
(1993) 08 GUJ CK 0012
In the Gujarat High Court

Gujarat State Civil Supplies Corporation Ltd.

APPELLANT

Vs

Dashrathlal L. Patel

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1993) 2 GLR 1676

Hon'ble Judges : S. Nainar Sundaram, C.J;S.D. Dave, J

Bench : Division Bench

Judgement

S.D. Dave, J.—This Letters Patent Appeal has been directed against the orders pronounced by the learned single Judge in Special Civil Application No. 6775 of 1986 dated November 30, 1992. The relief accorded to the petitioner by the learned single Judge vide the said orders runs thus:

...Accordingly, I would direct the respondent to operate the select list of Depot Manager published in the month of April, 1985 so far as petitioner is concerned and to give appointment to the petitioner to the post of Depot Manager within four weeks from the receipt of the writ of This Court. Rule is accordingly made absolute to the aforesaid extent.

2. The question which arises for our consideration in the present Letters Patent Appeal may be formulated thus:

...Whether a Select List drawn up in conformity with the existing Recruitment Rules for filling up the existing vacancies can be abandoned and the process of selection which had culminated in drawing up of such a Selection List can be set at naught either (A) Because of the coming into operation of the New Rules which are only prospective in nature, or (B) Because of a subsequent settlement between the employer and some of the in service employees to which a selectee on the list was never a party and which again provides for a relaxation qua the experience qualification in violation of the Rules?

The petitioner who is the respondent herein had approached This Court by filing

the petition under Article 226 of the Constitution of India, inter alia praying for the appropriate writ or direction to the original respondent - the appellant herein, Gujarat Slate Civil Supplies Corporation Limited, to operate the Select List for the post of Depot Manager and to give him the appointment on the basis of his selection and his inclusion in the select list prepared by the respondent-Corporation.

3. The brief facts beyond the pale of controversy are that, that there were certain vacancies for the post of Depot Manager with the respondent-Corporation and, therefore the Corporation had asked for the sponsoring of the names of eligible candidates from the Employment Exchange, and accordingly, the name of the petitioner came to be sponsored. The petitioner vide letter dated 1st December, 1984 was asked to participate in competitive written test examination to be conducted on 16th December, 1984. The petitioner having passed the above said test was called for personal interview vide intimation letter dated 2nd March, 1985 and later on, on the basis of his performance during the interview he was selected and his name was included in the select list at Serial No. 11. The said select list was published on the notice board of the respondent-Corporation in the month of April 1985. Thus, it appears that the petitioner was duly selected for the post of Depot Manager and his name appeared at Serial No. 11 in the select list prepared and published by the respondent-Corporation. As the petitioner was not able to secure the appointment on making certain inquiries he had learnt that the respondent-Corporation has now decided not to operate the above said select list in view of the subsequently framed Recruitment Rules, under which a different quota was fixed for the Direct Recruits. The above said attitude of the respondent-Corporation had provided the petitioner with the necessary provocation to challenge their action by filing the petition before This Court.

4. In response to the Rule in Special Civil Application issued by This Court, the respondents had appeared and by filing the affidavit-in-reply it was contended inter alia that, a Select List of 40 candidates was prepared by them in April 1985 for filling up the post of Depot Managers, and that, the name of the petitioner came to be included in the said list. The respondent-Corporation have further averred in the affidavit-in-reply that after the select list which included the name of the petitioner was prepared the Rules called "G.S.C.S.C. Recruitment and Promotion Rules, 1985" came to be enacted and that, the said Rules were approved and made operative by the Board of Directors vide Resolution dated 14th June, 1985, and under the said Rules the quota allotted to the direct recruits and promotees and deputationists came to be altered. It was also further contended on behalf of the respondent-Corporation that, looking to the fresh quota arrangement the Depot Managers who had come in service by way of direct recruitment were in excess than the prescribed quota under the new rules and, that, therefore the Corporation had decided not to fill up the posts by direct recruitment, and therefore, the said list could not be operated. It was also further contended by the respondent-Corporation that as there was already an

excess in recruitment of direct recruits in the post of Depot Managers there was some discontent amongst the employees and that, with a view to buy industrial peace an agreement or a settlement was arrived at between the Corporation and the employees on 3rd July, 1985, under which the Corporation had inter alia agreed to fill up the post of Depot Managers by promotion of service candidates; and therefore also the respondent-Corporation was not in a position to and also was not required to operate the select list in which the name of the petitioner got included.

