

(1995) 02 GUJ CK 0041
In the Gujarat High Court

P.M. Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Panchayats Act, 1961 — Section 203, 203(4)(a), 323

Citation : (1995) 1 GLR 837

Hon'ble Judges : K.R. Vyas, J

Bench : Single Bench

Judgement

K.R. Vyas, J.—The petitioner, by way of this petition under Article 226 of the Constitution of India has challenged the action of the respondents in not considering his case for promotion and absorption to Class II services of the State Government and has prayed to direct the respondents to consider his case for promotion to Class II services of the State Government on the basis of his position in the seniority list issued by the respondents from time to time showing positions of the employees working as Agriculture Officers, Grade I and to promote him with effect from the date his junior had been promoted to the Class II services with continuity of service and difference of salary.

2. By way of interim relief, the petitioner prayed for restraining the respondents, their servants and agents from making further promotions of the officers junior to him to Class II services of the State Government. While issuing notice on the petition, ad-interim relief was granted by this Court. However, it appears that on Civil Application No. 2837 of 1983 filed for modification of the ad-interim relief, this Court on 22nd July, 1983 passed an order to the effect that one post in Gujarat Agriculture Service Class II be kept vacant and that promotions to Gujarat Agriculture Service Class II would be subject to the result of this petition.

3. The petitioner was initially appointed as Junior Statistical Assistant in the Director of Agriculture by an order dated 1st May, 1962. The petitioner appeared at the department examination in Accounts of the Agriculture Section held by the

respondents on 27th, 28th and 29th January, 1963 and was declared successful by an order of March 1963 (Annexure "A" to the petition). According to the petitioner, the said examination was conducted for promotion to Class II and Class I posts. In June, 1963 the petitioner was transferred as Agriculture Supervisor at Nadiad. He resigned this post for personal reasons in September, 1963.

4. The petitioner thereafter appeared in the selection held by the Gujarat Panchayat Service Selection Board for direct recruitment to the post of Agriculture Supervisor and was selected and appointed to the said post by an order dated June, 11, 1965. The petitioner thereafter appeared in the selection held for the post of Agriculture Officer, Grade I by the Panchayat Service Selection Board and was declared successful and was appointed as Agriculture Officer, Grade I by an order dated 6th January, 1966.

5. It is the case of the petitioner that he, as an Agriculture Officer, Grade I, was eligible for absorption in the cadre of Gujarat Agriculture Service Class II of the State Government under the provisions of the Gujarat Panchayat Service (Promotion to the Cadre in Panchayat Service) Rules, 1974 framed in exercise of the powers conferred by Section 323 read with Clause (a) of Sub-section (4) of Section 203 of the Gujarat Panchayats Act, 1961. The petitioner, in fact, addressed a letter (Annexure "C") dated 31st December, 1974 informing the District Development Officer, District Panchayat Surendranagar, that he was willing to be absorbed on promotion to Class II services of the State Government in pursuance of the Rules (Annexure "B" to the petition) framed by the State Government.

6. It appears that in the seniority list of Agriculture Officers, Grade I published by the respondents on 2nd December, 1978, the name of the petitioner did not figure even though the petitioner was working as Agriculture Officer, Grade I at the relevant time. He, therefore, filed his objections on 28th December, 1978, inter alia, pointed out that he was appointed on 11th June, 1965 as Agriculture Supervisor, Surendranagar District Panchayat; was further appointed to the post of Agriculture Officer, Grade I with effect from 6th January 1966 and has been working on the said post since then and as per the notification (Annexure "B"-Rules) he had already given his option to be absorbed in the State Service on promotion to Class II Service of the State Government. He also stated that the said option was forwarded to the competent authority by the District Panchayat on 13/18th August, 1975; that he has passed the departmental examination in January 1963 and as he was working as Agriculture Officer, Grade I for more than 12 years, he was entitled to be included in the seniority list published by the respondents. The petitioner also made a grievance in his objections that pursuant to the seniority list, the respondents, without inviting objections, have promoted 142 employees working as Agriculture Officers in the Panchayat as well as State whereas the petitioner, though senior to all of them has neither been included in the seniority list nor promoted.

