

(2010) 06 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 3949 of 2009

Amit B. Jethava

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 320
Forest and Environment Department (Gujarat State Service) and Recruitment Rules, 1999 — Rule 2, 3
Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 — Rule 16

Citation : (2010) 06 GUJ CK 0012

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Purvish J. Malkan, for K.I. Kazi, for the Appellant; Tushar Mehta, A.A.G. and Krina Calla, Asst. Government Pleader for Respondent No. 1, Premal R. Joshi and Paresh Upadhyay, for the Respondent

Judgement

M.R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ of quo-warranto or an appropriate writ, order and/or direction directing the respondent No. 1 to remove the respondent No. 3 from the post of Director, Forest and Environment Department by holding the promotion of the respondent No. 3 as irregular and illegal. By way of this petition, the petitioner challenges the action of the respondent No. 1 - State of Gujarat in promoting the respondent No. 3 as Director (Class-I), Forest and Environment Department contending inter-alia that the promotion of the respondent No. 3 on the said post is without making prior mandatory consent of the respondent No. 2 - Gujarat Public Service Commission (hereinafter referred to as "GPSC" for short).

2. It is the case on behalf of the petitioner that the petitioner is the President of Gir Nature Youth Club and also an Ex-Member of State Wild Life Advisory Board, Government of Gujarat and is working for the protection of environment, forest and wildlife.

3. It is submitted by Mr. Purvish J. Malkan learned advocate appearing for Mr. K.I. Kazi, learned advocate appearing on behalf of the petitioner that as per the Director (Class-I), in the Forest and Environment Department (Gujarat State Service) and Recruitment Rules, 1999 framed in exercise of the powers conferred by the provisions of Article 309 of the Constitution of India, appointment to the post of Director (Class-I), Forest and Environment Department in the Gujarat State Service shall be made either (a) by promotion on the basis of principle of selectivity of a person from amongst the persons who have worked for about 5 years in the cadre of Senior Technical Officer (Class-I) in Forest and Environment Department or (b) by transfer of deputation basis of a suitable officer working on the analogous post in any department or government institution and who possesses educational qualification and experience specified in Rule 3 for direct selection or (c) by direct selection.

4. It is submitted by the learned advocate appearing on behalf of the petitioner that the respondent No. 3 has been promoted as Director (Class-I), Forest and Environment Department by the respondent No. 1 by an order dtd. 24/1/2003 on ad-hoc basis and subject to getting clearance from GPSC. It is submitted that the respondent No. 3 was appointed/promoted on the said post as per Sub-clause (a) mentioned hereinabove and therefore, "principle of selectivity" has to be followed. It is submitted that as per the Resolution of the General Administration Department dtd. 29/3/1982 for zone of consideration it has been mentioned that on the basis of principle of selectivity for an appointment in one post, 5 candidates are required to be considered, but in the present case, since there was no other candidate eligible to the post of Director as required under Clause (a) other than respondent No. 3, the respondent No. 1 has given go-bye to the Resolution of the GAD dtd. 29/3/1982. It is also submitted on behalf of the petitioner that despite the fact that before promoting respondent No. 3 on the post of Director (Class-I), Forest and Environment Department, prior approval/consultation of the GPSC was required. In the present case, no such consultation was made with the GPSC and the respondent No. 1 has appointed respondent No. 3 initially on ad-hoc basis subject to approval/consultation by GPSC. It is submitted that despite the fact that the respondent No. 2 GPSC vide letter dtd. 30/12/2004 specifically intimated the respondent No. 1 that the appointment of the respondent No. 3 is not recommended, the respondent No. 3 has been continued on the post of Director (Class-I), Forest and Environment Department, which is absolutely illegal and against all norms of public employment.

5. It is further submitted that even the appointment of the respondent No. 3 as Director (Class-I), Forest and Environment Department is contrary to Rule 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. Therefore, it is requested to issue a writ of quo-warranto and direct the respondent No. 1 to remove the respondent No. 3, as the respondent No. 3 cannot hold the post of Director (Class-I), Forest and Environment Department.

