

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 10151 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

=====

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 ?	

=====

THE WORK ASSISTANT ASSOCIATION, PWD ROAD AND BUILDING  
DEPARTMENT

Versus

STATE OF GUJARAT &amp; ANR.

=====

Appearance:

MR GM JOSHI, SENIOR ADVOCATE with VYOM H SHAH(9387) for the  
Petitioner(s) No. 1

MS POOJA ASHAR, AGP for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

=====

**CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI****Date : 24/10/2024****ORAL JUDGMENT**

1. Heard Mr. G. M. Joshi, the learned Senior Counsel

assisted by Mr. Vyom H. Shah, the learned advocate appearing for the petitioner and Ms. Pooja Ashar, the learned AGP appearing for the respondent – State.

2. The petitioner herein is a Association of Work Assistants, employed under the respondent State in its Roads and Buildings Department. It is the case of the petitioner that originally, the respondent - State was having Public Works Department, which was subsequently divided into two departments namely Building and Construction Department and Roads and Buildings Department. Again, both the departments were merged and it was named as Roads and Buildings Department.

3. The members of the petitioner Association were originally employed on various posts namely, Karkoon, mistry, technical assistant as well as sub-overseer, by a policy decision, which is reflected in Government Resolution dated 07.01.1984, a cadre of Work Assistant was created merging the cadre of Karkoon,

mistry, technical assistant, sub-Overseer and like other posts, which were carrying different pay scales and different recruitment rules. By the said decision, all the cadres were merged in one cadre namely Work Assistant. The said decision also provided that the recruitment rules for the post of Additional Assistant Engineer as well as Sub-Overseer would be appropriately amended providing for promotion from the post of Work Assistant.

4. It is the case of the petitioner that the State Government did take a decision in the year 1984 to merge the cadre of Karkoon, mistry, technical assistant, sub-overseer and like other posts into that of Work Assistant and it also prescribed recruitment rules in the year 1985 which are duly produced at Annexure-B to the petition.

5. Directions were issued to issue appointment orders to Karkoons and mistry on the post of work assistant, still, surprisingly no pay scale was prescribed for the post of Work

Assistant in any of the revision of the Pay Rules notified from time to time. The ROP, showing the pay scale of Karkoon and mistry are duly produced at Annexure-C to the petition. The petitioners are paid salary and allowances in the pay scale of Rs.1200-1800, which was payable to the post of sub-overseer that was revised to Rs.4000-6000 in the ROP Rules, 1998 to that of Rs.5200-20200 with grade pay of Rs.2400/- in ROP Rules, 2009.

6. The Government passed fresh Resolution on 09.07.1987 issuing clarificatory policy decision absorbing the concerned Karkoon/mistry in the pay scale of Rs.1200-1800 as work assistant. Accordingly, all the Karkoon/mistry, who were satisfying the condition prescribed in the resolution were given appointment as work assistant. A further clarification was issued on 28.07.1987 including the “work charge” employees in the scope of the said resolution which is duly produced at Annexure-D to the petition.

7. On 04.08.1990, a circular was issued to all the departments to give promotion to all the Karkoon and mistry as work assistant in spite of the fact that these were the cadres that were merged into the all concerned not only took the training but passed the examination also. The said circular dated 04.08.1990 is duly produced Annexure-E to the petition.

8. It is the case of the petitioner that on coming into force of ROP Rules, 1998 the members who were given the pay scale of Rs.1200-1800 were entitled to get corresponding scale Rs.4000-6000 that was given to them after some persuasion, however, by different orders the pay scale was reduced to Rs. 3050-4590 and recovery was also made from all the employees. Not only that the benefit of corresponding scale i.e. Rs.5200-20200/- was also taken back by effecting recovery of the amounts paid to them. One such order is also produced at Annexure-G to the petition.

