

(2024) 10 GUJ CK 0058

Gujarat High Court

Case No: Special Civil Application No. 13916, 14506, 15095, 16350 of 2015, 26914 of 2022, Civil Application (For Amendment) No. 1 of 2023, Civil Application (For Interim Relief) No. 1 of 2016

Gujarat Rajya Gram Sevak
Mahamandal & Ors.

APPELLANT

Vs

Vs State Of Gujarat & Anr.

RESPONDENT

Date of Decision: Oct. 24, 2024

Acts Referred:

- Gujarat Civil Services (Revision of Pay) Rules, 1998 - Rule 11
- Constitution of India, 1950 - Articles 14, 16

Hon'ble Judges: Vaibhavi D. Nanavati, J

Bench: Single Bench

Advocate: N K Majmudar, Nidhi Vyas

Final Decision: Allowed

Judgement

,,,,,

Vaibhavi D. Nanavati, J",,,,,,

1. Since issue involved in all the captioned petitions is self-same, are heard analogously and are being disposed of by this common order. For the sake",,,,,,

of convenience, Special Civil Application No.13916 of 2015 is treated as the lead matter.",,,,,

1.1 The petitioners in the Special Civil Application No.13916 of 2015 have prayed for the following reliefs:,,,,,

â€œ23. The petitioners, therefore, humbly pray that this Honâ€™ble Court be pleased to -",,,,,,

A) admit this petition;,,,,,

B) issue appropriate writ, order or direction and be pleased to quash and set aside the illegal, illogical, discriminatory and arbitrary action",,,,,

of the concerned respondent authorities of subjecting the Members of the petitioner no.1 Association to Gram Sevaks by applying the pay,,,,,

scale of 4500-7000 as a Higher Pay Scale (on completion of 9 years service on or after 1/1/1996) and other similarly situated Gram Sevaks,,,,,

(who have completed 9 years service on or before 1/1/1996) have been placed in the pay scale of 5000-8000 and therefore, the action of",,,,,

the respondent authorities of subjecting the category of Gram Sevaks who are placed in the pay scale of 4500-7000 may be quashed and,,,,,

set aside and the same may be declared as illegal, illogical, arbitrary, discriminatory, violative of Article -14 and 16 of the Constitution of",,,,,

India;,,,,,

C) issue appropriate writ, order or direction and be pleased to direct the respondent authorities to apply the Scale/Higher Pay Scale of",,,,,

5000-8000 to the Gram Sevaks to Members of the petitioner no.1 Association who have completed 9 years services on or after 1/1/1996,,,,,

and the respondents be directed to apply the aforesaid correct pay scale of 5000-8000 and the same may be made applicable to all the,,,,,

Gram Sevaks who have completed 9 years of service on or after 1/1/1996 and difference of salary/difference of pay scale and other,,,,,

consequential benefits be ordered to be paid with 12% interest, and the pay scale of 5000-8000 may be ordered to be made applicable from",,,,,

the date of completion of 9 years services in the cadre of Gram Sevaks after 1/1/1996 and all consequential benefits be ordered to be paid,,,,,

with 12% interest;,,,,,

D) issue appropriate writ, order or direction and be pleased to quash and set aside the G.R. dated 7/12/2013 as the same is illegal, illogical,",,,,

violative of Article-14 and 16 of the Constitution of India and violative of Gujarat Civil Services (Revision of Pay) Rules, 1998 and be",,,,,

pleased to direct the Government Authorities to modify the same to the extent that the same provides incorrect Higher Pay Scale i.e. pay,,,,,

scale of 4500-7000 and the same may be ordered to be modified and the Government Authorities be directed to prescribe the correct Higher,,,,,

Pay Scale of 5000-8000 against the pay scale of 4000-6000 and to the aforesaid extent only the said G.R. dated 7/12/2013 may be ordered,,,,,

to be quashed and set aside;,,,,,

E) issue appropriate writ, order or direction and be pleased to quash and set aside the communication dated 5/1/2015 as the same is non-,,,,,

speaking communication/order issued by respondent authorities upon the representation dated 10/12/2013, and the respondents be directed" ,,,,,

to reconsider the representation dated 10/12/2013 and the respondent authorities be directed to take appropriate decision upon the,,,,,

representation dated 10/12/2013 after giving reasonable opportunity of hearing to the Office Bearers of the petitioner no.1 association and,,,,,

the respondents be directed to reconsider the said representation as expeditiously as possible in the interest of justice and the respondents,,,,,

be directed to pass detailed reasoned order after hearing the concerned office bearers/gram sevaks;,,,,,

F) issue appropriate writ, order or direction and be pleased to quash and set aside the G.R. dated 14/8/1998 as the same is violative of" ,,,,,

Article-14 and 16 of the Constitution of India and violative of Gujarat Civil Services (Revision of Pay) Rules, 1998;" ,,,,,

ALTERNATIVELY,,,,,

G) issue appropriate writ order or direction and be pleased to direct the respondent authorities to consider and decide the,,,,,

application/representations and the aforesaid representations preferred by the petitioner no.1 Association may be ordered to be considered,,,,,

and decided by giving reasonable opportunity of hearing to the Office bearers of petitioner no.1 Association and the same may be,,,,,

considered and decided as expeditiously as possible;,,,,,

H) grant interim relief and by way of interim relief be pleased to direct the respondent authorities to consider and decide the,,,,,

representations Annexure " J Collectively after giving reasonable opportunity of hearing to the Office Bearers of petitioner no.1,,,,,

