

(1994) 02 GUJ CK 0033

In the Gujarat High Court

Case No : Special Civil Application No. 7140 of 1989

H.V. Buch and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 25-02-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 235

Citation : (1995) 70 FLR 711 : (1994) 2 GLR 1747

Hon'ble Judges : N.J. Pandya, J

Bench : Single Bench

Judgement

Pandya, J

1. The action of the State Government in not granting the gazetted status to the Stenographers Gr. I of the City Civil and Sessions Court, Ahmedabad is under challenge in this petition. A notification granting gazetted Class-II status to the stenographers Gr. I was issued by the State Government on 30-4-1986-Annexure "C" (Page 22) to the petition. Pursuant to this Notification, the learned Principal Judge, City Civil and Sessions Court, Ahmedabad on 28-5-1986 implemented the said Government Notification so far a Stenographers Gr. I on the establishment of the Ahmedabad City Civil and Sessions Court, are concerned and he was pleased by his order to grant gazetted Class-II status to them and redesignated them as "Private Secretaries". The Notification of the Principal Judge granting gazetted status to the Stenographers Gr. I of the City Civil and Sessions Court, Ahmedabad, was required to be published in Government gazette and the same was sent by the learned Principal Judge to the Government Printing Press and copies thereof were endorsed to the High Court of Gujarat, secretary to Government, Legal Department, Sachivalaya, Gandhi Nagar, Accountant General etc. This Notification generated correspondence between the High Court on its administrative side and the learned Principal Judge, City Civil and Sessions Court, Ahmedabad. The learned Principal Judge by his letter dated 3-9-1986 - Annexure "F"-1 (Page 28A) to the petition explained his stand and agreed with the High

Court that directly the Government Notification may not be applicable but on the principle that equity and equal treatment to the equally situated persons is required to be given, he had acted in this manner and in support of his action he had referred to the judgments of his action he had referred to the judgments of this Court in special C. A. No. 1957 of 1980 (Coram : N. H. Bhatt, J.) and L. P. A. No. 386 of 1983 arising therefrom (Coram : P. S. Poti, C. J. and S. B. Majumdar, J.). The question before the learned single Judge in the above Special C. A. and also before the Division Bench related to the grant of selection grade to Stenographers Gr. I of the City Civil and Sessions Court and the High Court of Gujarat.

2. Copy of the judgment delivered on 8-12-1982 in Special C. A. No. 1957 of 1980 is produced before me. The relevant portion of the said judgment is also produced at Annexure "A" to the petition. Reading the judgment, it is clear that as many as 14 Stenographers Gr. I working in the Sachivalaya were being given selection grade and the same was denied to the Stenographers Gr. I of the High Court of Gujarat, Stenographers Gr. I of the City Civil and Sessions Court and other Stenographers Gr. I in the State. In that case stenographers Gr. I recruited through the G. P. S. C. and posted in offices other than Sachivalaya were also excluded and the benefit of selection grade was given only to the Stenographers Gr. I working in Sachivalaya.

3. This action was challenged in the said Special C. A. by some of the Stenographers Gr. I of the City Civil and Sessions Court including petitioners Nos. 1, 2 and 3 herein and some of the Stenographers Gr. I of the High Court and as no reply was filed by the State Government till the date of final hearing the learned single Judge proceeded on the basis of uncontroverted facts and delivered the judgment holding as under :

"I hold that the petitioners are similarly situated like Stenographers Grade-I attached to the Sachivalaya and qua the State, they constitute one common class to be equally treated by the State Government."

Thus, the learned single Judge had no difficulty whatsoever in arriving at the conclusion which otherwise was also obvious, that the Stenographers Gr. I in the judicial set up, High Court downwards, are equally situated, if not higher when compared with the Stenographies Gr. I working in the Sachivalaya. The use of the words if not higher is mainly used inasmuch as if the work is compared objectively, it clearly shows that the post of Stenographers Gr. I in the judicial set up itself is higher from the point of view of quantum of work, efficiency required and more particularly the confidentiality attached to the post. The attempt is not to compare the two services or to make inquiry as to which of the two is better. An attempt will always be an attempt and for me it is only to find out whether they are equally situated or is there any manner of difference between the two. Obviously the answers to the former part is in the affirmative, i.e., they are equally situated and the latter part in the negative, i.e., there is no difference between the two.