7. It is not in dispute, as can be seen from the letter dated 4th March, 1978 of the District Agriculture Officer (Panchayat), Surendranagar addressed to the Dy. Secretary, Agriculture, Forest and Co-operation Department, Gandhinagar, that the petitioner's option for absorption on promotion to Class II Services in the State Service had been accepted by the DDO, Surendranagar. In the fresh seniority list, as on 31st December, 1979 published on 15th June, 1980, the petitioner's name was shown at Sr. No. 474. Vide Annexure "F", the petitioner submitted a representation on 8-9-1981 to the Director of Agriculture, inter alia, pointing out that pursuant to the objections filed by him on 28th December, 1978, his name has been included in the seniority list of Agriculture Officers, Grade I and that his name has been shown at Sr. No. 474 and, therefore, he should be given promotion to Class II post in the State Service with a deemed date since many juniors have been promoted overlooking the petitioner's claim without any fault on his part. It appears that the Director of Agriculture of the State of Gujarat in reply to Annexure "F" on 10th November, 1981, vide Annexure "G", stated that the petitioner's name has also been included in the seniority list of Agriculture Officers, Grade I as per his representation. However, in view of the stay order issued by the Supreme Court against the said seniority list, it was stated that the moment the stay order issued by the Supreme Court against the said seniority list would be lifted, the petitioner's case for promotion and absorption in Class II Service as per his seniority in the seniority list would be considered in light of the directions that may be given by the Supreme Court. The petitioner, vide letter Annexure "H", dated 18th November, 1981, addressed to the Director of Agriculture, pointed out that if there was stay order from the Supreme Court, why the same had not been taken into consideration while publishing seniority list dated 2nd December 1978 and giving promotions to his juniors in accordance therewith in December, 1978. Annexure "I" is the reply of the Director of Agriculture to the representation of the petitioner wherein it was stated that the petitioner's representation would be decided in due course as per the relevant Rules. The petitioner again sent a detailed representation on 17th February, 1982 (Annexure "J").

8. It appears that on 18th July, 1982 a fresh seniority list showing the positions of the Agriculture Officers as on 31st December, 1980, was published wherein the name of the petitioner was shown at Sr. No. 474 and in pursuance thereof, by an order dated February 25, 1983, 101 employees were promoted to Class II Service. It is the case of the petitioner that persons upto Sr. No. 929 have been promoted in total disregard of his seniority and, therefore, he has filed this petition.

9. On behalf of the respondents, one G.R. Purohit, Administrative Officer of the Director of Agriculture, Gujarat State, has filed affidavit-in-reply wherein it has been stated, inter alia, that-

....the petitioner has given option for promotion in State Service. His option has been accepted also and his name has been included in the combined seniority list

of Agriculture Officer also. As per provision of Rule 2 of Government Notification dated 16th September 1974 the petitioner can be considered for promotion after he fulfils the requirements of the recruitment rules for the posts shown in the Schedule. As per the condition 2 of column No. 3 of the Schedule, the person who gives option for the State Service has to pass the departmental examination meant for posts for which he has given option. The petitioner has not passed the departmental examination as required as per the conditions laid down in the Notification and hence he has not been considered for promotion....

It is further stated in the affidavit that even though the petitioner passed the departmental examination in the year 1963 when he was serving under the State Service, as he resigned in the same year from the State Service and joined the Services of the District Panchayat afresh in June, 1965, his service in the State Government could not be considered for any purpose and, therefore, the departmental examination passed by him before his fresh appointment in Panchayat Service could not be taken into consideration for the purpose of his promotion. It is also stated that the syllabus of the examination, which was in force in 1963, also changed. In view of the above, it is stated that even though his option was accepted in the year 1979, the Examination Rules in force at that time were applicable to him and he was required to pass that examination. It is further the case of the department that as the petitioner was selected by the Gujarat Panchayat Service Board as a direct recruit Agriculture Supervisor and joined the Panchayat Service after giving resignation from the State Service, he was not entitled to any benefits of his State Service and, therefore, the departmental examination passed by him in the year 1963 could not be taken into consideration. The petitioner has also filed affidavit-in-rejoinder reiterating what he has stated in the petition.