6. Mr. Premal R. Joshi, learned advocate has appeared on behalf of the

respondent No. 2 - GPSC. Affidavit-in-reply has been filed on behalf of the respondent No. 2 - GPSC. It is submitted in the said Affidavit-in-reply that by order dtd. 24/1/2003 the respondent No. 3 was promoted as Director (Class-I), Forest and Environment Department on ad-hoc basis and subject to clearance of the GPSC. By communication dtd. 10/3/2003, GPSC intimated the State Government that in case a person is continued for more than one year, then, principle of selectivity has to be followed and accordingly requested the State Government to move proposal to the GPSC. That by communication dtd. 19/6/2003 the State Government addressed one letter to the GPSC informing that feeder cadre of Director (Environment) is Technical Officer and there is only one post in the cadre of Technical Officer and therefore, the question of principle of selectivity would not arise and accordingly requested the GPSC to advise/consent to the appointment of respondent No. 3. It is further submitted by the GPSC in the Affidavit-in-reply that the GPSC by letter dtd. 29/7/2003 requested the State Government to forward proposal of the Job Chart for all cadres and also requested to provide details about number of vacancies in the cadre of his Junior Technical Officer and Senior Technical Officer. That in response to the aforesaid letter, the State Government by letter dtd. 15/9/2003 forwarded Job Chart of both the cadres i.e. Junior Technical Officer and Senior Technical Officer. It was further informed that there are three posts of Junior Technical Officer and Senior Technical Officer, respectively and all the posts are vacant. That thereafter the GPSC by letter dtd. 10/10/2003 requested State Government to provide certain more details. That the GPSC also reminded the State Government by letters dtd. 21/1/2004 and 5/3/2004 to furnish the aforesaid information within a period of one month. The State Government by letter dtd. 29/3/2004 furnished the details. It is further submitted in the Affidavit-in-reply on behalf of the GPSC that after receiving the letter from the State Government, the GPSC by letter dtd. 8/6/2004 requested the State Government to send proposal to prescribe ratio in proportionate of the strength of three cadres and also requested to give clarification regarding the letter of the petitioner dtd. 12/5/2004 (by which the grievance was raised by the petitioner with respect to appointment of the respondent No. 3 as Director (Class-I), Forest and Environment Department). That the GPSC thereafter reminded the State Government on 21/9/2004 and 30/12/2004 and requested to provide information/opinion as to whether the said post can be filled up by direct recruitment or not. That in pursuance of the aforesaid letters, the State Government by letter dtd. 11/4/2005 clarified the same. That thereafter the GPSC by letter dtd. 26/5/2005 advised to promote the respondent No. 3 upto 31/12/2005. That thereafter by communication dtd. 29/3/2005 the State Government requested to give approval without any condition. It is submitted in the reply of the GPSC that thereafter a General Meeting was held on 27/10/2005 between the Secretary of the GPSC and Dy. Secretary of the Department and with respect to the said meeting, the GPSC by letter dtd. 15/12/2005 informed the State Government to take into consideration certain aspects for promotion which is given to the post of Director (Environment). It is further submitted in the Affidavit-in-reply on behalf of the

