(2003) 02 GUJ CK 0036

In the Gujarat High Court

Case No : Special Civil Applications No''s. 794 and 3644 of 1987, 5846 of 1988, 2511, 5626, 5985 and 8287 of 1989

C.D. Totlani and Others APPELLANT

Vs

State of Guj RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 226, 227, 309

Citation : (2003) 02 GUJ CK 0036

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : N.J. Mehta Asso. for Petitioner Nos. 1 and 2 in Special Civil application No. 794 of 1987, for the Appellant; Hasit Dave, AGP for Respondent Nos. 1-2 and B.N. Patel, for Respondent Nos. 3-4 in Special Civil Application No. 794 of 1987, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—Since common issue is involved in all these petitions, they are being disposed of by this common judgment.

2. All these petitions are directed against the purported action of the respondents in seeking to revert the petitioners from their present Class-III

posts in the pay-scale of Rs. 1400-2600 to the lower posts in the pay-scale of Rs. 1200-2040 on the ground that they have not passed

Government Diploma in Cooperation and Accountancy (hereinafter referred to as ""GDCA"") Examination. Looking to the prayers made in the

petitions, three important issues are involved in all these petitions. The issues are as under;

(1) The apprehended reversion of the petitioners who have crossed the 45 years of age from their present post held by them at the time of filing of

the petitions;

(2) The failure of the respondent authorities in extending the benefit of exemption under Government Resolution dated 10th May 1962 to the

petitioners;

(3) The constitutional validity of the rules framed by the Government vide its notification dated 14th September 1967, on the ground that the said

rules so far as they confine the benefit of exemption only to those who had crossed 45 years of age on 10th May 1962 are ultra vires the Articles

14 and 16 of the Constitution of India.

3. Before the above issues are dealt with, it is necessary to have a look at relevant facts giving rise to this group of petitions. The facts are taken

from Special Civil Application No. 2511 of 1989 and since more or less similar facts are there in all other petitions, the facts of other petitions are

not required to be stated.

4. The petitioners in Special Civil Application No. 2511 of 1989 have joined services of the Cooperation Department during various dates from

1956 to 1963 in the pay-scale of Junior Clerk. The petitioners were promoted to various cadres in the pay-scale of Rs. 330-560 (old pay-scale)

and most of them were working as Senior Clerks. The petitioners were, thereafter, promoted to other Class-III posts and were working as either

Auditors, Head-Clerks, Cooperative Officers, Marketing Officers etc., in the pay-scale of Rs. 1400-2600 at the time of filing of these petitions.

All the petitioners have crossed the age of 45 years and have put in the services of 5 to 18 years in their present cadre, from which they were being

sought to be reverted.

5. It is the case of the petitioners that they crossed the age of 45 years and were working in their respective posts since quite a long period of time

and hence they were entitled to exemption from passing GDCA Examination. However, the respondent authorities were not treating the petitioners

as exempted in respect of the fact that they have crossed the age limit of 45 years. The Government Resolution dated 8-9-1961 provided for the

said examination. The Regulation No. 13 of this Government Resolution reads as under;

13. No person shall ordinarily be eligible for appointment as a permanent Auditor in the Cooperative Department unless he holds (a) the

Government Diploma in Accountancy or (b) a permanent auditor''s certificate granted by the Government of India, or (c) the Government Diploma

in Cooperative Accountancy or (d) the Government Diploma in Cooperation and Accountancy.

6. Thereafter, the Government had passed another Resolution on 10.5.1962 and substituted Regulation No. 13 by exercising its powers. The

newly inserted provision related to the age of passing GDCA Examination is as under;

13(3). The cases of officers who are above the age of 45 years and who have consistently good record and who are considered eligible for

exemption shall be submitted to Government.

13(4). Persons who are above the age of 50 years shall be exempted from passing the examination.