9. It is the case of the petitioner that accordingly all the

Karkoon and mistry, who were satisfying the conditions of the rules as well as the resolutions namely rendering 10 years of service were entitled to be promoted in the year 1990 itself as Work Assistant. Instead of giving them appointment orders upon completion of 10 years of service as Karkoon or mistry, the office of the respondent issued appointment orders after a lapse of time and such orders were issued up to year 1999. The petitioner is produced a statement giving details of the members of the Association with their complete service details namely date of original appointment, date of appointment as Work Assistant and the date of retirement (as and when applicable).

10. The petitioner states that as the posts of Karkoon, mistry, sub-overseer, technical assistants were merged into one post i.e. Work Assistant, the promotion was to be made available to the post of sub-overseer or additional assistant engineer, which is a technical service as distinguished or clerical service. All the petitioners were therefore entitled to be

considered for promotion to the post of either overseer or additional assistant engineer as the case may be and therefore, in the event of their not getting promotion within the stipulated time, the petitioner would be entitled to get the benefit of the Government Resolution dated 16.8.1994 providing for the benefits of higher grade of pay on the promotional posts, originally at the end of 9, 18 and 27 years of service and/or as at the end of 12 and 24 years of service. The said Government Resolution governing the field is duly produced at Annexure-F to the petition.

11. It is the case of the petitioner that the members of the petitioner Association would be entitled to the higher pay scale payable to the post of Additional Assistant Engineer/overseer and Deputy Engineer as the case may be. At the end of 9 years or 18 years of service as the case may be with grade pay of Rs.2800/- in the case of overseer and Rs.4200/-, the members of the petitioner Association are paid first higher grade pay of Rs.5200-20200 with grade pay of Rs.2800/-,

however, they are entitled to first promotion to the post of overseer which post does not exist and it is already merged in the cadre of work assistant as back in 1984. The petitioner Association has placed on record a table showing the position of various posts to substantiate the aforesaid submission raised in the present petition in para-3.7 to the petition.

12. It is the case of the petitioner that though the petitioners were required to be appointed as work assistant in the year 1987 or latest by 1990, by creating the cadre of work assistant and by prescribing the pay scale for the said post, they were designated as work assistant after a lapse of 9 years i.e. 1999, but without prescription of any pay scale and were paid the pay scale prescribed for the post of sub-overseer. At the end of 9 years of service they were paid the pay scales of sub-overseer only without giving any benefit of higher pay scale that were payable to the post of Additional Assistant Engineer with the pay scale of Rs. 5500-9000 later revised to Rs.9300 34800 for the reason that except a minor difference of



grade pay, the pay scales for the post of sub-overseer and overseer are the same.

13. In view of the aforesaid, the petitioner Association filed detailed representation to the State Government pointing out the injustice caused to them in the matter of delayed conversion from “work charge” to temporary, delayed appointments as work assistants and non-payment first and second higher grade pay at the end of 9-18 years of service as the case may be on 21.11.2015, which is duly produced at Annexure-H to the petition. As nothing was done, a fresh representation is given to the Superintending Engineer, Ahmedabad City (Road and Building) Ahmedabad in March 2016.

14. The aforesaid has given rise to the present petition wherein the petitioner herein has prayed for the following reliefs :-

*“(A) This Hon'ble Court may be pleased to direct the State*

*to confer temporary status to the members of the petitioner Association who were originally appointed as work charge, at the end of 5 years of their service and further directing the State to prescribe the pay scale for the post of work assistant and pay to the members of petitioner Association such salary and allowances in the said pay scale with benefits of first higher grade pay scale payable to the post of Additional Assistant Engineer and second higher pay scale in the scale of Deputy Engineer on completion of 9 and 18 years of service or 12 & 24 years of service as the care may be and pay to the members the difference of salary and allowances at the end of such exercise and further quashing and setting aside the recovery made from the salary of members of petitioner association on and return the said amounts with appropriate rate of interest;*

