

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 98 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J. SHELAT**

Approved for Reporting	Yes	No
		✓

PUNAMCHAND DEVRAJ DHUA

Versus

STATE OF GUJARAT THROUGH SECRETARY & ORS.

Appearance:

MR G M JOSHI, SENIOR COUNSEL with MR MEHUL SHARMA for
MR.VYOM H SHAH(9387) for the Petitioner(s) No. 1MS FORUM SHAH, ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 1

MR HS MUNSHAW(495) for the Respondent(s) No. 2

RULE SERVED for the Respondent(s) No. 3

CORAM: HONOURABLE MR. JUSTICE MAULIK J. SHELAT**Date : 08/04/2026****JUDGMENT**

1. Heard Mr. G. M. Joshi, learned Senior Counsel with Mr. Mehul Sharma, learned Advocate for Mr. Vyom H. Shah, learned Advocate for the petitioner, Ms. Forum Shah, learned Assistant Government Pleader for respondent No.1-State and Mr. H. S. Munshaw, learned Advocate for respondent No.2.

2. The present petition is filed under Articles 14, 16 and 226 of the Constitution of India, seeking the following reliefs:

"A) Quashing and setting aside the order dt.2.11.2010 and restore the order dt.5.5.2009 and further direct the respondents to grant the 1st higher grade scale to the petitioner from 3.6.2002 ignoring the penalty imposed vide order dt. 2.5.2009 with all the consequential benefits.

B) In the alternative quash and set aside para 1 and 2 of the Resolution dt.31.3.2005.

C) During the pendency and final disposal of this petition the respondents may be directed not to affect any recovery pursuant to the orders dt.2.11.2010.

D) To grant such and further relief as may be deemed fit and proper."

3. **SHORT FACTS:**

- 3.1. The short controversy arising for consideration before this Court is whether the withdrawal of the first higher pay scale granted to the petitioner by the respondent, vide order dated 22.04.2010, is justified in law.
- 3.2. It is not in dispute between the parties that the petitioner was entitled to receive the first higher pay scale w.e.f. 03.06.2002, and the same was granted by the respondent vide its order dated 05.05.2009, *albeit* w.e.f. 03.06.2002. It is also not in dispute that prior to passing of the aforesaid order of granting the first higher pay scale, the petitioner was subjected to departmental inquiry, wherein, he was found guilty and

subjected to major penalty vide order dated 28.11.2008, i.e., reduction in present pay scale by one stage with reduction of one increment for a period of five years without future effect, which was later on substituted by the Appellate Authority vide order dated 01.05.2009 for a period of one year w.e.f. 01.12.2008.

3.3. The respondent having come to know about said penalty order, it has decided to withdraw the benefit of the first higher pay scale already granted to petitioner. As per the order dated 22.04.2010, the respondent has withdrawn such benefit. It appears that petitioner challenged the said order before this Court by way of Special Civil Application No. 6996 of 2010, which came to be partly allowed on 02.08.2010. This Court opined that as on the date of entitlement of the petitioner to receive benefit of the first higher pay scale, there was no chargesheet issued and as such, no departmental inquiry was pending against him. Considering such aspect, the matter was remanded back to the respondent authority to take an appropriate decision in accordance with law.

3.4. It appears that after remand of the matter to the respondent, it

has again reiterated what has been stated in the order dated 22.04.2010. While passing the impugned order dated 02.11.2010, reliance was placed upon Government Resolution dated 31.03.2005 issued by the Finance Department of the State, whereby, it has been decided that in a case where a government employee is entitled to receive benefit of higher pay scale, but for any administrative reasons, it was not granted to him and before passing any order in regards to granting him such benefit, such employee would face any departmental proceeding or criminal proceeding and or is suspended, then in such situation, he should not be granted the benefit of higher pay scale until such inquiry gets over.

3.5. Thus, in view of the aforesaid facts and circumstances and feeling aggrieved and dissatisfied with the impugned order dated 02.11.2010 passed by the respondent, the petitioner has approached this Court.

4. SUBMISSIONS OF THE PETITIONER:

4.1. Mr. Joshi, learned Senior Counsel, would submit that the respondent has committed gross illegality in withdrawing the benefit of the first higher pay scale which was already approved

and granted to him. It is submitted that the respondent has wrongly placed reliance upon Government Resolution dated 31.03.2005, as it is not applicable to the case on hand.

