

(1992) 04 GUJ CK 0010
In the Gujarat High Court

Kabbur Shivanand Nagappa

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 06-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 — Rule 8(5)

Citation : (1992) 2 GLR 1028

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—By means of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the decision made by respondent No. 2 herein by means of its communication of 20th June, 1983 holding the petitioner to be age-birred for the purpose of appointment to the post of Executive Engineer (Civil) Class-1 or of Deputy Executive Engineer (Civil) Class-11 in the Gujarat Service of Engineers.

2. The facts giving rise to this petition are not in dispute. The petitioner joined Government service as a Supervisor on 1st December, 1970. At the time of institution of this petition he was working as such in the Public Health Department of the State of Gujarat. Respondent No. 2 herein issued one advertisement for making direct recruitment to certain posts in the Gajarat Service of Engineers Class-1 and Class-11. The petitioner applied for both the posts some time in December 1981. The compstitive examination for recruitment to these posts was held by respondent No. 2 some time in February 1982. The petitioner appears to have passed the examination. Thereupon respondent No. 2, by its letter of 5th February, 1983 asked him to appear for viva voce and personality test on 25th February, 1983. Its copy is at Annexure "B" to this petition. He was interviewed accordingly on 25th February, 1983. As directed in the communication asking him to appear for viva voce and personality test, he produced one certificate of his first appointment in Government service. Thereafter he received one communication of 20th June, 1983 from respondent

No. 2 under the signature of its Deputy Secretary to the effect that respondent No. 2, in consultation with respondent No. 1, came to the conclusion that the Government servants employed on the posts of Supervisors were not entitled to relaxation of the age-limit prescribed for Class-1 and/or Class-11 posts and that he was not entitled to the relaxation in the upper age limit under the rules. A copy of the said communication is at Annexure "C" to this petition. In short, he was informed that his appointment to the posts of Class-1 and/or Class-11 cannot be considered as he was age-barred. He has thereupon invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of his grievances against the decision of respondent No. 2 treating him as age-barred for the purpose of appointment to Class-1 and/or Class-11 posts in the Gujarat Service of Engineers.

3. In order to appreciate the rival contentions urged before me, it would be quite proper to look at the relevant provisions contained in the rules governing recruitment to these posts. Recruitment to the post of Deputy Engineer (Civil) in the Gujarat Service of Engineers Class-11 was at the relevant time governed by the Deputy Engineers (Civil) Gujarat Service of Engineers Class-11 Recruitment Rules, 1979 (the "Deputy Engineers" Service Rules" for brief). The relevant rule for the present purpose is Rule 6 thereof. As it originally stood it reads as under:

To be eligible for appointment by direct selection to the post mentioned in Rule 2(a) above, a candidate must:

(i) be of not less than 21 years and not more than 28 years:

Provided that the upper age limit shall not apply to a Government servant working as Junior Engineer (Civil) possessing the same percentage of marks as prescribed in Rule 6(ii) below and who was within the age limit when appointed to such post, and

(ii) have passed the B.E. (Civil) Examination of recognised University with at least second class or possess a qualification equivalent thereto.

The proviso to Rule 6(i) thereof came to be amended by one Government Notification of 27th July, 1981 issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The existing proviso was thereby substituted by the following proviso:

Provided that the upper age limit may be relaxed in favour of a candidate who is already in the service of the Government of Gujarat in accordance with the provisions of the Gujarat Civil Services, Classification and Recruitment (General) Rules, 1967, as amended from time to time.

4. Recruitment to the post of Executive Engineer (Civil) in the Gujarat Service of Engineers, Class-1 was at the relevant time governed by the Executive Engineers (Civil) Gujarat Service of Engineers Class-1 Rules, 1979 (the "Executive Engineers" Service Rules" for brief). The relevant rule for the present purpose is Rule 5 thereof. As it originally stood it reads:

To be eligible for appointment by direct selection to the post mentioned in Rule 2(a) above, a candidate shall:

(a) be not less than 21 years and not more than 28 years of age: Provided that the upper age limit shall not apply to a Government servant working as Junior Engineer (Civil) or Deputy Engineer (Civil) possessing the same percentage of marks as prescribed in Rule 5(b) below and who was within the age limit when appointed to such post; and

(b) have passed the B.E. (Civil) Examination of recognised University with at least 60 p.c. of the total marks or having qualification recognised by the Government of Gujarat as equivalent to it.

The proviso to Rule 5(a) thereof came to be substituted by the following proviso by the Notification of 27th July, 1981 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India:

Provided that the upper age limit may be relaxed in favour of a candidate who is already in the service of the Government of Gujarat in accordance with the provisions of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 as amended from time to time.