4. Thus, they being equally situated and taken them to be having so found, one of the instances being the said judgment of the learned single Judge which was challenged in appeal by way of L. P. A. No. 386 of 1983 in which also the aforesaid finding of other learned single Judge was confirmed by this Court (Coram : P. S. Poti, C. J. & S. B. Majmudar, J.) on 20-12-1983 the matter, so far as the State is concerned, is concluded.

5. Interestingly enough, in the course of hearing of the said L. P. A. the State Government had given consent which was recorded in the judgment, copy of which is at Annexure "B" to the petition, in the following terms :

"The consent, we make it clear here, is that whatever is the formula applicable from time to time to the Sachivalaya Stenographers must apply to the Stenographers of High Court as also subordinate judiciary from time to time. This is a matter in which the parties consent. We accord such consent and dispose of the appeal on the basis of such consent."

6. May be, in deference to the consent thus given and recorded with the approval of this Court, that in the present petition there is no reply filed and the facts therefore, remain totally uncontroverted. However, so far as the matter is concerned, aforesaid consent should certainly ensure to the benefits of the petitioners.

7. At the same time, I must place on record, with approval the fairness in the submission made by Mr. Nair learned Advocate for the petitioners. He has drawn my attention to the fact that the G. R. in question which is at Annexure "C", page 22 has a reference to stenographers Gr. I in the subordinate Secretariat service and other offices which are within the purview of G. P. S. C. These Stenographers Gr. I are to be accorded gazetted status as per the G. R. Annexure "C", He further pointed out that strictly speaking judicial Stenographers including petitioners herein who are Stenographers Gr. I on the establishment of the City Civil and Sessions Court, Ahmedabad may not squarely be falling within the description. However, there being a different recruitment procedure for them, if they are sought to be discriminated only on the ground that their recruitment is not through G. P. S. C. it will be a case of totally discriminatory treatment meted out to the equally situated persons.

8. To this it may be added the factually accepted position under Art. 235 of the Constitution of India : It is the High Court which exercises the administrative control over the subordinate judiciary including the matter of recruitment of staff B. C. S. Rule are squarely applicable to the staff members of subordinate judiciary as well as to the High Court. But, wherever the word "Government" occurs because of the derivation of power under Art. 235 of the Constitution of India, it had to be read as High Court. In this view of the matter, obviously, the Stenographers Gr. I of the subordinate Courts or for that matter, City Civil and Sessions Court, Ahmedabad can never be excluded from the said G. R. and they can never be made to suffer discrimination only on that ground. If person are

otherwise equally situated, the source, the manner and the method of recruitment can never be pressed into service for meting out different treatment to persons recruited by different sources or employing different methods.

9. Even otherwise, as set out in the petition, the various authorities for District set ups. the District Judges, for Ahmedabad City Civil and Sessions Court the Principal Judge and for High Court of Gujarat the Registrar, have the same procedure for calling for the applications from the candidates for the post of stenographers Gr. I with prescribed qualifications, which are the same for the candidates of G. P. S. C. Thereafter the candidates are called for a dictation test. Dictation at the prescribed speed is given by a senior Judge and the transcription of the same and typing that are supervised by a Judicial Officer. Then a Committee of three senior-most judicial officers, headed by the District Judge or the Principal Judge or the Registrar as the case may be, takes an oral test of the successful candidates in the written test. So far as the subordinate judiciary is concerned, the select list prepared by the Committee has got to be approved by the High Court on its administrative side. Further, for being appointed as a stenographer Gr. I in subordinate judiciary, either the candidate should posses G. C. C. certificate of 120/40 words per minute, respectively in shorthand and typewriting or in absence of such certificates, the appointment is given conditional on his passing such examination.

10. Thus, recruitment, the manner and method-wise except for the label of G. P. S. C. there is no difference, whatsoever. If at all there is any difference, it is merely illusory than real.

11. In view of the aforesaid position, that there are judicial pronouncements more particularly the one in L. P. A. above-mentioned, where there is a consent accorded by the State of Gujarat on the lines reproduced hereinabove, I have no hesitation in holding that the action on the part of the State Government in refusing to grant class-II gazetted status smacks of discriminatory treatment violative of Arts. 14 and 16 of the Constitution of India. Accordingly, respondents Nos. 1 and 2 directed to confer gazetted status to the petitioners by redesignating the posts as "Private Secretaries (Stenographers Gr. I) Class-II" as per Government Resolution dated 30-4-1986 forthwith.

12. Rule is made absolute. No order as to costs.