

HIGH COURT OF GUJARAT (D.B.)

PARMAR PRABHATBHAI MAFATLAL

Versus

STATE OF GUJARAT & OTHERS

Date of Decision: 27 September 2011

Citation: 2011 LawSuit(Guj) 1097

Hon'ble Judges: [V M Sahai](#), [K S Jhaveri](#)

Case Type: Letters Patent Appeal

Case No: 1375 of 2004

Subject: Constitution

Acts Referred:

[Constitution Of India Art 226](#)

Final Decision: Appeal dismissed

Advocates: [Manish J Patel](#), [R C Jani](#)

Cases Referred in (+): 5

V. M. Sahai, J.

[1] Heard learned counsel for the parties.

[2] This appeal, filed under Clause 15 of the Letters Patent, challenges the judgment and order dated 29th March 2004 passed by the learned Single Judge in Special Civil Application No.9262 of 1999 dismissing the said writ petition.

[3] We have heard Mr R.C. Jani, learned counsel for the appellant, Mr N.J. Shah, learned Assistant Government Pleader for respondent No.1 and Mr Manish J Patel for respondent No.3.

[4] The facts of the present case are that pursuant to the advertisement dated 28th February 1991 inviting applications for making appointment to the post of Talati cum Mantri in various districts, the petitioner had applied for the said post from Sabarkantha District. In the examination for the selection that was conducted on 9th February 1992 the petitioner was selected for the said post and he was placed at Serial

Number 1 in the select list. However, in the meanwhile the State Government vide its circular dated 28th October 1991 imposed financial ban of 10% on the new posts and therefore the petitioner could not be appointed on the post of Talati cum Mantri.

[5] One Dodia Dilipbhai Prabhatsinh, who was also selected for the post of Talati cum Mantri filed a writ petition being Special Civil Application No.7323 of 1997 under Article 226 of the Constitution before this Court praying for issuance of direction to the respondent to exhaust the select list and keep it alive which is prepared in pursuance of advertisement dated 28/2/1991 for making appointments on the post of Secretary, Gram Panchayat till the new select list is prepared. It was his case that he was placed by the Selection Committee in the merit list at Sr. No.16, which has been prepared in the year 1992. He stated that in Bharuch district also the process has been undertaken for making the selection on the post of Secretary, Gram Panchayat / Talati-cum-Mantri etc. For this, advertisement was published in the year 1990. The said petitioner contended that as the State Government has put ban on appointments, he was not given appointment. It is the grievance of the said petitioner that the State Government as well as the Appointing Authority have acted arbitrarily and exhibited a clear example of the favouritism and nepotism in dealing with these matters and have made hostile discrimination in making the appointments. If the ban is there it is there throughout the State but what the petitioner submits, in Bharuch District the appointments have been made whereas in Kheda district the appointments have not been made. This action of the respondents what the learned counsel for the petitioner contended, as totally unconstitutional.

[6] The learned Single Judge allowed the said writ petition vide his judgment and order dated 30th June 1999 by which the respondent No.1 therein was directed to consider the case of the petitioner whose name was there in the select list for giving appointment on the post of Talati cum Mantri, Gram Panchayat. It was made clear that the appointment may not be denied to the said petitioner only on the ground there is a ban put on the fresh recruitment by the Finance Department and necessary order of appointment has to be made within a period of one month from the date of the receipt of the writ of this order. The respondent No.1 was directed to pay Rs.2,000/- as costs of the petition by account payee cheque.

[7] Therefore, being sure of his success, the petitioner herein too has filed Special Civil Application No.9262 of 1999 in the month of November 1999 after the judgment of the learned Single Judge. It appears that the petitioner was sleeping over his rights and only woke up after writ petition being Special Civil Application No.7323 of 1999 was allowed.

[8] In the case of [Bharat Sanchar Nigam Limited v. Ghanshyam Dass & Ors](#), 2011 2 Scale 479 the Apex Court has held that since the respondents therein preferred to sleep over their rights and approached the Central Administrative Tribunal only in 1997, they cannot get the benefit of the order dated 07.07.1992 of the Tribunal rendered in OA No.1455 of 1991. Paragraphs 13 and 14 of the said decision is relevant and therefore the same is quoted hereunder:-

13. The principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:

- a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;
- b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;
- c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

14. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others. In [Jagdish Lal and others v. State of Haryana and others](#), 1997 6 SCC 538, the appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis of the decisions in [Ajit Singh Januja v. State of Punjab](#), 1996 2 SCC 715, [Union of India v. Virpal Singh Chauhan](#), 1995 6 SCC 684 and [R.K. Sabharwal v. State of Punjab](#), 1995 2 SCC 745 and this Court refused to grant the relief saying:

this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from Virpal Chauhan and Ajit Singh ratios. But Virpal Chauhan and Sabharwal cases, kept at rest the promotion already made by that

date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in Sabharwal case which required to be examined in the light of the law laid in Sabharwal case. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law laid down in Sabharwal case and Virpal Chauhan case and equally Ajit Singh case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In A.B.S. Karamchari Sangh case a Bench of two Judges to which two of us, K. Ramaswamy and G.B. Pattanaik, JJ. Were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. In Chander Pal v. State of Haryana a Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of Virpal Chauhan, Ajit Singh, Sabharwal and A.B.S. Karamchari Sangh cases and held that the seniority of those respondents who had already retired or had been promoted to higher posts could not be disturbed. The seniority of the petitioner therein and the respondents who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in Virpal Chauhan and Ajit Singh; but promotion, if any, had been given to any of them during the pendency of this writ petition was directed not to be disturbed .

Since the respondents preferred to sleep over their rights and approached the Central Administrative Tribunal only in 1997, they cannot get the benefit of the order dated 07.07.1992 of the Tribunal in O.A. No.1455 of 1991 and will only be entitled to the benefit of the circular dated 13.12.1995 which was in force in 1997.

[9] In view of the decision of the Apex Court the appellant, who is a fence-sitter, is not entitled to any relief and the learned Single Judge has rightly dismissed the writ petition. We are in complete agreement with the view taken by the learned Single Judge.

This appeal is devoid of any merits and hence the same is dismissed. No order as to costs.