It would also be necessary to look at Rule 8(5) of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 (the "General Recruitment Rules" for brief). It reads:

(5) Notwithstanding anything to the contrary contained in any rules for the time being in force relating to the recruitment to any service or post, the upper age limit for the purpose of recruitment prescribed in Such rules shall not apply to a candidate who is already in Gujarat Government service either as a permanent Government servant or as a temporary Government servant officiating continuously for six months in a substantive or leave vacancy or in a vacancy caused as a result of deputation of other servants and was within the age limit prescribed for the post at the time of his first appointment in Government service:

Provided that such upper age limit shall apply to such candidate in a case where recruitment to a post or service is done through competitive examination or by direct selection for which experience has not been prescribed as one of the qualifications for such post:

Provided further that where a post requiring a Medical, Engineering or Agricultural Degree or Diploma as a qualification is to be filled up by direct selection through the Public Service Commission, a Government servant who was within the age limit when appointed to such post shall, if he subsequently applied for any such post, be entitled to relaxation from the application of the upper age limit prescribed aforesaid even if experience has not been prescribed as one of the qualification for such post.

5. Rule 8(5) of the General Recruitment Rules came up for interpretation before this Court in its ruling in the case of *Ajit K. Shahani and Another Vs. Gujarat Public Service Commission and Another*, . In that case the petitioners were employed as Planning Assistants. They applied for the posts of Assistant Town Planners, a Class-11 gazetted post. They were selected for those posts and were given ad hoc appointments as Assistant Town Planners. Since the posts were within the purview of the Gujarat Public Service Commission (the "Commission" for convenience), recruitment thereto could have been made only by selection through the Commission. It invited applications for 11 posts of Assistant Town Planners by an advertisement appearing in certain newspapers on 4th June, 1984. The petitioners applied for the advertised posts. The Commission however did not call them for interview informing that they were not within the prescribed age limit. They made representation to the Commission for relaxation of the upper age limit. They did not get any response to their representation. They therefore approached this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of their grievances against not being considered for the posts. this Court was therefore required to examine the question of relaxation of the upper age limit in the light of Rule 8(5) of the General Recruitment Rules read with Rule 3 of the Assistant Town Planners/Land Acquisition Officers (Town Planning and Valuation Department) Recruitment Rules, 1974. It may be mentioned that under the Recruitment Rules in that case the prescribed upper age limit for the posts involved therein was 30 years. On the date of their applications, the petitioners had already crossed the prescribed upper age limit. On interpretation of the relevant provisions contained in the Recruitment Rules involved therein in the light of Rule 8(5) of the General Recruitment Rules, this Court has held:

Therefore, the question which arises for consideration is whether the petitioners' case falls under the second proviso to Sub-rule (5) of Rule 8. On a plain reading of the proviso it is clear that where a post requiring Medical Engineering or Agricultural Degree or Diploma as qualification is to be filled up by direct selection through Commission, a Government servant who was within the age limit was appointed to such post, shall, if he subsequently applied for any such post, be entitled to relaxation from the application of the prescribed age limit even if experience has not been prescribed as one of the qualifications for that post. In order to attract application of the second proviso to Sub-rule (5), three conditions must be fulfilled, namely (1) the candidate is holding a post requiring Medical, Engineering or Agricultural Degree or Diploma, (2) he was within the age limit when appointed to such post and (3) the post for which the candidate has applied is also a post requiring Medical, Engineering or Agricultural Degree or Diploma. A person holding the post requiring Medical, Engineering or Agricultural Degree or Diploma, is not entitled to the benefit of this provision only in case the applies for same or equivalent post requiring Medical, Engineering or Agricultural Degree or Diploma. The expression "any such post" used in the proviso can only mean post requiring Medical, Engineering or Agricultural Degree or Diploma and

