
(1989) 10 GUJ CK 0001
In the Gujarat High Court

Raval Ichchhashanker Mahashanker

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 12-10-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 16, 16
Prevention of Food Adulteration Act, 1954 — Section 9
Senior Food Inspector (Food and Drugs Control Administration) Recruitment Rules, 1987 — Rule 2(a)

Citation : (1990) 1 GLR 291

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

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—Both these Special Civil Applications question the vires of Rule 2(a) of the Senior Food Inspector (Food and Drugs Control Administration) Recruitment Rules, 1987, as offending Articles 14 and 16 of the Constitution. According to Mr. J.V. Desai, the learned Counsel appearing for the petitioner in both the petitions, the eligibility criteria prescribed under Rule 2(a) for the purpose of promoting to the Senior Food Inspector grade offends Articles 14 and 16 of the Constitution since persons working as Food Inspectors must get equal opportunity for promotion on the basis of seniority-cum-merit or merit-cum-seniority. This Rule 2(a) of the Senior Food Inspector (Food and Drugs Control Administration) Recruitment Rules, 1987 reads as follows:

2. Appointment to the post of the Senior Food Inspector, in Food and Drugs Control Administration, Gujarat State, Class-II shall be made either:

(a) by promotion of a person of proved merit and efficiency from amongst the persons working as Food Inspector in the Food Inspector in the Food and Drugs Control Administration for at least seven years and who possesses the academic qualification specified in Sub-rule (b) of Rule 3; or

xxx xxx xxx

Rule 3(b)(iii) of the above Rules reads as follows:

3. To be eligible for appointment by direct selection to the post mentioned in Rule 2, candidate shall:

(b) xxx xxx xxx (iii) be a graduate in Science with chemistry as one of the subjects or be a graduate in Agriculture or Public Health or Pharmacy or in Veterinary Science or be a graduate in Food Technology or Dairy Technology or be a Diploma-holder in Food Technology or Dairy Technology from a University or Institution established by law in India or possess its equivalent qualifications recognised and notified by the Central Government for the purpose and has received three month's satisfactory training in Food Inspection and Sampling work under a Food (Health) Authority or in an institution approved for the purpose by the Central Government.

Provided that the upper age limit may be relaxed in favour of a candidate 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.

Provided further that the upper age limit may be relaxed in favour of a candidate possessing exceptionally good qualification or experience or both.

According to Rule 2(a) extracted above, promotion to the post of Senior Food Inspector is on the basis of experience and also qualification specified in Rule 3(b) (ii) extracted above. This Rule 3(b)(iii) prescribes the very same qualification that has been prescribed in Rule 3(b) of the Food Inspector (Food and Drugs Control Administration) Recruitment Rules, 1982. Mr. Desai, reading the said Rule of 1982, contends that as per this Rule, Food Inspectors are selected from three different categories. One such category is that a person must have qualification as Food Inspector u/s 9 of the Prevention of Food Adulteration Act, 1954 and the Rules made thereunder. The said Rule 3(b) of the Rules reads as under :

3. To be eligible for appointment by direct selection to the post mentioned in Rule 2 above, a candidate shall or,

xxx xxx xxx (b) be a graduate in Science with Chemistry as one of the subjects or a graduate in Agriculture or Public Health or Pharmacy or in Veterinary Science or a graduate in Food Technology or Dairy Technology or is a Diploma-holder in Food Technology or Dairy Technology from a University or Institute established in India by Law or equivalent qualifications recognised by Government of India for the purpose.