Association pending admission and final disposal of this petition;,,,,,

I) grant further interim relief and by way of interim order be pleased to direct the respondent authorities to consider and decide the,,,,,

representation dated 10/12/2013 pending admission and final decision of this petition;,,,,,

J) pass such orders as thought fit in the interest of justice.â€",,,,,

2. The petitioner No.1 in Special Civil Application No.13916 of 2015 is a registered Association recognized and approved by the State of Gujarat,,,,,

having its registration No.PR.R.1075-6304-YA dated 21.09.1978. The petitioner No.1 Association represents its members who are serving under the,,,,,

respondent No.1 in various Taluka & Gram Panchayats in the State of Gujarat. The petitioner No.1 Association is represented by its President,,,,,

Ranjitsinh M. Matieda. The petitioner Nos.2 to 5 are Gram Sevak whose names and details are annexed in tabular form at Annexure "A to the,,,,,

petition; having been appointed under the Recruitment Rules published by the Government of Gujarat in the pay scale of 1200-2040 upon fulfilling all,,,,,

the eligibility criteria seeking 1st higher pay scale as per the Government Resolution dated 16.08.1994 i.e. the petitioners became eligible to get the 1st,,,,,

higher pay scale prescribed in Appendix annexed to the Government Resolution dated 16.08.1994 as the respondent authorities have treated the post,,,,,

of Gram Sevaks as solitary post (Ekanki post in Gujarati) though, as per the Appendix annexed to the same, such category of Gram Sevaks who have",,,,,

been appointed after 01.01.1996 became eligible and entitled to get the pay scale of 1400-2600 though, the said pay scale was already made",,,,,

applicable, the corresponding revised pay scale as per the 5th pay revision rules which is prescribed under relevant Government Resolution is 5000-",,,,,

8000, the petitioners are subjected to injustice and therefore, it is prayed that all the Gram Sevaks who are members of the petitioner No.1 Association",,,,,

Association and who have been granted the 1st higher pay scale of 4500-7000 be ordered to be given the 1st higher pay scale of 5000-8000 as per,,,,,

appendix annexed to the Government Resolution dated 16.08.1994 and suitable directions be issued for all the consequential benefits, difference of",,,,,

salary to be paid at the rate of 12% interest.,,,,,

2.1 The members of the petitioner No.1 Association and the petitioners in other cognate petitions serving in various Gram Panchayats in 7,,,,,

Districts namely Valsad, Dang, Vadodara, Kheda, Anand, Amreli and Kutchh have already been granted higher pay scale of 5000-8000 considering",,,,,

the communication/ office order/directives dated 18.04.2012 issued by the Finance Department as well as considering the Circular dated 25.06.2012,,,,,

issued by the respondent No.1 and considering the clarificatory Office Order dated 27.09.2012 issued by the concerned authorities however, on the" ,,,,,

basis of Circular/G.R. dated 07.12.2013, the respondent authorities issued instructions to all the concerned District Development Officers of the" ,,,,,

aforesaid 7 Districts to effect recovery of higher pay scale and the decision was taken to cancel the higher pay scale of 5000-8000 in the said Districts,,,,,

as the same was decided to be withdrawn and in place of the same, the respondent authorities have decided to apply higher pay scale on 4500-7000." ,,,,,

The aforesaid decision effecting recovery as referred above deserves to be quashed and set aside and the respondents be restrained from effecting,,,,,

recoveries from the salary of Gram Sevaks/Members of the petitioner No.1 â€" Association serving in the said 7 District Panchayats.,,,,,

3. Heard Mr. N.K. Majmudar, learned advocate appearing for the petitioners, Ms. Nidhi Vyas, learned AGP appearing for the respondent â€" State" ,,,,,

and Mr. Premal Joshi, learned advocate for Mr. H.S. Munshaw, learned advocate appearing for the respondent Nos.3 and 4 in Special Civil" ,,,,,

Application No.15095 of 2015.,,,,,

4. Mr. N.K. Majmudar, learned advocate appearing for the petitioners, relied on the contentions raised in the captioned petitions and submitted that the" ,,,,,

respondent authorities be directed to apply the correct higher pay scale of 5000-8000 to all the Gram Sevaks who are members of the petitioner No.1 ,,,,,

â€" Association upon completion of 9 years of service. It is submitted that in an identical issue for applicability of higher pay scale in respect of Craft ,,,,,

Instructors/Supervisor Inspectors serving under the State of Gujarat i.e. under various Industrial Training Institutes, petitions came to be filed and" ,,,,,

ultimately, resolutions/notifications came to be issued extending the benefit of 1st higher pay scale upon completion of 9 years duly produced at page" ,,,,,

122, Annexure â€" F colly." ,,,,,

4.1 Mr. Majmudar, learned advocate, submitted that the Government Resolution dated 16.08.1994 provides for scheme of granting the benefit of" ,,,,,

higher pay scale upon completion of 9, 18 and 27 years of service wherein, the pay scale prescribed for the post of Gram Sevaks was 1200-2040 and" ,,,,,

the higher pay scale provided under the said Government Resolution in respect of the pay scale was 1400-2600. In view thereof, the higher pay scale",,,,,

for Gram Sevaks being 1400-2600 and upon completion of 9 years of service in the cadre of Gram Sevak as also upon remaining in the pay scale of,,,,,