*(B) During the admission, pendency and final disposal of this petition be pleased to direct the respondents to place before this Hon'ble Court the details of action taken pursuant to notification dated 23.05.1985;*

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

*(D) Any other and/or further relief/s that may be deem fit looking to the facts and circumstances of the case may be granted to the petitioner.”*

15. Mr. G. M. Joshi, the learned Senior Counsel appearing for the petitioner placed reliance on the facts, as referred above, and submitted that the decision of the State Government to merge the cadre of Karkoon, mistry, technical assistant and sub-overseer though was transparent in terms of the Recruitment Rules in the year 1985, no subsequent steps are taken for prescribing the pay scale for the post of work assistant and the members of the petitioner Association are fixed in the pay scale payable to sub-overseer.

15.1 It is submitted that as a result thereof, at the end of 09 years, the petitioners are fixed in the pay scale of overseer. Resultantly the petitioners are deprived of the pay scale of Additional Assistant Engineer of Rs.9300 34800 with a grade pay of 4600 payable from time to time as higher grade pay on completion of 9 years and that of Deputy Engineer on completion of 9, 18 and 27 years or 12 & 24 years as the case may be.

15.2 Reliance is placed on the ratio laid down by the Hon'ble Apex Court wherein it is held that "work charge" employees would be given the benefit of temporary status on completion of 05 years automatically. The respondent State took years in conferring the status of temporary servant to the petitioner members as a result of which their subsequent appointment as work assistant was also delayed beyond 1990 and the same was given to them by the year 1999 further delaying the payment of first higher grade pay that also in the pay scale of overseer rather than Additional Assistant Engineer that they were entitled to. It is submitted that in view of the aforesaid submissions petitioners are constrained to approach this Court for the reliefs, as referred above.

16. Ms. Pooja Ashar, the learned AGP appearing for the respondent – State relied on the affidavit in reply filed by the respondent authority and submitted that the respondent State has acted in accordance with the Notification dated 23.5.1985 and benefits have been sanctioned to the employees entitled to

the same.

16.1 It is submitted that Karkoon, Mistry, Sub-overseer, Technical Assistant who fulfilled the criteria as envisaged in Government Resolution dated 07.01.1984, Notification dated 23.05.1985, Government Resolution dated 09.07.1987, 28.07.1987 and 04.08.1990 were promoted accordingly. It is submitted that the post of Additional Assistant Engineer/Overseer can only be filled up by following the Recruitment Rules of Additional Assistant Engineer/Overseer on availability of the vacancy in the said post.

16.2 It is submitted that the higher grade of pay can only be sanctioned on completion of 12 years 24 years and on fulfilling other conditions laid down as per the Government Resolution dated 14.09.2007.

16.3 Reliance is placed on the judgment passed in LPA No.380 of 2016 in SCA No.10829 of 2003 wherein the said

decision deal with temporary status and benefits arising thereof for the “work charge” employees. It is submitted that the benefit of converting “work charge” employees to temporary establishment therefore resolved and the prayers as sought for in the present petition to that extent would not survive. The said decision is duly placed on record at Annexure-R/4.

16.4 Ms. Ashar, the learned AGP submits that the present petition is barred by delay and laches. The petitioners herein are granted the higher grade in the years between 1981 to 1991.

16.5 It is submitted that the State Government decided to create a cadre of Work Assistant vide Government Resolution dated 7.1.1984 by merging the earlier cadre of Karkoon, mistry, technical assistant as well as sub-overseer etc. The recruitment rules for the aforesaid merged cadre were notified on 23.5.1985. The members of the petitioner Association were promoted accordingly and given the pay-scale prevalent at the

point of the said promotion i.e. Rs.1200-1800 as per Fourth Pay Commission instead of Rs.950-1500 and they were also beneficiary to the pay-scale of Work Assistant declared vide subsequent Pay Commission.

