
(1993) 03 GUJ CK 0015
In the Gujarat High Court

Yogendrakumar Ratilal Raval and Others	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970 — Rule 3, 3(iii), 4
Waqf Act, 1954 — Section 15(1), 15(2)

Citation : (1994) 1 GLR 361

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Judgement

M.S. Parikh, J.—In all these petitions the prescription of age limit as on 1-7-1992 under the advertisement dated 13-10-1992 issued by the District Primary Education Officer has been directly or indirectly under challenge by invoking Article 226 of the Constitution of India. It is generally the case of the petitioners that if some date subsequent to the advertisement was earmarked, they would have been eligible for being considered for the post of Primary Teachers as by that time they would have completed the minimum required age of 18 years. They have placed reliance upon decisions in Special Civil Applications Nos. 3678 of 1988 dt. 27-7-1988, 6394 of 1988 dtd. 19-10-1988, 7769 of 1988 dtd. 30-11-1988, 8335 of 1988 dtd. 28-12-1988, 1777 of 1992 dtd. 1-10-1992, 6166 of 1991 dtd. 23-4-1992 and (sic). Jitendra Jinabhai Makwana Vs. Dist. Primary Education Committee and Another, .

2. In Special Civil Application No. 3678 of 1988 between Miss Kalpanaben Babubhai Patel v. Administrative Officer, District Panchayat, Bulsar, decided on 27-7-1988 (Coram: S.B. Majmudar, J. as he then was). Rule 4 of the Gujarat Panchayat Service (Recruitment of Primary Teacher) Rules, 1970 coupled with explanation thereto came to be considered. There the respondents had issued a public advertisement on 13-8-1987 calling for applications from the candidates who were desirous of being considered for being appointed as Primary Teachers

in the schools under the administrative control of the respondents. So far as age limit was concerned, it was mentioned that the candidates must be between 18 and 28 years of age on 2-7-1987. The petitioner mere completed 17 years and one month on 1-7-1987 and, therefore, she was under age. The Court was informed on the date of decision, namely, 27-7-1988 that the interviews were being held from 26-7-1988 and they would continue till 27-7-1988, i. e., on the date when the judgment was being pronounced. Admittedly on that day the petitioner completed 18 years of age. In the context of such facts, the word "recruitment" appearing in the proviso, which will hereinafter be reproduced, was held applicable on the ground that it was only in July, 1988 that the recruitment was being made. Consequently it was held that there was no reason for the respondents not to permit the petitioner to appear in me ensuing interview since the petitioner completed 18 years of age. The point to be noted from this decision is that the interviews were not held for a period of about one year after me issuance of advertisement.

3. In Special Civil Application No. 6394 of 1988 decided on 19-10-1988 by this Court (Coram : A.P. Ravani, J.) between Mukesh-kumar Maganlal Patel and Anr. v. Director of Primary Education, Gujarat State and Anr. reported in the petitioners applied for the post of Primary School Teachers pursuant to the advertisement dtd. 9-12-1987 and they were excluded from me interview on the ground that they were not Mukeshkumar Maganlal Patel and Others Vs. Director of Primary Education, Gujarat State and Another, ligible as they had not completed 18 years of age on the relevant date. After setting out the explanation to Rule 4, the submission of the learned Counsel for the respondents came to be considered. It was the Submission of the learned Counsel for the respondents that the term year in the explanation should be read as school year which has been defined as the period commencing from 1st June, and ending of 31st May. It was held as under:

Even if the contention of the learned Counsel for the respondents is taken as legal and valid, it is an admitted position that the recruitment process was started after May 31 1988. Therefore, the recruitment year would be the year 1988. Hence the age of the candidates concerned as on 1st. July, 1988 will have to be taken into consideration and not on 1st July. 1987.

Having so held, it was, therefore, directed that the petitioners in that petition should be called for interview which was to be held after May, 1988, i.e., in the year subsequent to the year in which the advertisement was issued.

4. In Special Civil Application No. 7769 of 1988 between Miss Kokilaben Dwarkadas Patel and Anr. v. Director of Primary Education, decided on 30-11-1988 (Coram : A.P. Ravani, J.) the aforesaid rule again came to be considered in the light of the facts of the petitioners in that petition. There the petitioners applied for the post of Primary School Teacher pursuant to the advertisement dated 2-11-1987. There again it has been held as under:

Even if the contention of the learned Counsel for the respondents is taken as legal and valid, it is an admitted position that the recruitment process has started after May 31, 1988. Therefore, the recruitment year would be the year 1988.

Under such circumstances similar direction as in the previous matter came to be issued.