As per this substituted Regulation, the cases of officers who were above the age of 45 years and who have consistently good record and who

were considered eligible for exemption should be submitted to the Government and the persons who were above the age of 50 years shall be

exempted from passing the said examination. The said Regulation No. 13, as amended by Government Resolution dated 10th May 1962, had

again come to be amended by Government Resolution dated 14th September 1967 and the substituted clauses bearing Nos. 13(6)(i) and 13(6)(ii)

are as under;

13(6)(i) The cases of officers who were above the age of 45 years on 10.5.1962 and who had consistently good record and who were

considered eligible for exemption will be submitted to Government.

13(6)(ii) Persons who were above the age of 50 years on 10-5-1962 shall be exempted from passing the examination.

Thus, by virtue of the above referred amended Regulation, the employees, who had reached the age of 45 years on 10th May 1962, were

required to be considered eligible for exemption and the employees, who were above the age of 50 years on 10.5.1962, were required to be

exempted from passing the examination in question whereas the employees who had reached the age of 45 years/50 years after 10th May 1962

were not entitled to be considered for exemption from passing the examination in question.

7. The petitioners have further stated that the examination of GDCA consisted of 8 papers covering various subjects and were to be conducted

without books. The said examination also required a candidate to memorise various rules relating to Cooperation Department. The said

examination was very tough and was absolutely difficult for the persons who have crossed the age of 45 years. It was further stated that the

Government of Maharashtra had also followed this very policy by passing a Government Resolution dated 1.11.1977 without confining this

exemption only to those who have crossed the age of 45 years on any specific date. The said benefit of exemption was correctly extended to all

the employees who crossed the age of 45 years, on any day subsequent to the resolution.

8. The petitioners have further submitted that most of the petitioners had attained the age of 45 years long back and they were therefore entitled to

the benefit of exemption under the Government Resolution dated 10th May 1962 without confining the same to the employees who have crossed

the age of 45/50 years on that day. The respondent authorities, having extended benefit of exemption to a particular section of the employees in the

past, failed to extend such benefit to the petitioners by relying on the Resolution dated 14th September 1967. It was further stated that instead of

extending the benefit of the Government Resolution dated 10th May 1962 to the petitioners and granting of consequential benefits like

regularisation in the cadre which the petitioners held at the time of the petition, promotion, seniority etc., the respondent authorities were seeking to

revert the petitioners from their said posts. It is against the said apprehended action of reversion of the petitioners from their posts which they held,

the petitioners have filed these petitions before this Court.

9. Heard Mr. Shalin Mehta, learned advocate appearing for the petitioners in all these petitions and Mr. Hasit Dave, learned Assistant Government

Pleader appearing for the respondent authorities. Mr. Mehta has submitted that the respondent authorities have adopted an irrational policy by

confining the benefit of exemption to only those employees who have attained the age of 45 years on 10.5.1962. The employees, who had reached

the age of 45/50 years, after 10th May 1962, were denied the benefit of said exemption by the respondent authorities. He has further submitted that originally the respondent authorities have granted the benefit of exemption from passing the said examination to all employees who have

completed the age of 45/50 on 10.5.62. However, subsequently, the respondent authorities have arbitrarily confined the benefit of exemption to

those who had reached the age of 45 years on 10th May 1962. The restriction imposed by the respondent authorities with regard to the date had

no rationale behind it. In support of his submissions, Mr. Mehta has relied on the decision of the Hon''ble Supreme Court, in the case of D.S.

Nakara and Others Vs. Union of India (UOI), , wherein it is held that the extension of benefit of liberalised pension scheme only to the employees

who were in service on a particular date, namely March 31, 1979 and who had retired on or after March 31, 1979, was unconstitutional. It was

further held therein that there was no rationale in confining the benefit of liberalised pension scheme only to those who had retired on a particular

date and not prior thereto. Similarly in the present case also, Mr. Mehta has submitted that the respondent authorities should not have denied the

benefit of exemption from passing the GDCA Examination especially when the employees who had reached the age of 45 years on 10th May

1962 and the petitioners who had attained the age of 45 years after 10th May 1962. Thus, the decision of the respondent authorities was arbitrary,

illegal and violative of Articles 14 and 16 of the Constitution of India.

