

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6921 of 2019**

With
CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 6921 of 2019

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

HARSHAD D SANTOKI S/O DEVJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR RUSTOM MARSHALL, SENIOR COUNSEL WITH MR ARPIT A KAPADIA(3974) for the Petitioner(s) No. 1

MR KRUTIK PARIKH, ASST GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

RULE SERVED for the Respondent(s) No. 4

CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV**Date : 02/05/2022****ORAL JUDGMENT**

1. By way of this petition, the petitioner has approached this court for a declaration that the action of the respondents in not giving the benefit of

the Academic Grade Pay (AGP) of Rs.8000/- with effect from 12.07.2010 and consequential AGP of Rs.9000/- with effect from 12.07.2013 which has been extended to other Assistant Professors be quashed and set aside.

2. Facts in brief would indicate that the petitioner was appointed as Lecturer in Industrial Engineering Department of L.E. College, Morbi vide notification dated 09.07.1999. His period of probation was over on 12.07.2001 and thereafter he was appointed on a long term basis by order dated 11.02.2002. By a communication dated 17.09.2007, on completion of six years of service on the same post, the petitioner was extended the benefit of Senior Scale of Rs.10000-15200. He was redesignated as Assistant Professor in accordance with the norms of AICTE with effect from 28.03.2011. On 07.08.2018, applications were invited from eligible professors for movement from AGP Rs.7000 to Rs.8000. The petitioner on 08.08.2018 made an application requesting that he is entitled to the upward movement of AGP from Rs.7000 to 8000 in PB-III with effect from 12.07.2010. Thereafter he also moved an application on the same date for the benefit of upward movement of AGP from Rs.8000 to 9000 with effect from 12.07.2013. By a communication dated 12.09.2018, a list of beneficiaries of AGP of Rs.8000 was published. The petitioner's name figured at Sr. No. 43. The benefit of AGP of Rs.8000 was granted with effect from 01.04.2015 rather than on completion of five years from 12.07.2005. The remark against the column mentioned that since he had adverse remarks for the year 2009-10, he was denied benefit from the year 2010.

3. Mr. Rustom Marshall, learned Senior Counsel appearing with Mr. Arpit Kapadia, learned advocate for the petitioner would submit that the denial of AGP of Rs. 8000 from 12.07.2010 and consequential movement

upwards to AGP of Rs. 9000 with effect from 12.07.2013 based on the adverse remarks is bad. Pointing out the adverse remarks which have been annexed to the affidavit-in-reply, Mr. Marshall would submit that if the adverse remarks are perused, three things appear to have weighed with the respondents in denying the benefit of AGP of Rs.8000 and Rs.9000 respectively. Against the column 'Initiative, Resourcefulness and Willingness to assume responsibilities' the petitioner has been shown to be weak. Against the column 'Capacity to take quick and sound decisions' the remark is that he lacks in taking quick decisions and needs improvement. With regard to the details of disciplinary action, the remark indicates that the petitioner was on unauthorized leave for a day. Assailing these assessments, Mr. Marshall would in support of his submissions rely on a communication addressed by the petitioner after attending the election duties on 29.04.2019 wherein there is a categorical remark of the Principal that the petitioner was absent on 02.05.2019, on telephonic information he had informed the authorities on 01.05.2009 that he was unwell. This, according to Mr. Marshall, learned Senior Counsel would totally unjustify the disciplinary action that is made a remark in the assessment reports for denial of AGP.

3.1 Mr. Marshall would submit that though representation was made for expunging the adverse remarks in the year 2010, it was rejected on 31.08.2010, that itself would not disentitle the petitioner to claim benefit of AGP of Rs.8000 and 9000 respectively based on the submission that the remarks were not adverse so as to deny benefits of upward movement in the pay-scale. Several documents have been annexed to the petition to indicate the work efficiency of the petitioner inasmuch as he was handed over additional charge at some stages or also was made incharge of certain examinations which was to be conducted by Saurashtra

University.