10. Having heard the learned Advocates for the parties, only question which is required to be decided is whether it was obligatory on the part of the petitioner to pass departmental examination for being considered for absorption in the Gujarat Agriculture Service Class II, even though he had passed the departmental examination in the year 1963. Since the question mainly depends on the interpretation of the notification (Annexure "B") dated 16th September 1974 issued by the State Government in Panchayat and Health Department whereby the State Government issued Rules called the Gujarat Panchayat Service (Promotion to Cadres in State Services) Rules, 1974, it is necessary to deal with said Rules at this stage. These Rules are framed in exercise of the powers conferred by Section 323 read with Clause (a) of Sub-section (4) of Section 203 of the Gujarat Panchayats Act, 1961. Rule 2 provides that an officer or servant holding a post belonging to a cadre in Panchayat Service specified in column 1 of the Schedule annexed to the said Rules would be eligible for promotion to the post or posts belonging to the cadres in the State Service specified against it in column 2 of the Schedule, subject to conditions specified in column 3 thereof, having regard to the relevant recruitment rules for the time being in force. Since we are concerned in this petition with the post shown at Sr.

No. 10(i), column No. 1 of Part I of the Schedule, the same is reproduced below:

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Conditions cadre in cadre in the Panchayat State Service Service to which	eligible	for promotion
-----	1	2 3 1. xx (1)

Persons holding the post mentioned in column 1 shall satisfy all the conditions laid down by Government from time to time for promotion to the post specified in column 2 including that of passing of the departmental examination and that, in cases where such examinations are held by the Gujarat Public Service Commission (hereinafter referred to as "the Commission") they shall have to pass examination held by the Commission and subject to the approval of the Commission. (2) Persons specified in column 1, under Part I of the Schedule shall be eligible for promotion either to the post respectively specified in column 2 or to post in the Gujarat Development Service, Class II provided they satisfy the conditions laid down for promotion to these posts including that of passing of the departmental examination and that in cases where such examinations are held by the Commission, they shall have to pass the examination held by the Commission. Such persons should give their option in writing to the District Development Officer and to the Head of the Departments concerned within four months from the date of publication of these rules and in case of those, who are appointed to post specified in column 1 after the publication of these rules, in clear vacancy, within 4 months from the date of their appointment to such posts, and the option once so exercised shall be final: Provided that those persons who have failed to exercise the option within the aforesaid period of four months, shall be deemed to have opted for the Gujarat Development Service, Class II. 10(i) Agriculture Gujarat Officer, Agriculture Grade I. Service, Class II. Rule 3 of the Rules provides for publication of combined seniority list. It is provided therein that for the purpose of promotions to the post or cadre in the State Service specified in column 2 of the Schedule, the concerned Head of Department under the State Government or where there is no such Head of Department, the authority competent to promote persons to such posts, would prepare or cause to be prepared a combined seniority list of those in the State Service who are eligible for promotion as well as those in the Panchayat Service, who are holding the posts or who belong to the cadre specified in column 1 of the said Schedule and shall publish such combined seniority list every year in the month of April, or in any case not later than the 30th June. Sub-rule (2) of Rule 3 provides that the seniority list referred to in Sub-rule (1) would be prepared on the basis of the length of continuous service of the person in the post or the cadre from which such person is eligible for promotion so however that the inter se seniority of persons belonging to the State Service or, as the case may be, Panchayat Service is maintained. Sub-rule (3) of Rule 3 provides that for the purpose of preparing such combined seniority list, the Head of Department or, as the case may be, the authority aforesaid, would call for from the District Panchayats copies of seniority lists and other

particulars, if any, of persons in the Panchayat Service who are holding the posts or who belong to the cadre specified in column 1 of the said Schedule and it would be the duty of the Panchayat concerned to supply all relevant information to such Head of Department or authority without any delay. Rule 4 provides that the service rendered by a person in the Panchayat Service under the relevant District Panchayat prior to his appointment by promotion to any of the posts in the State Service specified in column 2 of the said Schedule would be deemed to be the service rendered under the State Government.

