

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/LETTERS PATENT APPEAL NO. 213 of 2023**  
**In R/SPECIAL CIVIL APPLICATION NO. 60 of 2019**  
**With**  
**CIVIL APPLICATION (FOR STAY) NO. 2 of 2022**  
**In R/LETTERS PATENT APPEAL NO. 213 of 2023**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE A.S. SUPEHIA** **sd/-**

**and**  
**HONOURABLE MRS. JUSTICE MAUNA M. BHATT** **sd/-**

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

=====

**BABUBHAI JETHABHAI PATEL**  
**Versus**  
**REGISTRAR GENERAL & ORS.**

=====

**Appearance:**

**MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1**  
**for the Respondent(s) No. 3**

**LAW OFFICER BRANCH(420) for the Respondent(s) No. 1,2**

**MR HAMESH C NAIDU(5335) for the Respondent(s) No. 1,2**

=====

**CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**  
**and**  
**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

**Date : 19/06/2024**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. **ADMIT.** Learned advocate Mr. Hamesh Naidu waives service of notice of admission on behalf of respondent Nos. 1 and 2.

2. The present Letters Patent Appeal filed under Clause 15 of the Letters Patent emanates from the judgment and order dated 29.06.2022 passed by the learned Single Judge in the captioned writ petition, whereby the learned Single Judge has dismissed the writ petition filed by the appellant challenging the action of the respondents denying him promotion to the post of Principal Private Secretary, Class-I.

**BRIEF FACTS**

3. The appellant joined the service as an English Stenographer Grade-II on 10.11.1978 and thereafter, was promoted to the post of English Stenographer Grade-I on 11.05.1998. He was serving in the establishment of Vadodara District Court and thereafter, he was serving at District Court, Chotta Udepur since it was established w.e.f. 24.12.2016. The issue of denial of promotion to the post of Principal Private Secretary, Class-I cropped up when the order dated 11.10.2017 was passed by Principal District Judge conferring promotion to the employees, as mentioned in such order in the cadre of Stenographer Grade-I (Class-I). In the said order, the name of the appellant figures at Sr. No.2 and in the column of remarks, it is recorded that *“Not granted as the Hon’ble High Court has*

*considered him not fit to be appointed as ex-post-facto Principal Private Secretary (Class-I) in view of the letter No.B.1440/86 dated 07.02.2017”*. The appellant meanwhile retired on 31.07.2013. The appellant became eligible for promotion on 12.05.2013. On coming to know about the said order denying him promotion *ex post facto* to the post of Principal Private Secretary, Class-I the appellant made a representation on 08.11.2017 to the Registrar General, High Court of Gujarat.

4. At this stage, it is pertinent to note that the communication dated 07.02.2014 written by the Registrar General, High Court of Gujarat to Principal District Judge, Vadodara was also supplied along with the order dated 11.10.2017, and on coming to know about such communication he specifically in his letter dated 08.11.2017 asserted that the adverse remarks mentioned in the communication dated 07.02.2014 were never communicated to him. It appears that the representation was ‘filed’ by the High Court on its administrative side and such decision was communicated to the appellant by the Registrar, District Court, Vadodara vide communication dated 23.12.2017.

5. It appears that the appellant filed an application under the Right to Information Act, 2005 seeking appropriate information regarding the Confidential Reports. He again approached the Registrar General, High Court of Gujarat and it appears that by the communication dated 31.01.2018, the Registrar General filed the letter dated 04.01.2018 by observing that he was communicated the adverse remarks for the period from 18.05.2012 to 31.03.2013 and his Merit-cum-Efficiency Report for the last 5 years was found as average. This led to the filing of the captioned writ petition by the

appellant. The learned Single Judge has dismissed his writ petition.