GPSC that thereafter the State Government by communication dtd. 6/2/2008 informed the GPSC that the respondent No. 3 has been given promotion to the post of Director (Environment) on 24/1/2003 in anticipation of approval of the GPSC and since the matter of approval is pending before the GPSC and considering the Gujarat Civil Services (Classification and Recruitment) General Rules, 1967 and considering the educational qualification and experience on environment side and considering the experience taken by him in abroad in the field of environment, by not accepting recommendations of the GPSC, it has been decided to appoint respondent No. 3 on long term from 24/1/2003. It is the case on behalf of the GPSC that in pursuance of the aforesaid letter dtd. 6/2/2008, it was informed by the GPSC on 17/3/2008 that the GPSC has not advised the State Government in this regard and therefore, the question of non-acceptance of advise does not arise and the State Government was requested to clarify the fact that when no advise was given by the GPSC, how Notification dtd. 6/2/2008 has been issued. That further promotion was also issued on 18/7/2008. That thereafter, as the State Government did not respond to the same, another letter was addressed on 1/9/2008. It is the case on behalf of the GPSC that the State Government was also informed that the action of non-consultation with the GPSC is of serious nature and to clarify the aforesaid aspect within a period of 15 days, otherwise note of non-consultation with the GPSC will be included in the Annual Report of the GPSC. It is further stated in the Affidavit-in-reply by the GPSC that the GPSC had already decided to include the non-consultation by the State Government in the Annual Report for the year 2008-2009. Mr. Premal Joshi, learned advocate appearing on behalf of the respondent No. 2 - GPSC has submitted that thus, as such, the respondent No. 2 supports the petitioner with respect to appointment of the respondent No. 3 on the post of Director (Class-I), Forest and Environment Department and has submitted that the appointment of the respondent No. 3 without approval/consultation with the GPSC is absolutely illegal and against all the norms of public employment and just ignoring the commission like GPSC by the State Government. It is submitted that in fact, the GPSC was constrained to include non-consultation with the GPSC by the State Government in their Annual Report for the year 2008-2009, which can be said to be very serious. It is submitted that initial appointment of the respondent No. 3 on ad-hoc subject to approval by the GPSC and thereafter to continue the respondent No. 3 on long term that too from 24/1/2003 is absolutely illegal.

7. The petition is opposed by Mr. Tushar Mehta, learned Additional Advocate General appearing with Ms. Krina Calla, learned Assistant Government Pleader appearing on behalf of the respondent No. 1 - State of Gujarat and Mr. Paresh Upadhyay, learned advocate appearing on behalf of the private respondent No. 3.

8. Mr. Tushar Mehta, learned Additional Advocate General appearing on behalf of the respondent No. 1 - State of Gujarat and Mr. Paresh Upadhyay, learned advocate appearing on behalf of the private respondent No. 3 have submitted that the present petition at the instance of the petitioner may not be entertained. It is submitted that the present petition has been filed by the petitioner with a

malafide intention and even looking to the status of the petitioner it is requested not to entertain the present petition. It is submitted that the petitioner has no locus to prefer the present petition and pray for writ of quo-warranto.

9. An Affidavit-in-reply is filed on behalf of the respondent No. 1, affirmed by the Dy. Secretary, Forest and Environment Department, State of Gujarat opposing the present petition. It is submitted that the respondent No. 3 is promoted as per the provisions of Recruitment Rules 1999. It is submitted that the question of making appointment to the post in question was decided to be made by way of promotion from the feeder cadre of Technical Assistant Officer (Class-II). It is submitted that in the said feeder cadre, there were only three sanctioned posts and therefore, in view of the peculiar facts the question of applying the "principle of selectivity" out of five persons would not be adhered to. It is submitted that at the relevant point of time, the respondent No. 3 was the only officer holding the post and working as Senior Technical Officer (Class-I) and therefore, his case was considered for being promoted as Director (Class-I), in the Forest and Environment Department. It is submitted that for the purpose of deciding the question of promotion, meeting of the Departmental Promotion Committee was held on 26/11/2002 headed by the then Chief Secretary, State of Gujarat. The said Departmental Promotion Committee decided to promote respondent No. 3 to the post of Director (Class-I) in the Forest and Environment Department, however observed that he should be subject to transfer of similar post on the various organization under the Government or Local Self Government Institutions. It is submitted that in pursuance of the recommendation of the Departmental Promotion Committee, the respondent No. 3 came to be granted ad-hoc promotion vide order dtd. 24/1/2003 subject to consultation with Gujarat Public Service Commission. It is submitted that the Forest Department sent a communication dtd. 19/6/2003 to the GPSC seeking its consultation for said promotion. It is submitted that thereafter, after various communications between the GPSC and Forest Department, GPSC vide communication dtd. 25/5/2005 advised the Government to promote respondent No. 3 till 31/12/2005. Therefore, it is submitted on behalf of the State that effective consultation with GPSC has already taken place with regard to promotion of respondent No. 3.

