

## Sudhir Jaysukhlal Chhapia Versus Vs Gujarat Maritime Board & Ors.

**Court:** Gujarat High Court

**Date of Decision:** Jan. 16, 2025

**Hon'ble Judges:** Nirzar S. Desai, J

**Bench:** Single Bench

**Advocate:** Harshal N Pandya, Sejal K Mandavia

**Final Decision:** Allowed

### Judgement

Nirzar S. Desai, J

1. Heard learned advocate Ms. Harshal N. Pandya appearing for the petitioner and learned advocate Ms. Sejal K. Mandavia appearing for the

respondents.

2. With the consent of all the parties, the matter was taken up for final hearing. Hence, issue RULE. Learned advocate Ms. Sejal Mandavia waives

service of notice of rule for and on behalf of the respondents.

3. By way of this petition, the petitioner has prayed for holding and directing the respondent authority to grant the petitioner the benefit of second

higher pay scale upon his completion of fifteen years of service from the date of receipt of first higher pay scale, in light of Government Resolution

dated 02.07.2007 and to direct the respondent authorities to grant second higher pay scale of Rs.9300-34800, GP (Grade Pay) Rs.4200 to the

petitioner from his due date with all consequential benefits including arrears and consequential fixation of pay and pension with appropriate revision

alongwith interest.

4. It is the case of the petitioner as stated by learned advocate Ms. Harshal Pandya that the petitioner was appointed as Peon in the Gujarat Maritime

Board vide order dated 22.2.1980 and in the year 1987 vide order dated 5.1.1987, he was promoted to the post of Godown Keeper. Thereafter,

pursuant to the Government Resolution dated 16.08.1994, the petitioner was granted first higher pay scale in the year 1996 with effect from 5.1.1996

by order dated 11.4.1996 and thereafter, in the year 2007, Government's policy of granting higher pay scale upon completion of 9, 18 and 27 years

of service was modified vide Government Resolution dated 02.07.2007 and a new policy of giving higher pay scale upon completion of 12 and 24

years of services was introduced. However, as per Clause 4(B) of the new policy vide Government Resolution dated 02.07.2007, if a person has

already received the first higher pay scale on completion of 9 years, his second higher pay scale would become due on completion of 15 years from

the date on which he got the first higher pay scale on completion of 9 years so as to ensure that he meets with the criteria of getting second higher pay

scale upon completion of 24 years of service from the date of becoming eligible for getting second higher pay scale as per the Government Resolution

dated 02.07.2007.

5. Considering the fact that the petitioner got his first higher pay scale upon completion of 9 years though in the year 1996 with effect from 5.1.1996,

the petitioner became eligible for second higher pay scale on completion of 15 years from the date of 5.1.1996 and therefore, the petitioner became

eligible for second higher pay scale in the year 2011 with effect from

5.1.2011. Accordingly, the petitioner represented his case before the respondent - authority for grant him second higher pay scale vide his

communication dated 20.1.2011 and thereafter also the petitioner continued to keep making representation, but the respondent neither rejected his

claim, nor granted it and kept saying that their case is under consideration in view of various judgments.

6. In the meantime, other similarly situated persons who were also denied the benefits of second higher pay scale preferred Special Civil Application

No. 10318 of 2018 with Special civil Application No. 10320 of 2018 in case of Keshubhai Vashrambhai Bhuva V/s. Gujarat Maritime Board, decided

on 16.01.2020 by the Coordinate Bench whereby while interpreting the Clause No. (4) (a) and (b), the Coordinate Bench in its order dated 16.01.2020

considered the case of similarly situated persons and allowed the petition and directed the respondent to grant the benefits of second higher pay scale

to the petitioners of those petitions.

7. The aforesaid order was carried in appeal by the Gujarat Maritime Board being Letters Patent Appeal No. 504 of 2020. However, the aforesaid

Letters Patent Appeal was dismissed by the Division Bench of this Court vide order dated 09.09.2020 and therefore, Gujarat Maritime Board carried

both the aforesaid orders before the Hon'ble Supreme Court by way of Special Leave to Appeal (C) No. 1284 of 2021. However, the said Special

Leave to Appeal also was dismissed by the Hon'ble Supreme Court vide order dated 08.02.2021. Ultimately, the order qua those petitioners was

implemented by Gujarat Maritime Board and thereafter, one more similarly situated person Viz. Urvashiben Umeshchandra Thanki preferred Special

Civil Application No.13416 of 2020 alongwith other petitions on the same issue. Those set of petitions also were allowed by the Coordinate Bench of

this Court vide judgment dated 08.02.2022 and the respondents have implemented that order as well as stated by learned advocate Ms. Harshal

Pandya.

8. It is in this background, the petition is preferred and therefore, according to learned advocate Ms. Pandya when the benefits are granted to the

other similarly situated persons and the orders are implemented qua them after having failed till the Hon'ble Supreme Court, the present

petitioner's case which is almost identical to the case of those petitioners is required to be considered positively and by allowing the petition, the

respondents may be directed to grant the benefits of second higher pay scale to the present petitioner as well.

