

(2017) 03 GUJ CK 0124
In the Gujarat High Court
Case No : 20434 of 2016

HARDIK BHARATBHAI TRIVEDI & ORS

APPELLANT

Vs

STATE OF GUJARAT & ORS

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

[Constitution of India](#), [Article 309](#), [Article 309](#), [Article 16](#), [Article 16](#), [Article 16\(4\)](#), [Article 16\(4\)](#), [Article 234](#), [Article 234](#), [Article 16\(4-A\)](#), [Article 16\(4-A\)](#) - Recruitment and conditions of service of persons serving the Union or a State - Recruitment and conditions of service of persons serving the Union or a State - Dissolution of a District or a Regional Council - Dissolution of a District or a Regional Council - Dissolution of a District or a Regional Council - Recruitment of persons other than District Judges to the judicial service - Recruitment of persons other than District Judges to the judicial service - Dissolution of a District or a Regional Council - Dissolution of a District or a Regional Council
[Gujarat State Judicial Service Rules, 2005](#), [Rule 7\(2\)\(b\)](#) — Rule 7(2)(b)

Citation : (2017) 03 GUJ CK 0124

Hon'ble Judges : R.Subhash Reddy, Vipul M. Pancholi

Bench : Single Bench

Advocate : ANSHIN DESAI, HJ KARATHIYA, DM DEVNANI, GM JOSHI, PP MAJMUDAR, HIREN J TRIVEDI

Judgement

1. In all these Special Civil Applications, challenge is to the vires of Rule 7(2)(b) of the Gujarat State Judicial Service Rules, 2005, as such they are heard together and disposed of by this common judgment and order. For the purpose of disposal of these writpetitions, we refer to the facts and the parties as arrayed in Special Civil Application No. 20434 of 2016.

2. Special Civil Application No. 20434 of 2016 is filed with the prayers which read as under: "(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or

a writ in the nature of mandamus or any other appropriate writ, directions quashing and setting aside second part of Sub-Rule-7(2)(b) of the Rules of 2005 and further be pleased to hold and declare that the said second part of Sub-Rule-7(2)(b) of the Rules of 2005 is ultra virus (sic) Article 14 and Article 16 of the Constitution of India;

(B) YOUR LORDSHIPS may further be pleased to declare that the candidates who are in service in courts of other allied departments are not required to have work for five years prior to be considered as an eligible candidate for the post of Civil Judge;

(C) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, directions by directing the respondents to permit the petitioners herein to participate in the examination by permitting them to fill up the form in the Advertisement No. RC/0719/2016 issued by the respondent no.2 without insisting the imposition of Rule 7(2)(b) of Gujarat Judicial Service Rules, 2005;

(D) YOUR LORDSHIPS may please to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction by quashing and set aside the Advertisement No. RC/0719/2016 published by Respondent No.2;

(E) YOUR LORDSHIPS may please to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction by directing the respondents to count and include the period of practice of the petitioners as advocate in `5" as read in Rule (2) (b).

(F) During pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to direct the respondents herein to permit all the Deputy Section Officers (Legal Side) in Legal Department and Legislative and Parliamentary Affairs Department to fill the form and appear for examination for the post of Civil Judge in the Advertisement No.RC/0719/2016 issued by the respondent no.2;

(G) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case;"

3. Recruitment to the cadre of District Judges, Senior Civil Judges and Civil Judges in the Gujarat State Judicial Service is governed by the Gujarat State Judicial Service Rules, 2005 ("the said Rules" for short), which are framed in exercise of powers conferred by the proviso to Article 309 read with Article 234 of the Constitution of India. Method of recruitment, qualification, age limit etc. to the post of Civil Judge is covered by Rule 7 of the aforesaid Rules. As this batch of petitions is concerned with the recruitment to the post of Civil Judges, we refer to the provision under Rule 7 of the said Rules which reads as under: "7. Civil Judges: (1)Recruitment to the cadre of Civil Judges shall be made on the basis of aggregate marks obtained in a competitive examination conducted by the High Court.

