

(1992) 07 GUJ CK 0002
In the Gujarat High Court

C.T. Shah and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967 — Rule 3(1)
Gujarat Panchayats Act, 1961 — Section 203, 203(2), 323, 323

Citation : (1992) 2 GLR 1600

Hon'ble Judges : R.D. Vyas, J;M.B. Shah, J

Bench : Division Bench

Judgement

M.B. Shah, J.—In this group of matters the petitioners have challenged the Gujarat Panchayat Service (Classification and Recruitment) (Second Amendment) Rules, 1977 by which the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967 are amended and by which common Clerical Cadres and Common Accounts Cadres are constituted instead of various cadres. They have also challenged the Gujarat Panchayat Service (Classification and Recruitment) (Eighth Amendment) Rules, 1978 (Annexure "A" by which the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967 are amended and the following sub-rule (4) is added:

(4) For the purpose of allotment to the common clerical cadre and the common accounts cadre, the Panchayat servants specified in the Table below shall be given notice for exercising option for allotment either in the common clerical cadre or in the common accounts cadre. Such option shall be exercised within a period of three months from the date on which the notice is served. Such notice shall be served on each such servant individually. If the number of servants who opt for a particular cadre exceeds the number of posts available in that cadre, the Committee shall finalise the allotment of such servants taking into consideration the following matters, namely

(a) length of service rendered by the servant and the experience of work he has gained during the service;

(b) educational qualifications of the servants;

(c) suitability of the servant for allotment in the particular cadre which shall be determined by holding oral test.

TABLE

1. Sr. Clerks mentioned in clerical Group-11 in Part-1 of Schedule IV-A to the said Rules.

2. Clerks mentioned in clerical Group-111 in Part-1 of Schedule IV-A to the said Rules.

3. Senior clerks mentioned in accounts Group-III in Part-11 of Schedule IV-A to the said Rules.

4. Clerks mentioned in accounts Group-IV-A in Part-11 of Schedule IV-A to the said Rules.

5. The Committee referred to in Sub-rule (4) shall consist of the following Officers, namely:

(i) District Development Officer

(ii) Deputy District Development Officer (in-charge of Establishment).

(iii) Accounts Officer, District Panchayat.

2. Before discussing the contentions raised by the learned Advocate for the petitioners, it should be noted that the State of Gujarat has framed the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967 in exercise of its powers u/s 323 of the Gujarat Panchayats Act, 1961. Rule 3(1) provides that the Panchayat Service shall consist of two Classes, namely; (i) Superior Panchayat Service and (ii) Inferior Panchayat Service. Sub-rule (2) (a) provides that the Superior Panchayat Service shall consist of posts which are not included in the Inferior Panchayat Service. Clause (b) of Sub-rule (2) provides that the Inferior Panchayat Service shall consist of posts specified in Schedule I. Schedule I consisted of 57 different posts. The rest of the posts were considered to be of Superior Panchayat Service. Schedule IV to the said Rules mentions number of posts in different branches of the panchayat, such as Agriculture Branch, Animal Husbandry Branch, Medical Branch, Ayurvedic Branch, Public Health Branch, Prohibition Propaganda Branch, Public Works Branch, Co-operative Branch, Statistical Branch, Social Welfare Branch, Revenue and Rural Development Branch, General Education Branch and General Branch. In all these branches number of cadres are mentioned, by the Second amendment in 1977 Rule 3A was added to the aforesaid rules which provides for constitution of Common Clerical and Common Accounts Cadres. Common Clerical Cadre is divided into three Groups, namely, (a) A Common Clerical Cadre of posts in Clerical Group I, (b) A Common Clerical Cadre of posts in Clerical Group II and (c) A Common Clerical Cadre of posts in Clerical Group III. Similarly, Common Accounts Cadre is

divided into four Groups, namely, (a) A Common Accounts Cadre of posts in Accounts Group I; (b) A Common Accounts Cadre of posts in Accounts Group II; (c) A Common Accounts Cadre of posts in Accounts Group III; and (d) A Common Accounts Cadre of posts in Accounts Group IV. Further, Schedule IV-A is added which provides which posts are included in Common Clerical Cadres and Common Accounts Cadres.

3. Keeping the aforesaid background of the Rules, we may consider the following submission of the learned Advocate for the petitioners:

1. The said amendment is illegal and ultra vires the powers given to the State Government under Sub-section (2) of Section 203 of the Gujarat Panchayats Act because the said section authorises the State Government only to form three cadres, namely, (1) district cadre, (2) taluka cadre and (3) local cadre but it nowhere authorises the formation of Common Clerical Cadre and Common Accounts Cadre in the district cadre itself.