5. The Learned Counsel Mr. K.M. Patel appearing on behalf of the respondent-Corporation had urged before the learned single Judge that since the decision of the Corporation was neither arbitrary nor unreasonable and was based on the subsequently framed Recruitment Rules, no interference of This Court under Article 226 of the Constitution of India was called for. It was also urged by the Learned Counsel Mr. Patel for the Corporation that a mere inclusion of the name of the candidate in the select list confer no right in his favour and that, the mere fact of inclusion of his name in the select list was not enough to secure any relief, much less a mandamus from the Court exercising high prerogative writ jurisdiction.

6. The learned single Judge has decided the above said contentions raised by the Learned Counsel Mr. Patel in view of the Supreme Court decision in case of P. Mahendran and others Vs. State of Karnataka and others, and a Bench pronouncement of This Court in case of Kantibhai Parmabhai Vankar and Others Vs. District Superintendent of Police and Others, and has come to the conclusion that when the newly framed rules were only prospective and never retrospective in nature the selection of a candidate already made on the basis of the existing rules cannot be set at naught on the ground of subsequently amended rules. The learned single Judge was also of the opinion that it was not open for the respondent-Corporation to successfully urge before him that because the respondent-Corporation had entered into an agreement or settlement to appease a class of employees for the purpose of buying industrial peace by expressly agreeing to violate the rules, the rightful claim of the petitioner could not have been denied According to the learned single Judge, accepting the case put forth by the respondent-Corporation would amount to "a mockery of Service Jurisprudence" and would leave behind a very poor image of an ideal employer. The above said view of the learned single Judge has culminated in the orders, which are sought to be canvassed in the present Letters Patent Appeal before us.

7. Mr. K.M. Patel, the Learned Counsel appearing on behalf of the respondent-Corporation urges before us that as the decision of the Corporation can never be branded either as arbitrary or unreasonable and is based on the subsequently framed Recruitment Rules, it was not open for the learned single Judge to issue the direction as has been done under Article 226 of the Constitution of India. The Learned Counsel Mr. Patel further urges that merely because the petitioner came to be selected and his name came to be included in the select list he cannot by

way of right claim the appointment which is the prerogative of the employer, namely, the respondent-Corporation only. Any how, the Learned Counsel Mr. P.C. Kavina appearing on behalf of the original petitioner/respondent herein has urged that the matter cannot be said to be res Integra in view of the Supreme Court pronouncement in case of P. Mahendran (supra) and the Bench pronouncement of This Court in case of Kanntibhai Parmabhai Vankar (supra).

8. As noticed by the learned single Judge, the fact that the petitioner was sponsored by the Employment Exchange and that, he was invited to participate in the competitive test examination and that, ultimately he was called for personal interview and later he was selected and his name was included in the select list at Sr. No. 11 are not in dispute. The case put forth by the respondent-Corporation as has been pointed out by the learned single Judge is that though the select list containing names of 40 candidates including the name of the petitioner was prepared by the respondent-Corporation in April 1985 for the post of Depot Managers, later on the new rules called ""G.S.C.S.C. Recruitment & Promotion Rules, 1985" came to be enacted by the respondent-Corporation and that under the said rules the quota allocated for direct recruits on one hand and promotees and deputationists on the other hand was in the ratio of 30 : 70. It was also the case of the respondent-Corporation that after coming into force of the new rules the direct recruits were far more in excess of the quota prescribed under the new rules and that, with a view to appease the employees led by the Union an agreement or settlement was arrived at on 30th July, 1985, whereunder the Corporation had agreed with the Union inter alia to fill up the post of Depot Managers by promotion of internal candidates by relaxing the experience qualification. Thus it is clear that the respondent-Corporation after admitting all the material facts put forth by the petitioner, had to urge that the select list in which the petitioner's name finds place cannot be operated because of the coming into force of the new Rules of 1985 and because of the agreement or the settlement between the respondent-Corporation and the Union.