5. In Special Civil Application No. 8335 of 1988 between Miss Ramilaben Motilal Patel v. Director of Primary Education and Ors. decided on 28-12-1988 (Coram : A.P. Ravani, J.) it was held recruitment year was 1988 as the process of interview was to commence in that year, although the advertisement was published in the year 1987.

6. In Special Civil Application No. 1777 of 1992 decided on 1-10-1992 (Coram : N.B. Patel, J.) the petitioner applied for the post of Primary School Teacher on 9-11-1987 pursuant to the advertisement dated 2-11-1987 and she was excluded as under age on 1-7-1987, the date mentioned in the advertisement. According to the petitioner, her age on 1-8-1988 should have been considered and on that date she had completed 18 years of age. Reliance was placed upon the aforesaid last mentioned decision and was held to be applicable as the facts were identical. It was, therefore, directed that the petitioner should be called for interview and should be placed on the select list if she was found fit at the interview.

7. In Special Civil Application No. 8445 of 1992, reference has been made to a decision rendered on 23-4-1992 (Coram : J.M. Panchal, J.) in Special Civil Application No. 6166 of 1991 and that was with regard to the filling in the posts of Primary Teachers in the year 1988. Reliance was placed on decision in Special Civil Application No. 7769 of 1988 decided on 30-11-1988 (Coram : A.P. Ravani, J.) and it was held in respect of the same advertisement that 1-7-1988 and not 1-7-1987 would be the relevant date for consideration of the requirement of minimum age.

8. Rule 4 and explanation thereto again came to be considered in the case of Jitendra Jinabhai Makwana Vs. Dist. Primary Education Committee and Another, . The petition was filed against the cancellation of the appointment of the petitioner as Primary Teacher by order dated 12-3-1991. The petitioner's birth date there was 7-11-1971. The advertisement inviting applications for the post of Primary Teachers was published in the year 1989, so that the petitioner there applied before the last date, namely 31-8-1989 for the post. He was interviewed on or about 6-11-1989 and appointed by order dated 6-2-1991 communicated on 14-2-1991. However, the said appointment came to be cancelled on the ground that the petitioner there was under age. The petition was allowed on the ground that the date 1-8-1989 which was fixed to be the cut off date for being eligible on the basis of age requirement was held to be contrary to the settled rules. 1 has been held that when a deeming fiction is provided by rule-making

authority it is not open to the respondent No. 1 to fix a particular date and the said date must be in accordance with the statutory rules. Therefore, it was held that it must be 1st July and it could not be any other date. Under such circumstances and in the facts in that petition, the petitioner was allowed on the ground that the petitioner was found to be eligible, inasmuch as he had completed 18 years of age on the day on which he appeared at the interview.

9. Insofar as present petitions are concerned interviews were already held much before the end of December 1992 and even the select list came to be prepared during the year 1992. On account of that very circumstance it has been submitted on behalf of the respondents that the aforesaid decisions would not be applicable in the present petitions. In reply, it has been the combined submission of all the learned Advocates appearing for the petitioners that word "recruitment" appearing in the proviso has got to be construed in the light of the aforesaid decisions. Their submission is that word "recruitment" would mean "appointment" and not include the whole process of selection. It has been submitted that in the advertisement it is not specified as to for which year the applications have been invited. It has been submitted that the aforesaid decisions must be extended further so as to interpret word "recruitment" as "appointment". The proviso under consideration cannot be interpreted to take away the right that would accrue to the petitioners on the date of the advertisement. Extending this submission further it has been argued that no anti-date could be prescribed in the application form. The dictionary meanings of word "recruitment" have also been pressed into service and the same will hereafter be dealt with. The word "recruitment" should not be dealt with as a term or art and meaning thereof should be allowed to have elasticity while interpreting the same. It is accordingly submitted that words "recruitment" and "appointment" are interchangeable and, therefore, recruitment should be construed as appointment. As the appointments are likely to be made in the year 1993, the cut off date should be 1-7-1993 and not 1-7-1992 and the petitioners' interviews, therefore should be directed to be taken and their applications should be considered.

10. In reply to the submissions made on behalf of the petitioners, Mr. R. C. Jani, learned Advocate for the concerned respondents and Mr. Y.M. Thakkar, learned A.G.P. for the State have placed reliance upon the decision of Division Bench of this Court in the case of Manjuben Lallubhai Patel v. Administrative Officer in S.C.A. No. 750 of 1990 rendered on 29-8-1990 (Coram : G.T. Nanavati and C.K. Thakker, JJ. - per G.T. Nanavati, J.) and a Supreme Court decision in the case of A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, .