10. It is further submitted that the consultation with the GPSC as contemplated under Article 320 of the Constitution of India is advisory in nature and as per the settled position of law, advise if not accepted would not render the entire exercise which can be termed as non-consultation. It is submitted that there cannot be consultation for promotion for a particular period. It is submitted that when the State Government sent proposal to the GPSC it was specifically pointed out that there is recommendation of the GPSC to give promotion to the respondent No. 3 on the post in question and the said recommendation was duly approved by the State Government. It is submitted that the proposal having been made by the State, the GPSC had given its opinion with concurrence or otherwise. It is submitted that the advised so given by the GPSC has been duly considered by the Government and it has been decided that the promotion given

to the respondent No. 3 is to be regularized. It is submitted that the said decision of the government is culminated into a Notification of the Government dtd. 6/2/2008 and looking to the educational qualification, vast experience in the environmental field, of the respondent No. 3 and in exercise of power under Rule 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, it has been decided to give promotion to the respondent No. 3 on the post in question, on long term basis.

11. Mr. Tushar Mehta, learned Additional Advocate General appearing on behalf of the respondent No. 1 - State of Gujarat has relied upon the following decisions of the Hon''ble Supreme Court in support of his submission that the provision of Article 320 of the Constitution of India are only directive and opinion/recommendation of the GPSC is only advisory in nature and the State Government is not bound to accept the same:

1. Jatinder Kumar and Others Vs. State of Punjab and Others,
2. Dr. H. Mukherjee Vs. Union of India and Others,
3. State of U.P. Vs. Manbodhan Lal Srivastava,
4. Ram Gopal Chaturvedi Vs. State of Madhya Pradesh,
5. State of Andhra Pradesh and another Vs. Dr. Rahimuddin Kamal,
6. Union of India (UOI) and Another Vs. T.V. Patel,

Making above submissions and relying upon above decisions, it is requested to dismiss the present petition.

12. The petition is also opposed by Mr. Upadhyay, learned advocate appearing on behalf of the respondent No. 3. It is submitted that after following due procedure and having satisfied the conditions as per Recruitment Rules, 1999 when the respondent No. 3 has been promoted, it is requested to dismiss the present petition and not to issue writ of quo-warranto and that too at the instance of the petitioner who has no locus.

13. Mr. Purvish Malkan, learned advocate appearing on behalf of the petitioner has relied upon the decision of the Full Bench of the Gujarat High Court in the case of Gujarat Mazdoor Panchayat Vs. State of Gujarat, It is submitted that though the aforesaid decision has been reversed by the Hon''ble Supreme Court, however, the said decision has been reversed on merits and so far as the observations made by the Full Bench in respect of the locus-standi of petitioner in a petition praying writ of quo-warranto has not been upset. Therefore, it is submitted that when the appointment of the respondent No. 3 is absolutely back-door and against all norms and as such there was no competition at all with other persons, it is requested to allow the present petition.