9. While allowing the petition of the petitioner and granting him the relief as noticed by us earlier, the learned single Judge has placed reliance upon the Supreme Court pronouncement in case of P. Mahendran and Ors. (supra). The said decision in our opinion settles the position by saying that it is a well settled rule of construction that every Statute or statutory rule is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. This pronouncement of the Supreme Court also lays down that the amended rules cannot be applied to invalidate the selection already made. The Supreme Court has summed up the above said two settled position by saying that:

The amended rule could not be applied to invalidate the selection made by the Commission. It is true that a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the

advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment rules he acquires right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. In the instant case the Commission had acted in accordance with the then existing rules and there is no dispute that the appellants were eligible for appointment, their selection was not in violation of the recruitment rules, therefore, setting aside the select list prepared by the Commission would not be proper.

10. As pointed out by the learned single Judge in his orders, the dispute involved in case of P. Mahendran and Ors. (supra) related to the selection and appointment of Motor Vehicles Inspectors. The recruitment to the said post was regulated by the Kamataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1962, framed under Art, 309 of the Constitution. The Rules provide for direct recruitment to the post of Motor Vehicle Inspectors and lay down the minimum qualification inquiring a candidate to be holder of Diploma in Automobile Engineering or Mechanical Engineering. In 1978 the Kamataka Public Service Commission held selections and about 200 posts of Motor Vehicle Inspectors were filled up from amongst the candidates holding Diploma in Mechanical Engineering and in Automobile Engineering. On September 28, 1983, the Public Service Commission issued an advertisement inviting applications for 5.6 posts of Motor Vehicle Inspectors which was later on increased to 102 posts. The advertisement specifically stated that the selection shall be made in accordance with the Recruitment Rules, 1976, and it further stated that a candidate for selection must be holder of Diploma in Automobile Engineering or Mechanical Engineering. The appellants petitioners who were holding Diploma in Mechanical Engineering alongwith others applied for selection to the post of the Motor Vehicle Inspectors and the Commission had commenced holding of interviews in August, 1984. After an interregnum caused by the orders of the Kamataka High Court, the Commission resumed interviews and declared result of the selection on 26th June, 1987, which was published in the Kamataka Gazette on 23rd July, 1987. The selected candidates were given intimation of their selection. But in the meanwhile the State Government of Kamataka amended the Recruitment Rules by a Notification dated May 4, 1987, published in May 14, 1987 omitting the qualification of Diploma in Mechanical Engineering for the post of Motor Vehicle Inspectors. Consequent to such an amendment in the rules, the holders of Diploma of Automobile Engineering became exclusively eligible for appointment in the post in question, and the holders of Diploma in Mechanical Engineering ceased to be eligible for selection and appointment to the said post. In the background of these facts the Supreme Court has noticed that the whole question for the consideration was as to whether the amendment made in the Rules on 14th May, 1987 render the selection illegal. Ultimately the Supreme Court has opined that the appellant's right to selection and appointment could not have been defeated by the subsequent amendment in the Rules.

11. The Bench decision of This Court in case of Kantibhai Parmabhai Vankar and Ors. (supra) has taken a similar view by following the said decision in case of P. Mahendran and Ors. (supra), by saying that when the amended rules which were only prospective in nature, the selection made as per unamended rules cannot be cancelled.

12. In our opinion the facts of the case before the learned single Judge and which have been put on canvass before us again, fully justify the import of the ratio of the Supreme Court decision in case of P. Mahendran and Ors. (supra) duly followed by the Bench decision of This Court in case of Kantibhai Parmabhai Vankar and Ors. (supra). It cannot be disputed that the amended Rules are only prospective in nature and that there is nothing in the rule either expressly or by necessary implication that they have a retrospective effect. In view of the facts situation, as has been laid down by the Supreme Court in case of P. Mahendran and Ors. (supra) we are of the opinion that the selection of the petitioner made by the respondent -Corporation on the basis of existing rules could not have been abandoned and set at naught on the basis of the amended Rules which are never retrospective in operation.

13. The learned single Judge was of the opinion that it was not open for the respondent-Corporation to successfully urge that because of a settlement or an agreement entered into between the Corporation and the Union the Select List could have been abandoned or given a go-bye. The relevant paragraph of the said agreement runs thus:

2. Relaxation in the length of the experience for promotion to the higher post.

It was decided to promote employees working as Assistant, Sr. Assistant, Depot Manager and Assistant Manager by obtaining the approval of the Board considering them as special case by giving relaxation in the length of experience as required in the lower cadre as provided in the rules approved by the Board on 14-6-1985 at the first instance only. This will not affect the provisions of the rules already approved on 14-6-1985 by the Board

In our opinion the view expressed by learned single Judge did never lack in jurisdiction when it is said the fact of the Corporation having entered into an agreement or settlement subsequently with a section of in-service employees aimed to buy industrial peace, at the cost of the petitioners, could not have the effect of cancellation of the list.