not the same or equivalent post. In fact, before the said provision was amended, the expression used was "same post", but this expression was substituted by "any such post" making it clear that the application has to be for a post requiring Medical, Engineering or Agricultural Degree or Diploma, therefore, if a person holding a post requiring Medical, Engineering or Agricultural Degree or Diploma, applies for another post which also requires Medical, Engineering or Agricultural Degree or Diploma he is entitled to relaxation of upper age limit under the second proviso to Sub-rule (5) of Rule 8. It is not correct to say that he is entitled to such relaxation only in case where he applies for the same or equivalent post as urged on behalf of the respondents. The interpretation which has been placed on the proviso by the respondents cannot be sustained. So far as the second contention regarding acquisition of qualifications within the prescribed age limit is concerned, there is nothing in the rules to suggest that the requisite qualifications must be acquired before the candidate reaches the upper age limit. It is not disputed that the petitioners acquired the requisite qualifications after attaining the age of 30 years which is the upper age limit for the post of Assistant Town Planners, however, there is no provision in the General Rules which lays down that the candidate should have acquired requisite qualifications before attaining or reaching the upper age limit. The second proviso to Sub-rule (5) of Rule 8 of the General Rules would apply irrespective of the fact as to when the requisite qualification is acquired provided the other conditions laid down in Sub-rule (5) are satisfied. As already observed above, it is not disputed that other conditions of Sub-rule (5) of Rule 8 are satisfied by the petitioners. Therefore, the second contention raised on behalf of the respondents must also fail. In the view which I am taking, petitioners are entitled relaxation of age under second proviso to Sub-rule (5) Rule 8 of the General Rules.

The principle of law enunciated by this Court in its aforesaid ruling in the case of Ajit K. Shahani (supra) should govern the present case. The petitioner in this case should be held entitled to the post he applied for and selected by the Commission at the relevant time.

6. Kum. Doshit for the respondents has however submitted that this Court in its aforesaid ruling in the case of Ajit K. Shahani (supra) has not considered one aspect of the matter, namely, that the qualification for both the posts should be the same on correct interpretation of the second proviso to Rule 8(5) of the General Recruitment Rules. According to Kum. Doshit for the respondents, the relaxation of age is available under the second proviso to Rule 8(5) of the General Recruitment Rules only if the qualification for the post in which the concerned applicant was working was the same as the post for which the concerned applicant had made his application. If the post on which the applicant was working at the time of his application for the higher post in response to the advertisement issued by the Commission was a Diploma in Engineering runs her submission, the prescribed qualification for the higher post for which the application is made should also be a Diploma in Engineering. According to her, the meaning required to be assigned to "any such posts" occurring in the second

proviso to Rule 8(5) of the General Recruitment Rules calls for no other interpretation except this.

7. It is difficult to accept this submission for two reasons. In the first place, the second proviso to Rule 8(5) of the General Recruitment Rules refers to the qualification of a Degree or a Diploma in Engineering generally and not specifically. If the post on which a person is working requires the qualification of a Diploma in Engineering, it is difficult to read in the second proviso to Rule 8(5) of the General Recruitment Rules that the higher post for which the application is made should have the minimum qualification of a Diploma in Engineering and not a Degree in Engineering. The words used are "a post requiring a Medical, Engineering or Agricultural Degree or a Diploma as a qualification" and "appointment to such posts". The expression "such posts" has been interpreted by this Court in its ruling in the case of Ajit K. Shahani (*supra*) to mean not the same or the equivalent post. It has been interpreted to mean that the post requiring a Medical, Engineering or Agricultural Degree or Diploma. In this view of the matter, it is difficult to read into the second proviso of Rule 8(5) of the General Recruitment Rules that the qualification for both the posts should be the same and not different though pertaining to the same faculty.

8. Secondly, the purpose of bringing about the amendment in the proviso to the Deputy Engineers' Recruitment Rules and the Executive Engineers' Recruitment Rules need not be overlooked. The proviso to Rule 6(1) to the Deputy Engineers' Recruitment Rules and the proviso to Rule 5(a) of the Executive Engineers' Recruitment Rules restricted entry to the service contemplated therein only to Junior Engineers and not to Supervisors. It is not in dispute that the minimum prescribed qualification for the post of Junior Engineer is a Degree in Engineering while that for the post of Supervisor is a Diploma in Engineering. By incorporating Rule 8(5) of the General Recruitment Rules in the proviso to Rule 6(i) of the Deputy Engineers' Recruitment Rules and Rule 5(a) of the Executive Engineers' Recruitment Rules for the purpose of relaxation of the upper age limit, the entry to service thereunder was thrown open even to Supervisors. As pointed out hereinabove, the minimum qualification for the post of Supervisor at the relevant time was a Diploma in Engineering. Thus, by bringing about amendment in the proviso to Rule 6(1) of the Deputy Engineers' Recruitment Rules and Rule 5(a) of the Executive Engineers' Recruitment Rules, the entry to service therein was thrown open to diploma holders in engineering as well. It thus becomes clear that the same qualification was certainly not insisted upon for the higher post when direct selection was contemplated. A Supervisor when initially recruited might be holding a Diploma in Engineering. As found in present case, such diploma holder in course of time may acquire a Degree in Engineering for improving his prospects. With a view to enabling him to compete with other degree holders for direct selection to the higher post, he is made eligible for making application by relaxing the upper age limit by substituting the proviso as it originally stood in the concerned recruitment rules. In this view of the matter, it is difficult to accept the submission urged before me by Kum. Doshit for the

respondents to the effect that the expression "any such posts" occurring in Rule 8(5) of the General Recruitment Rules should be meant to have the same qualification for both the posts, that is, the post held by the applicant applying for the higher post and the higher post for which the application is made by him.

