

(1996) 12 GUJ CK 0002
In the Gujarat High Court

Case No : Special Civil Application No's. 4858, 4859 and 4897 of 1984

K.A.R. Subramaniam and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 320

Citation : (1996) 12 GUJ CK 0002

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : A.M. Mithani, for the Appellant; H.L. Jani, for the Respondent

Judgement

S.K. Keshote, J.—Heard learned counsel for the parties. In all these Special Civil Applications, the petitioners have challenged the order of their reversion from the post of Assistant Conservator of Forests to the post of Range Forest Officer. The facts and grounds are common in these Special Civil Applications and hence these Special Civil Applications are disposed of by this common judgment.

2. In the month of May, 1981 the meeting of Departmental Selection Committee was held for considering the cases of Range Forest Officers, including the petitioners, for their promotions to the post of Assistant Conservator of Forests. The Departmental Selection Committee placed the name of the petitioners in the select list. In pursuance of that selection, the petitioners were given promotion on officiating basis on the post of Assistant Conservator of Forests. All the petitioners have been given the promotion under the same order. The order of reversion of the petitioners has been made, but as usual without receiving the copy of that order, the petitioners have filed these Special Civil Applications before this court challenging thereunder their reversion from the post of Assistant Conservator of Forests to that of Range Forest Officer. All the petitioners have proceeded on casual leave from 15th September, 1984 i.e. on knowing of this order. This court has issued the rule and protected the petitioners by granting interim relief in their favour in terms of para no.14(B). Para no.

14(B) reads as under:

Pending the hearing and final disposal of this petition, Your Lordship will be pleased to restrain by an order of injunction the respondents herein, their officers, servants and agents from effecting reversion by reverting the petitioner from the Gazetted Class II post of Officiating Assistant Conservator of Forest to the substantive Class III post of Range Forest Officer;

The reply to the writ petition has been filed and in para no.4 thereof it has been averred as under:

I say that the facts in the present case are similar to the facts in the Special Civil Application No.1736 of 1984 filed by on Mr. B.O. Shah, who was similarly situated as the petitioner. I say that the issues raised in the present petition are identical to the issues raised in the Special Application No.1736 of 84. I say that I have made an affidavit in reply to the said Special Civil Application No.1736 of 84 on 4th February, 1989. I say that, my statements and contentions made in the said affidavit be treated as the statements and submissions made in reply to the present petition. A copy of the said Affidavit in reply dated 4th February, 1989 is annexed hereto and marked Annexure-1. A copy of the reply which has been filed by the respondents in Special Civil Application No.1736 of 1984 has also been filed along with the reply. The respondents have come up with a case that the petitioners have been reverted from the post of Assistant Conservator of Forests as their selection made by Departmental Selection Committee was not approved by Gujarat Public Service Commission. The G.P.S.C. considered the petitioners unfit for promotion to the post of Assistant Conservator of Forests and consequent thereupon they have been ordered to be reverted.

3. The learned counsel for the petitioners made two fold submissions before this court. Firstly, it is contended that many juniors who were promoted alongwith the petitioners were retained on the post of Assistant Conservator of Forests whereas the senior persons, the petitioners herein, were reverted which is violative of Articles 14 and 16 of Constitution of India. It has next been contended that no reasons whatsoever have been given by the G.P.S.C. not to approve the promotion of the petitioners made by the Selection Committee. The learned counsel for the petitioners does not dispute that the selection of the petitioners by Departmental Selection Committee was provisional subject to the approval by the G.P.S.C.. The learned counsel for the petitioners also does not dispute that the appointment by promotion which has been given to the petitioners was subject to the condition of approval by the G.P.S.C..

4. The learned counsel for the respondents, on the other hand, contended that the petitioners were given promotion on officiating basis and they have no right to continue on the post. It is true that they were provisionally selected by the Departmental Selection Committee, but that was not the final selection as it was subject to the approval by the G.P.S.C.. The G.P.S.C. has not approved their selection, and as such, they have been reverted back to the lower post from