1200-2040, the petitioners became eligible to the pay scale of 1400-2600. It is submitted that the aforesaid post is of an isolated cadre and therefore",,,,,

the higher pay scale would mean higher pay scale prescribed in Appendix â€" I of the Government Resolution dated 16.08.1994 as per Clause â€",,,,,

3(8) of the said Government Resolution.,,,,,

4.2 Mr. Majmudar, learned advocate, submitted that on the basis of recommendations of 4th pay commission as per the 1986 revision pay rules, the",,,,,

pay scale prescribed for the post of Gram Sevak was 1200-2040. The State of Gujarat â€" respondent No.1 herein accepted the recommendations,,,,,

made by the 5th pay commission and revised pay scale came to be applied upon publication of the Resolution dated 07.01.1998 duly produced at,,,,,

Annexure â€" C. It is submitted that in the said Government Resolution, the pay scale of Gram Sevak was shown at Sr. No.10 i.e. 1200-30-1560-40-",,,,,

2040 and the corresponding revised pay scale prescribed in the Gujarat Civil Services (Revision of Pay) Rules, 1998 was 4000-100-6000. It is",,,,,

submitted that upon implementation of the revised pay rules i.e. 6th pay revision rules, the pay scale of the Gram Sevaks was prescribed as 4000-100-",,,,,

6000. The revised pay scale came to be implemented with retrospective effect from 01.01.1996. In view thereof, the Gram Sevaks were placed in the",,,,,

pay scale of 4000-100-6000 w.e.f. 01.01.1996.,,,,,

4.3 Mr. Majmudar, learned advocate, submitted that the Gram Sevaks who had completed 9 years service on 01.01.1996 i.e. on or before 01.01.1996,",,,,,

were given the revised pay scale of 4000-6000. The Gram Sevaks who had completed 9 years of services in the cadre of Gram Sevaks, were given",,,,,

higher pay scale of 4500-7000. Thus, the Gram Sevaks who had completed 9 years of service on 01.01.1996 were given dual benefits i.e. against the",,,,,

pay scale of scale to scale basis considering the revised pay scale against higher pay scale of 1400-2600, which came to be revised to the pay scale of",,,,,

5000-8000. Such Gram Sevaks were placed in the pay scale of 5000-8000. It is submitted that the Gram Sevaks who had not completed 9 years in the,,,,,

cadre of Gram Sevaks, who are already serving as Gram Sevaks, were placed in the pay scale of 4000-6000 which was revised as per 5th pay",,,,,

revision w.e.f. 01.01.1996. It is submitted that the petitioners herein though, identically placed as uniform pay scale was made applicable to the Gram",,,,,

Sevaks who had completed 9 years as on 01.01.1996 as well as the Gram Sevaks who had not completed 9 years of service as on 01.01.1996, both",,,,,

the categories of Gram Sevaks were given revised pay scale of 4000-6000 against the pre-revised pay scale of 1200-2040 as per 5th pay revision.,,,,,

4.4 Placing reliance on the aforesaid, it is submitted that the grievance of the petitioner No.1- Association is to the effect that the Gram Sevaks who",,,,,

have completed 9 years of service in the cadre of Gram Sevaks and in the pay scale of 4000-6000, are required to be granted the corresponding",,,,,

higher pay scale of 5000-8000 however, surprisingly, the respondent authorities subjected such category of Gram Sevaks, who completed 9 years of",,,,,

service, in the pay scale of 4500-7000.",,,,,

4.5 Mr. Majmudar, learned advocate, submitted that the respondent No.1 published Resolution dated 07.12.2013 wherein, it is decided that as per the",,,,,

Appendix " I annexed to the Government Resolution dated 14.08.1998, the corresponding pay scale against the pay scale of 4000-6000 would be",,,,,

4500-7000 however, the same is erroneous considering that the issue relating to the higher pay scale as Appendix- I annexed to the Government",,,,,

Resolution dated 14.08.1998 is irrelevant; as Government Resolution dated 14.08.1998 and the Appendix- I thereto is in respect of the pay scale and,,,,,

revised pay scale and the same does not provide the corresponding higher pay scale against the prescribed pay scale. Placing reliance on the,,,,,

aforesaid, it is submitted that the Gram Sevaks in the pay scale of 1200-2040 (before 5th pay revision) were provided higher pay scale of 1400-2600",,,,,

as per Clause " 10 of the Appendix " I of the Government Resolution dated 14.08.1998 and the said pay scale of 1200-2040 was revised to 4000-,,,,,

6000 as per 5th pay revision and higher pay scale of 1400-2600 was given the revised pay scale of 5000-8000 on scale to scale basis as per the 5th,,,,,

pay revision of pay rules.,,,,,

4.6 Placing reliance on the aforesaid, it is submitted that it is well settled proposition of law that the statutory rules would prevail over the",,,,,

administrative instructions/resolutions. It is submitted that considering the scale to scale revision as per the Gujarat Civil Services (Revision of Pay),,,,,

