

(2002) 12 GUJ CK 0052

In the Gujarat High Court

Case No : Special Civil Application No. 2223 of 1987

Association of Scientists and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 26-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2003) 23 GLH 271

Hon'ble Judges : J.M. Panchal, J

Bench : Single Bench

Advocate : S.N. Pahwa for Mr. P.M. Thakkar, for the Appellant; Amit Kotak, AGP, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—By filing instant petition under Article 226 of the Constitution the petitioner, which is an Association of Scientists, Gujarat Engineering Research Institute, has prayed to issue a writ of certiorari any other appropriate writ or order declaring Rule 2 of the Senior Scientific Assistant Irrigation Department Recruitment Rules, 1984 as ultra vires, and offending Articles 14 and 16 of the Constitution because no quota is laid down for the two sources, i.e. direct recruits and promotees, while making appointment to the post of Senior Scientific Assistant in the research cadre of Irrigation Department. The Court has heard Mrs. Sangita Pahwa, the learned Advocate appearing for Mr. P.M. Thakkar, learned Counsel of the petitioners and Mr. Amit Kotak, the learned Assistant Government Pleader appearing for the respondents, at length and considered the documents forming part of the petition including affidavit-in-reply filed by Mr. B.N. Gandhi, the then Deputy Director, Gujarat Engineering Research Institute, Baroda, on behalf of the respondent No. 2.

2. It may be stated that the Governor of Gujarat has made the Senior Scientific Assistant Irrigation Department Recruitment Rules, 1984 ("the Rules" for short) in exercise of powers conferred by the proviso to Article 309 of the Constitution.

The only contention that there are no guidelines as regards quota or ratio of promotees and direct recruits for appointment to the post of Senior Scientific Assistant in the research cadre of Irrigation Department and, therefore, Rule 2 of the Senior Scientific Recruitment Rules, 1984 should be regarded as arbitrary and violative of Articles 14 and 16 of the Constitution cannot be accepted in view of the decision of Division Bench of this Court in Gujarat Foods and Drugs Control Administration Gazetted Officers Association Vs. State of Gujarat and Another, . In that case, the post of Joint Commissioner, Gujarat Drugs Service, Class-I, was advertised and applications for the said post were invited. The proposed appointment to the post of Joint Commissioner, Gujarat Drugs Service, Class-I, was challenged by the petitioner by filing a petition under Article 226 of the Constitution on the ground that there were no guidelines as regards the quota or ratio of promotees and direct recruits for the appointment to the post of Joint Commissioner and, therefore, Rule 2 of the Joint Director (Administration), Drugs Control Administration (Recruitment) Rule , 1972 providing for appointment by direct selection should be regarded as arbitrary and violative of Articles 14 and 16 of the Constitution. The Division Bench of this Court negated the said contention in the following terms.

"3. The petitioner contends that there is no guidelines as regards the quota or ratio of promotees and direct recruits for appointment to the post of Joint Commissioner. Since there is no fixed quota nor there is any guidelines contained in the rule, the provision of rule is" arbitrary and hence violative of Articles 14 and 16 of the Constitution of India. It may be noted that the post of Joint Commissioner is a ClassI post. It is. a post of higher cadre in the administration. As one steps up higher in the ladder, the appointing authority should have sufficient margin and wide discretion for selection of meritorious candidates for such posts. At the lower level or in the middle level in service, ordinarily seniority or seniority-cum-merit may be the criterion. But as far as the posts in the highest cadre of administration are concerned, the criterion is ordinarily suitability of the candidate concerned for the post in question. For judging suitability of the candidate from amongst the employees in service, proved merit and efficiency is the criterion. For such posts ordinarily there cannot be fixed quota rule or ratio. The authority concerned must have meritorious persons to man such posts. The omission to prescribe specified ratio for direct recruitment and for promotees would not render the rule otiose. In absence of fixed quota or ratio, all that would happen will be that the selecting authority will have discretion to resort to either of the two channels, provided under the rules. When the legislature has not provided for fixed quota ratio for the promotees and the direct recruits, it necessarily implies that the legislature desired to confer wide discretion on the selecting and appointing authority. It may also be noted that even in case of promotees the eligibility criteria prescribed is proved merit and efficiency and not seniority. When the selecting and appointing authority resorts to either of the mode of appointment in both cases the authority concerned will be in a position to judge the merits of a candidate on the basis of objective

material. It may be in the shape of service record of the candidate when the appointment is by way of promotion. In the shape of factual data regarding educational qualification and other relevant material with regard to experience, etc. This material will be sufficient for the selecting and appointing authority to exercise their discretion in just, fair and reasonable manner. It may also be noted that there is no material placed on record to show as to how many posts are there in the cadre of Joint Commissioner. However, it may be reasonably inferred and presumed that the number of posts in Class-I service will be few. Whenever the number of posts in the higher cadre is small or very small it would naturally be difficult to prescribe any fixed ratio for the direct recruits and promotees. On the contrary in such situation, it would also be desirable that no such fixed ratio be prescribed and room for sufficient play by the selecting and appointing authority be provided. If this is not done, it is very likely that doors for more meritorious and suitable persons may remain permanently closed. In this view of the matter, omission to prescribe fixed ratio or quota appears to be rational and in conformity with the object to be achieved."

3. From the above-quoted principles laid down by the Division Bench of this Court, it is clear that it is not necessary that in all cases, legislature must provide for fixed quota or ratio, and must prescribe guidelines in minute details for appointment to a particular post. A bare reading of the Rules makes it abundantly clear that the post of Senior Scientific Assistant is a post of higher cadre and the criterion for appointment to the said post is proved merit. Therefore, non-fixation of any ratio for the direct recruits and promotees cannot be regarded as illegal. When the legislature has not prescribed any ratio, it means that the legislature has conferred wide discretion on the Appointing Authority for selection of meritorious candidates. Omission to prescribe ratio is also in the interest of service because merit being the criterion for appointment to the senior post, a candidate would perform his best to get selected on the said post. Under the circumstances, Rule 2 of the Senior Scientific Assistant Irrigation Department Recruitment Rules, 1984 cannot be regarded as arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution. The apprehension that the authority concerned will exercise its direction arbitrarily has no factual basis, as is pointed out by Mr. Gandhi in his affidavit-in-reply filed on behalf of the respondent No. 2. Even otherwise on the basis of such apprehension, the legality and validity of statutory provisions cannot be adjudged. In view of the above discussion, the Court does not find any substance in the petition, and the petition is liable to be dismissed. For the foregoing reasons, the petition fails, and is dismissed. Rule is discharged. There shall be no order as to costs.