11. A conjoint reading of the aforesaid provisions makes it clear that an officer or servant holding a post belonging to a cadre in Panchayat Service specified in column 1 of the Schedule would be eligible for promotion to the post belonging to the cadre in the State Service specified against it in column 2 of the said Schedule, subject to the conditions specified in column 3, and that the Head of the Department or the competent authority of the State Service specified in column 2 would prepare a combined seniority list of those in the State Service, who would be eligible for promotion as well as those in the Panchayat Service who would be holding the post or who belonged to the cadre specified in column 1 of the Schedule. The seniority list would be prepared on the basis of the length of continuous service of the person in the post or the cadre from which such person is eligible for promotion so that the inter se seniority of persons belonging to the State Service or the Panchayat Service is maintained. For the purpose of preparing such combined seniority list, the authority concerned would call for from the District Panchayats copies of seniority lists and other particulars, if any, of persons in the Panchayat Service holding posts or belonging to the cadre specified in column 1 of the Schedule and it was the duty of the Panchayat to supply all relevant information to such Head of Department or the authority without any delay. Now, as far as the present case is concerned, it is an admitted position that by letter at Annexure "C" dated 31st December 1974, the petitioner informed the DDO, District Panchayat, Surendranagar that he was willing to be absorbed on promotion to Class II Services in State Service in accordance with the Rules framed by the State Government. It is also not in dispute that the said option was also forwarded immediately to the competent authority by letter of the District Panchayat bearing outward No. 1534-74-75 which was further forwarded by the Dy. DDO to the concerned authority by their letter dated 13/18th August 1975. However, in the meanwhile, seniority list was published on 25th May 1975 and since the department had sent the petitioner's option after the seniority list was published, the petitioner's name could not be included in the seniority list. It appears, reading the letter Annexure "J" addressed to the petitioner by the Director of Agriculture that the same was received after the seniority list of 1975 was published. Therefore, while preparing seniority list of the Agriculture Officers, Grade I, on 2nd December, 1978, it was obligatory on the part of the respondents, pursuant to Rule 3 of the Rules, to call for from the District Panchayat, copies of the seniority lists and other particulars, if any, of persons holding the posts or belonging to the cadre specified in column 1 of the

Schedule, and the concerned Panchayat was cast with a duty to supply all relevant information to such Head of Department or authority without any delay. The averment made by the petitioner in the petition that the seniority list was neither notified nor circulated in Surendranagar District Panchayat and, therefore, his name was not shown in the seniority list of Agriculture Officers, Grade I on 2nd December, 1978, has not been denied in the affidavit-in-reply on behalf of the respondents. The petitioner also made a grievance pointing out the aforesaid facts that pursuant to the seniority list, the respondents promoted 142 employees working as Agriculture Officers in Panchayat as well as State cadre of work as Class II Officers in the said cadre overlooking the seniority of the petitioner, and in the fresh seniority list as on 31st December, 1979 published on 16th June, 1980 his name was shown at Sr. No. 474.

