

(1987) 07 GUJ CK 0007
In the Gujarat High Court
Case No : Spl. C.A. No. 2583 of 1987

P.N. Roal and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 02-07-1987

Acts Referred:

Gujarat Account Service Rules, 1964 — Rule 5(1)

Citation : (1987) 2 GLR 996 : (1988) 1 LLJ 355

Hon'ble Judges : P.R. Gokulakrishnan, C.J.;R.C. Mankad, J

Bench : Division Bench

Judgement

Gokulakrishnan, C.J.—The petitioners have come forward with this Special Civil Application for striking down the words and figures "8 years" substituted for "3 years" in the Gujarat Account Service Rules, 1964, under Rule 5(1) under the heading "Gujarat Accounts Services Clause I Junior Duty Post" under sub-rule 1 by holding it to be ultra vires, unconstitutional and violative of Arts. 14 and 16 of Constitution of India, and also for declaring that he amended Rules at Annexure "A" to Special Civil Application do not restrain the direct recruits promoted to Class I posts by substituting 8 years experience in place of 3 years and for other reliefs.

2. The short facts of this case are that the petitioners are working as Class II officers being appointed by direct recruitment. They joined their services on 1st October, 1982 being selected by the Gujarat Public Service Commission directly as Accounts Officers Class II. There are two modes of appointment for posts of Class II Officers, i.e., one by promotion and the other by direct recruitment. The promotion is made from among the persons of proven merit and efficiency who have worked for atleast 3 years on the supervisory post and have passed the departmental examination. The other mode of recruitment is direct recruitment by Gujarat Public Service Commission. The ratio of appointment to the post is 1 : 3, i.e., one promotee and 3 direct recruits. As per the old rules, 3 years experience in the Class II post is required for promotion to Class I Junior Duty

Post. This promotion is also on the ratio of 2 : 1, i.e., two promotees and one direct recruit. Recently, the Government has amended the promotion rules and has substituted the period of experience of 8 years in the place of 3 years in Class II cadre for becoming eligible for promotion to Class I post. This amendment to rules prescribing 8 years experience is questioned by the petitioners herein on various grounds. It is submitted by the petitioners that they joined as direct recruits since the rules as on the date they have joined the service prescribed only 3 years experience for promotion to Class I post and that the amendment substituting 8 years experience, according to the petitioners, bars their bright future for promotion. They questioned the amendment on the doctrine of promissory estoppel. It is further contended that the amendment carried out is to block the direct recruits from getting any promotion to Class I service (Junior Duty Post) in order to enable the promotees to enjoy such benefits. The petitioners further contended that such amendment will create anomaly by promoting juniors to the direct recruits to the post of Class I services, since the promotees to Class II service either on ad-hoc basis or on temporary promotion would have put in 8 years experience.

3. Mr. Tanna, the learned Counsel appearing for the petitioners, submitted that the Gujarat Accounts Services (Amendment) Rules, 1987 was passed in pursuance of the resolution of the General Administration Department, which inter alia refers to the amendment in Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. It is further submitted by Mr. Tanna that, on a plain reading of both the resolutions and the amended rules, it is quite clear that, minimum experience of 8 years prescribed under Rule 11(2)(a)(b) of General Rule is to be applied only when the relevant rules at the relevant time did not provide the specific period for minimum experience as a condition precedent for promotion to higher posts. It is further contended by Mr. Tanna that the Government in Finance Department has exercised power under this resolution and notification and therefore it is a colourable exercise of power since there is no mandate for amending recruitment rules which specified period of experience. The learned Counsel further submitted that the right which has accrued to the petitioners, i.e., the right to get promoted with 3 years experience, cannot be taken away by subsequent amendment which does not specifically apply retrospectively. So, the learned Counsel submitted, the Government is bound by the doctrine of promissory estoppel, in as much as the original experience rule led the petitioners to believe that they would be promoted after a minimum period specified in the rules and if the Government is allowed to back out from the said original rule of three years experience for promotion, the petitioners would be placed in a disadvantageous situation. Finally, the learned Counsel, submitted that it would create an absurd situation that a person is treated as a senior but is not found fit for promotion by subsequent amendment to the rules. The amendment now introduced has not taken care of the situation whereby the petitioners' promotional avenues have been arbitrarily curtailed and hence such amendment is violative of Arts. 14 &

