

Sultanaben Bavudinbhai Kazi vs Gujarat Water Supply And Sewerage Board ... on 28 January, 2019

Author: N.V.Anjaria

Bench: N.V.Anjaria

C/SCA/14668/2018

CAV ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 14668 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE N.V.ANJARIA

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1 Whether Reporters of Local Papers may be allowed toNo see the judgment ?

2 To be referred to the Reporter or not ? No 3 Whether their Lordships wish to see the fair copy of theNo judgment ?

4 Whether this case involves a substantial question of lawNo as to the interpretation of the Constitution of India or any order made thereunder ?

===== SULTANABEN
BAVUDINBHAI KAZI Versus GUJARAT WATER SUPPLY AND SEWERAGE BOARD THROUGH
C H I E F A D M I N I S T R A T I V E O F F I C E R
===== Appearance:

MR GUNVANT B SHAH(3859) for the PETITIONER(s) No. 1 MR SAMIR B
GOHIL(5718) for the PETITIONER(s) No. 1 RC JANI AND ASSOCIATE(6436) for
the RESPONDENT(s) No. 2 RULE NOT RECD BACK(63) for the RESPONDENT(s)
N o . 1

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA Date : 28/01/2019 CAV
ORDER Heard learned advocate Mr. Samir Gohil for the petitioner and learned
advocate Mr. R. C. Jani for the respondent Gujarat Water Supply and Sewerage
Board and its authority.

C/SCA/14668/2018 CAV ORDER

2. What is prayed by the petitioner is to set aside the decision of the respondent board reflected in communication dated 21.8.2018 to deny to the petitioner the second higher pay scale. It is further prayed to direct the respondents to grant the second higher grade scale to the petitioner with effect from 29.11.2012 and revise the pensionary benefits accordingly and also to pay the interest.

3. The relevant facts are that the petitioner was appointed as junior clerk on 13.10.1978. She was thereafter promoted to the post of senior clerk on 29.11.1988. The petitioner was granted first higher pay scale on 28.11.1997 upon completion of 9 years of service in the cadre of senior clerk. This first higher pay scale was granted in accordance with the providence in the conditions contained in resolution dated 16.8.1994 of the state government. 3.1 It appears that the state government introduced new policy for higher pay scale by passing resolution dated 2.7.2007, under which it was contemplated that second higher pay scale would be available after completion of 15 years of service by the government servant from the date of grant of first higher pay scale. As per resolution C/SCA/14668/2018 CAV ORDER dated 2.7.2007, the petitioner became entitled to the second higher pay scale with effect from 29.11.2002, as the date of 29.11.2002 marked completion of 15 years from the date of receipt of the first higher pay scale which was given on 28.11.1997 as aforesaid. 3.2. Though the Executive Engineer of the respondent Board forwarded the proposal to the competent authority for grant of second higher pay scale to the petitioner, respondent No. 2 rejected the same by its letter dated 21.8.2018 which reflected the impugned decision. It was mentioned in the said communication that the petitioner was not becoming entitled to the second higher pay scale in view of the provisions of paragraph 4(b) of the Resolution dated 15.9.2015 of the Finance Department. It was stated that since the petitioner was imposed by order dated 7.4.2005 penalty of withholding of one increment without future effect, he was rendered ineligible to get the second higher pay scale.

3.3 The petition was contested by the respondents by filling affidavit-in-reply, in which inter alia relied on was circular dated

5.9.2008 issued by the Gujarat Water Supply and Sewerage Board, C/SCA/14668/2018 CAV ORDER to contend in view of that circular, that the penalty imposed on the petitioner was classifiable as major penalty, as a result of which the second higher pay scale was rightly denied. Also raised was the contention about delay by submitting that the petition was filed by the petitioner after delay of 5 years from the date of her retirement.

4. While learned advocate for the petitioner submitted that the penalty with which the petitioner was visited with, was of withholding of one increment without future effect and that it was a minor penalty which would not come in way to grant the petitioner the benefit of second higher pay scale, on the other hand learned advocate for the respondent board harped on the contentions in the affidavit-in-reply.

5. At the outset, it is to be observed that the contention of respondent about the delay was not well conceived. The impugned order conveying the decision not to grant the benefit to the petitioner was dated 21.8.2018, hence the petition filed on 19.9.2018, could not be thrown out on the ground delay. The petitioner may have retired on 31.5.2013. Even in any view, looking to the strength C/SCA/14668/2018 CAV ORDER of the merit part of the case of the petitioner, even the aspect that the petitioner had retired in the year 2013 and filed the petition in 2018 may not be an impediment in granting the relief. The contention on this score is to be rejected outrightly.

5.1 The impugned decision is rested on the condition No. 40(b) of resolution of the Finance Department dated 15.9.2015 which provide that if the government servant is imposed with major penalty at the end of departmental proceedings, in such eventuality higher pay scale will not be liable to be granted to him. The petitioner was imposed penalty of stoppage of one increment without future effect by order dated 7.4.2005. Now, in order to contend that this penalty is major penalty, the respondents have relied on circular dated 5.9.2008 of the respondent Gujarat Water Supply and Sewerage Board. There is a total misreading of circular by the respondents. 5.2 The circular categorises the classes of penalties as minor penalties and major penalties. The withholding of next increment without future effect as well as withholding of next increment with future effect, both are treated as minor penalties. Therefore, it is C/SCA/14668/2018 CAV ORDER entirely erroneous and misleading on part of the respondents to contend that the penalty imposed on the petitioner was a major penalty as contemplated in the circular. The penalty of stoppage of increment without future effect is a minor penalty as per circular dated 5.9.2008 itself. It could not be treated as major penalty to raise the case that the petitioner would be disentitled to receive the second higher pay scale in view of the condition No. 40(b) of the Resolution dated 15.9.2015, which mentions the ground of a major penalty to render the government employee disentitled to receive the higher pay scale.

6. In addition to the above, as per the above undisputed dates, the petitioner became entitled to the second higher pay scale on 29.11.2012. Resolution dated 15.9.2015 was not in existence much less in force on the date when the petitioner became entitled to second higher pay scale. The resolution on which the respondents places reliance is subsequent in point of time, therefore could not have been applied in the case of the petitioner.

7. For all the foregoing reasons, the petitioner is entitled to C/SCA/14668/2018 CAV ORDER succeed. Resultantly, communication dated 21.8.2018 and the decision reflected therein to deny the petitioner the second higher grade is hereby set aside. The petitioner shall be entitled to the second higher grade with effect from 29.11.2012 when he completed 15 years of service from the date of grant of first higher grade pay. Since the petitioner has retired his pension shall also be revised accordingly. It is, therefore, provided that the petitioner shall be granted second higher grade pay as directed above and shall be further paid the arrears arising by virtue of this order within a period of eight weeks from the date of receipt of writ of this order. If the amount and the arrears is not paid within the time stipulated above, it shall carry interest at the rate of 6% from the date of filing of this petition that is from 19.9.2018.

The petition stands allowed. Rule is made absolute accordingly.

Direct service is permitted.

(N.V.ANJARIA, J) C.M. JOSHI