**SUBMISSIONS ON BEHALF OF THE APPELLANT(PETITIONER)**

6. Learned advocate Mr. Vaibhav Vyas appearing for the appellant submitted that the appellant for the first time came to know about his rejection for the post of Principal Private Secretary, Class-I only when the Office Order No. 210 of 2017 was passed on 11.10.2017 and the reason assigned in the communication dated 07.02.2014 for denying him promotion was also communicated along with such order, wherein it is referred that his case for the promotion to the post of Principal Private Secretary, Class-I cannot be considered in view of the adverse remarks passed in Confidential Report for the period from 18.05.2012 to 31.03.2013 and his last 5 years report for Merit-cum-Efficiency is average. Learned advocate Mr. Vyas has submitted that the appellant could not have been denied promotion in wake of the fact that he was never communicated the adverse entries in his Confidential Report as mentioned in the aforesaid communication. While placing reliance in the judgment of the Supreme Court in the case of Prabhu Dayal Khandelwal vs. Chairman, Union Public Service Commission and Ors., (2015) 14 S.C.C. 427, it is submitted that the promotion cannot be denied on the basis of uncommunicated entries made in the Confidential Reports. It is submitted that in case, the respondent authorities had communicated the adverse entries, he would have made representation against such entries, as required under the Instructions/Resolution, which govern the Confidential Report and as adopted by the respondents.

7. Learned advocate Mr. Vyas has further submitted that in fact,

the appellant made efforts to procure such Confidential Reports from the establishment under, which he was working however, no Confidential Reports were provided to him. Pursuant to the order passed by this Court, the respondents along with their affidavit have filed the necessary Confidential Report and while inviting the attention of this Court to the said reports, learned advocate Mr. Vyas has submitted that the Confidential Report reveals that the entries made therein are not treated as adverse, but the remarks are only treated by the Reviewing Authority for the purpose of showing better results. Thus, it is submitted that adverse entries, which are taken into consideration by the respondent authorities for the period from 18.05.2012 to 31.03.2013 cannot frustrate the claim of the appellant for promotion/appointment/upgradation to the post of Principal Private Secretary, Class-I.

8. It is further submitted by learned advocate Mr. Vyas that the entries made in the outward register, as produced by the respondents along with their affidavit, reveal that the post containing such Confidential Reports were sent to 3<sup>rd</sup> Additional District Judge, Vadodara at Chhota Udepur but not to the appellant and hence, the adverse entries incorporated in the Confidential Report were never supplied to the appellant.

9. Learned advocate Mr. Vyas has further contended that so far as the second reason assigned by the respondents in denying the appointment to the post of Principal Private Secretary, Class-I, is concerned, the Confidential Reports for the years from 2007 till 2012 do not indicate that he has been graded as an average officer and thus, it is submitted that a false and incorrect ground has been assigned in the communication denying him promotion to the post

of Principal Private Secretary, Class-I. It is submitted that in case, the respondents had treated the Confidential Report adverse to the appellant, it was incumbent upon them to supply or communicate the adverse entries, which are incorporated in the Confidential Report, so that he could have appropriately made a representation against such adverse entries.

10. Learned advocate Mr. Vyas for the appellant has also placed reliance on the judgment of the Supreme Court in the case of Abhijit Ghosh Dastidar vs. Union of India and Ors., (2009) 16 S.C.C. 146 to submit that even the entries to the effect of grading the employee as 'Good', which is below the benchmark of 'Very Good', are required to be communicated to the employee, since such grading affects the chances of promotion. Thus, it is urged that since the learned Single Judge has failed to appreciate the aforementioned facts, the impugned order passed by the learned Single Judge as well as the action of the respondents of denying the promotion to the appellant, may be quashed and set aside.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT-INSTITUTIONS :**

11. Fervently, opposing the submissions advanced by learned advocate Mr. Vaibhav Vyas for the appellant, learned advocate Mr. Hamesh Naidu appearing for the respondents has submitted that the order passed by the learned Single Judge, which is assailed in the present Letters Patent Appeal, does not require any interference since the appellant did not qualify the criterion of merits and efficiency, when his case was considered for the post of Principal Private Secretary, Class-I. Learned advocate Mr. Naidu while

referring to the contents of Office Order No. 210 of 2017 dated 11.10.2017 has submitted that before implementation of Shetty Pay Commission report, the eligibility criteria for promotion to the post of Principal Private Secretary, Class-I was merit and efficiency and since the Confidential Report of the appellant for the period from 18.05.2012 to 31.03.2013 contains adverse remarks, his case was precisely rejected for promotion. He has further submitted that the Merit-cum-Efficiency report for the last 5 years were also considered and it reveals that the appellant was an 'average' employee and hence, he could not have been promoted to the post of Principal Private Secretary, Class-I.