10. Mr. Mehta has further submitted that despite the long services of the petitioners in their present cadres they were not considered for further

promotion. Non-consideration of the petitioners for being regularised in the present cadres after granting them the benefit of exemption under the

Government Resolution dated 10th May 1962 was absolutely arbitrary and irrational. Instead of regularising the petitioners in their present cadres

and considering them for further promotion, the respondent authorities have sought to revert the petitioners from their present posts on the basis

that the petitioners had not so far passed the GDCA Examination.

11. Mr. Mehta has further submitted that the policy with regard to the petitioners'' department was absolutely discriminatory and irrational. Even

other employees working as Research Assistants in Bureau of Economic and Statistics, whose recruitment rules were framed by General

Administration Department, were given similar exemption simply on the ground that they have completed the age of 45 years. The policy of the

State Government has all along been in favour of giving exemptions in all recruitment rules or rules relating to passing of departmental examination

in favour of those who have crossed the 45 years of age. The petitioners should have not therefore been denied the said benefit of exemption. The

denial of this benefit, according to Mr. Mehta, is arbitrary, capricious and violative of Articles 14 and 16 of the Constitution of India.

12. Mr. Mehta has further relied on the Division Bench decision of this Court in the case of K.A. Barot of Mehsana & Ors. v. State of Gujarat and

others in Special Civil Application No. 3521 of 1980 and other cognate matters, decided on 2nd August 1982, wherein it is held that the action of

the respondent State of confining the benefit of exemption only to a group of employees who attained the age of 45 years on a particular date was

unconstitutional and thus the said benefit must be extended to all employees attaining the age of 45 years at any time.

13. On the basis of the aforesaid submissions, Mr. Mehta has strongly urged before this Court that the denial of benefit of exemption from passing

GDCA Examination despite the fact that the petitioners have crossed the age of 45/50 years long back is absolutely arbitrary, unreasonable and

violative of Articles 14 and 16 of the Constitution of India. The subsequent resolution/regulation of 1967 has no constitutional force as it

discriminates one group of persons from other group of persons and on that basis the respondent authorities are not entitled to revert the

petitioners from their existing posts. On the contrary by granting the benefit of 10th May 1962 resolution, the petitioners ought to have been

regularised in their respective posts and their cases should have been considered for further promotion, seniority and all other consequential

benefits.

14. Mr. Hasit Dave, ld. AGP appearing for the respondent authorities, on the other hand, has strongly defended the action of the respondent

authorities and submitted that there is no infirmity in the resolution dated 14th September 1967 confining the benefits to the employees who had

reached the age of 45 years on 10th May 1962. He has further submitted that the Government had taken a policy decision by passing resolution

dated 14th September 1967 and this Court while exercising the writ jurisdiction under Article 226/227 of the Constitution of India should not

interfere with such policy decision of the Government. He has further submitted that the State Government, in exercise of the powers conferred by

the Proviso to Article 309 of the Constitution of India has made amendments and additions to the Regulations for award of Government Diploma

in Cooperation and Accountancy and the said exercise of powers cannot be said to be arbitrary or excessive. He has further submitted that the

similar issue arose before the Hon''ble Supreme Court in Civil Appeal No. 1856 of 1970 in the case of J.K. Vasavada & Others v. Chandrakanta