(2) In order to be eligible for selection by direct recruitment to the cadre of Civil Judges, the candidate (a) must possess a degree in law from the University established by law in India,

(b) must be practicing as an Advocate in courts of Civil and/or Criminal jurisdiction on the last date fixed for receipt of applications; or must have worked in Courts or other allied departments for at least five years; and

(c) must not have attained the age of thirty five years and must not have completed as on the last date fixed for receipt of applications thirty eight years of age in the case of candidates belonging to Scheduled Caste or Scheduled Tribe.

Provided that if the High Court has made any order under Article 16(4) or 16(4-A) of the Constitution providing reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes the recruitment shall be subject to such order."

4. From the aforesaid Rule, it is clear that, to be eligible for selection by direct recruitment to the cadre of Civil Judge, one must possess a degree in law from the University established by law in India. Under Rule 7(2)(b) of the said Rules, a candidate must be practicing as an Advocate in courts of Civil and/or Criminal jurisdiction on the last date fixed for receipt of applications; or must have worked in the courts or other allied departments for at least 5 years; and must not have attained the age of 35 years and must not have completed as on the date fixed for receipt of applications 38 years of age in the case of candidates belonging to Scheduled Caste or Scheduled Tribe. In the petition, challenge is to the part of Rule 7(2)(b) of the Rules which prescribes service of at least 5 years so far as the candidates who have worked in the courts or other allied departments.

5. All the petitioners are working as Deputy Section officers (Legal side) in the Legal Department of State of Gujarat. The post of Deputy Section Officer in the Legal Department is, of Class-III service in the Subordinate Secretariat Service Rules of 2010. To be eligible for appointment to such post, one must be a candidate possessing degree in law obtained from any of the Universities established or incorporated by or under the Central or State Act in India. It is the case of the petitioners in the petition that pursuant to an advertisement issued by the Gujarat Public Service Commission, the petitioners are appointed as Deputy Section Officers (Legal side) in the Legal Department of the State of Gujarat and they were issued appointment letters on 16.5.2014, and since then, they are working as such. The petitioner nos. 1 to 3 obtained degree in law in the year 2012 and till their appointment in the Legal Department, they were practicing as Advocates in different courts in the State of Gujarat. So far as the petitioner no. 4 is concerned, he obtained degree in law in the year 2008 and was practicing as advocate till his appointment in the Legal Department. In this petition, it is the grievance of the petitioners that, prescription of minimum experience of 5 years for candidates belonging to service category under Rule 7(2)(b) of the said Rules is illegal and arbitrary. It is their say that a candidate

possessing degree in law after his enrollment, immediately, he or she is entitled to appear in the examination for entry in to service of Civil Judge, but similarly situated candidates possessing degree of law who have entered into service in courts and allied departments are required to have 5 years" experience under the impugned Rule, which is illegal and discriminatory. It is the say of the petitioners that the said Rule to the extent it requires 5 years" experience to be eligible to appear in the examination for recruitment to the cadre of Civil Judge, has no nexus with the object sought to be achieved, and in fact, it causes prejudice to the law degree holders who are in employment in courts or allied departments, for entry into Judicial Service.

6. As the vires of Rule 7(2)(b) of the said Rules is under challenge, we have heard Shri Anshin Desai, learned Senior Advocate assisted by Shri H.J. Karathiya, learned counsel for the petitioners in Special Civil Application Nos. 20434 of 2016, 21791 of 2016, 21382 of 2016 and 21961 of 2016, Shri P.P. Majmudar, learned counsel appearing for the petitioner in Special Civil Application No. 21378 of 2016 and Shri Gautam M.Joshi, learned counsel appearing behalf of the respondent High Court of Gujarat in all the petitions.

