

**HIGH COURT OF GUJARAT**

**MANHARBHAI H PARMAR  
V/S  
STATE OF GUJARAT**

**Date of Decision:** 25 January 2008

**Citation:** 2008 LawSuit(Guj) 260

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**Hon'ble Judges:** [S R Brahmbhatt](#)

**Case Type:** Special Civil Application

**Case No:** 4517 of 2003

**Subject:** Constitution

**Acts Referred:**

[Constitution of India Art 226](#)

**Final Decision:** Petition allowed

**Advocates:** [Thakkar Associates](#), [Hemant Makwana](#)

**Reference Cases:**

[Cases Referred in \(+\): 4](#)

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**Judgement Text:-**

S R Brahmbhatt, J

**[1]** Heard learned counsel for the parties.

**[2]** The petitioner under Article 226 of the Constitution of India has challenged the denial of benefit of higher grade pay scale given to all other employees pursuant to the GR dated 16.8.1994 on the ground that despite there being a clear finding and direction of the Division Bench vide order dated 24.7.2001 made in LPA No 370 of 2000, the respondents have wrongfully and arbitrarily denied the benefits of higher pay scale of the petitioner.

**[3]** Facts in brief deserve to be stated as under.

**[4]** The petitioner was appointed on 12.8.1983 as Computer in the pay scale of Rs.260-400. As per the say of the petitioner, his name was forwarded through the employment exchange. The allegations were made subsequently that the employment exchange had not sent any kind of list. The petitioner apprehended termination of his service and therefore, he moved Special Civil Application No. 1 of 1985 in this Court. The interim order was granted and the matter was admitted. The State issued a GR on 5.7.1991 for granting higher pay scale to the eligible employees, who had completed 9,18 and 27 years in service without any promotion. The benefits was not given to the petitioner on account of pendency of the said petition. It deserves to be noted that in the meantime, even the termination order dated 31.12.1984 was placed on record, which had become subject matter of challenged in the SCA No. 1 of 1985. The said petition was dismissed by this Court holding that the order of authority dated 31.12.1984 was proper and valid. This order was challenged by the petitioner by preferring LPA No. 370 of 2000 before this Court and Court admitted the appeal and finally disposed of the same. On rejection of the petition, the petitioner was removed from the service on 27.7.2000 and ultimately with the order of LPA passed on 24.7.2001, he was declared to be eligible for reinstatement with all consequential benefits. The LPA was allowed and the petitioner thereafter came to be reinstated on 11.12.2001. The petitioner thereafter is in service continuously. The order dated 24.7.2001 in Letters Patent Appeal No. 370 of 2000 has not been challenged by the respondent State in any forum and it has attained finality. The respondent issued show cause notice dated 22.1.2003 calling upon the petitioner to show cause as to why he may not be treated as irregular appointee and why the benefits available to the regular appointee may not be stopped in his case. Shri Thakkar has submitted that the petitioner has replied the said notice and after that nothing is heard from the respondents. The denial of the consequential benefits from the order of the Division Bench dated 24.7.2001 is impugned in the present petition as the respondent did not have any authority to treat the petitioner as irregular appointee and on that basis, denied him the benefits.

**[5]** At this stage, it deserves to be noted that other similarly situated selected co-employees of the petitioner i.e 6 petitioners moved this Court by filing Special Civil Application No. 10566 of 1994 and this Court (Coram: H.K.Rathod, J.) vide order dated 10.12.2003 was pleased to quash and set aside the order of termination in their case and restrained the respondents from even holding the inquiry against them. This order was challenged by the State by preferring LPA No. 1126 and said LPA has been admitted and stay has been granted vide order dated 26.11.2004 in Civil Application No. 3743 of 2004. Thereafter, these employees have not been given any other benefits and the matter is pending. Despite the judgment being stayed by this Court, those 6 persons are continued in service as per the statement made by Shri K.A. George, Administrative Officer, Commissioner of Health and Service and they are not being granted any higher grade pay scale.