Rules, 1998, the revised pay scale of 5000-8000 which is a revised pay scale on 1400-2600 came to be prescribed under the statutory rules i.e. the",,,,,

Gujarat Civil Services (Revision of Pay) Rules, 1998 and in view thereof, the revision of pay rules would always prevail over the said Government",,,,,

Resolution and therefore, the members of the petitioner No.1 " Association, Gram Sevaks would be entitled to the pay scale of 5000-8000 as per the",,,,,

Government Resolution dated 14.08.1998, cannot be considered by the respondent authorities but, the respondent authorities have to consider the",,,,,

revision/scale/pay scale on the scale to scale basis. Placing reliance on the aforesaid, it is submitted that the prayers, as prayed for, in the present",,,,,

petition be allowed.,,,,,

5. Ms. Nidhi Vyas, learned AGP appearing for the respondent Nos.1 and 2, relied on the affidavit-in-reply filed by the respondent No.1 and submitted",,,,,

that when the scheme of higher pay scale was introduced by the State Government from 01.08.1987, the post of Gram Sevak was an isolated post and",,,,,

there was no provision for promotion for the post of Gram Sevak. In that case, subject to the satisfaction of other conditions of the Government",,,,,

Resolution dated 16.08.1994 and 14.08.1998, the Gram Sevaks were eligible for the 1st and 2nd higher pay scale as per the standard mentioned in the",,,,,

Schedule " I of the said Government Resolution issued by the Finance Department. It is submitted that if the employee is entitled to higher pay scale,,,,,

before 01.01.1996, the Schedule "I of the Government Resolution dated 16.08.1994 would be applicable. If the employee is entitled to higher pay",,,,,

scale after 01.01.1996, the Schedule " I of the Government Resolution dated 14.08.1998 would be applicable.",,,,,

5.1 Ms. Vyas, learned AGP, submitted that upon receipt of various representations from the Gram Sevaks, the Panchayat Department has clarified",,,,,

from time to time the higher pay scale; payable to the post of Gram Sevak by issuing Circular dated 25.06.2012, 27.09.2012 and the Government",,,,,

Resolution dated 12.07.2013 regarding the higher pay scale entitled for the post of Gram Sevak. It is clarified by the Panchayat Department that the,,,,,

Gram Sevak would be entitled for the higher pay scale as per the Schedule "I" of the Government Resolution dated 16.08.1994 and 14.08.1998 and,,,,,

no further modification is required. It is submitted that the reply of the District Panchayat had been sent to the petitioner "Mandal by a letter dated,,,,,

05.01.2015. The previous representation of the Gram Sevak has also been decided in consultation with the Finance Department.,,,,,

5.2 Ms. Vyas, learned AGP, submitted that the Panchayat Department has issued final Government Resolution dated 07.12.2013 regarding",,,,,

sanctioning of higher scale to the State Government Employees and Gram Sevak working under the Panchayat Department vide Circular dated,,,,,

25.06.2012. Despite the issuance of the various Circulars dated 25.06.2012 and 27.09.2012, there are many discrepancies with respect to the payment",,,,,

of higher pay scale at the district level. Some of the District Panchayats have paid higher pay scale to the Gram Sevak; not according to the standard,,,,,

mentioned in the Government Resolutions dated 16.08.1994 and 14.08.1998 so, the recovery of such extra amount paid to the Gram Sevak has been",,,,,

made by the concerned District Panchayat. The Liability of such recovery order is of the concerned District Panchayat and not of the State,,,,,

Government. It is submitted that the Circular dated 27.09.2012 is regarding clarification for granting higher pay scale to the Gram Sevak in which, the",,,,,

detailed clarification has been issued to each of the District Panchayat regarding Government Resolution dated 16.08.1994 and 14.08.1998, that the",,,,,

higher pay scale has to be paid as per the Schedule "I" of the said Government Resolution.,,,,,

5.3 An affidavit-in-reply is also filed by the respondent No.1 pursuant to the order dated 19.04.2023 duly produced at page 160. Pursuant to the said,,,,,

order dated 19.04.2023, the petitioner made a representation to the office of the respondent No.1 herein, which has been decided by order dated",,,,,

19.06.2023. The said order is duly produced at Annexure" AA1, page 162.",,,,,

5.4 Further affidavit-in-reply is also filed by the respondent No.1 wherein, the contentions raised earlier are reiterated and it is submitted that the",,,,,

scheme of higher pay scale was governed by Government Resolution dated 16.08.1994 duly produced at page 73. It is submitted that upon introduction,,,,,

of Revision of Pay Rules, 1998 (5th Pay Commission), the Finance Department issued the Government Resolution dated 07.01.1998 duly produced at" ,,,,,

page 107 whereby, the corresponding scales were prescribed as per the Revision of Pay Rules, 1998. As per the said Government Resolution dated" ,,,,,

