated 10-3-2000 doing away with the income limit in matters of compassionate appointment shall be given effect from 1-1-

1996.

5. In view of the aforesaid resolution, it is clear that in cases where deceased expired on or after 1-1-1996, the compassionate appointment cannot be

refused on the ground of the income of the families exceeding the prescribed limit as no limit would now be applicable.

6. In view of the statement being made by the learned counsel for the petitioner that the death of the father of the petitioner took place while holding

office and on or after 1-1-1996 i.e. on 19-6-1999, it is obvious that the present case will be governed by the Government Resolution dated 10-3-2000

read with the Government Resolution dated 7-9-2002.

11. Based on these directions, Mr. Manharbhai Ramanbhai Naik was appointed on compassionate ground by an order dated 23.7.1994 on fixed pay of

Rs.2,500/-. That his appointment was on fixed pay similar to the one in case of the petitioners is evident from the modified order issued by the State on

12.6.2019. Reading the order of 12.6.2019 would indicate that the State Government considering the spirit of the order passed in Special Civil

Application No.1579 of 2002 dated 7.10.2002 modified the order appointing that petitioner in fixed pay of Rs.2,500/- and backing his appointment as

one in the regular scale of pay from his initial date of appointment and not after completion of five years.

12. The facts on hand in the present cases would indicate that the case of the petitioners is similar to that of the petitioner of Special Civil Application

No.1579 of 2002. The petitioners in the cases as argued by Ms. Thakar who were appointed on 25.7.2004 and 19.4.2005 and in the case of Ms.

Harshal Pandya, the petitioner so far as SCA No.14953 of 2020 was appointed on 12.8.2004. Perusal of all these orders would indicate that the

petitioners were appointed on compassionate ground on fixed pay of Rs.2,500/- as that of the petitioner of SCA No.1579 of 2002. It was on 12.7.2019

that petitioner Mr. Manharbhai Ramanbhai Naik for the benefit of being appointed on regular pay scale from his initial date of appointment and not on

completion of five years and the order was so modified. It is based on these orders that the petitioners are promoted to approach this Court in the year

2019-2020 claiming similar benefits.

13. The objection of delay on the part of the respondents therefore that having accepted that appointments in 2004, the petitions are delayed, is an

objection which is misconceived.

14. Accordingly, all these petitions are allowed. The respondents are directed to issue modified orders of appointment in case of all the petitioners and

place them in the regular scale of pay from their initial date of appointment in the respective cadres of Junior Clerks / Panchayat Sevak and / or as a

Peon as is the case so far as SCA No.14953 of 2020. The fixation of pay based on their the basis of the benefit granted by virtue of this judgment

shall be done from the date of their initial appointment for all purposes. As far as arrears are concerned, the benefits shall be given to the petitioners

only with effect from 1.1.2020. The order shall be implemented within a period of three months from the date of receipt of copy of this judgment.

15. Rule is made absolute to that extent. Direct Service is permitted. No order as to costs.

[7] The decision of this Court was carried in appeal and Division Bench of this Court in Letters Patent Appeal No.855 of 2022 and allied appeals, has

dismissed the appeals of the District Panchayat holding as under:

“8. We have heard learned advocates for the respective parties.

9. It is an undisputed fact that the policy, which was prevailing in the year 2015, when the respondent employee was appointed, there was no policy of

giving appointment on fixed pay for a period of five years, and therefore, the decision in case of the State of Madhya Pradesh (Supra) would squarely

apply to the facts of the case, and therefore, the policy, which was prevailing on the date of their appointment would come into play.

10. As far as delay is concerned, it is true that the petitioners have approached after a long period; however, if the order dated 12.06.2019 passed by

the concerned authority is perused, the said Manharkumar Ramanlal Nayak, who was appointed on compassionate ground on 23.07.2003 and was

given all the benefits subsequent to petition filed by him before this Court in the year 2017, and thus, the State Government itself has condoned the

delay with regard to claim put forward by said Manharkumar Ramanlal Nayak, and therefore, all the respondents employee in the appeals herein are

also required to be given similar treatment. Learned Single Judge has also kept in mind for filing the petition at belated stage and has observed

accordingly. Learned Single Judge has not granted any arrears from their initial date of appointment and has granted the benefits from 01.01.2010, and

therefore, no interference is required in the order passed by learned Single Judge. Hence, present appeals stand dismissed.

11. In view of the order passed in Letters Patent Appeals, Civil Applications do not survive and accordingly, the same are disposed of.”

[8] Having affirmed the order of the learned Single Judge, the present petition too is allowed in terms of the order dated 18.04.2022 as quoted above.

[9] Accordingly, present petition is allowed. The respondents are directed to issue modified order of appointment in case of petitioner and place him in

the regular scale of pay from his initial date of appointment in the cadre of Talati Cum Mantri. The fixation of pay based on the basis of the benefit

granted by virtue of this judgment shall be done from the date of his initial appointment for all purposes. As far as arrears is concerned, the benefits

shall be given to the petitioner only with effect from 1.1.2020. The order shall be implemented within a period of three months from the date of receipt

of copy of this judgment.

[10] Rule is made absolute to that extent. Direct Service is permitted. No order as to costs