4.2. It is submitted that the entitlement of the petitioner to receive the first higher pay scale undisputedly accrued on 03.06.2002, whereas, the said resolution was issued by the State on 31.03.2005. It is also submitted that as per the settled position of law, such type of administrative instruction/resolution would never operate retrospectively and requires to be applied prospectively.

4.3. To buttress his argument, Mr. Joshi, learned Senior Counsel, would rely upon the decision of a coordinate bench of this Court in the case *Dinesh Amrutlal Solanki in Special Civil Application No. 17080 of 2018 dated 07.05.2019*.

4.4. Making the above submissions, Mr. Joshi, learned Senior Counsel, would request this Court to allow the present writ petition.

5. SUBMISSIONS OF THE RESPONDENT NO.2:

5.1. *Per contra*, Mr. Munshaw, learned Advocate for the

respondent, would vehemently oppose this petition and place heavy reliance upon the affidavit filed by the respondent while defending this petition. It is submitted that due to inadvertence on the part of the respondent's officer concerned, the benefit of the first higher pay scale was released in favour of the petitioner vide order dated 05.05.2009, inasmuch as the petitioner was already inflicted with order of penalty vide order dated 28.11.2008.

5.2. It is submitted that when the petitioner was subjected to major penalty, he is not entitled to receive the benefit of the first higher pay scale, which is stated in Government Resolution dated 31.03.2005. It is also submitted that the respondent authority has appropriately considered the aforesaid resolution dated 31.03.2005 and correctly withdrawn the benefit of the first higher pay scale granted in favour of the petitioner.

5.3. Mr. Munshaw, learned Advocate, would submit that the decision cited by Mr. Joshi, learned Senior Counsel, would not be applicable to the facts of the present case, as in that case, it was not a case of imposition of major penalty like the present one and in peculiar facts of the present case, the learned Single

Judge of this Court, has granted the benefit of second higher pay scale to the petitioner concerned.

5.4. Making the above submissions, Mr. Munshaw, learned Advocate, would request this Court to reject the present writ petition.

6. No other and further submissions are being made.

ANALYSIS:

7. Having heard learned Advocates appearing for the respective parties and upon perusal of their respective pleadings and documents, it is not in dispute that the petitioner is entitled to receive the benefit of the first higher pay scale w.e.f. 03.06.2002, and the same was granted by the respondent vide its order dated 05.05.2009. It is equally undisputed that prior to grant of such benefit, the petitioner was imposed with penalty in the departmental inquiry vide order dated 28.11.2008. Therefore, vide order dated 22.04.2010, the respondent decided to withdraw the benefit of the first higher pay scale, which was challenged by the petitioner before this Court by way of writ petition being SCA No. 6996 of 2010. This Court, vide its order dated 02.08.2010 passed in said writ petition, while remanding

the matter back to the respondent authority, made the following observations:

"5. Considering the submissions of the learned advocates for the respective parties, it is found that the petitioner has completed 24 years of service on 3.6.2002. On that date i.e. 3.6.2002, there was no departmental inquiry pending against the petitioner. The petitioner was issued charge-sheet on 6.8.2007 and penalty was imposed on him on 1.5.2009. Hence, as per the Resolution dated 16.8.1994, the petitioner was fulfilling the criteria for grant of higher grade pay-scale and hence, he cannot be denied higher grade pay-scale on the ground of order of penalty, which is subsequent in time.

6. In the above set of circumstances, the petitioner is directed to approach respondent No.2, who, after considering the grievances that may be voiced by the petitioner, will take appropriate decision within a period of four months from the date of receipt of writ of this order. In the event, the order that may be passed by respondent No.2 runs adverse to the petitioner, it would be open to the petitioner to challenge the same. The petition stands disposed of accordingly. Notice is discharged. No costs."

(emphasis supplied)

8. As per the aforesaid observations made by this Court, it is very much clear that as on the date of entitlement of the petitioner to receive the benefit of the first higher pay scale, he was not subjected to any departmental inquiry.