7. It is contended by Shri Anshin Desai, learned Senior Advocate assisted by Shri H.J. Karathiya, learned counsel for the petitioners along with other advocates for the petitioners in these petitions that, Rule 7(2)(b) of the Gujarat State Judicial Service Rules, 2005 to the extent it requires 5 years of experience for the candidates serving in the courts and allied departments, is arbitrary and discriminates among equals who are qualified and possessing degree in law for entry into service as Civil Judge. It is contended that the impugned rule clearly differentiates those who are in service and those who are in practice. It is further contended that Gujarat State Judicial Service Rules, 2005 are framed to allow fresh candidates possessing degree of law for entry into service, so as to tap the young talented advocates immediately after completion of law. At the same time, it discriminates the persons, who have entered into service and intend to come to Judicial Service. It is submitted that when there is no minimum experience required for fresh law graduates, who enter into practice of law in the courts, at the same time, a candidate who has entered into service in courts and allied departments has to wait for 5 years before he/she is eligible to apply for the post of Civil Judge. It is contended that such rule is clearly discriminatory. It is further submitted by Mr.Desai that law graduate immediately after completion of law degree, if he or she enters into practice, he is eligible to apply for recruitment to the post of Civil Judge, whereas a candidate who, after practice in courts for about 2 years opts for service, such candidate is not eligible for the post of Civil Judge unless he/she completes 5 years of experience. It is contended that there is no nexus or intelligible differentia with the object sought to be achieved, and the said rule is fit to be quashed as discriminatory and arbitrary. It is submitted that all the law graduates were qualified after completing their law degree course and they constitute a class, as such, the impugned rule is in violation of equality clause guaranteed under Article 14 of the Constitution of India and is fit to be set

aside.

8. On the other hand, learned counsel Shri Gautam Joshi, appearing on behalf of the respondent-High Court of Gujarat submits that service candidates on one hand and fresh law graduates on the other hand, constitute a different and distinct class and they do not have anything in common. It is submitted that staff members/persons working in courts and other allied departments have already selected their career, and opportunity to apply for Judicial Service is only an additional avenue which is made available to them to improve upon their career. It is submitted that based on the recommendations made by Shetty Commission, entry is provided to fresh law graduates, practicing advocates and service members in the service of courts and allied departments. It is submitted that the aforesaid three categories are provided as feeder channel for recruitment to Judicial Service and the candidates coming from Judicial Service constitute different and distinct class, as such they cannot equate with fresh law graduates and they cannot take the plea of discrimination under the garb of protection under Article 14 of the Constitution of India. It is submitted by the learned counsel that once a law graduate opts for service, he has to necessarily wait for minimum period of experience before he seeks entry into Judicial Service as Civil Judge. Learned counsel has brought to our notice the judgment of the learned single Judge of this Court dated 16.7.2014 passed in Special Civil Application No. 9555 of 2002 and submitted that similar challenge is rejected by learned single Judge in the said judgment. It is submitted that, in the aforesaid order, the learned single Judge negated the plea to fix the higher age for the service candidates. At the same time, it is also submitted by learned counsel Shri Joshi that earlier there was requirement of three years' minimum experience for the law graduate practicing in law, but in view of the recommendation made by the Shetty Commission and the directions issued by the Hon'ble Supreme Court in the case of All India Judges' Association and others v. Union of India and others, reported in (2002) 4 Supreme Court Cases 247, new rules are framed in the year 2005 by deleting the minimum experience of three years for advocates who are desirous of entering into Judicial Service.

