

(1983) 07 GUJ CK 0027
In the Gujarat High Court

A.P. John and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-07-1983

Acts Referred:

Gujarat Government Servants (Lower Standard and Higher Standard Gujarati Language Examination) Rules, 1970 — Rule 4(c), 5(2)

Citation : (1983) 2 GLR 1478

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Judgement

R.C. Mankad, J.—These three petitions by English stenographers, working in various Departments of the Government of Gujarat involve common questions, namely (i) whether English Stenographers are required to pass Gujarati Language Examination, and (ii) whether their annual increments can be withheld, if they fail to do so. Petitioners do not dispute that the Gujarat Government Servants (Lower Standard and Higher Standard Gujarati Language Examination) Rules, 1970 (herein-after referred to as "Rules") apply to them and they are required to pass Gujarati Language Examination (herein after referred to as the "said examination") under the said rules. It is, however, contended that (i) since the petitioners are holding posts which may be described as technical or specialised posts, they are not required to pass the examination under the first proviso to Rule 3; (ii) under Rule 5 (i) their increments cannot be withheld merely on account of their failure to pass the examination; and (iii) their increments cannot be withheld unless they are given opportunity to show cause why their increments should not be withheld. Petitioners contend that the action of the respondents in withholding their increments for failure to pass the examination is therefore, bad in law.

2. First proviso to Rule 3 reads as under:

Provided that these rules shall not apply to Government servants (Gazetted or non-Gazetted) holding such technical or specialised posts as the State

Government may, by order, determine.

Petitioners say that they hold technical posts and therefore, they would be governed by the aforesaid proviso. In support of this contention, petitioners rely on the resolution dated January 22, 1977, which deals with the subject of retention of technical personnel in service beyond the age of superannuation on re-employment basis. By this resolution Government has directed that certain categories of Government servants should be retained in service beyond the age of superannuation for "a period of one year on re-employment basis subject to the conditions that (i) their service record is good; and (ii) they are physically fit to continue in service. One of the categories specified in the said resolution is "English Stenographers." I fail to see how this resolution which deals with the subject of retention of technical personnel in service beyond the age of superannuation can be of any help to the petitioners. Petitioners are no doubt considered to be technical personnel for the purpose of re-employment in terms of the said resolution; but this resolution cannot be of any avail to the petitioners for the purpose of the first proviso to Rule 3 of the Rules. First proviso to Rule 3 contemplates an order of the State Government which specifically provides that the rule shall not apply to certain categories of technical or specialised posts. The order has to be issued under the Rules. Admittedly no such order has been issued by the State Government. In other words, the State Government has not so far exempted any technical or specialised posts from the application of the Rules. Merely because the petitioners are considered to be technical personnel for the purpose of re-employment, it can not and does not mean that they are holding technical or specialised posts to which rules do not apply under the First proviso to Rule 3. Therefore, I do not see any substance in the First contention raised on behalf of the petitioners.

3. It is next contended that even if they are required to pass the examination under the Rules, their increments cannot be withheld for failure to pass the examination. In support of this contention, reliance is placed on the last part of Sub-rule (i) of Rule (5) of the Rules, which reads as under:

The increments of Gazetted and non-gazetted Government servants specified in Clauses (a) and (b) of Rule 4 shall not be withheld for failure to pass the Lower Standard Examination.

Petitioners are not Government Servants specified in Clauses (a) and (b) of Rule 4. They fall under Clause (c) of Rule 4, and they are required to pass only Lower Standard Examination. Government servants falling under Clauses (a) and (b) of Rule 4 are required to pass both Lower Standard and Higher Standard examinations and it is only in their case that it is provided that failure to pass Lower Standard Examination would not result in withholding of increments. Sub rule (i) of Rule 5 has no application to the petitioners. Their case would fall under Sub-rule (2) of Rule 5, relevant part of which reads as under:

5.(2) Non-Gazetted Government servants specified in Clause (c) of Rule 4 who

are appointed on or after 1st May 1960 and who fail to pass the Lower Standard Examination in Gujarati shall, after the expiry of the time limit prescribed in the said clause, be liable to have their increments withheld till they pass the Lower Standard Examination in Gujarati in the post of first appointment or in the higher post, if promoted to it within the prescribed time limit. For this purpose, the service rendered in the Lower and Higher posts should be taken as a whole:

Provided that in any case if the State Government is satisfied that the person could not pass the Lower/Higher Standard examination Within the specified period for reasons beyond his control, the State Government may/after recording reasons in Writing, extend the period of passing that examination.

It would thus appear that unless the Government for reasons to be recorded in writing extends the period of passing the examination, Government Servants specified in Clause (c) of Rule 4 are required to pass the examination within the prescribed time limit and if they fail to do so their increments are liable to be withheld. There is therefore, no substance in the petitioner's contention that their increments cannot be withheld under Sub-rule (1) of Rule 5 of the Rules.

4. It is then contended that since Sub-rule (2) of Rule 5 provides that if Government servants specified in Clause (c) of Rule 4 fail to pass Lower Standard Examination within the prescribed time limit," their increments are liable to be withheld, it does not mean that their increments are to be automatically withheld. According to the petitioners before withholding increments it is necessary to give them an opportunity of being heard. In this connection, reliance is also placed on the first proviso to the said sub-rule under which Government has been empowered to extend the period of passing the examination. It is submitted that unless opportunity of being heard is given to the petitioners, they would not be able to represent their case and satisfy the Government in their case, period of passing the examination requires to be extended. I do not find any substance in this contention. Passing of the examination is a condition of service. This is evident from the Rules and Rule 24 of the Stenographers, Steno-typist (Secretariat and other Officers) Recruitment (Examination) Rules, 1960 which reads as under:

the selected candidates shall be required to pass a language test in Gujarati, as laid down in the rules prescribed by the Government in this respect, within the time limit, if any prescribed in the said rules.

5. Withholding of increments on account of failure to pass the examination which under the conditions of service, the petitioners are required to pass, is not by way of penalty. Failure to pass the examination would automatically result in withholding of increments. It is however, open to the State Government to extend the period of passing the examination but that does not lead to the conclusion that failure to pass the examination does not result in withholding the increments. I, therefore, do not find substance in the last contention of the petitioners as well.

6. In the result, all these three petitions fail and are rejected. Rule discharged with no order as to costs. Interim relief shall stand vacated.

7. It is stated before me that Government has extended the period of passing the examination upto end of the year 1980 and therefore, the petitioners would not be liable to refund the increments paid to them upto the end of year 1980 in terms of the undertaking given by them to this Court. There is nothing on the record to support the above statement. I have, however, no doubt that if the period of passing the examination is extended in case of all Government servants by the State Government as stated on behalf of the petitioners, the State Government will not ask the petitioners to refund the increments paid to them upto the date the period of passing the examination is extended in case of other Government servants. I am further told that some of the petitioners have already passed the examination under the rules. However, some of them have not passed the examination labouring under the impression that they are not required to pass the examination.. If such of the petitioners make the representation to the State Government for extending the period for passing the examination, the State Government may consider their representation sympathetically.