- 8.1.** The respondent authority, upon remand of the matter, has not considered the aforesaid observation, rather has placed reliance upon the aforesaid Government Resolution dated 31.03.2005 issued by the Finance Department of the State and accordingly has not disturbed its order dated 22.04.2010.
- 9.** This Court has gone through Government Resolution dated 31.03.2005, wherein, it has been stated that in a case where any government employee is entitled to receive the benefit of higher pay scale, but due to administrative exigency, is not granted such benefit and before its grant, he is subjected to any departmental inquiry or criminal proceeding, as the case may be, he should not be granted such benefit until he gets exonerated from it. It is also mentioned in Clause 4(b) of the said resolution that in a case where the employee concerned is subjected to major penalty, he should not be granted any higher pay scale.
- 9.1.** Since it is not in dispute that the petitioner's entitlement to the first higher pay scale w.e.f. 03.06.2002, was prior to the issuance of the Government Resolution dated 31.03.2005, the provisions of the said Resolution cannot be applied

retrospectively to the petitioner's case. It is settled position of law; such type of administrative instruction/circular/resolution cannot be operated retrospectively.

- 9.2. At this stage, it would be apt to refer to the decision of a coordinate bench of this Court (Hon'ble Mr. Justice N.V. Anjaria, his lordship then was) in the case of ***Dinesh Amrutlal Solanki (supra)*** as cited by Mr. Joshi, learned Senior Counsel for the petitioner, wherein, in somewhat identical factual situation, held thus:

"3. The facts are that the petitioner was appointed as typist in the office of respondent Board on 23.3.1988. The petitioner completed 9 years of service, in view of which per the government resolution, the petitioner was extended the benefit of first higher grade pay with effect from 23.3.1997. It appears that on 28.8.2008, the petitioner was served with the chargesheet alleging that he was guilty of not drawing attention of the then Executive Engineer in respect of alleged illegal appointments of five employees as rojamdars. It was followed by reply of the petitioner and a regular departmental inquiry ending up with the imposition of penalty of stoppage of one increment for one year from 1.8.12 without future effect by order dated 31.7.2012.

3.1 Against the order of punishment, the petitioner preferred departmental appeal in which the punishment was modified by order dated 27.3.2017. Instead of withholding of one

increment for one year without future effect from 1.8.2012, the penalty imposed was withdrawal of one increment without future effect for six months. The petitioner appears to have made representation on 6.6.2017 for granting him the benefits of second higher pay scale on completion of 24 years of service.

3.2 The petitioner by the time completed 24 years of service on 13.3.2011 and on completion of such number of years in service he became, according to him, entitled to get the benefit of second higher pay scale under the Resolution of state government dated 2.7.2007. It appears that the state government introduced new policy for higher pay scale under Resolution dated 2.7.2007. It was contemplated thereunder that the second higher pay scale would be available after completion of 15 years of service by government servant from the date of grant of first higher pay scale. As per this Resolution dated 2.7.2007 the petitioner became entitled to claim higher pay scale with effect from 23.3.2012 which marked completion of 15 years from the date of grant of the first higher pay scale to him which was 23.3.1997.

6. In addition to the above, as per the above undisputed dates, the petitioner became entitled to the second higher pay scale on 23.3.2012. 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.”

(Emphasis supplied)

9.3. Thus, it is clear that the aforesaid resolution dated 31.03.2005, whereupon, reliance was placed by the respondent while withdrawing the first higher pay scale granted to the petitioner, is not only misconceived but it is not applicable to the case of the petitioner. The petitioner's entitlement to receive the benefit of the first higher pay scale accrued prior to the issuance of the said resolution and in view of said dictum, the said resolution is not applicable to the petitioner's case.

CONCLUSION:

10. In view of the foregoing discussions and reasons, according to my considered view, the impugned decision dated 02.11.2010 runs contrary to the settled position of law and warrant interference by this Court while exercising its power under Article 226 of the Constitution of India. Accordingly, the impugned order dated 02.11.2010 is hereby quashed and set aside and the order dated 05.05.2009 passed by the respondent, whereby, granted the benefit of the first higher pay scale to the petitioner, is hereby restored.

11. Consequently, the respondent is hereby directed to calculate the arrears of the benefit of the first higher pay scale and the

same shall be paid to the petitioner on or before 30.06.2026.

12. Before parting with the matter, it is made clear that along with this petition, the petitioner has also challenged the order of penalty imposed upon him by way of Special Civil Application No. 16329 of 2010, wherein, this Court held that the inquiry stood vitiated and accordingly quashed the penalty order. Nonetheless, the liberty reserved in favour of the respondent to hold *de novo* inquiry against the petitioner. Thus, any aforesaid payment to the petitioner shall be subject to the outcome of the *de novo* inquiry and any penalty that may be imposed, whereby, any amount to be recovered than respondent is entitled to recover from the petitioner.
13. In view of the foregoing conclusions, the present writ petition is allowed, to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

NILESH

(MAULIK J. SHELAT,J)