16. Referring to the Sadhwani Committee Report, Mr. Tanna states that the policy decision taken by the Government, no where reflects the conscious decision of the Government to amend all recruitment rules, and hence the policy decision, without applying its mind to the type of work, experience required for promotion etc., is arbitrary and cannot be sustained. After reading the Sadhwani Committee Report, Mr. Tanna also submitted that the said report clearly states that minimum experience qualification can be fixed only in cases where the rule does not prescribe minimum experience qualification for promotional purposes. In support of his contentions raised above, the learned Counsel appearing for the petitioners cited the following decisions;

1969 SLR 509 para 5 (K. Veerayya v. State of Mysore)

Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,

Col. A.S. Sangwan Vs. Union of India (UOI) and Others,

(AIR) 1968 SC 718 (Union of India v. Om Prakash)

(AIR) 1971 SC 1022 para 11, 12, (Century Spn. & Mfg. Co. Ltd. v. The Ulhasnagar Muni. Council) 1974 SLJ 170 (Orissa) (Gopal Chandar Bose v. State of Orissa).

State of Kerala and Another Vs. N.M. Thomas and Others,

Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others, .

4. The petitioners are direct recruits in Class II services. They are working in this Class II service of Gujarat Accounts Service as and from 1st October 1982. The mode of appointment to this Class II service is (1) by direct selection and (2) by promotion. The ratio is that, if there is one promotee, there have to be 3 direct recruits. Now the dispute is regarding the promotion to Class I of the Gujarat Accounts Service. As per the rules framed by virtue of Art. 309 of the Constitution, called the Gujarat Accounts Service Rules, 1964, it has been spelt out under Rule 5-B as follows :

"5. B. Gujarat Accounts Service Rules Class I (Junior Duty Posts).

(1) Appointment to Gujarat Accounts Service Class-I (Junior Duty Posts) shall be made either,

(i) by promotion of officers of proved merit and efficiency who have worked for not less than 3 years in Gujarat Accounts Service Class-II or in a corresponding post, and have passed the Departmental Examination as prescribed by Government".

5. This minimum qualification of experience of 3 years was in vogue from 1964 to 1967. By Notification dated 6th December, 1985, the State of Gujarat, in exercise of the powers conferred by Proviso to the Article 309 of the Constitution of India, amended the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. After Rule 11, to the original rule, the following rule was

inserted :

"11-A Minimum experience in service or post requisite for promotion :-

1. Where in any rules or orders relating to recruitment in or promotion to any service or post included in the State Services or Subordinate Services, possession of experience in a lower service or post for a specified period is not prescribed as a condition precedent to promotion to a higher service or post the provisions of sub-rule (2) shall apply.

2. (a) No person shall be promoted from a lower post in Class-III service to a higher post in the same service unless he has an experience of five years in the post from which he is to be promoted.

(b) no person shall be promoted from Class-III service to Class-II service unless he has an experience of seven years in Class-III service from which he is to be promoted.

(c) no person shall be promoted from a lower post in Class-II service to a higher post in the same service unless he has an experience of five years in the post from which he is to be promoted and;

(d) no person shall be promoted from Class-II service to Class-I service unless he has an experience of eight years in Class-II service from which he is to be promoted.

Provided that where an appointing authority is satisfied that a person having an experience specified in clause (a), (b), (c) or as the case amended the Gujarat Accounts Service Rules, 1964 in exercise of its power conferred by the Proviso to Article 309 of the Constitution of India. Rule 2 of the amendment reads as follows :

2. "In the Gujarat Accounts Service Rules, 1964, in rule 5, -

(1) Under the heading "B Gujarat Accounts Service Class-I (Junior Duty Posts)" in sub-rule (1) -

(i) in clause (i), for the figure and word "3 years" the words "eight years" shall be substituted."

6. This amendment prescribing 8 years experience instead of 3 years experience, is the subject matter of dispute in this Special Civil Application.

