
(1988) 08 GUJ CK 0015
In the Gujarat High Court

I.K. Soni and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 29-08-1988

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1989) 1 GLR 103

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Judgement

R.C. Mankad, J.—Conflict of interest between direct recruits and deputationists from the Government working in the Gujarat State Civil Supplies Corporation Ltd. ("Corporation" for short) respondent No. 1 herein has led to the filing of these petitions. The main questions which are raised on behalf of the direct recruits are : (1) all deputationists should be repatriated to their parent departments, (2) seniority and promotion should only be given to the direct recruits and in the alternative, (3) the deputationists should be given seniority only from the date of their absorption in the Corporation. Deputationists from the Government on the other hand have prayed for direction against the Corporation to pass appropriate orders for their absorption in the Corporation. Since common questions arise for my determination in these petitions, they are disposed of by this common judgment.

2. Facts giving rise to these petitions briefly stated are as under:

Food and Civil Supplies Department of the Government of Gujarat, Directorate of Civil Supplies, Directorate of Civil Supplies (Accounts), and Directorate of Food were entrusted with the task of regulating and Controlling the supply of food-grains and other essential commodities through the public distribution system. There were ills and disadvantages of bureaucratic administration and, therefore, it was decided to set up the Corporation to do away such ills and disadvantages. The Corporation a wholly owned Government Company incorporated under the Companies Act, 1956, came to be constituted pursuant to Government

Resolution dated, September 25, 1980 passed by the Government of Gujarat ("Government" for short) in Food and Civil Supplies Department. The Corporation was mainly established for the purpose of undertaking supply of food-grains and other essential commodities through public distribution system in the State of Gujarat. On the establishment of the Corporation certain activities, which were hitherto carried on by the Department of the Government, were transferred to the Corporation. The Corporation required staff to run its administration and to carry out the functions entrusted to it. The entire staff of the Corporation in the beginning was supplied by the Government by giving services of their employees on loan to the Corporation. Since the activities of the Government were transferred to the Corporation certain employees of the Government were transferred alongwith the activities and posts to the Corporation. Such transfers of Government employees were made from the aforesaid three Directorates and the Food and Civil Supplies Department of the Government. The godowns in the State, which were previously under the control of Food and Civil Supplies Department, were also transferred to the Corporation. Services of large number of Government employees working in the said godowns were also transferred on deputation to the Corporation. It would thus appear that many Government employees came to be transferred alongwith the activities to the Corporation. This was found necessary because the Corporation had to be manned by experienced staff so that it could discharge its functions efficiently and effectively. The terms and conditions on which the Government employees were transferred on deputation to the Corporation were contained in Resolution dated September 20, 1980 of the Government in Food and Civil Supplies Department, which is at Annexure "A" in Special Civil Application No. 1166 of 1986. Under the said Resolution at the end of one year Government employee on deputation to the Corporation, if found suitable by the Corporation, was to be given option for absorption in the Corporation on such conditions as the Corporation may decide. The Corporation issued a Circular dated April 4, 1981 inviting options from Government Employees on Deputation ("Deputationists" for short). In response to the Circular many deputationists exercised option to be absorbed in the service of the Corporation. The Corporation however, did not take any decision on the question of absorption of the deputationists as the Government had not finalised the guidelines for absorption/repatriation of the deputationists. The deputationists have, therefore, filed Special Civil Application No. 5242 of 1985 seeking direction against the Corporation for their absorption. By an order passed in the said petition by way of interim relief this Court directed the Government to finalise the guidelines for absorption/repatriation of the deputationists within a period of three months from the date of the order. The Government has, therefore, it appeals by Resolution dated February 20, 1986 issued by the Government in Food and Civil Supplies Department, Annexure "II" to the affidavit-in-reply filed on behalf of the Corporation in Special Civil Application No. 1166 of 1986, framed Rules for the absorption of deputationists. The process of absorption of the deputationists, however, has not yet been completed by the Corporation.

