
(1984) 11 GUJ CK 0006
In the Gujarat High Court
Case No : Special C.A. No. 4861 of 1984

R.K. Goswami

APPELLANT

Vs

K.M. Raval and Others

RESPONDENT

Date of Decision : 20-11-1984

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 6

Citation : (1985) 2 LLJ 568

Hon'ble Judges : A.G. Qureshi, J

Bench : Single Bench

Judgement

1. The petitioner herein challenges the order No. MHK/3-B-46/84-85, Mehsana, dated 17th September, 1984, whereby the petitioner's service as a Forest Guard is terminated on the ground that he had passed the age limit of 25 years when his appointment was made. The petitioner was born on 1st June, 1956. His name was enrolled in the register maintained by the Social Welfare Office as a person seeking a job. The Social Welfare Office recommended the name of the petitioner on 9th June 1981 for his appointment as Forest Guard in the aforesaid department. A selection test was held on 15th June, 1981 in which the petitioner passed. There were several other candidates with him, who failed to pass the test. It seems that after the petitioner's passing the said selection test, there was no appointment order for a considerable time. The petitioner joined Gujarat Technical Institute at Visnagar as a Trade Instructor. Subsequently, by the order dated 14th June, 1982 (Annexure-B) the petitioner was appointed as a Forest Guard. He therefore, resigned his job with Gujarat Technical Institute, Visnagar on 16th June, 1982 and joined the service as Forest Guard in the forest department on 17th June, 1982. The appointment letter (Annexure-B) stated that the appointment was temporary. The petitioner served as Forest Guard for over two years after the aforesaid appointment. All of a sudden, he was served with the letter dated 17th September, 1984 (Annexure-C) whereby he was informed that his birth date being 1st June, 1956, he was 25 years and 14 days on 15th June, 1981 when he passed the selection test 26 years and 16 days on

16th June 1982 on which he joined service. Thus, he had crossed the age limit of 25 years and, therefore, he was not eligible for appointment, hence he could not be continued in service, he would be treated as having been relieved from service on the date he received this letter. The aforesaid letter is produced as Annexure-C to this petition.

2. Mr. Mohit S. Shah, the learned counsel for the petitioner has urged that the impugned order terminated the service of the petitioner on the ground that he had crossed the age limit on the day of his passing the test and on the day he joined service, is illegal, void and untenable in law. Mr. Shah has urged that the petitioner had submitted his correct birth date. The appointing authority knew that the petitioner had crossed the age limit of 25 years on the date of appointment by one year and 15 days and yet his appointment was made, which shows that the appointing authority had waived the age limit in favour of the petitioner Mr. Shah has submitted that the appointing authority had power to waive the age limit in certain cases. He relies on the Finance Department order of the Government of Gujarat bearing No. GHL-448-RLX-1066/2448-CH, dated 21st October, 1967 (Annexure-E), wherein it is stated that in pursuance of Rule 6 of the Bombay Civil Services Rules, 1959, certain insertions were made regarding the power to relax upper age limit subject to certain conditions, viz.

(i) The maximum relaxation should be three years for superior services and five years for inferior services.

(ii) Backward class candidates should be given preference in giving the relaxation.

(iii) when the candidates within the gave limit are not available.

Mr. Shah has urged that the appointing authority knew its power to relax the upper age limit and therefore when he made the appointment with the knowledge of the petitioner having crossed the 25 years" age limit, it must be presumed that the appointing authority had relaxed the age limit in favour of the petitioner. Mr. Shah further states that the petitioner belongs to the other Backward class enumerated in the Baxi Commission report. Hence also, according to him, there was sufficient reason for the appointing authority to relax the age limit in favour of the petitioner. Moreover, according to Mr. Shah several candidates who had appeared with the petitioner, and failed in the test. Hence the suitable recruits not being available, the appointing authority thought it fit to relax the age limit in his case.