14. The Learned Counsel Mr. Patel appearing on behalf of the Corporation, with a view to persuade to take a different view has placed reliance upon the case law. Firstly the reliance has been placed by the Learned Counsel Mr. Patel on a Supreme Court decision in case of I.J. Divakar and Others Vs. Government of Andhra Pradesh and Another, . The said Supreme Court pronouncement recognises the salutary principle in service parlance, by saying that the inviting of the application for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application. The

Supreme Court pronouncement in *Jatinder Kumar and Ors. v. State of Punjab and Ors.* AIR 1984 SC 1851 lays down that a person cannot claim as of right that the Government must accept the recommendation of the Public Service Commission, and the process for selection and the selection itself for the purpose of recruitment against anticipated vacancies do not create a right to be appointed to the post, which can be enforced by a mandamus. In case of *Shankarsan Dash Vs. Union of India*, , it has been said that the inclusion of a candidate's name in the merit list does not confer any right to be selected and that the candidate could not as of right, claim that he should have been selected, when his name could not be included before the process of final selection was closed. In *Union Territory of Chandigarh Vs. Dilbagh Singh and others*, , the Supreme Court has said that, where the Administration had cancelled the list on finding the list to be dubious having been prepared in unfair and injudicious manner, the cancellation was bona fide and for valid reasons. The reference to two latter decisions has been made by the Learned Counsel Mr. Patel appearing on behalf of the appellant-Corporation to impress upon us that if the decision not to fill up the vacancies has been taken bona fide for appropriate reasons, it cannot be said that the said was an act done in arbitrary manner. When no exception can be taken with the principles made known to us by Mr. Patel by a detailed reference to all these Supreme Court pronouncements, we are of the opinion that, in the fact situation of the Letters Patent Appeal before us the said decisions would not assist Mr. Patel in his submissions before us. Our attention has been drawn to the Supreme Court decision in *The State of Haryana Vs. Subash Chander Marwaha and Others*, , with a view to urge that the Government is competent to fix a higher score for selection than one required for mere eligibility. Mr. Patel has read before us the under-mentioned observations of the Supreme Court in case of *E.P. Royappa Vs. State of Tamil Nadu and Another*, :

...Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the ante-chamber of the mind, is not legitimate and relevant but is extraneous and outside to area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

We do not think that the above said two decisions would carry the case of the appellant-Corporation any way further.

15. We are, while endorsing the views expressed by the learned single Judge, inclined to say that the process of selection carried through the required avenues in conformity with the existing Rules and culminated in drawing up a Select List

duly published wherein the petitioner did find a place, could not have been abandoned on any of the two grounds as suggested and done by the respondent-Corporation. Neither the subsequent Rules, only prospective and never retrospective in operation, nor the agreement or settlement arrived at between the Union and the respondent-Corporation to which the petitioner was never a party, which provided for the relaxation of the experience qualification vis-?-vis the new Rules also, could validity be taken as a ground just and proper, to obliterate the whole selection process which has resulted in the drawing upon and the publication of the Select List. The action of the respondent-Corporation also cannot be saved and sustained staying that the same being not arbitrary or unreasonable can never be challenged by a selectee. Even accepting the case of the Corporation on the assumed hypothesis that the action of the respondent-Corporation does not suffer from any of the two vices then also, the whole process of selection, reached at the peak of preparing and publishing of a Select List in complete harmony and regard with the Rules in existence, at all the relevant times.

16. Thus, reading the orders pronounced by the learned single Judge in the background of the facts situation, and in view of the Supreme Court decision in case of P. Mohendran and Ors. (Supra), and the Gujarat High Court decision in Kantibhai Parmabhai Vankar and Ors. (supra) and upon making our own assessment, we are satisfied that no exception can be taken to the opinion expressed and the orders made by the learned single Judge. We feel we are obliged to dismiss the present Letters Patent Appeal. We do so. We make no order as to cost.