3. The Corporation has besides taking services of the deputationists on loan from the Government, directly recruited employees in accordance with its requirement. Petitioner No. 1 in Special Civil Applications Nos. 1166 of 1986 and 6733 of 1986 is an Association representing persons, who have been directly recruited by the Corporation while rest of the petitioners in these two petitions are persons, who are directly recruited. It is not disputed that whenever a person was directly recruited by the Corporation letter of appointment was in the form which is at Annexure "III" at page 55 of Special Civil Application No. 1166 of 1986. The terms and conditions on which the appointment was made by the Corporation were stated in these letters of appointments. Condition No. 10 in the letter of appointment was to the effect that no objections will be entertained in regard to seniority of deputationists working in the Corporation on decision being taken to absorb them with retrospective effects. Whenever a direct recruit was promoted by the Corporation, the order of promotion was in from, which is at Annexure "II" at page 53 of Special Civil Application No. 1166 of 1986. This order clearly stated: "The promotion is temporary, in view of the fact that the case of the deputationists working with the Corporation and for being absorbed in service are under consideration and in the event of such deputationists being absorbed in the service of the Corporation, the inter se seniority in the post of Assistant/Assistants Depot Manager will have to be refixed". It would thus appear that whenever direct recruit was appointed or promoted by the Corporation it was subject to absorption of the deputationists and fixation of inter se seniority between the deputationists and direct recruits. It is however, contended on behalf of the direct recruits that there is sufficient number of direct recruits to run the administration of the Corporation and discharge its functions and, therefore, there is no need to continue the deputationists on the establishment of the Corporation. The deputationists should, therefore, be repatriated to their parent department in the Government. In any case the deputationists are not the employees of the Corporation and, therefore, they can not be considered for promotion to higher posts in the Corporation. According to the direct recruits deputationists have no right to claim promotion or seniority in service against direct recruits. Deputationists, if treated on par with direct recruits will have the effect of denial of right of seniority and promotion to the direct recruits. It is submitted that the deputationists have lien over the post which they were holding in the Government and they will be entitled to promotion in the Government in accordance with the rules applicable to them. Direct recruits can claim promotion to higher posts only in the Corporation. Therefore if the deputationists are treated on par with the direct recruits, they will have double advantage or they will continue to get all the benefits including promotion as Government employees and in addition they will also be entitled to promotion to higher posts in the Corporation. It is therefore submitted that the action to treat the deputationists on par with the direct recruits, so far as the service of the Corporation is concerned would be arbitrary and discriminatory and violative of Article 14 of the Constitution. In the alternative, it is submitted that the deputationists should be considered for promotion and other benefits

available to employees of the Corporation only on their absorption in the service of the Corporation and their seniority in the service of the Corporation should be reckoned only from the date of their absorption in the service of the Corporation. On the aforesaid ground the direct recruits have prayed for the reliefs to the following effect in Special Civil Application No. 1166 of 1986 :

(1) The Government and the Corporation be directed to repatriate all the deputationists to their parent departments.

(2) The Corporation be directed to give seniority and promotion only to the direct recruits.

(3) The Corporation be restrained from offering any option to any of the deputationists, who have completed one year's service with the Corporation, or in the alternative :

(4) The Corporation be directed to give seniority to the deputationists only from the date of their absorption in the service of the Corporation.

In Special Civil Application No. 6733 of 1986 besides claiming the reliefs to the above effect, the direct recruits have prayed for quashing and setting aside of the orders Annexure "F" and "G" to the petition by which the deputationists were appointed/promoted by the Corporation and the approval in that regard was granted by the Government.

4. So far as the deputationists are concerned, as already pointed out above, their only contention is that the Corporation should finalise the question of their absorption and seniority in the service of the Corporation. It is submitted on behalf of the State Government and the Corporation that the State Government has already issued guidelines for absorption of the deputationists in the service of the Corporation and the process of their absorption is in the final stages. It is further pointed out that the Corporation has also framed Rules called "GSCSC Ltd. Recruitment and Promotion Rules, 1985" and these Rules will come into operation after they are approved by the Government. It is pointed out on behalf of the deputationists that this Court had by an order dated October 31, 1985 passed in Special Civil Application No. 5242 of 1985 granted interim relief directing the Government to finalise guidelines regarding absorption/repatriation of the deputationists in consultation with the Corporation within three months from the date of the order. Their grievance is that inspite of this direction the process of their absorption in the service of the Corporation has not yet been finalised. However, as pointed out above it is stated on behalf of the Government and the Corporation that the Government has finalised guidelines for absorption of the deputationists in the service of the Corporation and the process of their absorption is in the final stages. In view of this statement made on behalf of the Government and the Corporation the only prayer which is made on behalf of the deputationists is that the Corporation should be directed to finalise the process of absorption within a specified time.