16.6 Reliance is placed on the order benefiting the petitioners herein which is duly produced at page-108 being Office Order No.90 of 1988. It is submitted that the promotion to the newly merged cadre was decided vide Government Resolution dated 7.1.1982 and Para-2A of the Government Resolution dated 23.5.1985.

16.7 It is submitted that the State Government decided to the cadre of Work Assistant by merging various cadres, as referred above, and also to convert the cadre of Karkoon, mistry, technical assistant, sub-Overseer etc., to the cadre of Work Assistant rendering the pay-scale of Rs.1200-1800 with effect from 1.7.1987 or the date on which the employee entitled to get appointment in the cadre of Work Assistant

which ever is later.

16.8 It is submitted that the members of petitioner Association are given the appointment accordingly. The benefit accruing thereof were extended to the “work charge” establishment vide Government Resolution dated 28.07.1987. It is submitted that the State Government also circulated instructions on 04.08.1990 to extend the benefit of Work charge Assistant to Karkoon, mistry, technical assistant, sub-Overseer etc., who had completed 10 years service and who were fulfilling the condition of promotion of Work Assistant vide Government Resolution dated 07.01.1984, notification dated 23.05.1985 and Government Resolution dated 09.07.1987.

16.9 It is submitted that recovery orders were issued according to the Government Resolution passed by the Finance Department dated 2.9.2002 bearing No.AHC-102002-1138-G2 only in cases wherein post facto effect was sanctioned. It is



submitted that otherwise the routine admissible pay scale and the corresponding pay scale was given.

16.10 Placing reliance on the aforesaid submissions, it is submitted that no relief as prayed for be granted to the petitioner herein in accordance with the eligibility of the petitioner and more particularly the petitioner having acquiesced of the right having accepted the same as back as in the year 1990.

16.11 It is submitted that in view thereof the respondent authority has continuously complied with the Government Resolution dated 07.01.1984 and the recruitment rules notified by Notification dated 23.05.1985.

**Analysis :-**

17. Having heard the learned advocates appearing for the respective parties, the following emerge :-

17.1 By way of present petition wherein the petitioners are

seeking benefit of higher pay-scale of 9-18-27 years or 12-24 years in accordance with the Government Resolution applicable to the members on the case to case basis.

17.2 The members of the petitioner Association having been initially appointed on various posts between 1981 to 1983 namely, Karkoon, mistry, technical assistant, sub-overseer etc., in the public works department of the respondent State which was subsequently divided into two departments, namely, Building and Construction Department and Road and Building Department. Again both the departments were merged and named as Roads and Building Department. The petitioner is an Association of Work Assistant, employed under the respondent – State in its Roads and Building Department. The petitioner is a registered trade Union and is entitled to espouse the cause of its members and, therefore, the present petition is filed by the Association to redress the grievance of all the members.

17.3 For the sake of convenience the “statement” produced

on record by Ms. Ashar, the learned AGP is relied upon to arrive at final conclusion.

17.4 By Government Resolution dated 07.01.1984 duly produced at Annexure-A (page-70) the respondent State took a policy decision to merge the cadre of Karkoon, mistry, technical assistant, sub-overseer etc., which were carrying different scales and different recruitment rules by creating the cadre of Work Assistant. The said decision also provided that the recruitment rules for the post of Additional Assistant Engineer as well as Sub-overseer would appropriately be amended providing for promotion from the post of Work Assistant.

17.5 It is not in dispute that no decision was taken by the respondent – State to implement the aforesaid resolution.

17.6 The Recruitment Rules, namely, Work Assistant, Class-III Recruitment Rules, 1985 (for short ‘Rules 1985’) came to be notified by Notification dated 23.05.1985 which is duly

produced at Annexure-B (page-19).

17.7 The petitioners herein were paid salary and allowances in the scale of Rs.1200-1800 (page-23) which was payable to the post of sub-overseer which came to be revised to Rs.4,000-8,000 as per the ROP Rules 1998 to that of Rs.5200-20200 with grade pay of Rs.2400/- as per ROP Rules, 2009.

