
(1994) 01 GUJ CK 0020
In the Gujarat High Court

G.C. Goswami

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-01-1994

Acts Referred:

Gujarat Lower Revenue Qualifying Examination Rules, 1978 — Rule 7

Citation : (1994) 2 GLR 1022

Hon'ble Judges : B.N. Kirpal, C.J;M.S. Parikh, J

Bench : Division Bench

Judgement

M.S. Parikh, J.—Inter-se seniority in the cadre of Inspectors, Motor Vehicles, based on passing of departmental examination came precisely to be canvassed by the petitioner-appellant herein by challenging seniority lists dated 18-12-1986 and 6-2-1988 in Special Civil Application No. 6163 of 1991 and now in this Letters Patent Appeal against the judgment dated 26-12-1991 rendered by the learned single Judge in the said Special Civil Application.

2. According to the petitioner he joined services in May, 1972 as Assistant Inspector of Motor Vehicles as a direct recruit. He stood promoted to the post of Inspector in April, 1980. Upon completion of 3 years of his service he became eligible to appear in the departmental examination in the month of April, 1983 and he in fact appeared in January, 1984 and passed the said examination at first attempt within specified chances and within specified period. According to him, some respondents had not cleared the examination within the specified period and/or within specified chances and, therefore, they would not be entitled to get promotion prior to the petitioner and their cases cannot be considered before the case of the petitioner is considered. In the impugned seniority lists the petitioner has been shown junior to the respondents and such an action of showing the petitioner junior to the respondents, on the part of the respondents authorities, is contrary to law and sought to be quashed and set aside.

3. The learned single Judge, upon consideration of the relevant rules, found that even if a candidate does not qualify himself by passing relevant examination

within the stipulated period and/or stipulated chances, he does not get his right to the promotion of higher post of R.T.O./ A.R.T.O. forfeited and such an act would have no reflection over the seniority so far as the lower cadre of Inspector/ Supervisor is concerned. Reference is made to the fact that the original proviso provided even with regard to the claim of seniority for the purpose of promotion, but then the said proviso came to be amended in the year 1982 with retrospective effect from September 30, 1978 saying that if a person becomes eligible for the promotion to the post of A.R.T.O./R.T.O., he shall not be entitled to claim seniority over those persons who have been promoted to the post of A.R.T.O./R.T.O. as the case may be, before he became eligible for promotion on account of he having been passed the departmental examination earlier than him. Bearing in mind the fact that no actual promotion had taken place it has been held that the petitioner cannot claim any benefit over the respondents on the basis of the rules in question. Distinguishing the decision in Special Civil Application No. 2860 of 1983 (N.M. Nayi & Ors. v. Collector, Mehsana District) and companion matters, rendered on 16-12-1983 by a Division Bench of this Court and relying upon an identical case in Kiritkumar Kantilal Malani v. State of Gujarat & Ors., reported in 1985 26 GLR 1077 the learned single Judge held that the passing of relevant examination within the stipulated period and/or stipulated chances would not have any reflection on the seniority so far as lower cadre of Inspector/Supervisor is concerned. He, therefore, dismissed the petition with the result that the petitioner is before this Court as stated above.

4. Mr. R.K. Mishra, Learned Counsel for the appellant has repeated his submission based on the same decision which has been pressed into service before the learned single Judge.

5. In Special Civil Application No. 2860 of 1983 between N.M. Nayi & Ors. v. Collector, Mehsana District & Ors., and other companion matters, the Division Bench consisting P.S. Potti, C.J. and S.B. Majmudar, J. (as they then were) by its decision dated 16-12-1983 had an occasion to deal with the Gujarat Lower Revenue Qualifying Examination Rules, 1978 (for short "L.R.Q.E. Rules"). Rule 7 has been once again canvassed in support of the submission that the said Rule with the proviso thereto is identical with the relevant rule and the proviso required to be considered in the present case. Rule 7 of L.R.Q.E. Rules reads as under:

7. A person (other than a direct recruit) who has failed to pass the examination within the specified period and chances during the prescribed period, shall, notwithstanding such failure, be eligible to appear at any time in such examination, on payment of an examination fee of Rs. 15/- and on passing of such examination he shall be eligible for confirmation and promotion to the higher post.

We would pause here to emphasize the word "confirmation" in the above rule.

It was followed by following proviso:

Provided that he shall not be entitled to claim seniority over those persons, who may have passed the examination earlier.

The aforesaid proviso came to be substituted by 1982 Amendment and the substituted proviso reads as under:

Provided that he shall not be entitled to claim seniority over those person who have been promoted before he became eligible for promotion post, on account of their having passed the Departmental Examination earlier than he, notwithstanding that he was senior to the persons promoted in the cadre from which promotion was given.

The relevant rules in so far as present case is concerned are Gujarat Motor Vehicles Department (Conditions of Services relating to Regional Transport Officers and Assistant Regional Transport Officers" Departmental Examination), Rules, 1974. Rule 6 Sub-rule (2) of these Rules reads as under:

(2) An Inspector or Supervisor who has failed to pass the examination within the specified chances and specified period shall, notwithstanding such failure, be eligible to appear at any time in such examination on payment of an examination fee of (Rs. 30 only) Rupees thirty only and if he passes the examination, he shall be eligible for promotion to the post of Assistant Regional Transport Officer or Regional Transport Officer, as the case may be.

The proviso to the aforesaid rule as it stood before 1982 Amendment would read as under:

Provided that a person who passes the examination under Sub-rule (1) or (2) of this rule, shall not be entitled to claim seniority for the purpose of promotion over those Inspectors or Supervisors who though junior to him, may have passed the examination earlier than him.