**[6]** Shri Thakkar, learned counsel for the petitioner has submitted that the Division Bench in unequivocal terms held that the petitioner was entitled to be reinstated on the original post as if the impugned order dated 31.12.1981 had never been passed and he was ordered to be given all the consequential benefits on that basis. The respondents, therefore, ought not to have denied the petitioner his legitimate dues only on account of their ill-founded belief that petitioner had not been regularly appointed. Shri Thakkar has submitted that original scheme of higher grade pay scale was substituted by subsequent GR dated 16.8.1994 and as per that GR also the petitioner was entitled to receive the higher grade pay scale. Shri Thakkar has submitted that thus the present petitioner cannot be equated with those petitioners in whose case LPA is pending as the Division Bench's decision in case of the present petitioner has attained finality as it has remained unchallenged and respondents were duty bound to comply with the same.

**[7]** Shri Makwana, learned AGP for the respondent submits that the petitioner cannot claim the benefit of regular appointee as his appointment was procured through improper means. The list of employment exchange which has been made basis for issuing the call letter was said to have never been sent by the concerned employment exchange. In view of this, the very employment of the petitioner and other similarly situated can be said to have been obtained fraudulently and when such a fraudulent appointment is obtained, the beneficiaries thereof under Article 226 of the Constitution of India cannot seek writ to be treated as regularly appointed employee. Shri Makwana further submitted that the letter/show cause notice dated 22.1.2003 has been issued and even the Division Bench while allowing the LPA, granted liberty to the respondent to conduct inquiry into the entire episode. When show cause notice was issued, it can well

be said that the petitioner was not eligible for receiving the higher grade pay scale and in view of this and especially in view of the interim order dated 26.11.2004, this Court may not grant prayer for higher grade pay scale as it would amount to giving benefit to an employee which is said to have procured the employment fraudulently.

**[8]** This Court has heard learned counsel for the parties and perused the record.

**[9]** It deserves to be noted that petitioner's termination order dated 31.12.1984 had been quashed and set aside by the Division Bench vide order dated 24.7.2001. The observation of the Division Bench deserves to be set out as under.

"para-8 : Faced with this situation, learned AGP has submitted before us that even if the termination order is quashed on this ground, the Government should be permitted now to hold an inquiry and in support of her submission, she has cited the decisions in the case of Director General of Police and ors. v. Mrityunjoy Sarkar and ors., reported in 1996 (8) SCC 280 and in the case of Union of India and ors. v. M.Bhaskaran, reported in 1995 Supp. (4) SCC 100. As against this, learned Counsel for the appellant has cited before us the decisions in the case of Union of India and ors. v. I.S. Singh, reported in 1994 Supp. (2) SCC 518 and in the case of State of Madhya Pradesh v. Bani Singh and anr., reported in 1990 Supp. SCC 738. We may straightway observe that if at all the respondents want to hold any inquiry, no permission is required from this Court for this purpose and therefore, there is no question of granting permission for holding an inquiry. It is for the respondents to consider as to whether holding of an inquiry at this stage can be fruitful for any purpose or it will be an empty formality and futile exercise now after a period of 17 years. The appellant has already continued in service for a period of 17 years by now, may be on the strength of the interim order passed by this Court, but the fact remains that much water has flown at this juncture and nothing prevented the Government if at all they wanted to do so at any stage and now after a lapse of such a long period of 17 years, if an inquiry is permitted to be held, the appellant may also have a grievance to make that after such a long lapse of time and delay of 17 years, no useful purpose will be served by holding inquiry and it will not be possible for him to get the material or evidence in support of his defence, if any. Even otherwise, in the pleadings of the parties, there is no direct allegation against the appellant and even before this Court, that it was at the instance of the

appellant that the second list which is alleged to be forged had been got prepared and sent. On the contrary, the categorical stand taken in para 5 of the affidavit-in-reply is that his services have not been terminated on account of misconduct. If the termination is not on account any misconduct, the question of inquiry simply does not arise. If the termination order is founded on misconduct, it ought to have been passed after enquiry. Therefore, there is no question of considering the prayer of the learned AGP for grant of permission to hold the inquiry and we leave it to the wisdom of the authorities themselves as to whether holding of any such inquiry in this case at this stage will be conducive to the ends of justice when the appellant has already become over age and has already remained in service for a period of more than 17 years when nothing has been pointed against his performance during the period of his service throughout uptill now.