12. While referring to the contents of affidavit filed by respondent No.1, it is asserted by learned advocate Mr. Naidu that the appellant was in fact communicated the adverse entries incorporated in his Confidential Report for the period from 18.05.2013 to 31.03.2013. He has referred to the outward register in this regard and it is contended that the outward register establishes that the Confidential Report has been communicated to the appellant, which contains the adverse entries. Learned advocate Mr. Naidu has further stated that the Confidential Report from 18.05.2012 to 31.03.2013 brands the appellant as an 'average employee' and hence, it can be said that he did not fulfill the criterion of merits and efficiency, which is mandatory for promotion to the post of Principal Private Secretary, Class-I. Similarly, he has pointed out the Confidential Reports of the appellant for the period from 2007 to 2012 and has submitted that the Confidential Reports would reveal that the appellant was an 'average' employee.

13. Finally, it is submitted by learned advocate Mr. Naidu for the

respondents that on the ground of delay also, the present appeal is not required to be entertained. In support of his submissions, learned advocate Mr. Naidu has placed reliance on the judgment of the Division Bench of this Court in the case of Gujarat Rajya Karigar Talim Yojna Karmachari Mandal Varg and Anr. vs. State of Gujarat and Ors., (2012) 3 G.L.R. 2378.

### ANALYSIS AND OPINION

14. We have heard the learned advocates appearing for the respective parties at length. The relevant documents, on which they have placed reliance, are also perused by us.

15. The facts, which are not in dispute *inter se* are that the appellant became eligible for promotion post to the post of Principal Private Secretary, Class-I on 12.05.2013, and he retired upon attaining the age of superannuation on 31.07.2013 in the post of English Stenographer Grade-I.

16. After his retirement, the establishment on which he had retired i.e. District Court, Vadodara, had undertaken necessary exercise to promote/appoint the Stenographers to the post of Principal Private Secretary, Class-I. Accordingly, the learned Principal District Judge passed an Office Order No. 210 of 2017 dated 11.10.2017 granting promotion to the post of Principal Private Secretary, Class-I. The name of the appellant figures at Sr. No. 2 . In the remarks column, it is mentioned as under: -

*“Not granted as the Hon’ble High Court has considered him not fit to be appointed as ex-post-facto Principal Private Secretary (Class-I) in view of the letter No.B.1440/86 dated*



*07.02.2017”*

17. It is pertinent to note that, along with the said order, the appellant was also communicated with the communication dated 07.02.2014 written by the Registrar General to the learned Principal District Judge, Vadodara in which the reasons for not appointing the appellant as *ex post facto* Principal Private Secretary, Class-I are assigned and the same are under: -

*“To,  
The Principal District Judge,  
Vadodara.*

*Subject: - Upgradation of 20% posts of English/Gujarati Stenographer Grade-I, on the establishment of the Subordinate Court in the State.*

*Reference: - This High Court letter of even number dated 18-06-2013.*

*Sir,*

*With reference to your letters No. Adm.Rec/650/2013, dated 30-09-2013 and No.Adm/Rec/55/2014, dated 16-01-2014, on the subject noted above, I am to inform you that, Mr. B. J.Patel, the then English Stenographer Grade-I, who retired on 31-07-2013, on attaining age of superannuation, is found not fit to be appointed as ex-post-facto Principal Private Secretary (Class-I), on the following grounds:-*

- 1. Adverse Remarks were passed in the Confidential Report of Mr. B. J. Patel for the period from 18.05.2012 to 31.03.2013 and he has not made any representation against the Adverse Remarks within the stipulated time*
- 2. His merit-cum-efficiency report for the last five years for consideration to the post of Principal Private Secretary (Class-I) is found ‘Average’.”*

18. A perusal of the aforementioned contents of the letter dated 07.02.2014, disclose that the appellant is not appointed *ex-post-facto* to the post of Principal Private Secretary, Class-I on two grounds (i) Adverse remarks communicated in the Confidential Report for the period from 18.05.2012 to 31.03.2013 and (ii) His merit-cum-efficiency report for the last five years is 'Average'.