11. In order to appreciate aforesaid submissions let the dictionary meanings of word "recruitment" be set out in the first instance. In the Concise Oxford Dictionary - The Nth Edition for the 1990s at page 1004 the word recruit" appears thus:

Recruit- the & v. n. 1. a serviceman or servicewomen newly enlisted and not yet fully trained. 2. a new member of a society or organisation. 3. a beginner - v. 1. tr. enlist (a person) as a recruit. 2. to. form (an army etc.) by enlisting recruits. 3. intr. get or seek recruits. 4. to. replenish or reinvigorate (numbers, strength, etc.) -recruitable adj. recruiter the. recruitment the. (earlier = reinforcement).

Websters II New Reverside University Dictionary - 1988 Edition at page 984 shows the meaning of "recruit" as under:

Recruit - vt.

- (1) to engage (persons) for duty in the armed force,
- (2) to strengthen or raise (an armed force) by enlistment,
- (3) to provide with new members or employees,
- (4) to enroll or seek to enroll,
- (5) to replenish.

From the aforesaid meanings it can be seen that broadly the word "recruitment" would mean enlistment or enrollment for ultimate employment (into service). It is nodoubt true that one of the meanings of the word "recruit" as a verb is to engage persons for duty in the armed force, but when word "recruit" is used in the noun "recruitment" it would also mean the process of selection or enlistment extended upto the stage of actual appointment.

12. It is in the above connection that Mr. Anand referred to a decision of the Madras High Court in the case of The State Wakf Board, Madras Vs. Subramanyam and Others, . Relevant observations pressed into service appear at page 82 in para 7 where the word "Manager" contemplated by the third column to Article 96 of the new Limitation Act was under consideration. The relevant observations are:

The combined effect of Sections 15(1) and 15(2) of the Wakfs Act will certainly be sufficient to designate the Wakf Board as a Manager for the purpose of recovery of possession of Wakf property and consequently it can certainly be termed as "Manager" contemplated by the third column to Article 96 of the new Limitation Act and if so construed, the constitution of the Wakf Board under the Statute can certainly be construed to be the appointment of the Wakf Board as Manager of the Wakf in question, because even the word "appointment" just like the word "Manager" is not a term of art and therefore has to receive its ordinary, natural and normal meaning.

Mr. Anand also placed reliance upon a decision of the Supreme Court in the case of Dr. Harkishan Singh v. State of Punjab and Ors. reported in 1971(2) SLR 373. Relevant observations pressed into service are at page 376 in para 11 and the same may be reproduced:

The word "Appointment" in Rule 9(3) in regard to selection grade as not

exceeding 25 per cent of the total number of appointments in the service contemplates both promotion and direct appointments in the service of selection grade. The word "appointment" cannot mean only promotion. It means appointment both by promotion and by direct recruitment. That is why the word "appointment" is used in that sense once in relation to selection grade and again in relation to the total number of appointments to the service.

It has, therefore, been held by the Supreme Court that Rule 9(2) of Punjab Medical Service Class I (Recruitment and Conditions of Service) Rules, does not contain any restriction that only members of the service shall be eligible to promotion to selection grade. The proviso to Rule 9(2) contains a word of limitation and is that no member of the service shall be entitled as of right to such promotion. To exclude appointment to selection grade would be to rob Rule 5 of the Punjab Medical Service Class I (Recruitment and Conditions of Service) Rules as well as Rules 9(2) and (3) of their contents because Rule 5 speaks of appointment to the service to be either by promotion or by direct recruitment.

13. Mr. Anand finally relied upon the observations of Rajasthan High Court in the case of *Man Mohan Kausbib and Ors. v. State of Rajasthan* reported in 1971 (2) SLR 88 (relevant page 93 para 15).

14. In my opinion in the context of the rules and proviso which are required to be considered in these petitions the observations of the Punjab and Haryana High Court referred to by the Rajasthan High Court would run counter to the cause sought to be canvassed. There the Rajasthan High Court has referred to Rajasthan Police Service Rules and on a close examination of the scheme of the rules, it has been found that the proviso to Rule 7(c) does not carry any prohibition that those persons who have been selected through the process of recruitment under Rule 7(c) shall not be appointed, if their appointment has not been notified before 31st December, 1955 after that date. In that connection reference was made to a decision in the case of *Gurdev Singh v. State of Punjab* 1968 SLR 538 and following observations of the learned Judges of Punjab and Haryana High Court have been reproduced:

Recruitment is just an initial process which may lead to an eventual appointment in the service but the two concepts of recruitment and appointment are separate and apart and the clear line of distinction between them has been manifest by the various rules; one of which is Rule 9 of the Cadre Rules which provides for temporary appointment of non-cadre to cadre posts...