Para-9. For the reasons as aforesaid, we find that the termination of the appellant as was brought about by the impugned termination order dated 31st Dec.1984 is not a valid order and the same cannot be sustained. The same is hereby set aside. Accordingly, the order passed by the learned Single Judge rejecting the Special Civil Application is also set aside and we direct that the appellant who was relieved on 27th July 2000 shall be relegated in service with all consequential benefits as if the impugned order of termination had never been passed against him. This Letters Patent Appeal and the Special Civil Application are hereby allowed with no order as to costs.

Para-10. Whereas the main Letters Patent Appeal itself has been decided, no orders are required to be passed in the Civil Application for stay. The Civil Application for stay stands disposed of accordingly."

**[10]** The aforesaid observation go to show that there was a clear liberty reserved to the respondents to hold appropriate inquiry if deemed fit in the entire incident. The respondents have from their conduct revealed that they have been satisfied with only issuing show cause notice dated 22.1.2003 calling upon the petitioner to show cause as to why benefits available to regular appointee may not be stopped in his case. Thereafter, no further action is initiated till date. As against this, it deserves to be noted

that the concerned officer at the relevant time issued a letter dated 21.11.2001 while reinstating the petitioner and in unequivocal terms it is stated that the reinstatement would not be construed as waiving right to hold inquiry proceedings if any against the petitioner. Thus, there was a clear perception with the respondents that they had liberty to initiate proceedings against the petitioner for so called fraudulent procurement of employment. The Division Bench while allowing the LPA No. 370 of 2000 on 24.7.2001 did give liberty which has been reflected in the letter dated 21.12.2001 despite that, only letter came to be issued in the form of show cause notice calling upon the petitioner to show cause as to why the benefits available to regular employee may not be stopped in his case. In otherwise, it can well be said that the said letter dated 22.1.2003 cannot be termed to be initiation of any inquiry proceedings against present petitioner much less full flagged inquiry.

**[11]** It deserves to be noted that in letter dated 24.9.2001 issued by the respondent, it was clearly opined that petitioner was entitled to receive all the benefits as per the decision of the Division Bench in LPA No.370 of 2000 dated 24.7.2001.

**[12]** This matter was posted for hearing on 17.1.2007 at that time also, this Court granted time to AGP to ascertain as to whether any inquiry has been initiated and if yes, at what stage the same is pending and the matter was adjourned to 21.1.2008.

**[13]** Today, during the course of hearing Mr. Makwana, learned AGP under instructions from the officials of the department informed the Court that no inquiry has been initiated and after issuance of letter dated 22.1.2003, no further communication in form of chargesheet had ever been issued to the petitioner.

**[14]** In view of this, it can well be said that the respondents did not have any authority to consider the petitioner to be irregularly appointed especially when the division Bench in LPA No.370 of 2000 has in unequivocal terms held that the petitioner was entitled to receive all the consequential benefits as if the impugned order of termination had never been passed. The liberty reserved to the respondents had not been availed by them till date and it is really shocking that the petitioner has not even given the benefits of order of the Division Bench only on the ground that he has been treated as irregularly appointee. This is not open to the respondent especially in view of the fact that the liberty reserved to them has not been availed till date. It also deserves to be noted that no appropriate action is initiated even after the Division Bench granted liberty in LPA No. 370 of 2000 in respect of other six employees. The stay was granted way back on 26.11.2004. At least from 2004, if any serious action was contemplated, the same could

have been initiated. The inaction on the part of the authority at various stage indicates that the petition deserves to be allowed as their appears to be no case against the petitioner. However, this observation shall not militated against the authority to hold inquiry, if it is permissible under the law, at this stage. The petition deserves to be allowed and is accordingly allowed. The respondents are hereby directed to accord the benefits flowing from the decision of this Court rendered on 24.7.2001 in LPA No. 370 of 2000 in terms that termination order had never been passed including giving higher grade pay scale as per the Government Resolution dated 16.8.1994. The whole exercise be undertaken and payment thereafter be undertaken within 30 days from the date of receipt of the writ. Rule is made absolute. There shall be no order as to costs.