19. We shall now make endeavor to deal with the first ground which has been considered by the respondents in denying him appointment to the post of Principal Private Secretary, Class-I.

20. As soon as the appellant received the aforesaid Office Orders dated 11.10.2017 and 07.02.2014, he immediately made a representation on 08.11.2017 to the Registrar General, High Court of Gujarat asserting the fact that he was never communicated the adverse remarks for the period from 18.05.2012 to 31.03.2013 and for the first time he came to know about the said adverse remarks, which are recorded in the Confidential Report. The said representation appears to have been filed on the administrative side of the High Court as reflected in the communication dated 23.12.2017 written by the Registrar, District Court, Vadodara to the appellant. It appears that thereafter, the appellant had also filed an RTI application seeking such Confidential Reports but he failed and by the communication dated 31.03.2018, the Registrar General again filed his letter dated 04.01.2018.

21. The respondents along with their affidavits have placed the Confidential Report dated 12.07.2013 (Annexure-R1) Form-6 of the

Confidential Report more particularly, Part-II records the assessment of the Reporting Officer. The Column No.15 in General Remarks, it is recorded as Average. The Part-II of Form No. 6 is incorporated as under:-

*PART-II*  
(Assessment by the Reporting Officer)

<i>(If any of items mentioned below do not apply, the reporting officer, should mention this fact against relevant items)</i>		
1	<i>Regularity and punctuality in attendance</i>	<i>Poor</i>
2	<i>Proficiency and accuracy in stenography work</i>	<i>Poor</i>
3	<i>Intelligence, keenness and industry</i>	<i>Poor</i>
4	<i>Trust-worthiness in handling secret and top secret matters and papers</i>	<i>Poor</i>
5	<i>Maintenance of engagement diary and timely submission of necessary papers for meetings, interviews etc</i>	<i>No</i>
6	<i>General assistance in ensuring the matters requiring attention are not lost sight of</i>	<i>NO</i>
7	<i>Initiative and facts in dealing with telephone calls and visitors</i>	<i>-</i>
8	<i>Nature of other duties, if any on which employed and whether carried them out satisfactorily</i>	<i>-</i>
9	<i>Suitability for working as noting hand</i>	<i>Poor</i>
10	<i>Brief mention of any outstand or notable work, if any, meriting special commendation</i>	<i>No</i>
11	<i>Has he been reprimanded for indifferent work or for other causes during the period under report? If so, give brief particulars.</i>	<i>He did not maintain steno book. His typing poor. Note made in affirm role of him</i>
12	<i>Remarks as to defects in character in-debtness etc, which may militate against efficiency and suitability</i>	<i>-</i>
13	<i>General Assessment of personality character and temperament including relations with fellow employees amenability to discipline etc.</i>	<i>Relations with fellow employees good</i>
14	<i>Assessment of integrity (if any thing adverse has come to your notice, please specify this also)</i>	<i>No adverse has come to my notice</i>
15	<i>General Remarks</i>	<i>Average</i>

Date:06.04.2013

Signature of

Reporting Officer \_\_\_\_\_

Name in Block Letters: HEMANSHU  
J.JOSHI  
Designation: 3<sup>rd</sup> Addl District Judge,  
Chhota Udepur

**PART-III**  
**(Remarks of the reverting officer)**

*(The reviewing officer should carefully consider and state, whether accepts the assessment recorded by the reporting officer in all respects including grading. If he differs from the reporting officer in any respect, the facts should be clearly stated)*