which they were promoted, and the respondents have all the right to make such an order. The counsel for the respondents in support of his contention relied on the decision of this court in the case of Special Civil Application No.3511 of 1984 decided on 29-8-1984 and decision of L.P.A. confirming that decision, in L.P.A. No.3779 of 1984 decided on 3-9-1984. The reliance has also been placed on another decision of this court in L.P.A. No.439 of 1984 decided on 12-10-1984. It has next been contended by the learned counsel for the respondents that the juniors who have been retained on the promotional post were those class of persons whose provisional selection was approved by the G.P.S.C. The petitioners' provisional selection was not approved by the G.P.S.C. and as such, this plea is not available to the petitioners. There is no question of any discrimination. The counsel for the respondents further urged that all the Range Forest Officers who were promoted as Assistant Conservator of Forests in officiating capacity and whose selection were not approved by the G.P.S.C. were reverted to their substantive post of Range Forest Officer. The counsel for the respondents has given the clarification that only those juniors are continuing on the higher post who have approached to this court and in their case interim relief has been granted. The learned counsel for the respondents lastly contended that the promotion of the petitioners was only on officiating basis, and as such, while reverting them, the notice or opportunity of hearing was not required to be given. It is not a case of reversion by way of the penalty. So far as the second contention of the counsel for the petitioners is concerned, the counsel for the respondents urged that no reasons are required to be given to the petitioners by G.P.S.C. for not approving their provisional selection.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The first contention made by the learned counsel for the petitioners is devoid of any substance. The petitioners have not filed any rejoinder to the affidavit filed by the respondents in reply to this Special Civil Application. In the reply, the respondent has made a statement of fact on oath that only those juniors have been retained on higher post whose provisional selection made by the Departmental Selection Committee was approved by the G.P.S.C.. Another factual statement made by the respondents in the reply that none of the Range Forest Officers whose provisional promotion has not been approved by the G.P.S.C. has been retained on the higher post except those persons in whose case this court has granted the interim relief, has also not been controverted by the petitioners. The plea of discrimination sought to be raised by the petitioners on the touchstone of the provisions of Article 14 and 16 of Constitution of India is not attracted in the present case. The petitioners as well as the junior persons were given the promotion on the basis of their provisional selection by Departmental Selection Committee subject to the approval by G.P.S.C.. The petitioners' provisional selection by Departmental Selection Committee was not approved by G.P.S.C. whereas the promotion of their juniors were approved. This makes the petitioners' case distinguishable and the reversion which has been made of the petitioners from the post of Assistant

Conservator of Forests to that of Range Forest Officer is not illegal or arbitrary. These are two different class of persons, and as such, the principle of equality as sought by the counsel for the petitioners is not available to them in the present case. The first contention raised by the learned counsel for the petitioners deserves no acceptance.

6. So far the second contention of the learned counsel for the petitioners is concerned, it is suffice to say that the counsel for the petitioners is unable to point out any provision from the service rules which puts an obligation on the G.P.S.C. to give the reasons for non approval of provisional selection of the petitioners made by the Departmental Selection Committee. In the absence of any statutory rule or any administrative decision taken by the Government or any other provisions or regulations made by the G.P.S.C. in exercise of power under Article 320 of the Constitution of India, this contention of the counsel for the petitioners is difficult to accept. In absence of any such provision, the petitioners have no right to make the claim for the communication of the grounds by the G.P.S.C. not to approve their provisional selection made by the Departmental Selection Committee.

7. The decision which has been taken by the G.P.S.C. not to approve the provisional promotion of the petitioners on the post of Assistant Conservator of Forests is not subject to the judicial review by this Court on any other ground except that it has acted arbitrarily or malafide. This court will not sit as a court of appeal above the decision of the G.P.S.C. not to approve the provisional promotion of the petitioners made by the D.S.C.. The G.P.S.C. is a body consisting of experts and on the decision taken by the expert body this court will not make any interference. In the case of Dr. H. Mukherjee Vs. Union of India and Others, , the case before the Supreme Court was that the recommendations of the selection made by the Commission were not accepted by His Excellency, The Governor. The decision of His Excellency, The Governor has been challenged before the Supreme Court on the ground that no reasons were communicated by His Excellency, The Governor not to accept the recommendations made by the Commission. The Apex Court has held that His Excellency, The Governor was not obliged to communicate the reasons not to accept the recommendations of the Commission either to the Commission or to the candidate. That principle laid down by the Apex court in the aforesaid case is applicable to this case. The Public Service Commission was not obliged to communicate the reasons. The obligation can only be under some statute or some other resolution or the circular of the Government or the Commission, and as stated earlier, the petitioners have failed to point out any such statutory provision or resolution or regulation. The second contention of the learned counsel for the petitioners is also devoid of any substance.

8. The learned counsel for the petitioners then contended that though the provisional selection of the petitioners made by the Departmental Selection Committee in its meeting held in the month of May, 1981 has not been approved

by the G.P.S.C., but it was obligatory on the part of the Departmental Selection Committee to consider their cases for promotion in the next meeting of the D.S.C.. The counsel for the respondents has produced on the record the letter of Under Secretary to the Government of Gujarat, Forest & Environment Department intimating thereunder that after May, 1981, the Departmental Selection Committee has met for adjudging the suitability of Range Forest Officers for promotion to the post of Assistant Conservator of Forests on the following dates.