9. Though learned advocate Ms. Sejal Mandavia appearing for the Gujarat Maritime Board vehemently opposed the petition, she could not point out

anything on merits which would compel this Court to take a different view or on facts that the case of the present petitioner is different than the case

of other persons who were the petitioners of that petitions mentioned in foregoing paragraphs and are decided against Gujarat Maritime Board.

Therefore, learned advocate Ms. Mandavia submitted that though the right is accrued in favour of the petitioner as per the case of the petitioner

himself in the year 2011 whereas the petition is preferred in the year 2023 and therefore, there is a gross delay of 12 years in preferring the petition

and therefore, the petition is required to be dismissed on the ground of delay.

10. By making the above submissions, she prayed for dismissal of the petition.

11. I have heard learned advocates for the parties and perused the record. Upon hearing the learned counsels for the parties as well as considering

the ground of delay agitated by learned advocate Ms. Mandavia, the Court is of the view that the right to avail the second higher pay scale was

accrued in favour of the petitioner in the month of January, 2011 on completion of 15 years service, after he was granted the benefits of first higher

pay scale. The petitioner asked for grant of second higher pay scale vide communication dated 20.1.2011 and subsequent reminders which was not

decided by the respondents. However, the aforesaid right is flowing in respect of original Government Resolution dated 16.08.1994 which was

subsequently modified vide Government Resolution dated 02.07.2007 and therefore, in view of Clause 4 (2) (B) of Government Resolution dated

02.07.2007, the petitioner is claiming second higher pay scale on completion of 15 years service from the date on which the petitioner was granted first

higher pay scale. The aforesaid right being an accrued right, the denial of aforesaid right to the petitioner, all throughout would constitute a continuous

cause of action and therefore, the aspect of delay would not come in the way of the present petitioner.

12. Further in this petition, though the respondents have filed reply, from the entire paper-book, learned advocate Ms. Mandavia could not point out

that the petitioner is not eligible or entitled for second higher pay scale. In absence of any material to indicate that the petitioner is ineligible to claim

the second higher pay scale when the right has already accrued in favour of the petitioner by virtue of above referred Government Resolution, the

delay would certainly not come in the way of the present petitioner and the contention of learned advocate Ms. Sejal Mandavia to dismiss the petition

on the ground of delay shall not be accepted and accordingly, rejected.

13. Now, if I consider the case of the petitioner vice versa case of other similarly situated persons who also preferred the petitions before this Court,

learned advocate Ms. Sejal Mandavia could not point out that the case of the present petitioner is different from the case of those petitioners or that

the issue is not squarely covered by the decision of this Court in case of Keshubhai Vashrambhai Bhuva (supra) wherein vide order dated 16.01.2020,

the Coordinate Bench of this Court held that the petitioner of that petition is entitled to have second higher pay scale despite availing two promotions

and one higher pay scale. The aforesaid view taken by the Coordinate Bench was confirmed upto the Hon'ble Supreme Court and in the instant

case, the only ground to deny the petitioner the benefits of second higher pay scale was that the petitioner was given one promotion and one higher

pay scale and only on that ground the aforesaid benefits of second higher pay scale was denied to the petitioner.

14. Now in view of that, the case of the petitioner is required to be considered in light of the case already decided on 16.01.2020 in case of Keshubhai

Vashrambhai Bhuva(Supra). In the aforesaid judgment while noting the submissions of learned advocate for the respondents, the Coordinate Bench

has observed in paragraph no. 8 as under:-

8. Ms.Sejal Mandavia learned counsel for the respondent Board through her affidavit-in-reply would submit that though the service details

of the petitioners are not disputed, the petitioners are not entitled to the benefit of Second Higher Grade Scale. She would rely on the

Government Resolution dated 16.08.1994 to contend that the resolution specifically provides in Clause-3 thereof that in case an employee

receives two or more promotions, he would not be entitled to the benefit of the higher grade scale. She would further submit that the

petitions are barred by gross delay and laches. She would submit that the petitioners have retired in the year 2012 and have approached

this Court more than six years after such retirement and are praying for benefits after 11 years from the date of their entitlement and the

petitions therefore must be dismissed.

15. Thereafter, the Coordinate Bench of this Court while interpreting the sub-clause 4(a)(b) of Government Resolution dated 02.07.2007 has observed

in paragraphs no. 9 to 13 as under:-

“9. Having considered the submissions of the learned advocates for the parties, what needs to be adjudged is whether since the

petitioners have earned two promotions and one Higher Grade Scale, they can be deprived of the benefit of the Second Higher Grade

Scale.

10. It is in this context that Clause 2, sub-clauses (2), (3) and (4) need to be read. When sub-clauses (2) and (3) are read, they make it clear

that only when a beneficiary of the First Higher Grade Scale on completion of 12 years of service in accordance with the Resolution of

02.07.2007 is given such benefit, he is entitled to the benefit of the Second Higher Grade Scale on completion of further 12 years of

service. This is subject to a qualification that such an incumbent has not earned more than one promotion and/or First Higher Grade Scale.