07.01.1998, the persons who were having pay scale of 1200-2040 had corresponding pay scale of 4000-6000 (Sr. No.10) whereas, the persons who" ,,,,,

were having pay scale of 1400-2600 got revised (owing to eligible for 1st higher pay of 1400-2600 before 01.01.1996) had corresponding pay scale ,,,,,

revised to 5000-8000. Consequently, the revised scheme of higher pay scale was made vide Government Resolution dated 14.08.1998 wherein, the" ,,,,,

revised pay scale as per the Government Resolution dated 07.01.1998 is to be considered and therefore, the persons eligible before 01.01.1996 shall be" ,,,,,

entitled for 2nd higher pay scale of 5500-9000 and the persons eligible after 01.01.1996 shall be entitled for 1st higher pay scale of 4500-7000. Placing ,,,,,

reliance on the aforesaid, it is submitted that the captioned petitions be dismissed." ,,,,,

6. In rejoinder, Mr. N.K. Majmudar, learned advocate appearing for the petitioners, placed reliance on the order passed in Special Civil Application" ,,,,,

No.14790 of 2011 with Special Civil Application No.10353 of 2011 dated 03.04.2018. Reliance is also placed on the order passed in Special Civil ,,,,,

Application No.2955 of 2010 dated 08.03.2010, Special Civil Application No.10305 of 2009 and allied matters dated 26.09.2017. It is submitted that the" ,,,,,

order passed in Special Civil Application No.2955 of 2010 was challenged before the Honâ€™ble Apex Court wherein, the Special Leave Petition" ,,,,,

filed by the respondent â€™ State came to be dismissed by order dated 22.07.2011. Placing reliance on the aforesaid, Mr. Majmudar, learned advocate" ,,,,,

submitted that the petitioners herein are identically placed to the petitioners of those petitions wherein, in the facts of the said petitions, the petitioners" ,,,,,

were also granted higher pay scale of 1400-2600 upon completion of 9 years of service on 17.01.1996. The corresponding pay scale of Rs.1400-2600 ,,,,,

in the 5th pay commission is 5000-8000. It is submitted that in view thereof, the petitioners herein are also entitled to the same pay scale and are" ,,,,,

similarly placed to those petitioners. ,,,,,

6.2 Placing reliance on the aforesaid, it is submitted that the prayers, as prayed for, be granted. The Government Resolution dated 14.08.1998 and the",,,,,

Government Resolution dated 07.12.2013 be held to be violative of Articles 14 and 16 of the Constitution of India as also, violative of Gujarat Civil",,,,,

Services (Revision of Pay) Rules, 1998. The respondent authorities be directed to modify the same to the extent that the same provides incorrect",,,,,

higher pay scale i.e. pay scale of 4500-7000 and the same be modified to the pay scale of 5000-8000 against the pay scale of 4000-6000 as also, the",,,,,

Government Resolution dated 07.12.2013 be quashed and set aside.,,,,,

7. Mr. Premal Joshi, learned advocate appearing for the respondent Nos.3 and 4 in Special Civil Application No.15095 of 2015, submitted that it is not",,,,,

in dispute that the petitioners herein are Class- III employees and would be governed by the ratio laid down by Honâ€™ble Apex Court in case of",,,,,

State of Punjab vs. Rafiq Masih (whitewasher) etc., reported in AIR 2015 SC 696. In light of the aforesaid ratio, the question of recovery effected",,,,,

from the petitioners herein does not arise.,,,,,

Analysis:-,,,,,

8. Having heard the learned advocates appearing for the respective parties, it emerges that the petitioners herein are Gram Sevaks serving in various",,,,,

Gram Panchayats in the State of Gujarat. The said post of Gram Sevak is an isolated post (â€™Akakiâ€™ post). There is no promotional avenue qua",,,,,

the present petitioners herein.,,,,,

8.1 The petitioners came to be appointed on the post of Gram Sevak in the pay scale of 1200-2040 as per the Gujarat Civil Services (Revision of Pay),,,,,

Rules, 1998. The Gram Sevaks who completed 9 years of service on or before 01.01.1996, have been granted the 1st higher pay scale of 5000-8000",,,,,

and the Gram Sevaks who are appointed under the same recruitment and pay Rules, 1998 and in the same pay scale of 1200-2040 which came to",,,,,

revised to 4000-6000 upon coming into force 5th pay commission, were granted higher pay scale of 1400-2600 which also came to be revised to 5000-",,,,,

8000 upon completion of 9 years on or before 01.01.1996, which was not higher pay scale but corresponding revised pay scale of 1400-2600 as per",,,,,

the Rules, 1998 and such category of members who have completed 9 years of service, have been placed in pay scale of 4500-7000 in view thereof,",,,,

subjected to discrimination as the members of the petitioner No.1 " Association who have completed 9 years service on or after 01.01.1996 have,,,,,

been given the higher pay scale of 4500-7000 though, the petitioners (members of the petitioner No.1 - Association) ought to have been granted the" ,,,,,

same higher pay scale as granted to the similarly situated Gram Sevaks upon completion of 9 years service on or before 01.01.1996 i.e. 5000-8000.,,,,,

8.2 The petitioner No.1 " Association representing its members, serving as Gram Sevaks in various District Panchayats had made number of" ,,,,,

representations seeking applicability of scale of 5000-8000 however, the respondent - State sent communication dated 05.01.2015 and without giving" ,,,,,

any reason, the decision was taken and it was communicated that the policy as per the Government Resolution dated 07.12.2013 is decided to be" ,,,,,

maintained for granting higher pay scales of Gram Sevaks and in view thereof, the petitioners have approached this Court having prayed for the reliefs" ,,,,,

as referred above.,,,,,

9. It is not in dispute that as per the 1986 Revision of Pay Rules, the pay scale prescribed for the post of Gram Sevak was 1200-2040. The respondent" ,,,,,