22-9-1982, 24-8-1983, 26-12-1983, 23-11-1985, 4-9-1986, 12-8-1988, 26-3-1989, 13-3-1994.

9. I have considered this submission made by the learned counsel for the petitioners. The learned counsel for the respondents does not dispute that on the aforesaid dates, the case of none of the petitioners has been considered and the reason has been given that as these Special Civil Applications were pending before this Court their cases were not considered. I fail to see any justification in this approach of the respondents. The petitioners have a right of consideration for promotion and their case has to be considered for promotion by the Departmental Selection Committee in every meeting held by it. It is different matter whether the petitioners are selected or not. Their cases has to be considered in every next meeting and the recommendations should have been sent for approval to the G.P.S.C. The petitioners are selected or not selected that is not the question, but the question is to consider their cases for promotion and on their provisional selection the matter should be sent to the G.P.S.C. for approval. The petitioners promotion may be approved at any later stage by the G.P.S.C. and from that date they have a right of promotion. In the present case, exactly the same has happened, which is clearly borne out from the reply. Earlier to May, 1981, the cases of the petitioners were considered for promotion by the Departmental Selection Committee in its meeting held on 15-9-1976, 2-2-1978 and 9-1-1979. In all those three previous meetings, they were not found suitable for promotion. In the next meeting of May, 1981 they were found suitable for promotion by the D.S.C.. The matter is different that their provisional selection was not approved by the G.P.S.C. and they have been reverted. The action of the respondents not to send the cases of the petitioners for consideration before the D.S.C. in the meeting held on aforesaid dates is clearly violative of Article 14 and 16 of the Constitution of India. The petitioners have a right of consideration for promotion in all subsequent meetings of the Departmental Selection Committee which right has been denied to them.

10. The counsel for the respondents fairly conceded that the cases of the petitioners will now be considered with reference to the dates on which the Departmental Selection Committee met earlier. In view of this fact, the interest of justice will be met in case, it is hereby ordered that the cases of the petitioners should be considered for promotion on the post of Assistant Conservator of Forests with reference to the meeting of the Departmental

Selection Committee held on 22-9-1982, 24-8-1983, 26-12-1983, 23-11-1985, 4-9-1986, 12-8-1988, 26-3-1989 and 13-3-1994. In case, the Departmental Selection Committee finds the petitioners suitable for promotion then those proceedings may be sent for approval to the G.P.S.C. and in case, the G.P.S.C. also approves those recommendations then the petitioners shall be entitled for promotion from the appropriate date i.e. the date of consideration of their cases for promotion by the Departmental Selection Committee and the petitioners shall be entitled for all the consequential benefits therefrom. The petitioners or any of the petitioner who is selected shall be entitled for all the consequential benefits from the date of their selection. All the benefits which they got under the provisional promotion shall be returnable by them to the respondents i.e. the benefits of the promotion which they got from the date of provisional promotion to the date of their regular promotion. This exercise should not be done with reference to the subsequent dates of the meetings of Departmental Selection Committee from the date on which the petitioners are being selected. In case, the petitioners are not selected on any of the date as aforesaid by the Departmental Selection Committee or their selection is not approved by the G.P.S.C. then they shall not be entitled for any benefit whatsoever. The consequential effect of the reduction in the pay should be given where the petitioners have retired or any of the petitioner has retired and according to the revision their retirementary benefits i.e. gratuity, encashment of leave, pension etc. should be fixed. The respondents shall make necessary order of the fixation of their pay on the lower post with effect from the date of their reversion and the excess amount which has been paid to them for all this period shall be recoverable from them though on reasonable monthly installments. In case the petitioners or any of the petitioner in the meanwhile has retired from the Government service then the respondents shall accordingly revise their retirementary benefits i.e. gratuity, encashment of leave, pension etc. The excess amount which has been paid to the petitioners under the aforesaid head shall also be recoverable in reasonable monthly installments.

11. In the result, the order of termination of the services of the petitioners is held to be valid, but the stay order which has been granted by this court shall continue till the cases of the petitioners for promotion are considered by the Departmental Selection Committee with reference to the dates given in the letter of the Under Secretary to the Government of Gujarat, Forests And Environment Department. The respondents shall take care that their cases for promotion are considered by the Departmental Selection Committee within a period of six months from the date of receipt of certified copy of this order. Within this period, the matter should be sent for approval and G.P.S.C. should also finalise the same. This stay order shall continue only in case the petitioners or any of the petitioner is in service. In case all the petitioners or any of the petitioner has retired from the service then this interim order will not continue. However, the pension may not be reduced during this period. Rule is discharged subject to the aforesaid conditions. No order as to costs.