

(2012) 06 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 7950 of 1995

Bin Rajyapatrit Technical Karmachari Mandal

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-06-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2012) 06 GUJ CK 0013

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Mukul Sinha, for the Appellant; Pranav Dave, AGP for

Respondent(s) : 1 and Notice Served for Respondent(s) : 1, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of filing this petition the petitioner has challenged the action of the State Government whereby the an anomaly has been created by the State Government by introduction of two different categories for the same post of Planning Assistant in the Town Planning and Valuation Department vide notification dated 20th March 1991 whereby those employees who are having qualification of Degree in Civil Engineering/Architecture have been placed in the pay scale of Rs. 2000-3200 whereas employees who were having the Diploma in Civil Engineering/Architecture, but doing the same work have been placed in the lower grade pay scale of Rs. 1640-2900. Mr Sinha, learned counsel for the petitioner association submits that the recruitment rules for the post of Planning Assistant were framed under Article 309 of the Constitution of India by the Government vide its notification dated 7th May 1975 and prior to framing of Recruitment Rules, the post of Planning Assistant was known as Architectural Assistant. He has further submitted that appointment to the post of Planning Assistant was made from two sources viz. by promotion of a person of proved merit and efficiency from amongst the persons of the Valuation and Town Planning Department in the cadre of Surveyors and by direct selection in the

ratio of 1:1. As per Rule 3 of the said Recruitment Rules, the qualification required by the direct recruits to be eligible for the post of Planning Assistant was either a Degree in Civil Engineering/Architecture or a degree or Diploma in City Town Planning or Regional Planning or Masters Degree in Arts, Geography, etc.

2. The case of the petitioner-association is that in the year 1991 the Government of Gujarat issued impugned notification by which Gujarat Civil Service (Revision of Pay) Rules, 1987 was amended and two grades were created for the same post of Planning Assistant, namely, Rs. 2000-3200 and Rs. 1640-2900. Those employees who were having qualifications of Degree in Civil Engineering/Architecture were given pay scale of Rs. 2000-3200 while those who were having the Diploma in Civil Engineering/Architecture have been placed in the lower grade pay scale of Rs. 1640-2900.

3. Mr Sinha, learned counsel for the petitioner has contended that the respondents chose to create an absolutely anomalous situation where the employees who have been working for years together, holding the same post of Planning Assistant doing exactly the same work and having the same responsibility. Therefore, the present petition has been filed.

4. Learned counsel for the petitioner has further contended that once promotion is given to the post of Planning Assistant, there cannot be two cadres. He further contended that the action of the State Government in creating two classes in single cadre by notification dated 20th March 1991 is arbitrary and violative of Article 14 of the Constitution of India. In support of his contention, he has relied upon the decision of the Supreme Court in the case of Kamlakar and Others Vs. Union of India and Others, , more particularly paragraphs 6 and 12 thereof, which read as under:-

6. Now Chandra Prakash Dadwa, the petitioners in SLP No. 16646 of 1995 and Kamlakar and others in this SLP No. 19257 of 1995 before us filed the respective SLPs against the same order dated 7-3-1995 in OA No. 625 of 1990 of the Central Administrative Tribunal, Bombay. In fact, all of them were petitioners in the same OA and claimed relief in regard to the same impugned orders of the Union Government dated 2-7-1990 by which the Government changed (i) the designation of the petitioners from Data Processing Assistants to Data Entry Operators (and gave them a particular scale) which according to them was reversion to an entry grade below that of Data Processing Assistants namely, as Data Entry Operators, Grade B. They also claimed that a lower scale of pay Rs. 1350-2200 was given to them than that was to be given. They were in the scale of Rs. 1200-2040 when OA 625 of 1990 was filed and they claimed that the revised scale of Rs. 1600-2660 meant for Data Processing Assistants was to be given and not Rs. 1350-2200. The grievance of all the petitioners in the OA was same. Now unfortunately while those who filed SLP 16646 of 1995 have got relief, the present petitioners who filed SLP 19257 of 1995 did not get relief so far.

12. We have considered the limited issue. We are of the view that all these

appellants should get the same relief as the appellants in the earlier Civil Appeal which arose out of SLP No. 16646 of 1995. Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given. The birth marks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale - which were matters common to all of them before the impugned order of the Government of India was passed on 2-7-1990, - then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible. We, therefore, reject the respondent's contention. We have examined the record and the common points arising in this case and those in Civil Appeal which arose out of SLP 16646 of 1995 and we are unable to find any lawful distinction between the appellants and those in the other appeal which has been allowed.

5. Mr Sinha has, therefore, contended that when the recruitment rules have not been amended to make any distinction between the degree holders and non-degree holders and in absence of any such provision in the recruitment rules, the government cannot create two different pay scales for the same post for persons holding the degree and for others. He has therefore contended that the notification is ultra vires, irrational and violative of Article 14 of the Constitution of India.

6. Mr Pranav Dave, learned Assistant Government Pleader has submitted that the State Government has accepted the recommendation of the High Level Committee and accordingly two cadres are created. He, therefore, contended that the decision of the State Government is based upon and pursuant to the decision taken by the High Level Committee.

7. Before proceeding with the matter, the fact which is very clear is that the Recruitment Rules are framed under Article 309 of the Constitution of India wherein the qualification for appointment of Planning Assistant is Degree in Civil Engineering or Diploma in Civil Engineering. When the Recruitment Rules specifically prescribe both the qualifications, in my view, having different pay scales only on the basis of educational qualifications is contrary to the rules, which are statutory rules. In that view of the matter, the distinction made by the State Government on the recommendation of the High Level Committee only on the ground of educational qualifications is contrary to the statutory rules. When both the persons holding different qualifications are appointed under the same Rules and are holding same posts, the decision of the State Government in prescribing two pay scales for the same post is contrary to law and violative of Article 14 of the Constitution and therefore the decision of the State Government dated 20th March 1991 is required to be quashed and set aside and the same is accordingly quashed and set aside.

8. The State Government is directed to give the same treatment to both the categories viz. the persons who are holding Degree and Diploma and they will be

placed in the same pay scale. The said exercise will have to be done within a period of six months from the date of receipt of this order. The petitioners will be entitled to get interest at the rate of 12% on the difference amount from the date of petition till realisation of the amount. Such interest shall be borne by the concerned officers who are responsible for the delay in implementing the order of this Court and shall have to be recovered from their salary. In the result, the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

Direct Service is permitted.