
(1988) 04 GUJ CK 0011
In the Gujarat High Court

Kanubhal Babubhai Patel

APPELLANT

Vs

Gujarat Electricity Board and Others

RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 2 GLR 976

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—Does the Supreme Court say that at the time of promotion of an employee is lacking in qualification regarding experience for requisite years, his promotion to the higher post should be regularized, if while serving on the higher post he acquires the experience required for fulfilling the eligibility criterion? How a decision of the Supreme Court is to be read and understood? Are the observations made by the Supreme Court to be applied generally in all cases or are they required to be restricted to the context in which they are made? These are some of the questions which arise in this petition in the background of the facts that follow.

2. The petitioner challenges the order of his reversion from the post of meter tester to the post of helper. In response to the advertisement for the post of meter tester the petitioner applied for the same. On the date of interview the petitioner was not possessing the requisite qualifications for the post of meter tester. The requisite qualifications required for the post of meter tester were:

- (1) the candidate should have passed S.S.C. examination; and
- (2) he should have passed Second Class Wireman examination and should have five years experience of meter testing.

OR

he should have passed First Class Supervisor's Examination and should possess

three years experience of meter testing.

The petitioner had passed Second Class Wireman examination, but had not completed five years experience of meter testing on the date of interview. However, the petitioner had three years experience of meter testing when he appeared at the interview. At the relevant time the petitioner had appeared at the First Class Supervisor's examination and he was awaiting the result thereof. Therefore he was allowed to appear at the interview on the condition that he should produce the certificate of passing the First Class Supervisor's examination as and when the result is declared. On this basis the petitioner was promoted to the post of meter tester purely on temporary basis as per the order dated February 4, 1987. It appears that the petitioner failed at the examination and till March 18, 1988 (when the petitioner has been served with a memo/show-cause notice) he has not produced the certificate of having passed the First Class Supervisor's examination. Hence the petitioner was called upon to explain as to why he should not be reverted to his original post of helper. In reply, the petitioner admitted that he had not passed the First Class Supervisor's examination. However, he contended that in Sabarmati Circle some other helpers who have been promoted to the post of meter tester have still not passed the First Class Supervisor's examination and according to the petitioner, they had not completed five years experience. Yet they are retained on the post of meter tester. Therefore he prayed that his appointment to the post of meter tester be regularized.

3. It is an admitted position that the order of reversion has still not been served upon the petitioner. The petitioner has received information that the order of reversion is passed and he apprehends that the order may be served upon him at any time. In this view of the matter on the short ground alone, namely, that till today no cause of action has arisen because the petition is filed against apprehended action of reversion, the petition is liable to be rejected. However, the petition is not disposed of on this ground since the learned Counsel for the petitioner has been heard on merits of the matter.

4. It is submitted that the petitioner has acquired the requisite experience of five years of meter testing while working as meter tester after he has been promoted. Therefore since the petitioner has passed Second Class Wireman examination and since he has acquired five years experience as meter tester he should not be reverted and his promotion to the post of meter tester should be regularized. In support of the aforesaid contention reliance is placed on a decision of the Supreme Court in the case of Ram Sarup Vs. State of Haryana and Others, . In that case the question before the Supreme Court was whether the order of appointment of the petitioner to the post of Labour-cum-Conciliation Officer was void or was it capable of being regularized. The question arose in the context of provisions of the Punjab Labour Services (Class I & II) Rules, 1955. On facts it was found that the appointment of the petitioner therein to the post of Labour-cum-Conciliation Officer was in breach of Rule 4(1) of the Punjab Labour

Services (Class I & II) Rules, 1955. The question was, the appointment wholly void so as to be completely ineffective or was it merely irregular so that it can be regularized as and when the petitioner acquired necessary qualifications to hold the post of Labour-cum-Conciliation Officer? In the context of the provisions of the aforesaid Rules and in the background of the fact situation of the case the Supreme Court held that when the petitioner acquired experience of requisite number of years on the post of Labour-cum-Conciliation Officer his appointment on the post should be deemed to have been regularized. Be it noted that in that case after a period of about nine years of the appointment of the petitioner to the post of Labour-cum-Conciliation Officer, the petitioner was sought to be reverted to the lower post on the ground that he was lacking in requisite experience when he was appointed to the post in question. The aforesaid decision does not help the petitioner for the following reasons:

(1) In that case the question before the Supreme Court was whether the appointment to the post was void so as to be completely ineffective or was it merely irregular so that it can be regularized as and when the appellant acquired necessary qualifications to hold the post in question. In the instant case no such question of regularization of the initial appointment arises, because the initial appointment itself is conditional or contingent. It could be confirmed provided certain event i.e. passing of the examination occurred.

(2) In that case the appointment of the petitioner to the post of Labour-cum-Conciliation Officer was permanent. The question was sought to be raked up after a period of about nine years. The appointment was not temporary as in the instant case.

(3) In that case the appointment to the post of Labour-cum-Conciliation Officer was not conditional on passing certain examination. In this case the very appointment is conditional.

(4) In that case before the Supreme Court the entire controversy was required to be resolved in the context of the provisions of the Rules, namely, the Punjab Labour Services (Class I & II) Rules, 1955. Proviso to Rule 4 inter alia permitted the Government to relax the qualifications in case of an official who may be of outstanding merit (See: Para 2 of the judgment of the Supreme Court). In the instant case the question regarding applicability of similar Rules does not arise. Similarly there is nothing to show that relaxation, if any, could be made.