14. Heard the learned advocates appearing on behalf of the respective parties.

15. At the outset, it is required to be noted that the dispute is with respect to

appointment of the respondent No. 3 as Director (Environment) in the department of Forest and Environment, State of Gujarat. It is not in dispute and it cannot be disputed that the said post is a sensitive post and assumes a serious role in the matter relating to environment. The appointment on the post in question is governed by the Recruitment Rules framed under Article 309 of the Constitution of India namely Director (Class-I) in the Forest and Environment, (Gujarat State "Service") Recruitment Rules, 1999. As per the Rule 2 of the said rules, appointment to the said post shall be made either ... (a) by promotion on the basis of principle of collectivity of a person from amongst the persons who have worked for about 5 years in the cadre of Senior Technical Officer (Class-I) in Forest and Environment Department; or (b) by transfer of deputation basis of a suitable officer working on the analogues post in any department or government institutes and who possesses educational qualification and experience specified in Rule 3 for direct selection; or (c) by direct selection. Thus, if the post in question is decided to be filled in by way of promotion, in that case, the principle of selectivity is required to be adhered to and followed. It is also not in dispute that the appointment on the said post either by way of promotion and/or direct recruit shall be with the prior consultation with the GPSC. In the present case, without any prior consultation with the GPSC a decision was taken to promote respondent No. 3 on the post in question on adhoc basis till clearance of the GPSC is obtained. It appears that the said decision was taken on the basis of the decision of the DPC held on 26/11/2002.

16. Considering the minutes of the DPC Meeting held on 26/11/2002 it appears that it was decided to fill up the post in question by promoting a suitable candidate from the feeder cadre of Senior Technical Officer. It also appears from the said minutes that at the relevant time when the case of the respondent No. 3 was considered by the DPC for promotion on the post in question, except respondent No. 3 there was no other Senior Technical Officer/candidate and therefore the DPC and the State Government considered the case of the respondent No. 3 only for filling up the post in question by way of promotion. As stated above, as per the Recruitment Rules, 1999, appointment on the post in question by way of promotion is required to be made on the basis of principle of selectivity of a person from amongst persons who have worked for about 5 years in the cadre of Senior Technical Officer (Class-I) in the Forest and Environment Department. Thus, when the case of the respondent No. 3 only had been considered for promotion on the post in question, "principle of selectivity" has not been adhered to and followed at all. It appears that thereafter despite the above, the respondent No. 3 came to be promoted as Director (Environment) (Class-I) on purely ad-hoc basis and till clearance of the GPSC is obtained, by order dtd. 24/1/2003. It appears that by communication dtd. 10/3/2003 the GPSC intimated the State Government that in case a person is continued for more than one year, then, "principle of selectivity has to be followed and therefore, it requested the State Government to move proposal to the Government. It appears that for whatever the reason even the post of Junior

Technical Officer and Senior Technical Officer were not filled in by way of direct recruitment and were lying vacant. On one hand, the case of the respondent No. 3 only came to be considered for promotion on the ground that he is the only person available as Senior Technical Officer and on the other hand, the aforesaid posts were vacant. It appears that there were various correspondences between the GPSC and the State Government and considering the correspondences, the GPSC by letter dtd. 26/5/2005 advised to promote respondent No. 3 only upto 31/12/2005. Again there were correspondences between the State Government and the GPSC and the last correspondence was of the GPSC was dtd. 15/12/2005, by which, the State Government was directed to send requisition to the GPSC for the post of Junior Technical Officer and Senior Technical Officer and it was communicated to the State Government that in case of appointment on promotion, _principle of selectivity_ is to be followed and against one post, case of five officers is required to be considered, which has not been followed, as there was only one officer for the post of Senior Technical Officer and therefore, it was communicated that in such a case appointment on the said post is to be made by direct recruitment and therefore, it was requested to send opinion to the Government whether the post in question is required to be filled in by direct recruitment or not. It appears that thereafter the State Government by the impugned communication/Notification dtd. 6/2/2008 has decided to promote respondent No. 3 on long term basis w.e.f. 24/1/2003 in exercise of power under Rule 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. It appears that while promoting the respondent No. 3 on long term basis vide communication dtd. 6/2/2008 w.e.f. 24/1/2003, the State Government has exercised the power u/s 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, which reads as under:

Rule 16. Appointment by relaxation of rules:

Notwithstanding anything contained in these rules, the State Government may, in the interest of public service:

1. Fill up a post by appointment of an officer of Defence Service or All India Service.
2. Make appointment to any service or post by a method other than prescribed under these rules, or
3. relax any of the provisions of these rules.