If a person has been selected as per the said Rule as Food Inspector, Mr. Desai states that for promotion as a Senior Food Inspector, it must not be on the basis of certain other qualifications except on seniority or merit. Reading the qualification prescribed in Rule 3(b)(iii) of the 1987 Rules, Mr. Desai states that the very same qualification is fixed in Rule 3(b) of the 1982 Rules and hence, such prescription of the qualification is discriminatory and offends Articles 14 and

16 of the Constitution of India. Mr. Desai also states that by prescribing such qualification it impliedly excludes persons, who have been appointed as Food Inspectors as per the qualification prescribed in Rule 3(c) and (d) of the 1982 Rules. In support of his contentions, the learned Counsel has cited number of decisions. In the decision in the case of N. Abdul Basheer and Others Vs. K.K. Karunakaran and Others, the Supreme Court had occasion to consider the ratio fixed for giving promotions to candidates from a particular cadre. Having absorbed in a particular cadre the Supreme Court decried the fixation of ratio for promotion on the basis of a person being a graduate and others being non-graduates. In that light the Supreme Court observed that since the conditions of employment and the incidents of service recognise no distinction between graduate and non-graduate Officers and for all material purposes they are effectively treated as equivalent, it could not be said that the ratio 1:3 between graduates and non-graduates was supportable on the ground that the recognition of graduation was recognition of merit, and that more merit in the post of Excise Inspectors would be conducive to better administrative efficiency.

2. Mr. J.V. Desai also cited the decision in the case of Roshan Lal Tandon Vs. Union of India (UOI), . In that case before the impugned notification was issued, there was only one Rule of promotion for both the departmental promotes and the direct recruits and that Rule was seniority-cum-suitability, and there was no Rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification, a discriminatory treatment was made in favour of the existing apprentice Train Examiners who have already been absorbed in Grade "D" by March 31, 1966, because the notification provided that this group of Apprentice Train Examiners should first be accommodated en bloc in Grade "C" upto 80 per cent of vacancies reserved for them without undergoing any selection. In those circumstances, the Supreme Court held that the impugned notification violates the guarantee under Articles 14 and 16 of the Constitution of India. The reason was that once direct recruits and promotees are absorbed in one cadre, they from one class and they could not be discriminated against for the purpose of further promotion to the higher grade "C". In that case, it was not disputed that before the impugned notification was issued, there was only one Rule of promotion for both the departmental promotees and the direct recruits and that Rule was seniority-cum-suitability. In those circumstances, the Supreme Court held that the impugned notification in that case was discriminatory and offends Articles 14 and 16 of the Constitution.

3. In the decision in the case of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , persons appointed directly and by promotion were integrated into a common class of Assistant Engineers. Rule 12 provided that graduates among the Assistant Engineers, shall be eligible for promotion to the cadre of Executive Engineers, to the exclusion of diploma-holders. This Rule was a statutory rule. Its constitutional validity was challenged on the ground that it violated Articles 14 and 16 of the Constitution of India. The Supreme Court, in those circumstances, repelled this contention, with the reasoning that the

classification of Assistant Engineers into degree-holders and diploma-holders could not be held to rest on any unreal or unreasonable basis, and that the classification was made with a view to achieving administrative efficiency in the Engineering Services.

4. The decision in the case of *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, is also a case where the authorities concerned fixed up the ratio after the personnel in that department have been absorbed in a particular cadre for the purpose of promotion. In those circumstances the Supreme Court found:

There is, therefore, no escape from the conclusion that after their direct recruitment to the Gram Shop Department the personnel coming from sources (ii) and (iii) had shed their genetic peculiarities and become members of the same class or unit governed by the same conditions of service. For the purposes of absorption, seniority, promotion etc. in regular departments, therefore, they were entitled to be treated alike.