4. Mr. Krutik Parikh, learned AGP appearing for the State would in addition to relying on the affidavit-in-reply filed on behalf of the State would take the court through the resolution dated 30.09.2014. Extensively reading the resolution it would be his submission that for the purposes of being entitled to the benefit of AGP the assessment has been to be on the same parameters as for promotion. The confidential reports for the particular years need to be examined which is also to be on the basis of an appraisal that is carried out by a committee constituted under the resolution. Reliance is also placed on the circular dated 07.02.1995 to indicate that the departmental promotional committee which considers the benefit of AGP has to consider the confidential reports of the preceding five years in question. Taking the court through the confidential reports in case of the petitioner he would submit that even if learned Senior Counsel Mr. Marshall's submission of penalty aspect of one day's unauthorized leave is accepted, the remarks against the column 'Initiative, Resourcefulness and Willingness to assume responsibilities' and 'Capacity to take quick and sound decisions' would indicate that the petitioner was weak. Merely because the overall assessment was good would not justify the stand of the petitioner to seek consideration of the benefit of AGP. He would submit that the assessment was carried out in accordance with the service records of the petitioner. The petitioner's confidential reports for the year 2009-10 were adverse. The court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot sit in appeal and reassess the adverse remarks made in the confidential records of the petitioner.

4.1 Apart from addressing the court on merits and justifying the

overlooking of the case of the petitioner for AGPs of Rs.8000 and 9000 respectively, based on adverse remarks, Mr. Parikh would submit that the fact that the rejection of the representation attained finality as back as in the year 2010, the petitioner cannot now turn around and assail the same remarks as adverse under the pretext of denying of benefit of AGP. For the purposes of restrictive role that the courts should undertake in assessing the confidential reports, Mr. Parikh would rely on the case of **State of Madhya Pradesh vs. Srikant Chaphekar (1992) 4 SCC 689**. Mr. Parikh would read the judgement extensively and submit that the court cannot reassess and sit in appeal and modify the remarks made in the confidential reports.

5. Considering the facts on hand when the service history of the petitioner is considered, what has come on record is that except for the adverse remarks for the period from 15.07.2009 to 31.03.2010 i.e. for a period of ten months over a period of five years relevant for the purposes of assessment there have been no adverse remarks in case of the petitioner. A positive assertion is made in the petition and which has not been denied by the other side is that during the 19 years of service that the petitioner has rendered neither has he received any adverse remarks nor has he received any show-cause notices or even taken any unauthorized leave for these years.

6. As far as remark of the petitioner being on unauthorized leave for one day, even if the stand of the respondents is accepted, that was only a penalty aspect considered in the affidavit-in-reply, over a period of eight months from 15.07.2010 to 31.03.2010, from the confidential reports what is apparent is that the overall assessment of the petitioner is marked as good except for the two remarks of the petitioner being 'weak' in

terms of 'Initiative, Resourcefulness and Willingness to assume responsibilities' and 'Capacity to take quick and sound decisions', nothing has come on record to suggest the weakness or fallibility of the petitioner to such an extent that he should be deprived of the AGP of Rs.8000 with effect from 12.07.2010 and AGP of Rs.9000 with effect from 12.07.2013. For these two purported adverse instances the financial loss that has occurred to the petitioner is denial of AGPs consequentially based on the communication of 2019.

7. Considering the totality of the submissions and papers on hand, what is evident is that for a brief period of seven to eight months during the entire service tenure for which adverse remarks which are referred to hereinabove have been considered as adverse cannot be taken as disqualification for award of AGP as prayed by the petitioner.

8. Accordingly, petition is allowed. The respondents are directed to award AGP of Rs.8000 from 12.07.2010 and consequential AGP of Rs.9000 from 12.07.2013 as has been extended to the other Assistant Professors vide notification dated 23.01.2019. Implementation of the aforesaid benefit and consequential pay revision shall be done within twelve weeks from the date of receipt of the writ of the order of this court. Rule is made absolute. Civil Application is disposed of.

DIVYA

(BIREN VAISHNAV, J)