9. Having heard the learned counsel for the parties, we have perused the material placed on record.

10. Appointments to the post of Civil Judge in the Gujarat State Judicial Service are presently governed by the Gujarat State Judicial Service Rules, 2005. Earlier, Gujarat State Judicial Service was governed by Gujarat Judicial Services Recruitment Rules, 1961. The Gujarat State Judicial Service Rules, 2005 are framed in exercise of the powers conferred by proviso to Article 309 read with Article 234 of the Constitution of India, in supersession of the Gujarat Judicial Service Recruitment Rules, 1961. Method of recruitment, qualification, age limit etc. for the post of Civil Judge are prescribed under Rule 7 of the said Rules. As per Rule 7(1) of the said Rules, recruitment to the cadre of Civil Judge shall be made on the basis of the aggregate marks obtained in the competitive

examination conducted by the High Court. Under Rule 7(2) of the Rules, in order to be eligible for selection by direct recruitment to the cadre of Civil Judge, a candidate must possess a degree in law from the University established by law in India and must be practicing as an Advocate in a court of Civil or Criminal jurisdiction on the last date fixed for receipt of application; or must have worked in the courts or other allied departments for at least 5 years and must not have attained the age of 35 years and must not have completed as on the date fixed for receipt of applications 38 years of age in case of candidates belonging to Scheduled Caste or Scheduled Tribe. From the aforesaid Rule, it is clear that for the purpose of direct recruitment to the cadre of Civil Judge, a candidate should possess law degree from the University established by law in India and if he is practicing as an Advocate in the courts of civil or criminal jurisdiction on the last date fixed for receipt of application, he is eligible to apply for recruitment to the said post. Apart from the advocates practicing in the courts of civil or criminal jurisdiction, if a candidate possessing a degree of law from the University established by law in India and is working in the courts and allied departments is also eligible to apply, but subject to condition that such candidate must have worked in the courts or other allied departments for at least 5 years. It is the say of the petitioners that when there is no minimum prescription of experience for fresh law graduates, there is no reason or justification for insisting for 5 years" experience for law graduates who are working in the courts or other allied departments. In fact, in the earlier rules which were in force, i.e., Gujarat Judicial Services Recruitment Rules, 1961 and similar such rules in other States in India, eligibility for recruitment to the cadre of Civil Judge was also from the two channels, namely, (i) by law graduates who practice in the courts of civil or criminal jurisdiction and (ii) by candidates who have entered the service and working as such in the courts and allied departments. In the case of All India Judges" Association and others v. Union of India and others, reported in (1993) 4 Supreme Court Cases 288, the Hon"ble Supreme Court has observed that in order of entering into Judicial Service, an applicant must be an advocate of at least 3 years" standing. Earlier rules were framed in conformity with the directions of the Supreme Court but in the second Judges Case, i.e. All India Judges" Association and others v. Union of India and others, reported in (2002) 4 Supreme Court Case 247, the Hon"ble Supreme Court has observed that, with the passage of time, experience has shown that the best talent which is available is not attracted to Judicial Service. A bright young law graduate, after three years of practice finds the Judicial Service not attractive enough. While referring to the recommendations made by the Shetty Commission, the Hon"ble Supreme Court has directed the High Courts and the State Governments to amend rules so as to enable fresh law graduates who may not even have put in three years of practice, to be eligible to compete and enter the Judicial Service. In the said judgment, the Hon"ble Supreme Court has also observed that, the fresh recruits to the Judicial Service should be imparted training of not less than one year, preferably two years. In view of the said directions issued by the Hon"ble Supreme Court, it appears that in the new rules framed subsequent to the

judgment in the case of All India Judges' Association and others vs. Union of India and others, reported in (2002) 4 Supreme Court Case 247, minimum requirement of three years of experience for advocates is done away with. When minimum experience for fresh graduates was required for the advocates, in the same Rules, there was also experience prescribed for the candidates, who were serving in the courts and allied departments, who seek entry into the Judicial Service by opting for recruitment to the post of Civil Judge. It appears that after the directions were issued by the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others, reported in (2002) 4 Supreme Court Case 247, Rules are amended by deleting the requirement of experience of three years for the advocates. But at the same time, experience which was prescribed for service candidates continued in the new Rules.