Provided that where the appointment to any service or post is to be made in consultation with Commission, no such appointment or relaxation under Clauses (ii) or (iii) above shall be made except in consultation with the Commission.

17. Now, considering the above Rule 16 it is clear that where appointment to any service or post is to be made in consultation with Commission, no such appointment or relaxation under Clauses (ii) or (iii) referred to hereinabove shall be made except in consultation with the commission. Admittedly, before

relaxation of Rules and promoting the respondent No. 3 on long term basis with retrospective effect, w.e.f. i.e. from 24/1/2003, admittedly there is no consultation with the Commission. It is to be noted at this stage that while promoting the respondent No. 3 on long term basis, the State Government in decision dtd. 6/2/2008 has mentioned that the State Government does not accept the opinion of the GPSC, however, as per the GPSC and in fact there is no consultation with the GPSC on the aforesaid aspect I.e. invoking Rule 16 of the Rules 1967 and there is no advice by the GPSC at all. Under the circumstances, the appointment of the respondent No. 3 on the post of Director (Environment) on long term basis w.e.f. 24/1/2003 is absolutely illegal and contrary to the Recruitment Rules, 1999 as well as Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, 1999, which cannot be sustained. It is to be noted that while making appointment on the post in question by way of promotion, principle of selectivity is required to be followed and for that against one post, case of five officers are required to be considered, so that the case of the respective persons can be considered on merits and the best person is selected/appointed on the post in question. In the present case, admittedly the respondent No. 3 was the only person who was available from the feeder post and therefore, the case of the respondent No. 3 only has been considered, which is against all the norms of the public employment. It is to be noted that initially the respondent No. 3 was promoted on the post in question on adhoc basis subject to clearance by GPSC and though there was no clearance, the respondent No. 3 came to be continued. It is also required to be noted that even in the minutes of the DPC meeting it has been specifically observed that the post of Director (Environment) is a very sensitive post and that it will be administrative prudence not to have anybody on such a sensitive post that too for such a long period and therefore, the respondent No. 3 should be promoted with clear indication that he is subject to transfer of similar post with various organizations under the government or even with the Self Government Institutions. There are correspondence between the State Government and the GPSC with respect to creating similar post so as to have transferability, however, no efforts have been made. Having realised that the respondent No. 3 cannot be continued on the post in question for a long period considering the provisions of Recruitment Rules, 1999, as the respondent No. 3 has not fulfilling the norms as per the Recruitment Rules, 1999, now by communication dtd. 6/2/2008 which has been culminated into notification dtd. 6/2/2008 the State Government has come out with a case that it has decided to promote respondent No. 3 on long term basis with retrospective effect i.e. w.e.f. 23/1/2003 in exercise of powers under Rule 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. As stated herein above, as per Rule 16 of the aforesaid Rules, the State Government may in the interest of public service make appointment to any service or post by method other than that prescribed under the aforesaid rules or relax any of the provisions of the rules, however, in such a case, where such appointment is to be made in consultation with the GPSC, no such appointment or relaxation under Clause (ii) or (iii) referred to herein above shall be made,

except in consultation with the Commission. It is not in dispute that the appointment on the post in question is required to be made in consultation with the GPSC. Therefore, when the respondent No. 3 has been promoted on long term basis with retrospective effect w.e.f. 24/1/2003 by the State Government in exercise of powers under Rule 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, the same is required to be made only in consultation with the Commission and therefore, the promotion of the respondent No. 3 on the post of Director (Environment) (Class-I) in the Forest and Environment Department, State of Gujarat is absolutely illegal and in breach of Rule 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 and therefore, the respondent No. 3 cannot be permitted to hold such a post.