17.8 The respondent Government passed fresh Resolution on 09.07.1987 issuing clarificatory decision (page-38) absorbing concerned kanroon and mistry in the pay-scale of Rs.1200-1800 as Work Assistant which is duly produced at Annexure-D (page-38). Accordingly all karkoon and mistry who were satisfying the conditions prescribed in the resolution were appointed as Work Assistant. The aforesaid clarificatory Resolution dated 09.07.1987 read thus :-

*“About converting the posts of Clerk/ Carpenter/ Technical Assistant and Sub-overseer into the posts of Work-Assistant.*

*Government of Gujarat  
Road and Building Department.  
Resolution No. BCS/1084/1/G.  
Secretariat, Gandhinagar.  
Date: 09/07/1987*

**RESOLUTION:-**

*A new cadre has been formulated by merging the cadres of Clerk/ Carpenter/ Sub-overseer/ Technical Assistant under the Road and Building Department vide a government resolution dated 07/01/1984, i.e. Road and Building Department Resolution No. BCS-1083/3/G.*

*With a view to give appointments to Clerks/ Carpenters in the new cadre, the matter as to converting the posts of Clerk etc. into the posts of Work-Assistant was under consideration of the government from some time.*

*The present total sanctioned/ permanent/ temporary cadre posts of Technical Assistant and Sub-overseer under the Road and Building Department are 98 and 29, respectively. In the same manner, the total filled/ temporary/ permanent cadre posts of Clerk and Carpenter are 720 and 78, respectively. After a due consideration, it is hereby resolved to convert all the sanctioned permanent/ temporary cadre posts of Technical Assistant and Sub-overseer, aggregating to 126, and only the filled temporary / permanent cadre posts of Clerk and Carpenter (Clerks – 720 Plus Carpenter -78, total 798 posts) into the posts of Work-Assistant having Grade Pay of Rs.1200-1800 with effect from 01/07/1987 or from the date of becoming*

*entitled to appointment as Work-Assistant as per the recruitment rules of Concerned Clerk/ Carpenter (whichever is later).*

*Appointment to a post of Work-Assistant from an existing cadre post of Clerk etc. shall be subject to the following terms and conditions.*

*1. For appointment as a Work-Assistant,*

*The concerned Clerk, Carpenter should have completed minimum 10 years of continuous temporary/ permanent service.*

*2. Should have successfully completed the training prescribed for Clerk, Carpenter, Work-Assistant.*

*3. Out of the Clerks/ Carpenters fulfilling above mentioned condition no. (1) and (2), Clerks and Carpenters with proven merits and competence shall be entitled to promotion on their seniority basis.*

*4. Employees working as Technical Assistants and Sub-overseers at present shall be given direct appointment as Work-Assistants.*

*5. The orders as to not giving any fresh appointment on the cadre posts of Clerk/ Carpenter shall continue to prevail until the further orders by the government in this regard.*

*All the Assistant Executive Engineers are informed to give promotions/ appointments as Work-Assistant as stated above.*

*These orders are issued on the basis of the approval dated 06/07/1987 on the file of Financial Adviser of even*

*number.*

*By the orders and in the name of the Governor of Gujarat.*

*(J.B. Patel)  
Deputy Secretary  
Road and Building Department”*

17.9 The respondent State further issued clarification on 28.7.1987 including the “work charge” employees in the said resolution dated 9.7.1987. It is apposite to refer to the said clarification which read thus :-

*“About converting the posts of Clerk/ Carpenter/ Technical Assistant and Sub-overseer into the posts of Work-Assistant.*

*Government of Gujarat  
Road and Building Department.  
Resolution No. BCS/1084/1/G.  
Secretariat, Gandhinagar.  
Date: 28/07/1987*