Chimanlal Bhavsar & Anr. decided on 28th August 1975, wherein it has been laid down that qualification of GDCA Examination for promotion is

a necessary prerequisite. it was further held in that case that the order of Government of Gujarat of 1962 laying down that the GDCA Examination

as a necessary qualification for promotion is valid one and challenge to the said order is not sustainable. Since these very rules were held to be just

and proper and in accordance with the constitutional provisions, Mr. Dave has submitted that all these petitions should be dismissed without

granting any relief to the petitioners. Mr. Dave had further drawn my attention to the affidavit-in-reply filed on behalf of the respondent authorities

in Special Civil Application No. 5846 of 1988, wherein it was contended that the petitioners were promoted after the examination rules came into

force and, therefore, they cannot claim exemption because at relevant time they were in full knowledge of the fact that it would be necessary for

them to pass the examination. It was further contended that on account of non-availability of qualified persons, the petitioners were provisionally

and purely on temporary basis promoted in the grade of Rs. 425-800 subject to the condition that on availability of qualified persons they were

liable to be reverted, and subsequently they were demanding exemption from passing the said examination on the ground of age. It was only with a

view to stick to their posts they have taken this ground before this Court. It was further contended that the rules which were framed were

constitutional and the date which was fixed for exemption was just, proper and reasonable date because of the fact that they were employees of

the advanced age at the relevant time who were protected by this exemption, but the petitioners and all other persons who have got promotions thereafter cannot take the benefit of the said exemption nor can plead that the rule is bad in law or unconstitutional. It was further contended that

the activities of the Cooperation Department are expanding rapidly and incumbents working in the department have to attend to multifarious duties.

The work in the Cooperation Department is rather of specialized nature at every age and knowledge of the principles and practice of cooperation

is very much essential. Besides this, the knowledge of audit, accounting, banking etc., is also necessary. Keeping this view in mind, and for

acquiring proper understanding of the principles of cooperation and accountancy such a test like GDCA Examination is necessary for the

department to judge the knowledge of the employees. Thus, passing of the examination is very much important and essential for the smooth and

better administration of the department.

15. Mr. Dave has, therefore, submitted that the petitioners would not deserve for any relief in this group of petitions as the passing of GDCA

Examination is a prerequisite condition which cannot be dispensed with. If the petitioners are not in a position to clear this examination, they are

bound to be reverted and this Court should not grant any protection against any such reversion.

16. After having heard the learned advocates appearing for the petitioners and after having gone through the contents of the petitions as well as

affidavit-in-reply, I am of the view that the petitioners are entitled to the relief which they have claimed in these petitions. Before the issues raised

hereinabove are dealt with on merits, it is necessary to state that almost all employees have retired by now and hence there is no question of

reverting them to the lower cadres. This Court has granted stay against such reversion at the time when these petitions were admitted and under the

order of this Court, the petitioners had remained on their respective posts and they have retired also in the said posts. If the exemption was granted

to the petitioners, they would have earned future promotions in the establishment and since they have retired there is no question of granting any

future promotions. The only benefit which they would avail as a result of succeeding in these petitions is some monetary pensionary benefit. The

Government has correctly laid down the policy in the year 1962 as in the Resolution passed on 10th May 1962 in Clause 13(3) and Clause 13(4) it was specifically mentioned that the cases of the officers who are above the age of 45 years and who have consistently good record and who are

considered eligible for exemption shall be submitted to Government and that persons who are above the age of 50 years shall be exempted from

passing the examination. In this Regulation there was no cut-off date and it was also not contemplated. It was only by a subsequent resolution

dated 14th September 1967 the cut-off date was inserted and the employees who had reached the age of 45 years on 10th May 1962 were

required to be considered eligible for exemption and the employees who were above the age of 50 years on 10th May 1962 were required to be

exempted from passing the examination. There was no rational behind fixing this cut-off date for the purpose of granting exemption to the

employees. The other counterpart, namely State of Maharashtra, has not confined this benefit of exemption only to those who had attained the age

of 45 years on a particular date. There was no sound logic behind deviation from the consistent policy adopted earlier by the respondent

authorities. When the scheme has remained in existence for about 5 years and only on 14th September 1967 a change was made therein without

disclosing any reason behind it. This approach was deprecated by the Hon''ble Supreme Court in the case of D.S. Nakara, cited (Supra), wherein

