

S. M. Pandit and Others

Vs

The State of Gujarat and Others

Civil Appeal Nos. 1109 of 1969, 519 and 520 of 1971

(K.S. Hegde, A.N. Grover JJ)

18.11.1971

JUDGMENT

HEGDE, J. -

1. These are appeals by certificate. They raise one common question of law for consideration. That question is whether the second proviso to the rule relating to the appointments to the posts of Deputy Collectors in the Bombay Civil Services Classification and Recruitment Rules as well as clause (3) of the Rules framed under Article 309 of the Constitution by the Governor of Gujarat relating to the appointments of Deputy Collectors are violative of Articles 14 and 16 of the Constitution. The High Court of Gujarat has come to the conclusion that those provisions are violative of Articles 14 and 16. Aggrieved by that decision the appellants have brought these appeals.

2. Till the year 1950, the posts of Deputy Collectors were filled by Bombay Government partly by direct recruitment and partly by promotion from the cadre of Mamlatdars. On February 6, 1950, the Government decided to fill up those posts only by promotion from the cadre of Mamlatdars. At the same time it decided to introduce the system of direct recruitment to the posts of Mamlatdars who in the first instance were to be on probation for two years and if found suitable would be confirmed. It was further decided that 50 Percent of the posts of Deputy Collectors will be reserved for promotion of direct recruits in the cadre of Mamlatdars and the other 50 per cent for the promotee Mamlatdars. In 1959, the Bombay Government introduced a change in the mode of recruitment to the posts of Deputy Collectors. In pursuance of the resolution of the Government of Bombay, the Bombay Civil Services Classification and Recruitment Rules were changed and the amended Rules read as follow :

(1) Appointment to the posts of Deputy Collectors shall be made either by nomination or by promotion of suitable Mamlatdars.

Provided that the ratio of appointment by nomination and by promotion shall as far as possible, be 50 : 50.

Provided further that half the vacancies reserved for appointment by promotion shall be filled by directly recruited Mamlatdars who have put in at least seven years service in the post including the period spent on probation.

(2) Appointment by nomination shall be made on the result of a competitive examination in accordance with the rules hereto appended as Annexure I, from among candidates who;

(a) are not less than 20 and more than 25 years of age;

(b) possess a Bachelor's degree in Arts, Science, Agriculture, Commerce, Law, Engineering or a similar or higher degree of a recognised University; and

(c) Possess adequate knowledge of Marathi and Gujarati.

(3) Candidates appointed by nomination shall be on probation for a period of two years, the probation being regulated according to the rules appended hereto as Annexure II.

#(4) \* \* \* \*.##

3. As a result of the second proviso in Rule 2 referred to above, out of 50 per cent of the promotees from the posts of Mamlatdars to those of the Deputy Collectors, 25 per cent was reserved for directly recruited Mamlatdars. In 1966, after the formation of the State of Gujarat, the Government of Gujarat slightly altered the recruitment rules relating to the posts of Deputy Collectors. The relevant rule may now be quoted :

(i) Recruitment shall be made on temporary posts which are existing since two years and which are likely to be continued for one year and more excepting those posts which have been created for special work in Revenue Departments and are permanent posts in the cadre of Deputy Collectors.

(2) Appointment on this post shall be made neither of the following way :

(a) By promotion of Mamlatdars of Gujarat Civil Service Class on proved merit and efficiency.

(b) By direct selection on the result of competitive examination in accordance with rules made by Government.

(3) The ratio of appointment in the available vacancies, by direct selection and promotion would be 50 : 50. But half the vacancies reserved for appointment by promotion shall be filled by directly recruited Mamlatdars who have put in at least seven year's service including the period spent on probation.

4. Rule 3 of these rules is similar to the second proviso at Rule 1 in the Bombay Civil Services Classification and Recruitment Rules framed in 1959. The question, as mentioned earlier, is whether the second proviso to Rule 1 of the Bombay Civil Services Classification and Recruitment Rules and rule 3 of the Rules framed by the Gujarat government are violative of Articles 14 and 16 of the Constitution.

5. The High Court accepting the contention of the writ petitioners came to the conclusion that the impugned rules violate Articles 14 and 16. It opined that both the directly recruited Mamlatdars as well as the promotee Mamlatdars formed one class. That being so, it was not competent for the Government to discriminate between the directly recruited Mamlatdars and the promotee Mamlatdars in the matter of their further promotion. In arriving at its conclusion, the High Court relied on the decisions of this Court in *Mervyn Continho v. Collector of Customs Bombay* ((1966) 3 SCR 600 : AIR 1967 SC 52 : (1967) 1 SCJ 374 : (1967) 1 LLJ 749) and *Roshan Lal Tandon v. Union of India* ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1963) 1 SCJ 746 : (1968) 1 LLJ 576).

6. The learned Counsel for the appellants did not contest the proposition that it both the directly

recruited Mamlatdars as well as the promotee Mamlatdars formed one class then the impugned Rules will be violative of Articles 14 and 16 on the basis of the decisions of this Court referred to earlier. But he challenged the conclusion of the High Court that they formed one class or one cadre. According to him, the directly recruited Mamlatdars and the promotee Mamlatdars formed two different classes. The High Court rejected that contention and in our opinion rightly. Both the directly recruited Mamlatdars as well as the promotee Mamlatdars are designated as Mamlatdars. They have the same pay scale. They discharge same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. The only circumstance urged in support of the contention that they form two different classes is that before promotion to the post of deputy Collector, the directly recruited Mamlatdars have to put in a certain minimum period of service. This condition, does not indicate that the two groups were kept apart. The High Court seems think that that condition is not a valid condition. We express no opinion on that question. even if it is a valid condition, the same does not show that the directly recruited Mamlatdars formed a different class. There is no material to show that the government had prepared two separate seniority lists, one for the directly recruited Mamlatdars and the other for the promotee Mamlatdars.

7. The Counsel for the appellants sought to place some reliance on the decision of this Court in *State of Mysore v. P Narasing Rao* ((1968) 1 SCR 407 : AIR 1968 SC 349 : (1968) 1 SCJ 863 : (1968) 2 LLJ 120). That decision is clearly distinguishable. In that case, according to the Rules framed by the Government, the non-matriculate tracers formed a separate cadre from those who had passed the matriculation examination. The two cadres had different pay scales. Hence there was no discrimination between the officers borne on the same cadre.

8. For the reasons mentioned above, we find no ground to interfere with the judgment of the High Court. These appeals are accordingly dismissed. But in the circumstances of the case, there will be no order as to costs in these appeals.

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