Date: 12/07/2013

Signature of Reviewing Officer  
**“Accepted except adverse  
remarks passed on point Nos. 1 to 6, 9 & 11.”  
The Average/adverse point Nos. 1 to 6, 9, 11 and 15  
be communicated for improvement in future**

Name in Block Letters \_\_\_\_\_  
Designation PRINCIPAL DISTRICT JUDGE  
12.07.2013

22. The Column No. 15 as mentioned above in General Remarks is stated as ‘Average’. The Part-III, which is to be filed by the Reviewing Officer, specifically states that **“ACCEPTED except adverse remarks passed on point Nos. 1 to 6, 9 & 11 and the adverse Point Nos. 1 to 6, 9, 11 & 15 be communicated for improvement in future”**. Further, the learned Principal District Judge in the very same Confidential Report finally has observed thus:-

*“I am further to state that, the remarks as above passed in the Confidential Report (except Point Nos.1 to 6, 9 & 11) are not being treated as adverse; that; however, the said remarks are brought to your notice with a view to enable you to show better result in these respects in future and that, no representation in these regard will be entertained.”*

(B. N. Mamtara)  
Principal District Judge”

23. The learned Principal District Judge thus, has specifically stated that the adverse remarks which are at Point Nos.1 to 6, 9 &

11 'are not being treated as adverse'. However, the said remarks are brought to the notice of the appellant with a view to enable him to show better results in future. It is also specifically recorded that no representation in that regard would be entertained. Thus, the entries, which are made in the confidential report of the appellant has not been treated as 'adverse', by the learned Principal District Judge.

24. So far as the communication of the aforementioned remarks is concerned, the respective parties have made rival claims. The appellant has asserted that the adverse remarks were not communicated, whereas the respondents deny the assertion. The outward register, which is produced on record reveal the entries and serial Nos. of the posts/letters which are sent to the different name, addresses and designations. Entry No. 459 (Page No.83) discloses that the Confidential Report (adverse remarks) are sent by post to the learned 3<sup>rd</sup> Additional District Judge, Vadodara at Chhota Udepur. This entry in the outward register reflects that the post has been sent to the learned 3<sup>rd</sup> Additional District Judge, Vadodara at Chhota Udepur, which contained the Confidential Report (adverse remarks) of the appellant. The respondents have construed this entry in a manner that the post containing the adverse entries have been in fact communicated to the appellant. There is nothing on record to show that in fact the learned 3<sup>rd</sup> Additional District Judge, Vadodara at Chhota Udepur has received the same and has further delivered the post/envelop containing the adverse remarks to the appellant. No evidence worth the name is pointed out before us which could remotely even suggest that the learned 3<sup>rd</sup> Additional District Judge, Vadodara at Chhota Udepur has received the post and that he has further handed over the post/

envelop to the appellant. Hence, in wake of absence of any documentary evidence, the assertion made by the appellant in his representation and before this Court and also in the writ petition to the effect that he was not communicated about the adverse entries, which are recorded on his Confidential Report for the period from 18.05.2012 to 31.03.2013, is required to be accepted.

25. At this stage, it would be apposite to refer to the communication dated 17.09.2018 written by the learned Principal District Judge, Chhota Udepur to the present appellant, wherein it is recorded that after searching the old records of the Court of Additional District Judge, Vadodara and Chhota Udepur, there is nothing to suggest that the Confidential Letters for the year 2013 being 41/459 of 2013 dated 12.07.2013 has been handed over to the concerned employee i.e. the present appellant. It is also further recorded that the Court is unable to provide him the certified copy of the Confidential Letter No. Admin/41/459 of 2013 dated 12.07.2013. This would further strengthen the case of the appellant that he never received the Confidential Letter No. Admin/41/459 of 2013 dated 12.07.2013 which records the adverse entries in his Confidential Report. Thus, the first ground, which is assigned in the communication dated 07.02.2014 falls flat since the adverse entries were never communicated and the appellant had no opportunity to make any representation against such adverse entries.