7. From the narration of the above facts, it is clear that the Government, by virtue of the powers conferred upon it by the Proviso to Article 309 of the Constitution of India, made the rules. Mr. Tanna, the learned Counsel, fairly conceded that the Government has the power to amend that recruitment rules. From the arguments advanced by Mr. Tanna, we have to consider whether such an amendment is a colourable exercise of the power vested with the Government and so as to whether such power has been arbitrarily exercised by the Government. It is clear from the facts stated above, that the Government, in the

interest of the Government employees and also as per the terms of compromise regarding the Roster system introduced for promotion in Government and Panchayat services, thought it fit to amend the said rule fixing 8 years experience to Gujarat Accounts Service Class-I (Junior Duty Posts). This rule was applied uniformly to every one. The resolution referred to above also states that such recruitment rule has to be prescribed for all cadres. Thus, it can be seen, there is neither arbitrariness nor mala fides on the part of the Government in introducing such amendment. Such amendment would equally apply to every employee in that particular cadre eventhough in the transitional period, the petitioners may be affected to certain extent. Thus, on the facts and circumstances of the present case and also in view of the fact that there is power in the Government to amend that recruitment rules, there is no question of such amendment being ultra vires Articles 14 & 16 of the Constitution.

8. In this connection, we can also usefully refer to the decisions cited by Mr. Thanna, the learned Counsel appearing for the petitioners herein.

9. In 1969 SLR page 509, the petitioner therein successfully completed his probation for 2 years. As per rules that existed as on the date of starting of the probation and as on the date of completion of probation, 2 years period of probation makes a candidate eligible for confirmation by a competent authority. Since in the said case, the Government did not confirm the confirmation made by the competent authority, the Court directed by issue of a writ to confirm the petitioner as per rules. In these circumstances, the Bench of the Mysore High Court held that any right acquired by a Government Servant under rules of service properly applicable to him would be a right which cannot be withheld from him and the same shall have to be regarded as an enforceable condition of his service.

10. As far as the present case is concerned, there is no enforceable right accrued to the petitioners to get the promotion as of right. The Government has every right to amend the recruitment rules as rightly conceded by Mr. Thanna, the learned Counsel appearing for the petitioners. Hence, the prescription of different criteria for promotion to higher posts even after one enters into service, cannot be considered against right acquired or promise held out by the appointing authority on which the party concerned acted and was adversely affected due to subsequent amendments. Hence, the decision referred to above cannot have any application to the facts of this case.

11. The next decision cited by the learned Counsel, Mr. Thanna was (AIR) 1985 Supreme Court page 941. In this case, the appellants before Supreme Court wanted regularisation of service as Assistant Engineers/Junior Engineers on the strength of the representation made by the Electricity Board. In this case, a few important aspects emerged from the record, i.e. (1) the Board did represent to the trainee Engineers from time to time, that after their training was completed, they would be absorbed in regular employment on the Board; (2) when some of the Engineers were getting age-barred for Government employment, they were

told to come back under the temptation of getting permanent employment in the Board; (3) when the Board was reeling under a strike of its employees, these trainee Engineers were told by the Board to keep up the generation and distribution of electricity and had been assured of absorption; (4) the Board had decided to absorb them on permanent basis but initially on a probation of 2 years without conducting any further examination.

12. The principle, that a public body is not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice, was reiterated. On such facts, the Supreme Court found that, due to the representation made by the Electricity Board, the Engineers, relying upon such representation, joined the service in order to get themselves regularised. If the Board as per its representation failed to regularise them, it is clear that these Engineers will be very much prejudiced since they cannot get absorbed elsewhere due to age bar. In those circumstances, the Supreme Court, on the principle of promissory estoppel, directed the Board to regularise their services.

13. As far as the present case is concerned, the rule as regards the qualification for promotion was modified. The right to amend the rules by Government cannot be questioned as such. There is no question of applying the principle of promissory estoppel to the facts of the present case.