" State accepted the recommendations made by the 5th pay commission and revised pay scale came to be applied by the respondent " State by,,,,,

publishing Resolution dated 07.01.1998 which is duly produced at page 107. The said Government Resolution dated 07.01.1998 provides for the pay,,,,,

scales which have remained in existence, the revised pay scales would made applicable on the scale to scale basis. The revised scales were decided" ,,,,,

to be made applicable against existing pay scales irrespective of reference to the posts or cadres. Accordingly, upon perusal of the table which is duly" ,,,,,

produced at page 109, the pay scale of Gram Sevak was 1200-30-1560-40-2040 and corresponding revised pay scale as per the Gujarat Civil Services" ,,,,,

APPLICABILITY ASP ER 5TH PAY

COMMISSION (BEFORE 01.01.1996)" ,,,,"APPLICABILITY ASP ER 6TH PAY

COMMISSION (AFTER 01.01.1996)" ,,,

Employee,Basic Pay,"Higher Pay

S c a l e (GR

Dated

16.08.1994)", "Pay Scale To

Be Considered

AS Revision

Of Pay Rules,

1996 (GR

dated

07.01.1998)", "Corresponding

Basic Pay (GR

Dated

07.01.1998)", "Higher Pay

Scale (As per

GR dated

14.08.1998)

Employee

appointed prior

to 1996 Eligible

higher pay scale

before

1.1.1996", "1200- 2040, "1400-2600 (1st

higher pay scale)", "1400-2600 (as

B a s i c Pay

changed after

adding higher

pay scale)", "5000-8000 (as

per GR dated

7.1.1998)", "5500-9000 (2nd

Higher pay as

1st already

granted before

1996)

Employee

appointed prior

to 1996 but

Eligible for

higher pay scale

after 1.1.1996",1200- 2040,Not Eligible,"1200-2040 (as

no HP granted)",4000-6000,"4500-7000 (1st

higher pay scale

as they became

eligible for the

first time after

1996)

12. Upon perusal of the aforesaid, it is not in dispute that the Gram Sevaks who are appointed prior to 01.01.1996 in the basic pay scale of 1200-2040",,,,,

are accorded the higher pay scale of 1400-2600. Though, the petitioners herein are also granted the corresponding basic pay of 5000-8000 as per the",,,,,

Government Resolution dated 07.01.1998 however, initiated recovery of the aforesaid pay scale by applying the Government Resolution dated",,,,,

14.08.1998 qua the petitioners placing the petitioners herein in the 1st higher pay scale of 4500-7000 as the petitioners become eligible for the first time,,,,,

after 01.01.1996.,,,,,,

13. At this stage, it is apposite to refer to the decision rendered in Special Civil Application No.2955 of 2010 dated 08.03.2010 wherein, paragraph 5",,,,,

reads thus:,,,,,

“5. On 02.02.1996, admittedly, the pay-scale of the petitioner was Rs.1400-2600 (pre-revised) and the corresponding pay-scale, as per",,,,,

the 5th Pay Commission, is Rs.5000-8000. The pay-scale of Rs.4500-7000 was for those employees who were receiving the pay-scale of",,,,,

Rs.1200-2040. Looking to the facts of the case, I am of the view that the Tribunal has rightly appreciated the documents on record and has",,,,,

allowed the application preferred by the petitioner. I am in complete agreement with the reasonings given by the Tribunal in its order and,,,,,

hence, find no reasons to interfere with the same.â€",,,,,

13.1 The aforesaid decision was subject matter of challenge before the Honâ€™ble Apex Court in Special Leave Petition (C) No.11597 of 2011,,,,,

wherein, by order dated 22.07.2011, the said SLP came to be dismissed. It is apposite to reproduce the said order which reads thus:",,,,,

â€œDelay condoned.,,,,,

We are not inclined to interfere with the impugned order in view of the peculiar facts of this case. The special leave petition is dismissed.â€",,,,,

13.2 It is also apposite to refer to the decision rendered in Special Civil Application No.14790 of 2011 with Special Civil Application No.10353 of 2011,",,,,

dated 03.04.2018. Relevant paragraphs of the said decision read thus:,,,,,

â€œ7. In my considered opinion, the Tribunal has failed to appreciate the facts of pay fixation of the petitioner in true perspective. The",,,,,

reply filed by the School authorities before the Tribunal reveals that the petitioner was granted the higher pay scale of Rs.1400-2600 after,,,,,

completion of nine years service w.e.f 17.01.1996. The Tribunal in the Order dt.25.08.2008 passed in Application No.142 of 1999, has",,,,,

observed that there is no provision of law to show that the Librarians who go the benefit of higher pay scale cannot be granted the benefit,,,,,

of 5th Pay Commission, or who got the benefit of 5th Pay Commission cannot get the benefit of higher pay scale. The corresponding pay",,,,,

scale of Rs.1400-2600 in the 5 th Pay Commission is Rs.5000-8000. In the Order dt.8.03.2010, passed in Special Civil Application No.2955",,,,,

of 2010, challenging the aforesaid order of Tribunal, this Court has observed thus:-",,,,,