11. For the purpose of testing the vires of the impugned Rule in this case, it is to be noted that fresh law graduate who has completed his law degree from the University established under the law in India, after joining the Bar for practice either on civil or criminal side, immediately one is eligible to apply for the post of Civil Judge under the Recruitment Rules. But at the same time, law graduate, who after completing his law degree course, practices for about 2 years and thereafter, chooses service in the court and allied departments as career, opts to compete for recruitment to the post of Civil Judge, he is not eligible unless he completes 5 years of experience. If a bright young law graduate is made eligible for the post of Civil Judge immediately after his entry into the practice in the court, equally, there is no reason to require a bright young law graduate who opts for service, to have 5 years of experience so as to become eligible to seek entry into the Judicial Service. All the law graduates, after their completing degree in law constitute single class for the purpose of recruitment to the post of Civil Judge. There cannot be any discrimination among them who constitute a single class for the purpose of entry into Judicial Service. As we are of the view that all fresh law graduates constitute a single class for the purpose of entry into Judicial Service, the impugned rule to the extent of requiring 5 years of experience for candidates who are seeking entry into Judicial Service, while serving in the courts or allied departments, is discriminatory and arbitrary and such rule is in violation of the rights guaranteed under Article 14 of the Constitution of India.

12. It is true that the learned single Judge of this Court in the judgment dated 16.7.2004 rendered in Special Civil Application No. 9555 of 2002 has opined that challenge to the fixation of age limit of 35 years and requirement of experience for the candidates coming from the service category, is without any substance. But it is to be noticed that at the relevant point of time, there was also requirement of possessing minimum experience for advocates practicing in the civil or criminal courts. At the same time, in the new Rules, 2005, when minimum experience of 3 years is done away with for fresh law graduates who seek entry into Judicial Service for the post of Civil Judge, there is no reason to contemplate 5 years of minimum experience for such similarly placed law

graduates who enter into service and choose to come into Judicial Service thereafter. In that view of the matter, we are of the view that the impugned Rule 7(2)(b) of the Gujarat State Judicial Service Rules, 2005 is discriminatory to the extent it requires minimum experience of 5 years for the law graduates who are working in the courts and allied departments, and it violates equality clause enshrined in Article 14 of the Constitution of India. Further, we are also of the view that, the said impugned rule has no nexus with the object sought to be achieved and in fact, as observed by the Hon''ble Supreme Court in case of All India Judges'' Association and others vs. Union of India and others, reported in (2002) 4 Supreme Court Case 247, it is coming in the way of preventing young talents to tap for Judicial Service at appropriate level. So long as there is no requirement of minimum practice for allowing the law graduates who are practicing in the courts of law, there is no reason to insist for requirement of minimum experience for similar law graduates who are in service of courts and allied departments and seeking entry into Judicial Service, as such, the impugned Rule is arbitrary and discriminatory.

13. In that view of the matter, to the above extent, the above said Rule 7(2)(b) of the Gujarat State Judicial Service Rules, 2005 is fit to be struck down by declaring the same as illegal, arbitrary and discriminatory.

14. For the foregoing reasons, all the writ-petitions are allowed by quashing and setting aside Rule 7(2)(b) of the Gujarat State Judicial Service Rules, 2005 to the extent it requires the experience of 5 years for the candidates who are working in the courts and other allied departments, by declaring the said impugned rule as arbitrary, illegal and discriminatory. However, it is needless to observe that if at any time in future, experience is introduced for the members of the Bar, it will not preclude the respondents from considering to introduce the minimum experience for the candidates who are serving in the courts and allied departments.

15. As the petitioners in this batch of petitions were allowed to appear in the Preliminary Examination (Elimination Test) conducted on 29th January, 2017 pursuant to the interim orders granted by this Court, such petitioners who have qualified among them in such Preliminary Examination (Elimination Test), be allowed to participate in the main written examination to be held on 19th March 2017. The respondents are directed to take further steps in accordance with law. No order as to costs.