As can be seen from the rules and the explanation under consideration, the legislature has set out various steps of recruitment and appointment in the rules.

15. Therefore, in the present case the relevant rules may at once be considered. The relevant rule is Rule 4 of the Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970 and as it stood before amendment in 1979 reads as under:

4. Qualification of candidates - To be eligible for appointment, a candidate must-
- (a) (i) be not less than 18 years and not more than 25 years of age,
 - (ii) in the case of candidates belonging to a Scheduled Caste or a Scheduled Tribe, be not less than 18 years and not more than 30 years of age, and
 - (b) have passed any one or more of the qualifying examinations specified in Schedule-1 Annexed to these rules:

Provided that the Committee may, if the candidates fulfilling the qualifications specified in Clauses (a) and (b) are not available, relax the qualifications specified in Clauses (a) and (b) with the prior approval of the State Government.

It was amended by a notification published on 24th September, 1979. Sub-clause (i) of Clause (a) of above rule has been substituted by the following Sub-clause (i):

- (i) be not less than eighteen years of age and not more than twenty-eight years of age.

Following explanation was added at the end of the said rule:

Explanation :- For the purpose of this rule, a candidate shall be deemed to have attained the age limit, if he attains such age limit before the first July of the year in which the recruitment is made.

Now instead of setting out the other rules for the purpose of giving a meaning to the word "recruitment" it would be appropriate to state here what the Division Bench had to say in this connection in the case of *Manjulaben Lallubhai Patel v. Administrative Officer*, in S.C.A. No. 750 of 1990 decided on 29-8-1990 (supra):

In order to decide this question and in order to appreciate the correct meaning of the words, "the year in which the recruitment is made," it will be necessary to refer to Rules 4, 7, 11, 12 and 14 of the Rules. Rule 3 provides for preparation of estimates of vacancies by Administrative Officer. The Administrative Officer has to prepare an estimate of the vacancies in the staff of primary teachers likely to arise in the district upto the end of August in the ensuing school year. This he is required to do in the first week of March of every year. After preparing the estimate, he has to take steps of inviting applications, so as to reach his office on or before 1st April by giving advertisement in one or more local news-papers. He has then to prepare a list of qualified candidates according to Rule 7. Rule 8 provides for the contents of the said list. Thereafter as required by Rule 9, the Administrative Officer has to place before the Committee the list of candidates with the applications and take further steps for calling the candidates for interview as directed by the Committee. Rule 11 contemplates preparation of final list of selected candidates for appointment by the Committee. That has to be done on or before 31st May and 31st October, as the case may be. Rule 12 provides for giving training to selected candidates. If the candidate gets through the said training, he is to be given appointment order as per Rule 13. Rule 14

provides that subject to the availability of vacancies, candidates from the select list prepared in May shall be appointed before select list prepared in October next becomes finalised and candidates from select list prepared in October shall be appointed before the select list prepared in May next becomes finalised. This rule further provides that the select list prepared in May shall lapse as soon as the select list prepared in October next is finalised and the select list prepared in October shall lapse as soon as the select list prepared in May next is finalised. A combined reading of Rules 3, 11 and 14 makes it clear that the vacancies arising between June and October are to be filled in by appointing candidates from the select list prepared in October next. In fact Rule 14 specifically provides that the select list prepared in May shall lapse as soon as the select list prepared in October next is finalised and the select list prepared in October shall lapse as soon as the select list prepared in May next is finalised. In view of this specific provision it will have to be held that no appointment can be made after 31st May of the year on the basis of the select list prepared earlier in October.

16. A close reading of the Rules precisely dealt with above would indicate that the word "recruitment" used in the proviso quoted above, cannot mean "appointment". Besides "the year in which the recruitment is made" also cannot mean the succeeding year, since the process of recruitment has been undertaken in the relevant year,

17. Mr. K.G. Sheth, learned Advocate appearing on behalf of one of the petitioners submitted that the word "ensuing year" appearing in Rule 3 should also be read with the proviso. This argument cannot be accepted because the word "ensuing year" is used in the context of school year for the preparation of estimate of vacancies in the first week of March and for such preparation the school year would be commencing from 1st June in the same year and ending on 31st May in the next year. This list is to be prepared for the vacancies likely to arise upto the end of August in the same year. However, Sub-clause (iii) of Rule 3 refers to preparation of similar estimate list in the first week of August for the vacancies likely to arise from September to the close of the school year (and not the ensuing school year); meaning thereby that the year contemplated in this sub-rule is also the same school year. Mr. Sheth in the alternative submitted that since the advertisement is not published in September as contemplated in Sub-rule (iii), the advertisement must be struck off and the consequences should follow. This submission of Mr. Sheth cannot be accepted because although the advertisement is published a little later, the time schedule has been maintained so as not to carry it beyond the stage of preparation of list in the month of March for the vacancies that might arise till upto August, in these cases of the year 1993.