**AMENDMENT:-**

*In the even numbered Resolution dated 09/07/1987 of this Department, in the third line of Para-3 of Condition No. (1), words “Work-Charge” are being inserted after the term ‘service’ and before the words ‘temporary/ permanent’ and the last para stands amended as stated below.*

*These orders are issued on the basis of the approval of Financial Adviser on the basis of the note dated 06/07/1987 of the Finance Department pursuant to the note dated 16/05/1987 on the file of even number of this Department.*

*By the orders and in the name of the Governor of Gujarat.*

*(J.R. Patel)  
Deputy Secretary  
Road and Building Department”*

17.10 On 4.8.1990, a circular was issued to all the departments to give promotion to all the karkoon and mistry as Work Assistant inspite of the fact that these were the cadres that were merged into all concerned not only who took the training but passed the examination. The said clarification dated 4.8.1990 is duly produced at Annexure-E (page-42).

17.11 It emerges that the ad hoc Karkoon, mistry, technical assistant, sub-overseer posts came to be converted into Work Assistant by Office Order No.291 of 1994 which is duly attached with the list thereof (page-120), the Additional Engineer, Ahmedabad issued the communication which is duly produced at page-118, , with reference to the Government



Resolution dated 9.7.1987 and 28.6.1987 which reads thus :-

“Office Order No. 291/1994

*Subject: About converting the posts of Clerk/ Carpenter/ Technical Assistant and Sub-overseer into the posts of Work-Assistant*

*Reference: Resolution No. BCS/1084/1/G dated 09/07/1987 and 28/06/1987 of Road and Building Department of the Government*

*As per the instructions of the Government qua the the above mentioned resolution, the Clerks/ Carpenters/ Technical Assistants/ Sub-overseers performing duty under this circle as shown in the appended Cadre-wise Statement, keeping reserved the rights of employees senior to them and without any prejudice and subject to any addition, amendment as may be ordered by the Government or by the Hon'ble Court, are being given promotion and being appointed as Work Assistant in the Pay-Grade of Rs.1200-30-1440-EB-30-1800 with effect from the date shown against their names. They shall be given appointments vide these orders in the same departments where they have been performing duty on temporary basis at present.*

*2. The above orders are issued without any prejudice to seniority and subject to any amendment as may be deemed necessary in future.*

*3. A junior employee having successfully completed training earlier than a senior employee is being given appointment with his fellow employees as per their Seniority-List declared as having completed the training successfully on a given date.*

*4. The employees who have availed training and declared as successful but have not completed ten years in their respective cadres have not been included in consideration for promotion.*

*M.B. (illegible)  
Executive Engineer  
Ahmedabad City (R & B) Circle,  
Ahmedabad”*

17.12 On coming into force of ROP Rules, 1998 the members who were given the pay-scale of Rs.1200-1800 were entitled to get corresponding scale of Rs.4000-6000 that was given to them after some persuasion, however by different orders the pay scale was reduced to Rs.3050-4590 and recovery was also made from all the employees. Not only that the benefit of corresponding scale i.e. 5200-20200 was also taken back by effecting recovery of the amounts paid to them pursuant to the Government Resolution passed by the Finance Department dated 2.9.2002 bearing No.SLT-102002-1138-G-2 duly produced

at page-129 (R/3), in cases wherein ipso facto effect was sanctioned, otherwise routine admissible pay-scale and corresponding pay-scale was given.

17.12(a) The said Government Resolution dated 2.9.2002 provides that ;

“The promotions in the services and on the posts under the Government of Gujarat are being awarded in accordance with the Recruitment Rules and as provided under the general rules and regulations. Some instances have come to the Government’s attention where promotions have been awarded with retrospective effect and giving of promotions with retrospective effects continues to prevail as a tradition. A promotion to any post cannot be with retrospective effect, because promotion involves higher post, higher duty and higher responsibilities. As a promotion to a higher post is a Functional Promotion, it cannot come into effect retrospectively. Under such circumstances, all the Departments/

Head of Departments/ Heads of Office are being given instructions that, except the instances where promotion-deemed date is required to be given as per the rules, no any employee/officer in the services/ on the posts under the State Government shall be given promotion with retrospective effects. All the Departments of Secretariat/ Heads of Department/ Office are being instructed to follow these instructions in letter and spirit.”