26. At this stage, it would be apposite to refer to the decision of the Supreme Court in the case of **Prabhu Dayal Khandelwal [supra]** which reads as under:-

“5.In so far as the issue of non-consideration of the claim of the appellant

is concerned, we are satisfied that the proposition of law relevant for the controversy in hand, was declared upon by this Court in *Abhijit Ghosh Dastidar v. Union of India and others*, (2009) 16 SCC 146, wherein a three-Judge Division Bench of this Court, held as under:-

“7. It is not in dispute that CAT, Patna Bench passed an order recommending the authority not to rely on the order of caution dated 22.09.1997 and the order of adverse remarks dated 09.06.1998. In view of the said order, one obstacle relating to his promotion goes.

8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly the entry of "good" was not communicated to the appellant. The entry of "good" should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the Annual Confidential Report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision [*Dev Dutt v. Union of India and Others*, (2008) 8 SCC 725] relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.”

6. The aforesaid position of law has again been affirmed by this Court in *Sukhdev Singh v. Union of India and Others*, (2013) 9 SCC 566, wherein another three-Judge Division Bench of this Court, has concluded as under:-

“8. In our opinion, the view taken in *Dev Dutt* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very

good – must be communicated to him/her within a reasonable period.””

27 The Supreme Court, after referring to the judgment in the case of **Abhijit Ghosh Dastidar (supra)** and also in the case of Sukhdev Singh vs. Union of India and Ors., (2013) 9 S.C.C. 566 reiterated that adverse entries or the entries, which affect the chances of promotion recorded in the Confidential Report are required to be communicated to an employee and in case, such entries are not communicated, they are to be ignored at the time of consideration of promotion. Though, the learned Principal District Judge has clarified that the adverse entries recorded by the Reporting Officer in the Confidential Report for the period from 18.05.2012 to 31.03.2013 are not required to be treated as adverse, even if the same is treated as such, the same would not have any bearing on consideration of promotion of the appellant since they were never communicated.

28. With regard to the second ground, which is mentioned in the communication dated 07.02.2014, ie. the Merit-cum-Efficiency report of the appellant shows him ‘Average’, it would be apposite to refer to the last five years Confidential Reports, which are produced on record by way of affidavit by the respondents. The Confidential Report for the year 01.04.2007 to 31.03.2008 reveals that the remark, which is incorporated in the Confidential Report, more particularly in Column No. 15 is ‘Good’. For the year 01.04.2008 to 31.03.2009, it is shocking to note that in the General Remarks i.e. Column No.15, nothing is recorded by the Reporting Officer and the same is accepted by the learned District Judge, who is the Reviewing Officer. We do not find any adversity in the said report also. For the year 01.04.2010 to 31.03.2011, it is noticed by



us that in General Remarks, it is observed as 'Nothing Adverse' is found. Overall, he possesses good qualities". For the period from 01.04.2011 to 31.03.2012, the Confidential Report Column No. 14 and 15 shows that 'Nothing Adverse is found. Reasonably Good'. So far as the Confidential Report for the period from 2009 to 2010 is concerned, the same are missing and are not found in record.

29. At this stage, we may refer to the communication dated 30.09.2013 written by the learned Principal District Judge, Vadodara, which is addressed to the Registrar General, High Court of Gujarat, wherein it is specifically recorded that 'so far as the Confidential Report of the last five years are concerned it is submitted that they are found Good' and the Confidential Report for the year 2009 to 2010 is not found in the file of the appellant. Thus, the Reviewing Officer i.e. learned Principal District Judge in response to the communication written by the Registrar General, High Court of Gujarat, while considering the case of the appellant for appointment/up-gradation/promotion to the post of Principal Private Secretary, Class-I, has specifically stated that his Confidential Reports for the last five years are found good. Thus, the second reason or the ground assigned in the communication dated 07.02.2014 appears to be arbitrary and does not reconcile with the confidential reports. Hence, the second ground assigned in the communication dated 07.02.2014 cannot in any manner circumvent the case of appellant, while considering his appointment/up-gradation/promotion to the post of Principal Private Secretary, Class-I. Thus, right from inception, it appears that the respondents have rejected the case of the appellant for promotion/up-gradation/appointment on the grounds, which are not tenable in law.