18. It is nodoubt true that the petition before the Division Bench became infructuous. All the same the scope and ambit of the rules came to be ddalt with, analysed and considered by the Division Bench and on a close reading of the rules, there is no reason why such consideration be deviated from in the manner

suggested. In fact, it has been observed by the Division Bench that even if some appointments had been made in the month of January 1990 pursuant to the final select list of October (of the previous year) it could not have been validly contended that in case of such candidates the year of recruitment should be considered as the one starting from 1st January, 1990 (succeeding year).

19. It is in the light of the aforesaid rules that the decision in the case of A.P. Public Service Commission v. B. Saratchandra (supra) not only assumes importance but in my opinion should have application on all fours and it should be found that the question no longer remains *res Integra*. In that case Rule 5 of the A.P. Police Service Rules was under consideration. There the Public Service Commission issued an advertisement/ notification inviting applications for selection in a Combined Competitive Examination to be held in November, 1983 at various places for recruitment to the posts included in Grade-1 Services. The notification was published in the Gazette dated August, 25, 1983. The post of Deputy Superintendent of Police was one of the posts for which applications were invited. The respondent applied to that post as well as other posts. The minimum age prescribed for selection to the post of Deputy Superintendent of Police was 21 years as on July 1, 1983, as against 18 years for other posts. The respondent did not complete 21 years as on July 1, 1983. He was short by 19 days and his case, therefore, was not considered for appointment to post of Deputy Superintendent of Police. His contention was that the date for attaining the minimum age prescribed under the notification was contrary to Rule 5 of the A.P. Police Service Rules, 1966 and that such date ought to be the date of preparation of the list of selected candidates and not any date anterior to it. His contention was accepted by the A.P. Administrative Tribunal. The decision of the Tribunal was under challenge before the Hon"ble Supreme Court of India. Rule 5 which was under consideration may also be quoted here:

5. Qualifications:- (A) No person shall be eligible for appointment as a Deputy Superintendent of Police, Category 2 by direct recruitment unless he-(i) has completed the age of 21 years and had not completed the age of 26 years on the first day of July of the year in which the selection is made.

The decision of the Supreme Court is to the following effect:

If the word "selection" is understood in a sense meaning thereby only the final act of selecting candidates with preparation of the list for appointment, then the conclusion of the Tribunal may not be unjustified. But round phrases cannot give square answers. Before accepting that meaning, we must see the consequences, anomalies and uncertainties that it may lead to. The Tribunal in fact does not dispute that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Rule 3 of the Rules of Procedure of the

Public Service Commission is also indicative of all these steps. When such are the different steps in the process of selection, the minimum or maximum age for suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific, and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. It would be, therefore, unreasonable to construe the word selection only as the factum of preparation of the select list. Nothing so bad would have been intended by the rule-making authority.

(Emphasis supplied)

20. In all the decisions of learned single Judge except the decision in the case of J.J. Makwana v. District Primary Education Committee (supra) the facts clearly show that the major part of very process of recruitment was undertaken in the succeeding year. In J.J. Makwana's case C.K. Thakker, J. has emphasised the element of certainty in respect of the setting out of the date "1st July" in the Explanation to Rule 4 and that is precisely what has been highlighted in A.P. Public Service Commission v. B. Saratchandra (supra).

21. Having gone through the relevant rules, I find that the word "recruitment" cannot be interpreted differently and so as to mean actual appointment. The concerned respondent has not committed any error in fixing the date as 1st July, 1992 in the application forms to be submitted pursuant to the advertisement in question, which is also quite legal and valid in view of the legal position set out above.

21.1 In the above view of the matter, all these petitions must fail. Rule and notice, as the case may be in all these petitions, discharged with no order as to cost. However, when the next process for recruitment commences the case of all the petitioners, Particularly of the petitioner in S.C.A. No. 9254 of 1992, who is stated to be a handicapped person, be considered if they or any of them apply for the post of Primary Teacher pursuant to such selection process.

22. At this stage Mr. K.G. Sheth and other learned Advocates for the petitioners request for stay of the operation of this order. Request is granted. The respondents are directed not to make appointments to the extent of 19 posts pursuant to the select list prepared by the respondents for a period of 15 days from today, and if the select list is still not finalised, the same may not be finalised for a period of 15 days from today, also to the extent of 19 posts.