2. Sub-rule (4) which is added by the Gujarat Panchayat Service (Classification and Recruitment) (Eighth Amendment) Rules, 1978 is illegal and discriminatory as it does not give option to opt for either Clerical Cadre or Accounts Cadre to all the employees except to the employees mentioned in the Table of the said Rules.

4. In our view, the first contention raised by the learned Advocate for the petitioners is totally misconceived. This would be clear from the bare reading of the relevant part of the Section 203 which is as under:

203 (1) For the purpose of bringing about uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions and duties of panchayats, there shall be constituted a Panchayat service in connection with the affairs of panchayats. Such service shall be distinct from the State service.

(2) The Panchayat Service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each class and cadre shall be such, as the State Government may by order from time to time determine:

Provided that nothing in this Sub-section shall prevent a district panchayat from altering, with the previous approval of the State Government, any class, cadre or number of posts so determined by the State Government.

(2A) (a) The cadres referred to in Sub-section (2) may consist of district cadres, taluka cadres and local cadres.

(b) A servant belonging to a district cadre shall be liable to be posted whether by promotion or transfer to any post in any taluka in the district

(c) A servant belonging to a taluka cadre shall be liable to be posted, whether by promotion or transfer to any post in any gram or nagar in the same taluka.

(d) A servant belonging to a local cadre shall be liable to be posted whether by

promotion or transfer to any post in the same gram or, as the case may be, nagar.

5. Reading the aforesaid Sub-section (2) of Section 203 it is apparent that the Panchayat Service shall consist of such cadres and posts as the State Government may by order from time to time determine. It also empowers the State Government to have different categories or classes, cadres and posts in the Panchayat Service. Sub-section (2A) further empowers the State Government to form district cadres, taluka cadres and local cadres. An employee belonging to (he district cadre can be posted by promotion or transfer in any taluka in the district. Similarly an employee belonging to a taluka cadre can be posted by promotion or transfer in any gram or nagar in the same taluka while an employee belonging to the local cadre can only be posted by promotion or transfer to any post in the same gram or nagar as the case may be. Not only this, but under Sub-section (2B) the Panchayat may have such other posts of such classes as the State Government may by general or special order determine. Such posts are to be called "deputation posts". Further, Section 323 empowers the State Government to make rules for carrying out the purposes of the Gujarat Panchayats Act. It can frame rules for all matters expressly required or allowed by the Act. In this view of the matter, it would be difficult to accept the first contention of the learned Advocate for the petitioners that the Gujarat Panchayat Service (Classification and Recruitment) (Second Amendment) Rules, 1977 by which Common Clerical Cadre and Common Accounts Cadre are created are in any way beyond the scope of Section 203(2) of the Gujarat Panchayats Act.

6. Apart from the aforesaid clear provision in Sub-section (2) of Section 203, it is established law that the Panchayat Service constituted u/s 203 of the Gujarat Panchayats Act is a Civil Service of the State. The members of the Panchayat Service are Government Servants of the State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, . In this view of the matter, the Government can amalgamate the cadres and can create common cadre and it can also bifurcate the cadres even if there is no specific provision to that effect. It is entirely a matter for the State to decide whether to have several different cadres or to have one integrated cadre in its services. It is a policy matter which would not normally attract the applicability of equality clause. While dealing with the similar contention in the case of Reserve Bank of India Vs. N.C. Paliwal and Others, , the Court has held that it is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. The relevant observations in that case are as under:

We fail to see how integration of different cadres into one cadre can be said to involve any violation of the equality clause. It is now well settled, as a result of the decision of this Court in Kishori Mohanlal Bakshi Vs. Union of India, that Article 16 and a fortiori also Article 14 do not forbid the creation of different cadres for Government service And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different

cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by the Combined Seniority Scheme cannot in the circumstances be assailed as violative of the constitutional principles of equality.