â€œ On 02.02.1996, the pay-scale of the petitioner was Rs.1400-2600(pre-revised) and the corresponding pay scale, as per the 5th Pay",,,,,

Commission, is Rs.5000-8000. The pay scale of Rs.4500-7000 was for those employees who were receiving the pay scale of Rs.1200-2040.",,,,,

Looking to the facts of the case the, I am of the view that the Tribunal has rightly appreciated the documents on record and has allowed the",,,,,

application preferred by the petitionerâ€œ.,,,,,

8. SLP filed against the aforesaid order is dismissed on 22.7.2011.,,,,,

9. Thus, in the case of a similarly situated Librarian, this Court has confirmed the order passed by the Tribunal by observing that a",,,,,

Librarian who is in a pay scale of Rs.1400- 2600 is entitled to the pay scale of Rs.5000-8000. In the present case, the petitioner was placed",,,,,

in the pay scale of Rs.1400-2600 by granting the higher pay scale w.e.f 17.1.1996, hence, her pay scale is to be revised to 5000-8000 in",,,,,

view of 5th Pay Commission. Prior to that he was in the pay scale of Rs.1200-2040. Hence, he is entitled to the pay scale of Rs.5000-8000",,,,,

as per the 5th Pay Commission.,,,,,

10. Thus, in light of the afore-noted decisions, the impugned judgment and the order dated 11.07.2011, passed by the Gujarat Higher",,,,,

Secondary School Services Tribunal in Application No.99 of 2001 is hereby quashed and set aside. The respondents herein are directed to.,,,,,

consider the case of the petitioner for grant the benefit of the pay scale of Rs.5000-8000 in light of the observations made herein above," ,,,,,

and thereafter pass appropriate orders fixing such pay scale. Necessary order shall be passed within a period of two months from the date.,,,,,

of receiving the copy of the present order. With the aforesaid observation and directions, the special civil application no.14790 of 2011 is",,,,,

allowed. Rule is made absolute.,,,,,

11. In the writ petition being Special Civil Application NO.10353 of 2011, the State government has challenged the judgment and order",,,,,

dt.11.1.2011 passed by the Tribunal in Application No.67 of 2009 governing a similar issue relating to fixation of the pay scale of Rs.5000-.,,,,,

8000 of applicant respondent therein who is a Librarian. The aforesaid order was also cited before the Tribunal in the Application No.99 of.,,,,,

2011 which was also distinguished on facts. In view of the foregoing observations, the Special Civil Application No.10353 of 2011 is",,,,,

dismissed. Rule is discharged. The petitioner-state is directed to grant the benefits arising of the judgment and order dt.11.1.2011 passed by.,,,,,

the Tribunal in Application no.67 of 2009 to the Respondent No.1.â€¸,,,,

13.3 Further, in an identical case of the Teachers of Government Primary Schools managed by a Town Primary Education Committee, the Education" ,,,,,

Department, State of Gujarat, has issued Government Resolution dated 12.10.2022 wherein, the said anomaly is corrected on certain conditions. It is" ,,,,,

apposite to refer to the said Government Resolution dated 12.10.2022, which reads thus: (true translation)" ,,,,,

â€œAs per the clarification issued vide the Circular read above at Sr.No. (7), the teachers of Government Primary Schools managed by a" ,,,,,

Town Primary Education Committee, who were not entitled to the First Higher Pay of Rs.5000â€¸8000 (as per the Sixth Pay Commission -" ,,,,,

Rs.9300â€¸34800, Grade Pay 4200), have also become entitled. However, due to that, the circumstances emerged that, the teachers who" ,,,,,

have become entitled for the First Higher Pay before 12/01/2021 and who have already been receiving the First Higher Pay of Rs.4500-,,,,,

7000 (as per the Sixth Pay Commission - Rs.5200â€¸20200, Grade Pay 2800) were, despite being seniors, receiving pay lower than their" ,,,,,

juniors. Under such circumstances, with a view to remove anomalies in pay and to determine the First Higher Pay and accordingly the" ,,,,,

Second and the Third Higher Pays on equality basis, in the manner same as earlier where the teachers of Primary Schools administered by" ,,,,,

a Town Primary Education Committee were getting the First Higher Pay on equality basis, a proposal had been moved by the Directorate of" ,,,,,

Primary Education vide the letter read above at Sr. No. (8).,,,,,

Moreover, pursuant to the repeated representations made by the state-recognized Primary Teachersâ€™ Unions and, as stated above, with" ,,,,,

a view to ensure uniformity in pay of all the teachers of government-primary-schools and with a view to remove anomalies in pay scale of,,,,,

the teachers who have become eligible for the first Higher Pay before 12/01/2021 and the teachers who have become eligible thereafter," ,,,,,

was under consideration of the Government.,,,,,,

RESOLUTION:-,,,,,

After a careful consideration and, as stated above, with a view to ensure uniformity in the First Higher Pay and subsequent Second and" ,,,,,

Third Higher Pays for the teachers of government primary schools administered by all the Town Primary Education Committees in the State,",,,,,

subject to the following terms and conditions, it is resolved to sanction the First Higher Pay of Rs.5000â€"8000 (as per Sixth Pay" ,,,,,