3. The second point urged by Mr. Shah is with regard to promissory estoppel. Mr. Shah has submitted that relying on the appointment letter dated 14th June, 1982 (Annexure-B), the petitioner resigned his bob with the Gujarat Technical Institute, Visnagar, on 16th June, 1982 and joined the present service on 17th June, 1982. The appointing authority having known that the petitioner had crossed the age limit by 14 days on the day of his passing the test and one year and 14 days on the date when the appointment letter was sent, the petitioner was justified presuming that the age limit was relaxed in his case and therefore

he resigned the job. Therefore, now it is not open to the respondents to contend that the petitioner being over-aged, was not entitled to be appointed. The respondents were barred by promissory estoppel from taking up such a contention. Mr. Shah relies on the decision of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, wherein it is held :-

"The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it. If it would be inequitable to allow him to do so having regard to the dealing which has taken place between the parties and this would be so irrespective whether there is any pre-existing relationship between the parties or not."

This decision has been referred to with approval in *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, .

4. Mr. M. B. Gandhi, the learned Assistant Government Pleader has urged that there is no relaxation or waiver of age limit either express or implied in this case. Mr. Gandhi has urged that at the time of making the appointment, the appointing authority had inadvertently over-looked the fact that the petitioner was overaged at the time of his passing the test as well as at the time of his appointment. As soon as this inadvertent error was noticed, it was rectified by the impugned order terminating the service of the petitioner. Mr. Gandhi has also urged that there cannot be any promissory estoppel in respect of a statutory rule laying down the age limit of 25 years. Both these contentions of Mr. Gandhi are untenable and must be rejected. It is quite obvious that the appointing authority knew that the petitioner had crossed the age limit of 25 years by 14 days when he passed the test and by one year and 14 days when the appointment letter was sent. In view of the fact that the appointing authority has power to relax the age limit in appropriate cases, it would be fair and just to hold that the appointing authority had relaxed the age limit in favour of the petitioner particularly in view of the fact that he belongs to other Backward class community enlisted in Baxi Commission report and that several candidates having failed, the eligible candidates may not be sufficient. It is not open to the respondents to urge that the question of age was inadvertently over-looked at the time of making the appointment. It is also not correct to say that there cannot be any promissory estoppel in respect of the statutory rule laying down the upper age limit for recruitment. The petitioner was justified in believing that the age limit was relaxed in his favour and he was appointed for the post of Forest Guard. Hence, he resigned his job. Having given up his job relying on the appointment letter, he has suffered a detriment and hence the respondents are barred by promissory

estoppel from terminating the service of the petitioner on the ground of his being over-aged on the date of his appointment.

5. One more contention raised by Mr. Gandhi is that the petitioner's appointment was temporary. Hence, it can be terminated at any time without giving any cause on showing any reason. For this proposition, he relies on the case of *State of Maharashtra v. Veerappa R. Saboji and another*, wherein the Supreme Court has held that the service on the temporary servant can be terminated by an order of termination simpliciter provided that the termination does not attach any stigma and that it is a termination simpliciter. Mr. Gandhi has urged that in the present case, although the termination was on the ground that petitioner was over-aged on the date of his appointment, the reason for termination may be overlooked and it should be treated as termination simpliciter. This contention of Mr. Gandhi also cannot be upheld because termination simpliciter stands entirely on a different footing from that of termination of service on a specified ground. If the specified ground fails, the termination of service also fails. It cannot be treated as termination simpliciter.

6. The impugned order of termination of service of the petitioner is bad in law on another ground also viz., that the respondents woke up to their so-called inadvertent mistake after more than two years. The petitioner had served for more than two years as Forest Guard before his service was sought to be terminated on the ground of over-age at the time of his appointment. Even if it was open to the respondents to rectify an error and terminate service reasonably soon after the appointment, it would be highly inevitable to allow them to do so after the lapse of more than two years.

7. There is no substance in any of the arguments of Mr. Gandhi. The petitioner therefore deserves to be allowed. A writ of certiorari shall issue quashing and setting aside the impugned order (Annexure-C) dated 17th September, 1984 terminating the service of the petitioner, Rule made absolute. In the circumstances of the case, there shall be no order as to costs.