5. In above view of the matter it should be clear that the Supreme Court has not laid down any principle of universal applicability. The Supreme Court has not laid down that in all cases wherever a candidate is promoted to the higher post, though lacking in basic qualifications, his appointment to the higher post should be regularized if he fulfills the qualifications subsequently. It appears that it was a case of mistake. It was probably subsequently brought to the notice of the authorities concerned or it was probably raked up after a period of about nine years, and therefore the petitioner was sought to be reverted. In the background

of the facts before the Supreme Court, the Supreme Court held that the appointment of the petitioner to the post of Labour-cum-Conciliation Officer should have been regularized and it was deemed to have been regularized when the petitioner acquired the necessary experience of working in labour legislation even while working on the post of Labour-cum-Conciliation Officer. Therefore the aforesaid decision of the Supreme Court does not help the petitioner.

6. At this stage reference may be made to the Full Bench decision of this High Court in the case of Ahmedabad Mfg. and Calico Prtg. Ltd. and Others Vs. Union of India, , which provides guideline for reading and understanding the Supreme Court decision. In para 5 of the judgment it is stated as follows:

What is considered binding to all the Courts is the ratio decidendi of the decision which is to be gathered from the statements of principles of law applicable to the legal problems disclosed by the facts of the case decided by the Supreme Court.

After referring to the decision of the Supreme Court in the case of Dalbir Singh v. State of Punjab AIR 1979 SC 1384, the Full Bench has observed as under:

It is, therefore, evident that the decision of the Supreme Court is only an authority for what is actually decided and the observations made in the judgment should be restricted to the context in which they are made after relating the observations to the precise issue before the Court taking care to interpret the observations in the context of the question before the Court even though the same are expressed in broad terms.

Similar observations are made in a recent decision of the Supreme Court in the case of Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 of the judgment the Supreme Court has observed as follows:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically followed from it.

7. In above view of the matter the decision of the Supreme Court in the case of Ram Sarup (supra) cannot be "logically" extended further. The observations made by the Supreme Court have got to be restricted to the question which was posed before the Court. The question before the Court was-whether the appointment of the petitioner to the post of Labour-cum-Conciliation Officer was void and wholly ineffective or could it be regularized. Having regard to the relevant provisions of the Rules applicable to the facts and circumstances of the case and having regard to the facts of the case, the Supreme Court held that the appointment in question could be regularized. In the instant case no such question arises. Therefore the observations of the Supreme Court with regard to the fulfilment of eligibility criteria regarding experience made in the context of that case cannot be applied as if the Supreme Court has laid down a principle of law applicable to each and every case. In this view of the matter the aforesaid decision of the Supreme Court in the case of Ram Sarup (supra) does not help

the petitioner.

8. Be it noted that the petitioner on the date of interview was ineligible for the post. He has interviewed by granting relaxation. The requirement with regard to the passing of First Class Supervisor's examination was relaxed for the time being only on the condition that he shall produce the certificate of passing the examination as and when the result is declared. No relaxation whatsoever was granted to the petitioner as regards the experience for requisite number of years" was concerned. Even with regard to passing of the examination no relaxation was granted. Production of the proof of that requirement was deferred. If the contention raised by the learned Counsel for the petitioner is accepted it would lead to an anomalous situation. There would have been many other employees working with the Board who would be similarly situated like that of the petitioner. But they would not have applied since they had not the requisite experience. Simply because the petitioner applied and as he had appeared at the First Class Supervisor's examination no discrimination in his favour can be made. If the petitioners claim for regularization of the appointment to the post of meter tester is to be taken into consideration, then all other candidates having passed Second Class Wireman examination and having less than five years" experience should have been considered.

All of them ought to have been granted an opportunity of appearing at the interview. Admittedly that has not been done. Now if this is permitted, or if it is directed to be done in the case of the petitioner only, by exercising powers under Article 226 of the Constitution of India it would amount to permitting backdoor entry to the superior post of meter tester. In other words it would amount to opening the flood gates of partiality and nepotism through the instrumentality of the Court by exercising powers under Article 226 of the Constitution of India. For such purposes the powers under Article 226 of the Constitution can never be exercised. To do so would amount to abuse and/or misuse of the process of the Court.

9. The learned Counsel for the petitioner submits that by letter Annexure "I" written by the petitioner to the Superintending Engineer of the Board, it is pointed out that there are certain other persons who, though lacking in requisite experience, have been promoted to the post of meter tester and they are allowed to retain the post of meter tester in Sabarmati Circle. If that be so, prima facie it appears to be wrong. However, benefit wrongly conferred upon others does not confer any right upon the petitioner to claim that such benefit be conferred upon him also. If the situation is as is sought to be made out, it requires to be corrected by the appropriate authority. But it does not require to be extended to all others by the instrumentality of the Court. By the instrumentality of the Court, wrong is to be corrected and it is not to be extended to all and it is not to be perpetuated.

10. In above view of the matter, there is no substance in the matter. Hence rejected. It is directed that the office shall send a copy of this order to

respondent No. 2.