In the decision in the case of *The District Registrar, Palghat v. M.B. Koyyakutty* reported in AIR 1979 SC 1060, the Supreme Court had occasion to deal with the promotional avenue of persons belonging to one cadre after a particular candidate in that cadre has been absorbed, after giving exemption regarding his educational qualification. For promotion purposes, the particular candidate was stated to be not qualified. In those circumstances, the Supreme Court, striking down such notification, held:

26. It will be seen that Triloki Nath's case is distinguishable from the one before us, at least, in three important aspects. Firstly, in that case, the statutory rule in question did not make any discrimination in relation to the source of recruitment: it simply provided that graduates alone shall go into the higher cadre of Executive Engineers, irrespective of whether they were appointed as Assistant Engineers directly or by promotion. In the present case, the impugned notification prescribes a qualifying test for promotion not for all but only for one category of persons with reference to the manner in which they initially entered service. Secondly, in Triloki Nath's case the post of the Executive Engineer carried higher responsibility and duties of a supervisory character requiring higher mental equipment and administrative skill. Thus, there, the classification rested on intelligible differential having a direct nexus to the object (viz. administrative efficiency), to be achieved. In the instant case, there is nothing on record to show that the duties discharged by the clerks of the Upper Division are substantially different from those in the Lower Division. Thirdly, in the instant case, the statutory rules does not warrant the classification made by the impugned Government Order. The primary criterion for promotion to the Upper Division prescribed by Rule 28(b)(ii) is seniority if the person concerned is otherwise not unfit. The impugned Government Order, impinges upon that statutory rule inasmuch as it lays down that even if a Lower Division Clerk who entered service as a result of exemption from possessing minimum educational

qualification, satisfied the criterion of seniority-cum-fitness prescribed by this Rule, he shall not be considered for promotion unless he qualifies in the test.

Thus, from the above said decision it is very clear that whenever the ratio is fixed for promotion on the basis of merit-cum-seniority or seniority-cum-merit from a particular cadre, the Supreme Court has struck down such ratio fixed since there is a discrimination between the persons belonging to the same cadre. Naturally, it will offend Articles 14 and 16 of the Constitution. As far as the present case is concerned, the Rules clearly prescribe the qualification for promoting a person as Senior Food Inspector from the post of Food Inspector. For that purpose, the Rules called "The Food Inspector (Food and Drugs Control Administration) Recruitment Rule, 1987 have been framed. In those Rules, Rule 2(a) gives the necessary particulars regarding the qualification for such promotion and in that, it is stated that a person must also possess qualification specified in Rule 3(b)(iii) of the said Rules. In that Rule, it has not disqualified the other personnel mentioned in Rule 3 of the said Rules. Thus, it is clear that a specific rule, in the interest of administration and also for efficiency, has been made for promotion of a person from the post of Food Inspector to the post of Senior Food Inspector. There is rationale in fixing special qualification for the post, which is of a different cadre than that of Food Inspector and the administration, in its wisdom, thought it fit to have such a qualification to promote a person to the cadre of Senior Food Inspector. That is why we find a specific observation in the decision in the case of *The District Registrar, Palghat v. M.B. Koyyakutty* reported in AIR 1979 SC 1060, where the Supreme Court, referring to the decision in the case of *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, has specifically stated :

25. The ratio of *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, does not advance the case of the appellant-State. Therein, persons appointed directly and by promotion were integrated into a common class of Assistant Engineers. Rule 12 provided that graduates among the Assistant Engineers, shall be eligible for promotion to the cadre of Executive Engineers, to the exclusion of diploma-holders. This rule was a statutory rule. Its constitutional validity was challenged on the ground that it violated Articles 14 and 16 of the Constitution. This Court, speaking through Chandrachud, J. (as he then was), repelled this contention with the reasoning that the classification of Assistant Engineers into degree-holders and diploma-holders could not be held to rest on any unreal or unreasonable basis. The classification was made with a view to achieving administrative efficiency in the Engineering Services.

5. This reasoning squarely applies to the facts of the present case. In that view of the matter, we do find any arbitrariness or discrimination in prescribing such rule for a promotional post and as such, there is no violation of Article 14 or Article 16 of the Constitution of India, by putting the said rule on the statute book of the Rules framed for the Senior Food Inspector (Food and Drugs Control Administration) Recruitment Rules, 1987. For all these reasons, both the Special

Civil Applications are dismissed.