

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14832 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

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Approved for Reporting	Yes	No

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NIMESHBHAI GANESHBHAI JHAVERI(DECEASED) & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES
for the Petitioner(s) No. 1

MR AS ASTHAVADI(3698) for the Petitioner(s) No. 1.1,1.2,1.3,1.4,1.5,1.6

MS. FORUM SUKHADWALA, ASST. GOVERNMENT PLEADER for the
Respondent(s) No. 1,2

MR HS MUNSHAW(495) for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 21/01/2026****ORAL JUDGMENT**

[1] Heard Mr. A.S. Asthavadi, learned advocate for the petitioners, Ms. Forum Sukhadwala, learned Asst. Government Pleader for respondent Nos.1 and 2 as also Mr. H.S.Munshaw, learned advocate for respondent No.3 at length.

[2] The present writ petition is filed under Articles 14, 19(1)(e), 21 and 226 of the Constitution of India, seeking the following reliefs:-

“a. Your Lordships may kindly be pleased to issue a writ of Mandamus and/or any other appropriate writ, direction and/or order quashing and setting aside the orders dated 16.08.2012 and 24.09.2012.

b. During Pendency and final hearing of the petition, Your Lordship may be pleased to stay the operation and implementation of the orders dated 16.08.2012 24.09.2012. and

c. Such other and further order which deems to fit, just and proper in the interest of justice.”

SUBMISSIONS ON BEHALF OF THE PETITIONERS

[3] At the outset, Mr. A. S. Asthavadi, learned advocate for the petitioners has pointed out that advice of the Gujarat Panchayat Services Selection Board dated 06.05.2011 and 02.11.2011 were not supplied to the original petitioner by the respondents, which is in contravention of Rule 26 of the Gujarat Panchayat Services (Discipline & Appeal) Rules, 1997 (hereinafter referred to as “***the Rules, 1997***”) and due to the aforesaid fact, the principle of natural justice has been clearly violated by the respondents.

[3.1] Mr. A. S. Asthavadi, learned advocate would submit that had the delinquent been supplied with the copy of aforesaid Board's advices, he would have submitted his response, inasmuch as, in the first advice dated 06.05.2011, the Board proposed the penalty of a pension cut of Rs.200 p.m. for two years, whereas in the second advice dated 02.11.2011, it was proposed to impose the penalty of cut of the full pension.

[3.2] Mr. Asthavadi, learned advocate would further submit that, without further entering into the merits of the matter and keeping all

rights of the original petitioner open, this Court may interfere with the impugned order of punishment dated 06.08.2012 and order dated 14.09.2012 passed by the respondent - State (Annexure-A Colly), on the aforesaid submissions.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS.

[4] *Per contra*, Ms. Forum Sukhadwala, learned AGP for respondent Nos.1 & 2 as also Mr. H.S.Munshaw, learned advocate for respondent No.3, are not in a position to controvert the aforesaid submissions made by Mr. Asthavadi, learned advocate for the petitioners, to the effect that, at any given point of time, the aforesaid Board's advices were not supplied to the original petitioner - delinquent by the respondents.

[4.1] Nonetheless, it is requested to this Court that in a case where impugned orders are interfered by this Court, on the aforesaid submissions of the petitioner, the respondents shall be allowed to consider the proceedings from the stage of supplying the copies of Board's advices to the petitioners.

ANALYSIS AND CONCLUSION.

[5] Having heard the learned advocates for the respective parties and considering the submissions made at the bar, it remains an undisputed fact that the aforesaid Board's advices dated 06.05.2011 and 02.11.2011 were not supplied to the petitioners by the respondents before passing the impugned orders. As per Rule 26 of "the Rules, 1997", it was incumbent upon the respondents to supply the Board's advices to the delinquent i.e., the original petitioner herein, before passing the impugned orders. The aforesaid rule is

mandatory in nature and even as per the settled legal position of law, when the State - disciplinary authority is relied upon the advice of the Commission or Board, as the case may be, it is liable to supply it to the delinquent. {***Union of India vs. S.K. Kapoor reported in (2011) 4 SCC 589***}

[6] At any rate, when the mandatory provision is not observed by the respondents before passing the impugned orders, it violates the principle of natural justice, inasmuch as the original petitioner could not make any effective representation before the competent authority.

[7] In view of the aforesaid, at this stage, without deliberation on other issues which might germane to the matter, on this limited point alone, the impugned orders are required to be quashed and set aside as they were passed without observance of the principle of natural justice. Consequently, the impugned orders dated 16.08.2012 & 24.09.2012 passed by the respondents concerned are hereby quashed and set aside.

[8] In view of above, the matter is remanded back to the respondent concerned. As the copy of the aforesaid Board's advice is made available on record and given to the petitioner, thereby, it can be presumed that the same is now served to the original petitioner.

[8.1] The respondents - authorities are hereby directed to issue a fresh notice to petitioner No.1.1 - widow of the original petitioner. Once such notice will be served upon petitioner No.1.1, it is open for her to make a suitable representation / written reply to the respondents - authorities concerned and while making the said

representation/reply, if she demands for personal hearing, the respondents - authorities shall afford her a personal opportunity of hearing.

[8.2] Upon receipt of the aforesaid written reply /representation and after affording a personal opportunity of hearing (if any), an appropriate decision may be taken by the concerned respondents, albeit, in accordance with law, and without being influenced by the observations made in the impugned orders.

[8.3] The aforesaid exercise shall be completed by the respondents concerned within a period of six months from the date of receipt of a copy of this order.

[9] In view of the foregoing reasons, the present petition is partly allowed. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

(MAULIK J.SHELAT,J.)

Lalji Desai

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: LALJI DESAI(HC01558), PRIVATE SECRETARY, at High Court of Gujarat on 21/01/2026 18:51:19