17.13 Upon harmonious reading of Notification dated 23.05.1985 and the Government Resolution dated 9.7.1987, both provide for promotional avenue i.e. Recruitment Rules, namely, Work Assistant, Class-III Recruitment Rules, 1985 profile in Clause 2(a) and Government Resolution dated 9.7.1987 provide for conditions of absorption. It is not in dispute that the petitioners herein comply with all the conditions of the said Government Resolution. The petitioners herein were accordingly given pay-scale of Rs.1200-1800 from 1.7.1987, however admittedly the petitioners are not promoted

and the same is also emerges from the “statement” produced by Ms. Ashar, the learned AGP.

17.14 Considering the aforesaid, the petitioners were entitled to the promotion to the post of either sub-overseer or Additional Assistant Engineer, as the case may be.

17.15 While all the karkoon and mistry who were satisfying the conditions of Rules, 1985 as well as Government Resolution 9.7.1987 namely, rendering 10 years of service were entitled to be promoted in the year 1990 itself as Work Assistant, instead of that upon completion of 10 years of the service of the karkoon or mistry, the respondent authority State issued appointment order in the year 1999. As the post of karkoon, mistry sub-overseer were merged into one post of Work Assistant promotion was to be made available to the post of Overseer of Additional Assistant Engineer which is a technical service as distinguished or clerical service.

17.16 The petitioners in the opinion of this Court were entitled to be considered for promotion to the aforesaid post, however having not promoted the petitioners are entitled to the benefit of Government Resolution providing them the benefit of higher pay-scale at the end of 9-18-27 years or as per the present position at the end of 12-24 years. Even considering their appointment as fresh appointment as per the Recruitment Rules, 1985 Government Resolution dated 9.7.1987 with clarification dated 28.07.1987 in the year 1991.

18. Ms. Ashar, the learned AGP is not in position to dispute the aforesaid factual position.

19. The ratio as laid down in the Letters Patent Appeal No.318 of 2024 and allied matters is not applicable in the facts of the present case. By the said judgment, directions were issued that the “work charge” employees who worked for more than 20 years would be entitled to conversion to temporary establishment as per the Government Resolution

dated 18.7.1973 from the date on which they completed 27 years of service as “work charge” employees and they would be working in the temporary establishment.

The petitioners in the facts of the present case are governed by the The Recruitment Rules, namely, Work Assistant, Class-III Recruitment Rules, 1985 and Government Resolution 9.7.1987.

20. Ms. Ashar, the learned AGP has vehemently submitted that the present petition is barred by delay and laches and is required to be dismissed on that ground alone.

Upon perusal of “statement” produced on record it emerges that the petitioners herein came to be granted the higher pay-scale in the year 2011.

20.1 The petitioners herein thereafter approached the competent authority by preferring a detailed representation to the respondent – State dated 21.11.2015 before retirement pointing out the injustice meted to the petitioners herein in the

matter of delayed conversion from “work charge” to temporary, delayed appointment as Work Assistant and non-payment of first and second higher pay-scale at the end of 9-18 years of service as the case may be. As nothing was done, a fresh representation was given to the Superintending Engineer in March, 2016, however in absence of any action taken by the respondent – State the petitioners herein is constrained to approach this Court.

Considering the the aforesaid, in the opinion of this Court, in absence of any response from the respondent State to mitigate the petitioners’ grievance there was no other remedy but to approach this Court. In view thereof the petition cannot be dismissed on the ground of delay.