18. Now, so far as the objections raised by the learned advocate appearing on behalf of the respondents with respect to locus of the petitioner to prefer the present petition praying for a writ of quo-warranto is concerned, as observed by the Full Bench of this Court in the case of Gujarat Mazdoor Panchayat (supra), so far as the writ of quo-warranto is concerned, relator may not have a direct interest so as to challenge the usurpation of a public office. It is true that the aforesaid decision of the Full Bench has been reversed subsequently by the Hon''ble Supreme Court, however, considering the decision of the Hon''ble Supreme Court, those observations of the Full Bench are not upset by the Hon''ble Supreme Court and the decision of the Full Bench has been reversed on merits. Even otherwise, considering the post in question, this Court is of the opinion that for issuing writ of quo-warranto, it is not necessary that the petitioner is not required to have a direct interest and anybody can challenge it.

19. Now, so far as the decision relied upon by the learned Additional Advocate General appearing on behalf of the State Government on the aspect of opinion of the GPSC and that the provisions of Article 320 are held to be directive, are concerned, all the decisions are distinguishable on facts. The controversy raised in the case of Jatinder Kumar and Ors. (supra), the petitioner was claiming appointment on the basis of recommendation by the Public Service Commission, as the State Government did not appoint employee and to that, the Hon''ble Supreme Court has observed that the provisions of Article 320 are only directory and a person cannot claim as a right that the Government must accept recommendation of the Commission. However, in the said decision the Hon''ble Supreme Court has also further observed that if, however, vacancy is to be filled up, the Government has to make appointment strictly adhering to order of merit as recommended by the Commission and the State Government cannot disturb order of merit according to its own sweet-will, except for the other good reason viz. Bad conduct or character. Therefore, considering the aforesaid decision of the Hon''ble Supreme Court, importance of the recommendation of the Commission has been accepted by the Hon''ble Supreme Court and it is observed that the State Government cannot ignore the recommendation of the Public Service Commission at its own sweet-will.

20. Similar is the facts in the case of Dr. H. Mukherjee (supra). The other decisions relied upon by the learned advocate appearing on behalf of the respondent Nos. 1 and 3 are with respect to disciplinary proceedings initiated alleged to be without consulting the GPSC. However, in the present case, as stated above, now when the respondent No. 3 has been promoted on the post of Director (Environment) (Class-I) in the Forest and Environment Department on long term basis with retrospective effect w.e.f. 24/1/2003 in exercise of powers under Rule 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, even there is no consultation on the same i.e. on relaxation of the Rules or appointment of the respondent No. 3 in the public interest by a method other than prescribed under the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. Under the circumstances, promotion of the respondent No. 3 is absolutely illegal and against all norms of public employment and adherence to statutory rules and therefore, the respondent No. 3 cannot hold the post in question and therefore, the appointment/promotion of the respondent No. 3 on the post in question deserves to be quashed and set aside and writ of quo-warranto is required to be issued against the respondent No. 3.

21. In view of the above and for the reasons stated above, present petition succeeds and writ of quo-warranto is issued against the respondent No. 3 and it is held and declared that the respondent No. 3 cannot hold the post of Director (Class-I), Forest and Environment Department, State of Gujarat, and respondent No. 1 - State of Gujarat is hereby directed to remove the respondent No. 3 from the post of Director (Class-I), Forest and Environment Department, State of Gujarat and further directed to make appointment on the said post in question after following due procedure of law and Recruitment Rules, 1999 read with Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

FURTHER ORDER

After pronouncement of the present Judgment and order, Mr. Kamal Sojitra, learned advocate appearing for Mr. Upadhyay, learned advocate appearing on behalf of the respondent No. 3 has requested to stay the execution and operation of the present Judgment and order so as to enable the respondent No. 3 to approach the Higher Forum.

In the facts and circumstances of the case, more particularly when the appointment/promotion of the respondent No. 3 is held to be absolutely illegal and writ of quo-warranto is issued and it is held that the respondent No. 3 cannot hold the post in question, the prayer to stay the execution and operation of the present Judgment and order is hereby rejected.