5. The Corporation is a wholly owned Government Company incorporated under the Companies Act, 1956. The Corporation can as a matter of policy decide how its establishment will be manned. It is within the powers and authority of the Corporation to take a policy decision to man its establishment by taking service of the Government employees on loan from the Government or to make direct recruitment. What should be the proportion of Government servants taken on loan and the direct recruits is again a matter of policy. The Corporation can decide to man its establishment entirely from the Government employees brought on loan or by direct recruitment. It can also decide to absorb deputationists or repatriate them to their parent departments of the Government. The fixation of percentage of deputationists vis-a-vis direct recruits in an administrative or managerial policy matter, which the Corporation is free to decide according to its needs and exigencies. When the learned Counsel for the direct recruits was asked as to what legal rights the direct recruits have to compel the Corporation to repatriate the deputationists or not to consider them for absorption or promotion, he had no answer to give. Indeed the direct recruits do not have such right. There are thus no fetters on the power of the Corporation in the matter of employment. The Corporation in the beginning started functioning with the staff, which was taken on loan from the Government. In course of time it made direct recruitment also. The Corporation, it seems, brought Government employees on loan or deputation and made its own recruitment according to its needs and exigencies of service. In the beginning it could not have run its administration and discharged its functions without staff, which are experienced in public distribution system and supply of food-grains and other essential commodities. It was, therefore that it took on loan experienced Government employees who were working in the Civil Supplies Department and Directorates of Civil Supplies (Accounts) and Food. The direct recruits cannot dictate to the Corporation that it should not continue the deputationists in the Corporation and that they should be repatriated. It is also not open to the direct recruits to tell the Corporation as to what should be the percentage of deputationists and direct recruits and whether or not the deputationists should be considered for promotion to higher posts in the Corporation. Absorption of deputationists in the service of the Corporation and the dates from which such absorption should be made effective are also matters of policy which the Corporation is free to decide without being told or advised by its own employees. It may be that continuance of deputationists in the Corporation and their absorption with retrospective effect may to some extent affect or mar the chances of promotion of the direct recruits to higher posts in the Corporation. But such a situation has to be faced in service. Again when the direct recruits were appointed or promoted they were in terms told that their appointment and promotions were subject to the absorption of the deputationists from the Government and that their seniority will be refixed on the absorption of the deputationists with retrospective effect. It is open to the Corporation to bring deputationists at all levels of its establishment and it is also open to it to promote the deputationists in its own service. Deputationists may not be strictly

considered to be employees of the Corporation till they have lien on the posts which they hold in the Government and their absorption or confirmation in the service of the Corporation and they can go back to their original posts in the parent departments, but for all practical purposes they are employees of the Corporation for such period they work on deputation in the Corporation. It is not the case of the direct recruits that the deputationists are arbitrarily or indiscriminately promoted without taking into consideration the dates from they came on deputation with the Corporation and the dates from which the direct recruits were appointed. In fact it was pointed out that as against 152 promotions given to direct recruits only one promotion was given to deputationists. It may be that deputationists were directly brought on higher posts but that, as pointed out above, the Corporation has right and authority to do and no complaint in that regard can be made by the direct recruits.

6. The Corporation is not bound to fill up posts at lower or higher level only by direct recruitment. No right of the direct recruits has been violated. They cannot claim that the deputationists should be sent back. They cannot claim as a matter of right that the deputationists should be repatriated or that they should not be considered for promotion. It is a matter of policy or managerial function of the Corporation to decide how to make recruitment and how to man its establishment. Corporation is not shown to have violated any rules or regulations. One of the contentions, which is raised on behalf of the direct recruits is that they are better qualified than deputationists for promotion and, therefore the deputationists can not be considered for promotion. That is proper qualification for promotional posts is entirely a matter for the Corporation to decide. If the deputationists are eligible for promotion under the policy or Rules of the Corporation they cannot be denied promotion merely because the direct recruits consider themselves to be better qualified. In my opinion the petitions filed by the direct recruits are misconceived. If they have any grievance regarding the proportion of direct recruits as against deputationists or the promotional policy of the Corporation the proper course for them to adopt is to approach the Corporation and satisfy it that their grievance is justified. However as already pointed out above ultimately it is a matter for the Corporation to decide how to man its establishment. There is nothing on record to hold that the action of the Corporation in bringing and continuing deputationists from the Government in its service or giving them promotions is in any way arbitrary or discriminatory and violative of Article 14 of the Constitution as urged on behalf of the direct recruits.

7. Under the circumstances. Special Civil Applications No. 1166 of 1986 and 6733 of 1986 deserve to be rejected. However, so far as Special Civil Application No. 5242 of 1985 filed by the deputationists is concerned their grievance that the Corporation has failed to finalise the question of their absorption inspite of the direction given by this Court, as aforesaid, is justified. It was as far back as on October 31, 1985 that this Court directed the Government to finalise guidelines regarding absorption. I am now told that the Government has finalised the

guidelines, but the process of absorption has not been finalised by the Corporation. The Corporation should now finalise the process of absorption so that the uncertainty which prevails in the minds of deputationists and direct recruits may be removed. The Recruitment Rules, which the Corporation has framed should also be brought into force at an early date with the approval of the Government. If the Government proposes to make any modification in the Rules it could act promptly and see that the Rules are finalised and brought into force as early as possible. Under the circumstances, Special Civil Application No. 5242 of 1985 deserves to be partly allowed.

8. In the result:

(A) Special Civil Application No. 5242 of 1985 is partly allowed and the respondents are directed to take a final decision on the question of absorption of the deputationists from the Government in the service of the Corporation within three months from the date of the receipt of the writ of this Court. Rule is made absolute to the above extent in the said Special Civil Application with no order as to costs.

(B) Special Civil Applications Nos. 1166 of 1986 and 6733 of 1986 are rejected. Rule issued in each of these petitions is discharged with no order as to costs. Interim relief which is granted in the said Special Civil Applications Nos. 1166 of 1986 and 6733 of 1986 shall stand vacated.