12. As can be seen from the correspondence between the petitioner as well as the Director of Agriculture, it was throughout the case of the respondents that the case of the petitioner could not be considered in view of the challenge to the seniority list of 16th June, 1980 before the Supreme Court. In none of the replies to the representations, it was pointed out to the petitioner that as the petitioner had not passed the departmental examination, his case for promotion was not considered. The fact that the respondents received the option sent by the petitioner in the year 1975. However, on the flimsy ground that the option of the petitioner was received on 28th February, 1979 his name was not included in the seniority list of 1978. Be that it may, the fact remains that in none of the replies to the representations of the petitioner, the respondent-authorities pointed out that the petitioner was required to pass the departmental examination which was a condition precedent for getting promotion to the post of Agriculture Officer, Class II of the State Government. It was for the first time in the affidavit-in-reply that the respondent-authorities have come forward with a case that the petitioner has not passed the departmental examination and, therefore, his case for promotion was not considered. The conditions enumerated in column 3 of Part I of the Schedule required a person holding the post mentioned in column 1 to satisfy all the conditions laid down by Government from time to time for promotion to the post specified in column 2, including that of passing of departmental examination.

13. In the present case, the petitioner, as Agriculture Officer, Grade I, was required to pass the departmental examination for becoming eligible for promotion to the post of Gujarat Agriculture Service Class II shown in column 2. Condition (2) also, over and above dealing with the passing of the departmental examination, required a person to give his option in writing to the DDO and to the Head of Departments within four months from the date of publication of the Rules and in case the person is appointed to a post specified in column 1 after the publication of the Rules, in clear vacancy, within four months from the date of his appointment to such post. The option once exercised is made final. In the instant case, the petitioner, who was appointed admittedly after coming into force of the said Rules, had within four months from the date of his appointment

given his option in writing to the concerned authority. In all the representations, the petitioner had clearly pointed out that he had also passed the departmental examination in January 1963 when he was serving as Supervisor in Agriculture Department of the State of Gujarat. Since the petitioner had passed the departmental examination and had given his option within the stipulated time, in my view, the respondent-authorities were not justified in not recognising the passing of the departmental examination by the petitioner in January 1963 when he was serving as a Supervisor in the Agriculture Department of the State. No rule and/or resolution of the Government has been pointed out to this Court derecognising the departmental examination passed by the petitioner earlier or requiring passing of the departmental examination again. Only ground urged on behalf of the respondents that as the petitioner passed the departmental examination in 1963 when he was serving under the State and as he had resigned from the State Service and joined afresh the Panchayat Service in 1965, passing of the departmental examination before his appointment in Panchayat Service cannot be taken into consideration for the purpose of promotions as the syllabus of the examination which was in force in 1963 was changed is, in my opinion, nothing but a misconception on the part of the respondents. The said submission on the part of the respondents, runs counter to the Gujarat Panchayat Service (Promotion to Cadres in State Services) Rules, 1974 wherein the only condition stipulated is to pass departmental examination and submit option within four months from the date of publication of the Rules or the appointment on the post. Since the petitioner, in my opinion, fulfilled both the requirements, insistence on the part of the respondent-authorities to pass departmental examination afresh after a lapse of about eight years is totally illegal and arbitrary. The petitioner was, therefore, wrongly held ineligible for being considered for promotion on the ground that the petition challenging the seniority list of 1980 is pending before the Supreme Court. In spite of the insistence of this Court to produce the order passed by the Supreme Court, nothing has been produced. No details about the proceedings pending in the Supreme Court are given on behalf of the respondents. Even if some proceedings were pending before the Supreme Court, the fact that the respondent-authorities granted promotions to 142 employees ignoring the claim of the petitioner, would go to show that the respondent-authorities were entitled to promote persons; however, on one or the other pretext he was not considered. Thus, the action on the part of the respondents ignoring the rightful claim of the petitioner for being considered for promotion is totally illegal, arbitrary and bad in law.

14. In the result, this petition is allowed. The respondent-authorities are directed to consider the case of the petitioner for absorption and promotion to Class II Service of the State Government on the basis of his position in the seniority lists issued from time to time showing the positions of the employees working as Agriculture Officers, Grade I and to promote the petitioner with effect from the date his juniors were promoted to Class II Services with continuity of service and difference in salary. The aforesaid directions shall be carried out by the

respondent-authorities within four months from the date of receipt of the writ from this Court. Rule is made absolute with no order as to costs.