However, in so far as present case is concerned, the aforesaid proviso came to be amended with retrospective effect from 30th September, 1978 as per the Amending Rules of 1982 by substituting following proviso:

Provided that a person who passed the examination under Sub-rule (2) or (2) of this rule shall become eligible for promotion to the post of Assistant Regional Transport Officer or Regional Transport Officer, as the case may be, but he shall not be entitled to claim seniority over those persons who have been promoted to the post of Assistant Regional Transport Officer or Regional Transport Officer, as the case may be, before he became eligible for promotion, on account of their having passed the Departmental Examination earlier than him, notwithstanding that he was senior to the person so promoted in the cadre of Inspector of Motor Vehicles or Supervisor.

6. Shortly stated the submission is that the aforesaid provisions of the respective rules, namely, L.R.Q.E. Rules and the R.T.O./A.R.T.O. Departmental Examination Rules are identical and so that even the existing seniority in the cadre of

Inspectors, Motor Vehicles would also be affected by the said Rules and would also be required to be re-set according to the passing of the examinations in specified chances and within specified period on one hand and passing of examination outside specified chances and specified period, on the other.

7. Repslling the aforesaid submission, which was also made before the learned single Judge, the learned single Judge placed reliance upon another decision of Division Bench of this Court in the case of Kiritkumar Kantilal Malani v. State of Gujarat (supra) where Rules 7 and 8 of the Sales Tax Officers (Sales Tax Department) Recruitment Rules, 1969 were under consideration. There also Rule 7 speaks of eligibility to appear in departmental examination beyond specified chances on payment of examination fee of Rs. 30/- and upon passing of examination eligibility to the promotion to the post of Sales Tax Officer according to his original seniority in the cadre of Sales Tax Inspector. Proviso to Rule 7 as it stood originally was as under:

Provided that he shall not be entitled to claim preference to those persons who may have passed the examination earlier.

That proviso also stood substituted in 1981 by following proviso:

Provided that he shall not be entitled to claim seniority over those who have been promoted as Sales Tax Officers before he become eligible for promotion to the post of Sales Tax Officer on account of their having passed the Departmental Examination earlier than he, notwithstanding that he was senior to the persons so promoted in the cadre from which promotion was given.

The learned single Judge held that in that case the relevant rules and the proviso could be said to be identical with the relevant rule and proviso required to be considered in the present case. Mr. Mishra, Learned Counsel for the appellant questioned this conclusion by referring to para. 9 of the decision in the case of Kiritkumar (supra). He repeated the argument which has been dealt with in that para. The argument is that the earlier Division Bench in the case of N.M. Nayi (supra) held as a general ratio to the effect that persons passing L.R.Q.E. examination within specified chances and period would get precedence over those not passing the said examination within specified chances and period in so far as seniority in the cadre itself was concerned. The Bench dealing with Kiritkumar's case, however, held that the rules as they stood before the Bench in the case of Kiritkumar and the rules as they stood before the Bench in the case of N.M. Nayi (supra) were not having the same perspectives, and though they deal with analogous situations, they did not deal with identical situations. We would reproduce the following observations which merit consideration while accepting the view of the learned single Judge that the respective rules in both the aforesaid cases were not identical and the respective rules in Kiritkumar's case (supra) and the present case are identical:

...but we find on the analysis of the spectrum of the rules in the background that the two Rules have different objectives to be achieved. In other words, though

they appear to be similar, they are distinct in their operations....

...If the interpretation canvassed by Mr. Tanna is adopted, it would mean that as long as regulars are available, late Latifs will not get a chance of promotion and they will be constantly pushed down....

Mr. Y.F. Mehta, learned A.G.P. submitted that there is a vital difference between Rule 7 of L.R.Q E. Rules and the relevant rules applicable in this case. It is the word "confirmation" appearing in Rule 7 of L.R.Q.E. Rules which marks out such a difference. This submission of Mr. Mehta merits acceptance while comparing the rules in Kiritkumar's case (supra) and the rules in N.M. Nayi's case (supra). Bearing in mind the relevant rule applicable in this case and comparing the same with the relevant rule in Kiritkumar's case (supra), we would say that the learned single Judge has rightly relied upon the Division Bench judgment in Kiritkumar's case (supra).

8. Summing up, we would say that there is no substance in the repeat submission of Mr. Mishra, Learned Counsel for the appellant that even if no actual promotion has taken place, passing of the examination within specified chances and specified period would dislodge the seniority of those who have not passed the examination within specified period and specified chances.

9. On a plain reading of the relevant Rules in so far as the present case is concerned, it is clear to us that the passing of the examination assumes importance when the event of actual promotion occurs and the only distinction that arises at the time of such an event is between those who have passed the examination and those who have not passed the examination. Rules nowhere provide for separate seniority list to be maintained in the cadre of Inspectors, Motor Vehicles, on the basis of passing of departmental examination. If the submission of Mr. Mishra is accepted, it would amount to dispensing with seniority in its entirety and fixing and refixing seniority in the same cadre from time to time according to the passing of the Departmental Examination. This is nowhere to be found in the relevant Rule and the proviso. Seniority in the same cadre has its own place, however, departmental examination is required to be passed for being eligible to be considered for promotion to the post of R.T.O./ A.R.T.O. and truism it would be to state that even amongst those who have been found to be of proved merit and efficiency seniority would be the governing factor even if not provided for.

10. In view of what is stated above, we find no merit in the submission made on behalf of the appellant. We, therefore, dismiss the Letters Patent Appeal, however, with no order as to cost.