

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1383 of 2021****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 1383 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Approved for Reporting	Yes	No
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PARMAR MADARSINH HAJURJI & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR GM JOSHI, SENIOR ADVOCATE WITH MR VYOM H

SHAH(9387) for the Petitioner(s) No. 1,2,3

DS AFF.NOT FILED (N) for the Respondent(s) No. 3

MS FORUM SUKHADWALA, AGP for the Respondent(s) No. 1,2

CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 28/04/2026****JUDGMENT**

1. Heard Mr.G.M.Joshi, learned Senior Advocate assisted by Mr.Vyom Shah, learned advocate for the petitioners and Ms.Forum Sukhadwala, learned AGP appearing for the State-respondents.

2. Rule returnable forthwith. Ms.Sukhadwala, learned AGP waives service of rule on behalf of the State-respondents.

2.1 With the consent of the learned advocates for the respective parties, the present matter is taken up for hearing.

3. The present petition is filed under Article 226 of the Constitution of India, seeking the following reliefs:

“A) This Honourable Court be pleased to issue a writ of mandamus or in the nature of mandamus or any other writ that the Honourable Court directing the respondent department to consider the candidature of the petitioners for the purpose of promotion to the post of Forester in the present exercise being under taken by them pursuant to letter dated 16.01.2021 and issue promotional orders accordingly.

AA. This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to grant the petitioners the deemed date of promotion to the post of Forester with effect from 06.03.2021, i.e. the date on which their juniors were promoted, in accordance with Rule 8 of the Guard Class III (Departmental Examination) Rules 2009.

B) During the admission, final hearing and pendency of the petition, be pleased to stay the promotional exercise being undertaken by the respondent department pursuant to the letter dated 16.01.2021 or in the alternative, direct the respondent to issue promotional orders to the petitioners subject to them clearing the examination as and when taken by the respondent department.

C) Be pleased to award the cost of this petition.”

4. The short facts of the case appear to be that the petitioner was appointed as a Forest Guard in the year 2011 by way of regular selection and upon completion of five years of service in the year 2016, he was given regular appointment. As per the Guard, Class-III (in the subordinate service of the Forest Department (Departmental Examination) Rules, 2009 (hereinafter referred to as **“the Rules, 2009”**), to get promotion from the post of Forest Guard to Forester, the guard has to appear in the examination. As per the rules, such examination ought to have been conducted twice a year. The

petitioners along with their juniors appeared in the departmental examination conducted in the year 2019 but they were declared unsuccessful, whereas their juniors having cleared the examination, promoted to the post of Forester w.e.f. 06/03/2021.

5. Since the respondent was not conducting the examination as per rules which deprived the petitioner of getting promotion, initially they approached this Court with a prayer that the respondent may be directed to conduct the examination. It appears that during the pendency of this petition, such examination was conducted and in fact upon clearing the examination, the petitioners were promoted to the post of Forester vide orders dated 08/06/2023 and 23/07/2025, respectively.

6. Now, in view of the subsequent development which has taken place during the pendency of this petition, the petitioners moved an amendment in the petition which was allowed by this Court vide its order dated 23/04/2026 whereby the petitioners sought a prayer to the effect that they shall be granted promotion w.e.f. 06/03/2021, i.e., the date on which their juniors were promoted.

7. Mr. Joshi, learned Senior Advocate would submit that as per Rule 8 of Rules, 2009, upon passing the examination, the petitioners are required to be given promotion w.e.f. 06/03/2021, i.e., the date on which the juniors were promoted. It is submitted that while issuing the order of promotion to the respective petitioners, the respondent authority has forgotten

to notice said Rules which resulted in injustice to the petitioners who are entitled to receive promotion from the deemed date, i.e., 06/03/2021.

8. *Per contra*, Ms. Sukhadwala, learned AGP would submit that at the relevant point of time, the petitioners did not clear the examination and were correctly not given promotion along with their juniors on 06/03/2021. It is submitted that once the petitioners have cleared the examination, they have received the order of promotion and as such, the claim of the petitioners to receive promotion with deemed date is not sustainable in law.

9. Having heard the learned advocates for the respective parties and after appreciating their respective submissions, the following would emerge:

(i) The petitioners were appointed as Forest Guard in the year 2011 and were confirmed on the post in the year 2016. Thereafter, they appeared in the departmental examination conducted in the year 2019 but they were unsuccessful in the examination. Whereas the juniors to the petitioners were successful in passing the examination and they were promoted to the next post, i.e., Forester w.e.f. 06/03/2021.

(ii) Thereafter, the petitioners have also cleared such examination on 05/10/2021 and accordingly, the orders of promotion were issued by the respondents on 08/06/2023 and 23/07/2025, respectively.

10. To appreciate the main thrust of the argument of Mr.Joshi, learned Senior Counsel, I would like to first refer Rule 8 of the Rules, 2009 which reads thus:

“A Guard who passes the examination within the specified period and in the specified chances shall on his promotion to the post of Forester be assigned seniority in Forester Cadre over a person, if any, who although being junior to him in the Cadre of Forester may have been promoted to the higher post earlier by reason of this having passed the examination earlier.:

11. The bare reading of the aforesaid rule would clearly indicate that upon passing the examination within the specified period and in the specified chances and getting the promotion to the post of Forester, the person concerned will be given seniority over his juniors who might have been promoted earlier due to clearing the examination.

11.1 Ordinarily, in a case of promotion, the person concerned cannot get a promotion with deemed date but when there is a statutory rule framed by the respondent State under Article 309 of the Constitution of India allowing such promotion with a deemed date, the respondent cannot ignore such binding rules framed by the State.

12. Upon reading the aforesaid rules and considering the fact that the juniors of the petitioners have been promoted to the post of Forester w.e.f. 06/03/2021, having cleared the examination by the petitioners subsequently on 05/10/2021, according to my considered view, the petitioners are also entitled to receive promotion with deemed date, i.e. 06/03/2021, the date on which their juniors were promoted.

Having not granted such deemed date in the case of the petitioners, the respondent authority has completely ignored the aforesaid Rule 8 of the Rules, 2009.

13. In view of the aforesaid peculiar facts and circumstances of the case and giving effect to the said Rule 8 of the Rules, 2009, to the facts of the present case, the petitioners are entitled to receive the promotion w.e.f. 06/03/2021. Consequently, the respondent is hereby directed to issue a fresh order of promotion in the case of the petitioners by giving them promotion w.e.f. 06/03/2021, i.e., the date on which their juniors were promoted. The said order shall be passed by the respondent on or before 31/05/2026.

14. In view of the foregoing reasons, the present petition is partly allowed. Rule is made absolute to that extent. Consequently, the connected Civil Application also stands disposed of.

15. Direct service is permitted.

GAURAV J THAKER

(MAULIK J. SHELAT, J)