14. In (AIR) 1968 Supreme Court page 718, we find that, import trade policy notification gave the right to exporters to the effect that they will be entitled to import raw materials of the total amount equal to 100% of F.O.B. Value of exports. This notification was not adhered to by the Textile Commissioner. In those circumstances, the Supreme Court observed that the executive necessity could not release the Government from honouring its solemn promise relying on which citizens have acted to their detriment. In this case, Supreme Court held that the Government is bound by its representation which was spelt out in the scheme called "The Export Promotion Scheme".

15. We do not think that this case can be of any use to the petitioners herein. It is not a case where the petitioners acting upon some promise made by the competent authority concerned suffered disadvantage due to the said authority not keeping up the promise it held out on which the petitioners acted to their detriment.

16. The next case cited by Mr. Tanna is the one reported in State of Kerala and Another Vs. N.M. Thomas and Others, . In this, Supreme Court upheld Rule 13AA of the Kerala State and Subordinate Services Rules, 1958 and 2 orders Exhibits P-2 and P-6 which gave advantage to the Scheduled Castes and Scheduled Tribes in their promotional avenue. This case, in our view, cannot be of any assistance to the petitioners herein since the present facts and circumstances are completely different and the rules amended in this case unlike the abovesaid Supreme Court case, will apply equally to every one who aspires for promotion to

Class-I Services (Junior Duty Posts).

17. (AIR) 1979 Supreme Court page 621 deals with the question of promissory estoppel. In this case, the promised sales tax exemption for a period of 3 years for Vanaspati Industry was held to be enforceable on the principle of promissory estoppel. In this case, Supreme Court observed :

"Where the Government maintaining the promise knowing or intending that it would be acted on by the promisee and in fact the promisee acting in reliance on it alters his position, the Govt. would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not regarded in the form of a formal contract as required by Art. 299 of the Constitution."

Continuing further, the Supreme Court in that case held :

"When the Government is able to show that, in view of the facts which have transpired since the making of a promise, public interest would be prejudices if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon and alter his position and the public interest likely to suffer if the promise is required to be carried out by the Government and determine which side the equity lies."

The said principle narrated above was enunciated as early as in 1971, in (AIR) 1971 SC 1022. In that case, the Supreme Court observed :

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position, to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise; when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be enforced against it in appropriate cases in equity."

18. Finally, we can quote the judgment reported in Col. A.S. Sangwan Vs. Union of India (UOI) and Others, which succinctly lays down the principle regarding the changing of promotional policies. In this case, Supreme Court held :

"A policy once formulated with regard to promotion of employees in a cadre in Defence Force by the Union of India is not good for ever; it is perfectly within the competence of the Union to change it, rechange it, adjust it, readjust it according to the compulsions of circumstances and the imperatives of material considerations. There is no bar to its changing the policy formulated earlier if there are good and weighty reasons for doing so. It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up but if it does change its policy it must do so fairly and should not give

the impression that it is acting by any ulterior criteria or arbitrarily. Whatever policy is made subsequently should be done fairly and make known to those concerned."

19. As far as the present case is concerned, there was no promise held out, nor the petitioners acted upon it. It cannot also be said that petitioners, relying upon such representation, have altered their position to their prejudice. In the present case, there is only change in the rules for promotion. Instead of 3 years experience, 8 years experience has been spelt out for promotion to Class-I service. There cannot be any bar for the Government changing the policy formulated earlier. As we have seen already, there were weighty reasons for doing so. In spelling out the experience for promotion, the Government has applied the said criteria equally to every one in that particular cadre. It is difficult for us to spell out that the Government acted with ulterior motive or arbitrarily in bringing about the amendment in the said rules.

20. Thus, from the foregoing discussions, we are not convinced with the argument of Mr. Tanna to the effect that the amendment is colourable exercise of power and that the Government cannot apply such amended rule to the petitioners who were recruited much earlier to such amendment, on the principle of promissory estoppel.

21. For all these reasons, this Special Civil Application is dismissed.

22. Ad interim relief granted, which is to the effect that the amended rule regarding experience of 8 years may not be implemented so as to affect the petitioners, will continue for a period of four weeks from this date. This interim relief is granted on the representation made by Mr. Tanna, learned Counsel for the petitioners to the effect that he wants interim relief for some time in order to enable the petitioners herein to move the Supreme Court.