it was specifically held that the extension of the benefit of liberalised pension scheme only to the employees who were in service on a particular

date i.e., 31st March 1979 and who had retired on or after March 31, 1979 was unconstitutional. Here in the case of the petitioners also, there is

no rationale in confining the benefit of the exemption only to those who had crossed the age of 45/50 years on 10-5-1962. The employees who

had crossed the age of 45/50 years on 10.5.62 and the employees who had crossed the age of 45/50 years after 10th May 1962 are similarly

situated persons. The action of the respondent-authorities of denying benefit of exemption from passing GDCA Examination to the petitioners does

not seem to be justified from any angle and even on the test of reasonable classification also the same would not be held to be valid or lawful. Even

this Court, while dealing with the case of K.A. Barot and Ors. , cited (Supra), and while striking down the Notification dated 28.2.1980

substituting the Proviso (iv) in sub-rule (3) of Rule 1, Proviso (iv) of 1978 rules and the proviso (iv) of 28-2-1980 rules, it has held that it goes contrary to the principle which was accepted that the persons, who attained the age of 45, on certain circumstances were required to be exempted

from appearing at the examination. This exemption, having been granted on good grounds, is now taken away by framing new rules, not only from

the persons who laboured under the impression that they had not to appear at the examination and therefore, did not appear in the examination in

1979 because of 1978 rules, but from all future persons who would in due course either by selection or by promotion join Class-I or Class-II

service in Cooperation Department. This rule is contrary to the recognised principles by the State that at a particular age a person is required to be

granted exemption. This rule has also created an absurd situation, and an absolutely unworkable situation and has brought about unjust and

discriminatory treatment to persons who are already in service and persons who are likely to be in service and likely to be promoted to Class-I

and Class-II posts. These observations are equally applicable to the facts of the present case as despite 1967 resolution, the petitioners were

promoted and the said Resolution was not pressed into service and subsequently they were told that they were liable to be reverted as they have

not passed the GDCA examination and they were not entitled to exemption from passing the said examination because of the fact that they have

not crossed the age of 45/50 years on 10.5.1962. The Supreme Court, in the case of JK Vasavada & Ors. , cited (Supra),relied on by the ld.

AGP, is slightly on the different point as there is no dispute on the proposition that the GDCA examination is a condition precedent for promotional

post. However, the issue regarding cut-off date, i.e., 10-5-62 was never before the Hon''ble Supreme Court and hence this decision would not

render any assistance to the respondent authorities for the purpose of justifying their stand taken in this petition. Considering the overall view of the

matter, it is required to be held that the petitioners who have crossed 45/50 years of age from their respective posts at the time when they filed the

petition were not liable to be reverted and their cases ought to have been considered for promotion when they fell due. However, since almost all

petitioners have retired by now, there is no question of either reversion or promotion. But for the purpose of their retiral and pensionary benefits,

this exercise is still required to be made and hence the respondent authorities are directed to consider their cases on the basis of Resolution dated

10.5.1962, without being influenced by the cut-off date of 10.5.1962 as inserted in the subsequent Resolution dated 14-9-1967 and to grant all

consequential benefits accordingly. It is further held that the failure of the respondent authorities in extending the benefit of exemption under

Government Resolution dated 10th May 1962 to the petitioners is absolutely unjust and improper and the same is held to be violative of Articles

14 & 16 of the Constitution of India. It is, therefore, held that the rule framed by the respondent authorities, vide Notification dated 14th

September 1967 cannot be held to be valid in so far as they confine the benefit of exemption only those who have crossed the age of 45/50 years

of age on 10th May 1962, as the same are ultra vires the Articles 14 & 16 of the Constitution of India.

17. Before parting with this judgment, the respondent authorities are directed to give effect to this decision, as early as possible so that the same

would render some assistance to the petitioners who had already retired from service, as far as their retirement benefits are concerned.

18. With these observations, all these petitions are allowed to the above extent. Rule in each of the petition is made absolute with no order as to

costs.