Commission - Rs.9300â€" 34800, Grade Pay 4200), i.e. on equality basis, for all the teachers of Government Primary Schools managed by" ,,,,,

the Town Primary Education Committees, from 01/01/1996." ,,,,,

Terms and Conditions:- ,,,,,

(1) The teachers of Primary Schools managed by a Town Primary Education Committee shall be entitled, to the first Higher Pay of" ,,,,,

Rs.5000â€" 8000 (as per the Sixth Pay Commission - Rs.9300â€"34800, Grade Pay 4200) after 9 years, the Second Higher Pay of" ,,,,,

Rs.5500â€"9000 (as per the Sixth Pay Commission - Rs.9300â€"34800, Grade Pay 4400) after 20 years and the Third Higher Pay of" ,,,,,

Rs.6500â€"10500 (as per the Sixth Pay Commission - Rs.9300â€"34800, Grade Pay 4600) after 31 years, from the date of their eligibility" ,,,,,

as per the provisions under the Scheme of Higher Pay and the Resolution dated 16/08/1994. ,,,,,

(2) In the instances, where a teacher out of the teachers of government primary schools managed by a Town Primary Education Committee" ,,,,,

has already been sanctioned the First Higher Pay of Rs.4500â€" 7000 (as per the Six Pay Commission - Rs.5200â€"20200, Grade Pay" ,,,,,

2800) from the date of his/her eligibility at present shall be, henceforth, sanctioned the First Higher Pay of Rs.5000â€"8000 (as per the" ,,,,,

Sixth Pay Commission - Rs.9300â€"34800, Grade Pay 4200) and the differential amount of the First Higher Pay of Rs.5000â€"8000 (as" ,,,,,

per the Sixth Pay Commission - Rs.9300â€"34800, Grade Pay 4200) for the period from date of his/her eligibility and the date of resolution" ,,,,,

shall be treated as notional and actual payment shall be made from 12/10/2022. ,,,,,

(3) In the cases where out of the teachers of Government Primary Schools managed by a Town Primary Education Committee, those who are" ,,,,,

yet to be sanctioned the First Higher Pay of Rs.4500â€"7000 (as per the Sixth Pay Commission - Rs.5200â€"20200, Grade Pay 2800) from" ,,,,,

their date of eligibility as per the rules, shall be, pursuant to the stated decision, sanctioned the First Higher Pay of Rs.5000â€"8000 (as" ,,,,,

per the Sixth Pay Commission - Rs.9300â€"34800, Grade Pay 4200) from the date of their eligibility. However, they shall be paid the" ,,,,,

differential pay amount for a period from the date of their eligibility to the date of resolution as per the First Higher Pay entitled to them as,,,,,

per the rules, i.e. Rs.4500â€"7000 (as per the Sixth Pay Commission - Rs.5200â€"20200, Grade Pay 2800). Whereas the differential pay" ,,,,,

amount for the Higher Pay of Rs.5000â€"8000 (as per the Sixth Pay Commission - Rs.9300â€"34800, Grade Pay 4200) shall be treated as" ,,,,,

notional and actual payment shall be made from 12/10/2022.,,,,,,

(4) An undertaking in form of an affidavit containing the above stated details, as per the Statement of Undertaking appended herewith," ,,,,,

shall be obtained from the teachers of government primary schools managed by a Town Primary Education Committee.,,,,,,

(5) As this decision has been taken in exceptional circumstances, it shall not be considered a precedent." ,,,,,

14. Considering the aforesaid position of law and the facts of the present case, the issue-in-question is no longer res-integra. Further, this Court has" ,,,,,

also perused the list of the petitioners in Special Civil Application No.15095 of 2015 and Special Civil Application No.16350 of 2015. Upon perusal of,,,,,

the same, it emerges that the date of eligibility of 1st higher pay scale of the petitioners herein is after 01.01.1996." ,,,,,

14.1 In the opinion of this Court, admittedly, the petitioners are in the pay scale of 1200-2040 and the petitioners herein were placed to the first higher" ,,,,,

scale of 1400-2600 in view thereof, the petitioners herein are entitled to the corresponding pay scale of 5000-8000 in accordance with the Government" ,,,,,

Resolution dated 07.01.1998 as per the 5th pay commission and not as per the Government Resolution dated 14.08.1998 and 07.12.2013. The,,,,,

corresponding pay scale as per 5th pay commission is 5000-8000.,,,,,,

15. For the foregoing reasons, the petitioners herein in the pay scale of 1400-2600 are entitled to the pay scale of 5000-8000 as per the 5th pay" ,,,,,

commission. The prayers, as prayed for, in the captioned petitions, are allowed to the aforesaid extent. The respondent authorities to consider in" ,,,,,

accordance with the initial date of appointment of the petitioners; upon due verification and pass appropriate orders fixing such pay scale, in",,,,,

accordance with law. The aforesaid exercise be undertaken within a period of eight weeks from the date of receipt of this order.,,,,,

15.1 Considering the fact that the captioned petitions are allowed, the question of recovery does not arise. Consequently, the impugned communication",,,,,

dated 05.01.2015 is also quashed and set aside.,,,,,

16. The captioned petitions are allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent. The connected civil applications stands,,,,,

disposed of accordingly.,,,,,