11. When in this context, sub-clauses (4)(a) and (b) are read, they specifically provide that when an incumbent earns his first higher scale

on completion of nine years of service in accordance with the Government Resolution dated 16.08.1994, he shall earn the Second Higher

Grade Scale on completion of 15 years thereafter. There are no riders in the clause that the earning of promotion and/or a higher grade

scale would disentitle the incumbent of earning the Second Higher Grade Scale after the First Higher Grade Scale of nine years in

accordance with the resolution dated 16.08.1994.

Reading of the communication dated 12.09.2014 addressed by the Gujarat Maritime Board asking for its opinion and the stand of the

Government as is evident from the Finance Department's communications dated 04.03.2008 and 22.10.2014 make it clear that

interpreting sub-clause 4(b) of Clause-2 of the resolution, the stand of the State is that one who has earned the First Higher Grade Scale on

completion of nine years of service in accordance with the resolution dated 16.08.1994, is entitled to the Second Higher Grade Scale in

accordance with the Government Resolution dated 02.07.2007 after completing 15 years thereafter. This of course is subject to the

incumbents satisfying other conditions of the Government Resolution dated 16.08.1994.

12. Keeping these clarifications in mind, the petitioners are entitled to the reliefs prayed for and therefore, the respondents are directed to

grant Second Higher Grade Scale of Rs.9300-34800/-, G.P. Rs.4400/- to the petitioners from their due dates with all consequential benefits

including arrears and consequential fixation of pay and pension.

13. The petitions are allowed.

16. The aforesaid decision was carried in appeal and confirmed by the Division Bench of this Court vide order dated 09.09.2020 in Letters Patent

Appeal No. 504 of 2020 in case of Gujarat Maritime Board V/s. Damjibhai Jerambhai Akbari wherein in paragraph nos. 2 and 3, the Division Bench

of this Court has observed as under:-

“2. The learned Single Judge, after considering the relevant Government Resolutions dated 16th August 1994, 2nd July 2007 and other

clarifications issued by the Gujarat Maritime Board and the State Government, as also the opinion given by the State Government, came to

the conclusion that the writ petitioner (respondent herein) was entitled to the second Higher Grade Scale as per the Government Resolution

dated 2nd July 2007 read with earlier Government Resolution dated 16th August 1994. It is admitted fact that the petitioner came to be

appointed in 1978, thereafter, got first promotion on 10th September 1980 as Senior Clerk, from the post of Junior Clerk with effect from

26th December 1983. Thereafter, in 1992, upon completing 9 years of service in the cadre of Senior Clerk, he was granted the first Higher

Grade Scale. Later on, in 2005, the petitioner was given promotion as Head Clerk in the same Pay Scale which was given to him as Higher

Grade Scale in 1992. Thus, it is clear that the Higher Grade Scale given in 1992 and promotion in 2005 are in the same Pay Scale. Even

from 1992, the writ petitioner has continued in the same Pay Scale and as such, under the Government Resolution referred above, he was

entitled to next Higher Grade Scale after completing 15 years of service which would be available to him in 2007. The learned Single Judge

has thus, extended the benefit correctly.

3. In view of the above, we do not find any error in the order of the learned Single Judge warranting interference in this appeal. The same

is accordingly dismissed. Consequently, the connected Civil Application stands disposed of.”

17. Thereafter, though the respondents carried the aforesaid order before the Hon'ble Supreme Court by way of Special Leave to Appeal No.

1284 of 2021, the same was dismissed by the Hon'ble Supreme Court vide order dated 08.02.2021 meaning thereby, the view taken by the

Coordinate Bench was confirmed upto the Hon'ble Supreme Court.

18. During the course of the submissions, learned advocate Ms. Pandya also submitted that not only the aforesaid decision is implemented by the

respondent " Board but subsequently, one more petitioner Viz. Urvashiben Umeshchandra Thanki who was also similarly situated person as

compared to the present petitioner preferred Special Civil Application No.13416 of 2020. While deciding the aforesaid petition alongwith other group

of the petition, the Coordinate Bench in similarly set of facts held that those petitioners are also entitled to second higher pay scale vide judgment dated

08.02.2022 and the respondent " Board has not even challenged the aforesaid judgment and in fact has implemented the aforesaid judgment by

granting the second higher pay scale to the petitioners of that group of the petition.

19. The aforesaid facts are undisputed as even learned advocate Ms. Mandavia also could not dispute the aforesaid facts and therefore, in light of the

facts that the above decisions squarely cover the issue on hand and as the identically similarly situated persons have succeeded in their challenge and

have been granted second higher pay scale, there is no reason for this Court to take a different view more particularly when the facts are undisputed.

Accordingly, the present petition is succeeded.

20. It is held that the present petitioner is entitled to have second higher pay scale on completion of 15 years from the date on which he was granted

the benefit of first higher pay scale i.e. 5.1.1996 that is from 5.1.2011 and the respondents are directed to grant the second higher pay scale to the

petitioner at the earliest by calculating the arrears and all other consequential benefits but in any case not later than three months from the date of

receipt of this order. In case of any delay beyond a period of three months from the date of receipt of the order, the respondents shall pay the interest

@ of 6% on the entire amount to the petitioner.

21. With the aforesaid observations, the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is

permitted.