9. In the present case, it is not in dispute that the applicant when appointed as Supervisor was within the prescribed age limit even for the higher post. It is not in dispute that he was holding a Diploma in Engineering at the relevant time. It is not in dispute that he obtained his Degree in Civil Engineering while in service on 21st December, 1971. It is also not in dispute that he was offered appointment as a Junior Engineer some time on 16th April, 1979. He however did not accept it. It is needless to point out that he was offered appointment as a Junior Engineer on the strength of his qualification as a degree holder in Civil Engineering. He applied for the post of Class I/Class II some time in December 1981. It is not in dispute that he cleared the competitive examination held by the Commission some time in February 1982. It is also not in dispute that he appeared at the viva voce and the personality test on 25th Feb., 1983. It transpires from the record of this case that he was successful in his viva voce and personality test. He was denied a Class-11 post only on the ground that he had crossed the upper age limit prescribed for the said post. In view of the interpretation placed on Rule 8(5) of the General Recruitment Rules in the light of Rule 6(i) of the Deputy Engineers' Recruitment Rules and Rule 5(a) of the Executive Engineers' Recruitment Rules, I am of the opinion that he is eligible for either post and he is entitled to relaxation of the upper age limit.

10. Pursuant to the order passed by this Court in this case on 9th August, 1983 at the time of the preliminary hearing of this petition, the petitioner was appointed as a Deputy Engineer in Class-11 in the pay-scale of Rs. 700-1300 by respondent No. 1 by its order of 12th June, 1984. Apropos, he reported for duty on 30th June, 1984. His appointment was on probation for two years including one year's training. It appears that there was some controversy with respect to the method of selection at the oral interview for the post advertised by the Commission inter alia giving rise to the present petition. It appears that some writ petition challenging the method of selection at the oral interview was preferred in this Court and this Court accepted that petition on 5th November, 1984 and directed the Government as well as the Commission to revise their selection. Apropos, the applicant came to be selected as an Executive Engineer in a Class-1 post. He was appointed as Assistant Executive Engineer under the relevant recruitment rules by Government Resolution of 26th June, 1986 in the same pay-scale with a starting pay of Rs. 780 per month. The applicant joined the said post on 27th June, 1986. He was entitled to be confirmed as Executive Engineer on completion of two years' probation commencing from his original date of appointment, that is, from 30th June, 1984, and on completion of two years' service as Assistant Executive Engineer in any sub-division. Respondent No. 1 herein waived the condition of one year's training as was otherwise required to be undergone in his case by one resolution of 26th June, 1986. Its

copy is at Annexure "B" to Civil Application No. 1437 of 1989 made in this petition. It appears that, by one order passed on 18th February, 1988, it was declared that the petitioner completed satisfactorily his period of probation with effect from 29th June, 1986. Its copy is annexed as Annexure "C" to Civil Application No. 1437 of 1989 made in this petition. The petitioner's grievance in that Civil Application however is that he has not been paid salary for the post of Executive Engineer though he has been appointed as such and is declared to have completed the period of probation successfully and satisfactorily with effect from 29th June, 1986. The ground given for non-payment of the salary of Executive Engineer to him is pendency of this petition in this Court. Since this petition is required to be accepted in view of my aforesaid discussion, the grievance of the petitioner voiced in Civil Application No. 1437 of 1989 in this petition also deserves to be redressed.

11. In the result, this petition is accepted. The petitioner is declared to be entitled to the benefit of relaxation of the upper age limit for the post held by him pursuant to the order of his appointment as Deputy Engineer as well as pursuant to the order of his appointment as Executive Engineer.

12. The impugned decision contained in the communication at Annexure "C" to this petition is hereby quashed and set aside. Respondent No. 1 is directed to pay to the petitioner his due salary for the post of Executive Engineer on which he is working with effect from 27th June, 1986. Respondent No. 1 is directed to comply with this direction within eight weeks from the date of receipt of the writ or from the date of production of a certified copy of this judgment by or on behalf of the petitioner whichever is earlier. Rule is accordingly made absolute however with no order as to costs on the facts and in the circumstances of the case. Rule in Civil Application No. 1437 of 1989 as earlier granted is made absolute however with no order as to costs on the facts and in the circumstances of the case.