7. Further, while dealing with the creation of common cadre of the Superintendents in the Gujarat Government Secretariat in the case of K.S. Vora and Others Vs. State of Gujarat and Others, , the Court observed as under:

The scheme of this rule protected the rank then held by every member of the service notwithstanding alteration of seniority on the new basis. This, therefore, makes it clear that accrued benefits were not to be interfered with To that extent the 1977 Rules were not retroactive. In spite of the protection of Rule regarding the post then held, the Rules brought about a change in the inter se seniority by adopting the date of initial recruitment and the length of service became the basis of refixing seniority. Total length of service for such purpose is a well-known concept and could not be said to be arbitrary. Undoubtedly one of the consequences of the change in the basis was likely to affect prospects of promotion-a matter in future. Two aspects have to be borne in mind while considering the challenge of the appellants to this situation. It was a historical necessity and the peculiar situation that arose out of Government's decision to create a common cadre with four grades in the entire Secretariat. We would like to point out with appropriate emphasis that there was no challenge to creation of the common cadre and certainly Government was competent to do so. The second aspect to be borne in mind is that Rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of Rules to regulate seniority, if the Rules were made bona fide and to meet exigencies of the service, no entertainable grievance could be made. If these are the tests to apply, we do not think the appellants have indeed any grievance to make.

In view of the clear position of law it cannot be stated that the creation of Common Clerical Cadre and Common Accounts Cadre is in any way illegal or without authority.

8. It should also be noted at this stage that the validity of the aforesaid Rules was challenged before this Court in Special Civil Applications Nos. 2177 of 1978, 185 of 1978, 1765 of 1978, 379 of 1980 & 911 of 1978 and Special Civil Application No. 294 of 1978. By the judgment and order dated 11th August, 1983 the Division Bench rejected these petitions. The Court upheld the validity of the Rules. The Court negatived the contentions of the petitioners that (i) as the petitioners were required to opt for the Clerical Cadre or Accounts Cadre, therefore the chance of promotion will be reduced and hence rules were violative of Article 16 of the Constitution; (ii) as the new posts have been brought in either Common Clerical Cadre or Common Accounts Cadre, therefore, fresh chances of promotion to the higher cadre will further be reduced; and (iii) new

rules were prejudicial to the rights guaranteed to Panchayat servants u/s 206 of the Panchayats Act and, therefore, ultra vires the powers of the State Government. The Court observed that a rule which merely affects the chances of promotion cannot be regarded as varying conditions of service. The Court further relied upon the decision of this Court in the case of S.D. Sharma and Anr. v. State of Gujarat 1977 (2) SLR 505, for arriving at the conclusion that it is a prerogative of the Government to constitute as many services as may be necessary for the convenience and efficient administration of the State. The Court held that reorganisation of the cadres or creation of Common Clerical Cadre and Common Accounts Cadre cannot be said to be in any way violative of employees' right. The Court further observed that instead of getting promotion in the respective branch, Panchayat employees will be entitled to numerous posts in the respective cadres to which they have opted for or may opt. The Court also negated the contention that Eighth Amendment Rules by which Rule 4 is inserted is in any way illegal by holding that appointment to the respective Common Cadre is not to be done by the Government at its own sweet will. After giving option to opt for either of the Common Cadres allotment is required to be made according to the principles which have been laid down in the amended rules by the Committee constituted for that purpose. The Court observed that the criteria laid down in the said Rules for allotment, i.e., length of service, educational qualifications and suitability of the servant for the allotment in particular cadre cannot be said to be in any way extraneous or irrational. The Court as a result rejected the petitions by holding that the Gujarat Panchayat Service (Classification and Recruitment) (Second Amendment) Rules, 1977 and the Gujarat Panchayat Service (Classification and Recruitment) (Eighth Amendment) Rules, 1978 are infra vires.

9. In view of the aforesaid decision also this petition requires to be rejected.

10. The second contention of the learned Advocate for the petitioners that Rule 4 which gives option to the employees mentioned in the Table to the said Rule is discriminatory and violative of Article 16 also requires to be rejected because the option is given after taking into consideration the posts available in the Common Clerical Group and Common Accounts Group. Take for illustration, if there is no post of Store Keeper in the Accounts Group, then there is no question of giving option to the Store Keeper to opt for Accounts Group. Option is given to each employee originally belonging to the Clerical and Accounts posts. In any set of circumstances, the petitioners have not made out any case how it is violative of Article 14 or 16 or that they were entitled to opt for the post either in the Common Clerical Cadre or in the Common Accounts Cadre, yet they were not given such option.

11. Lastly, with regard to Special Civil Application No. 2553 of 1981 it is observed that it would be open to the petitioner to approach the competent authority for his grievance against his reversion from the post of Deputy Accountant to the post of Senior Accounts Clerk.

No other contention was raised in these petitions. Hence all these petitions are rejected. Rule discharged with no order as to costs.