30. So far as the ground of delay which is canvassed before us by learned advocate Mr. Naidu for the respondents is concerned, the same does not merit acceptance since for the very first time his case for appointment/up-gradation/promotion to the post of Principal Private Secretary, Class-I appears to have been considered in the year 2017, after his retirement and for the very first time, the reasons are assigned in the Office Order No.210 of 2017 dated 11.10.2017 and along with such order for the first time, the appellant has been communicated the communication dated 07.02.2014, which was written by the Registrar General, High Court of Gujarat to the learned Principal District Judge, Vadodara communicating the grounds for denial of consideration of appointment/ up-gradation/ promotion of the appellant to the post of Principal Private Secretary, Class-I. After such reasons are communicated, the appellant has immediately pursued the respondent authorities and attempted to convince them that the reasons, which are assigned in the communication dated 07.02.2014, are required to be ignored and the same cannot in any manner debar the appellant from being appointed *ex post facto* to the post of Principal Private Secretary, Class-I.

31. We are constrained to make the observations in the manner that the entire issue has been dealt with by the respondents. No explanation is coming forth from the respondents for the delay in communicating the letter dated 07.10.2014, and why it was communicated in the year 2017. In fact, the delay has occurred on the part of the respondents. Such an approach was not expected from the esteemed respondent-Institutions. The employees are entitled to know the orders/communications/decisions immediately,

which jeopardize their careers or service benefits, so that they can take proper recourse questioning them. The approach of the respondents in handling the entire issue right from the recording of the entries in the confidential reports to its communication, appears to be casual and lackadaisical. The entries in the confidential reports are recorded in a perfunctory manner, and are not in rhyme with the administrative instructions governing the confidential reports. It is surprising that for the period from 2009 to 2010, the confidential reports are missing, and without the record, the same are considered for denying the promotion. There is no record available suggesting that the adverse remarks are communicated to the appellant.

#### **CONCLUSION AND ORDER**

32. On the substratum of the aforementioned analysis of the facts and the documents which are produced on record, we are convinced that the appellant has been arbitrarily and illegally denied his appointment/up-gradation/promotion to the post of Principal Private Secretary, Class-I. Reliance placed by learned advocate Mr. Naidu for the respondents on the judgment of the Division Bench rendered in the case of **Gujarat Rajya Karigar Talim Yojna Karmachari Mandal Varg (supra)** cannot rescue the respondents since admittedly in the present case, the grounds for which the respondents have denied the promotion and upgradation to the appellant, cannot be sustained and the same runs contrary to the record as well as the law enunciated by the Supreme Court. The appellant is not considered for promotion since it is the case of the respondents that he did not satisfy the criterion of proved merit and efficiency. Such an opinion has been premised on two reasons

that are incorporated in the communication dated 07.10.2014, which is passed and communicated to the appellant after his retirement that too in the year 2017. As noted hereinabove, we do not approve the reasons assigned in the communication dated 07.10.2014.

33. On the bedrock of the foregoing reasons, we allow the present Letters Patent Appeal. The impugned judgment and order dated 29.06.2022 passed by the learned Single Judge in the captioned writ petition is hereby quashed and set aside. The writ petition filed by the appellant – original petitioner is allowed. The action of the respondent authorities denying *ex post facto* promotion to the appellant to the post of Principal Private Secretary, Class-I is hereby quashed and set aside. The respondents are further directed to confer the promotion/up-gradation/appointment to the appellant to the post of Principal Private Secretary, Class-I *ex post facto* from the date of his eligibility. The appellant is also entitled for the consequential benefits. His retirement benefits i.e. pension, gratuity, etc. shall also be accordingly revised. Necessary orders, as directed by us, shall be passed within a period of 3 (three) weeks from the date of receipt of the order of this Court.

34. Civil Application does not survive and is accordingly disposed of.

sd/-  
**(A. S. SUPEHIA, J)**

sd/-  
**(MAUNA M. BHATT, J)**

SHRIJIT PILLAI/11