21. At this stage, it is apposite to refer to the judgment and order passed in the Letters Patent Appeal No.318 of 2024 in the Special Civil Application No.6489 order dated 18.7.2014, paragraphs 8 and 19 read thus :-

*“8. At this stage, it would be apposite to refer to the*



*observations made by the Supreme Court in the case of Rushibhai Jagdishchandra Pathak (supra), which read as under:-*

*“12 In Tarsem Singh (supra), the delay of 16 years in approaching the courts affected the consequential claim for arrears and thus, this Court set aside the direction to pay arrears for 16 years with interest. The Court restricted "the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser". Further, the grant of interest on arrears was also denied. 13 The aforesaid ratio in Tarsem Singh (supra) has been followed by this Court in State of Madhya Pradesh and Others v. Yogendra Shrivastava, (2010) 12 SCC 538 and Asger Ibrahim Amin v. Life Insurance Corporation of India., (2016) 13 SCC 797 14 In the facts of the present case, it is accepted that the respondent Corporation had accepted the interpretation rendered by the High Court of Gujarat to the Scheme whereby the appellants, on financial upgradation, would be entitled to the higher grade payscale of the next promotional post, which is Rs.5,000- 8,000/- in the present case. As noted above, the impugned judgment of the Division Bench accepts the said position and grants the appellants the said pay-scale but restricts the benefit from the date of the judgment of the Single Judge in the Writ Petitions filed by the appellants, that is, with effect from 31st July 2018. The Division Bench should not have taken the date of the decision/judgment of the Single Judge for grant of the said benefit in view of the decision and ratio in Tarsem Singh (supra) which has been followed in several other decisions. That apart, the date of the decision of the Single Judge is a fortuitous circumstance. Only the date of filing of the writ petition is relevant while examining the question of delay and laches or limitation. The appellants would, in consonance with the case law referred to above, be entitled to the arrears for three years before the date of filing of the Writ Petition.”*

*9. The Supreme Court has held that the claim, which is related to service benefits, one of the exceptions to the said rule of delay and laches relating to a continuing wrong. It is*

*held that where a service-related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is exception to the exception. Ultimately, it is held that the High Courts will restrict consequential relief relating to arrears normally to a period of 3 years prior to the date of filing of the writ petition. The Supreme court in case of Rushibhai Jagdishchandra Pathak (supra) has held that the High Court should not have taken the date of decision / judgment of the learned Single Judge for grant of benefits in view of the decision and ratio laid down in the case of Tarsem Singh (supra), and further it is clarified that “only the date of filing of the writ petition is relevant while examining the question of delay and laches or limitation, and the arrears are to be confined for three years before the date of filing of the writ petition.” The action of the appellant – authorities has also affected the pensionary benefits of the respondents, hence the action of withdrawal of higher pay-scale has travelled till their retirement.”*

22. For the reasons stated above, in the opinion of this Court, the present is a fit case to exercise extraordinary jurisdiction under Article 226 of the Constitution of India.

22.1 The prayers as prayed for in the present petition are allowed to the extent the respondent authority are directed to consider and grant higher pay-scale to the members of the petitioner Association upon completion of 9-18-27 years of service or 12-24 years of service as the case may be and all the consequential benefits arising consequent to the directions issued herein considering the date of initial appointment as Work Assistant as per Column No.6 of the “statement”, date of appointment as Work Assistant e.g. 1991 the first higher pay-scale in the year 1999, as the case may be, and not from 1.2.2011 as granted by the respondent authority taking into consideration the Recruitment Rules, namely, Work Assistant, Class-III Recruitment Rules, 1985, Government Resolution 9.7.1987, clarification dated 28.7.1987 and Circular dated 4.8.1990 and “statement” produced on record by Ms. Ashar, the learned AGP in accordance with law and upon due verification upon case to case basis. The aforesaid exercise be undertaken within a period of twelve weeks from the receipt

of this order.

23. The present petition is allowed to the aforesaid extent.

Rule is made absolute.

K.K. SAIYED

**(VAIBHAVI D. NANAVATI,J)**