

J. K. Vasavada and Others

Vs

Chandrakanta Chimanlal Bhavsar and Another

Civil Appeal No. 1856 of 1970

(A. Alagiriswami, N.L. Untwalia, Syed M. Fazal Ali JJ)

28.08.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal filed in pursuance of special leave granted by this Court by certain officers of the Co-operative Department of the Government of Gujarat is against the judgment of the High Court of Gujarat in a writ petition filed by the respondents.
2. The appellants as well as the respondents (hereinafter called petitioners) were originally servants of the State of Bombay and were allotted to the State of Gujarat on its formation on 1st May, 1960. The petitioners alleged that they had passed all the prescribed departmental examinations as required by the rules of the State of Bombay and challenged the validity of certain orders of the Government of Gujarat. One of them was an order of May 10, 1962 which provided that persons already promoted would have to pass the examinations of G.D.C. and A within a period of three years and if they did not their increment would be stopped and if they have reached the maximum of the scale their pay would be reduced to the next lower stage, until they passed the examination. It also laid down G.D.C. & A. as a necessary qualification for promotion. Another impugned order was, dated June 18, 1965 which contained rules made under the proviso to Article 309 of the Constitution of India and laid down the qualification of G.D.C. & A. examination for promotion. They also complained against an order dated January 23, 1968 that they should draw no further increments and what had been paid to them earlier without giving effect to that order should be recovered.
3. It is unnecessary to set out the impugned orders in extenso. For the purposes of this it is enough to say that the main grievance of the petitioners before the High Court of Gujarat was the laying down of the qualification of G.D.C. & A. for purposes of earning increments as well as for promotion. They complained that under the rules in force in the State of Bombay they were not required to pass this examination either for earning increments or for promotion and the rules and resolutions of the government of Gujarat laying down the passing of the G.D.C. & A. examination as a necessary qualification for promotion as well as for earning increments contravened section 81(6) of the Bombay Reorganisation Act, 1960 which is in pari materia with Section 115(7) of the States Reorganisation Act, 1956. The appellants who are the respondents in the writ petition had passed the G.D.C. & A. Examination and, therefore, been promoted earlier than the respondents who were the petitioners and had, therefore, been impleaded as parties to the writ petition.
4. As regards the complaint about the petitioners not being allowed to get future increments till they passed the examination and reduction by one stage of persons who had reached the maximum in

their grade and the recovery of the amounts which they had already drawn, they are no longer the subject-matter of any grievance because the State of Gujarat have removed those grievance by note to Regulation 13(4)(iii) found in the order of the Government of Gujarat dated September 14, 1967 at pages 17 to 22 of the paper book. There is a certain amount of confusion in the records regarding this. As against the rule above referred to there is an order, dated 23-1-1968 ordering recovery. But it was made clear during the course of the arguments that no recovery will be made We are, therefore, concerned only with the question of the validity of the orders of the Government insofar as they laid down the qualification of G.D.C. & A. as one of the requisites for promotion to higher posts.

5. Before the High Court it was contented on behalf of the State of Gujarat that immediately before the "appointed day" the petitioners were governed by the 1939 Bombay Rules, of which note to Rule 6-A provided the passing of the G.D.C. & A. as a qualification for promotion. On the ground that what was produced was a typed compilation consisting of some circular letters and rules of the Co-operative Department and that the learned advocate appearing for the Government had not been able to tell the Court whether the rules were gazetted or otherwise notified rules and whether they were made in any particular year and by what authority and under any particular provision of law and it was not known when the 'note' to the rule was added the High Court held that it would not be proper to rely upon Rule 6-A and that a note to a rule had in any case no legal effect.

6. In the course of arguments before this Court the relevant rules were sought to be produced. Based on the existence of those rules and on the decision of this Court in *Mohd. Shujat Ali v. Union of India* ((1975) 3 SCC 76 : 1974 SCC (L&S) 454) it was argued on behalf of the appellants that rules relating to promotion do not come within the scope of Section 81(6). The above decision of this Court was concerned with Section 115(7) of the States Reorganisation Act. There was in that case of a circular of the Central Government dated May 11, 1957 to all the States Governments stating among other things, that so far as departmental promotion was concerned the decision of the Central Government was that "it would not be appropriate to provide any protection in the matter". On the basis of that circular it was pointed out by this Court that so far as departmental promotional was concerned the State Governments might, if they so desired, change the conditions of service and for this purpose they might assume the previous approval of the Central Government as required by the proviso to Section 115(7) and as the central Government had given its approval to any alteration which the State Government might wish to make in the conditions of service relating to departmental promotion they did not need to be protected, and, held that the Andhra Rules and Andhra Pradesh Rules regarding promotion did not contravene the proviso to Section 115(7). In view of this decision the question whether there was any corresponding rule in the State of Bombay before the parties in this case were allotted to the State of Gujarat becomes academic. Whether there was or there was not any rule governing the parties while they were serving the Bombay State requiring that they should pass the G.D.C. & A. examination in order to qualify for promotion to higher posts the rule made by the Gujarat Government in 1962 should be held to be not hit by Section 81(6) of the Bombay Reorganisation Act, 1960.

7. It was, however, argued on behalf of the petitioners that the circular of the Central Government which was under consideration by this Court in the decision above cited was, dated 11-5-1957 and cannot, therefore apply in relation to the provision of the Bombay Reorganisation Act, 1960 which came into force subsequently. But there is a fallacy in this argument. Section 81(6) reads :

Nothing in this section shall be deemed to affect, after the appointed day the operation of the provision or the provision of Chapter I of part XIV of the Constitution in relation to the

determination of the conditions of service of persons serving in connection with the affairs of the State of Maharashtra or Gujarat.

Provided that the conditions of service applicable immediately before the appointed day to the case of any person provisionally or finally allotted to the State of Maharashtra or Gujarat under this section shall not be varied to his disadvantage except with the previous approval of the Central Government.

The question, therefore, is what were the conditions of service applicable immediately before the appointed day to the parties in this case? They were the rules and orders applicable to them when they were servants of the State of Bombay before May 1, 1960. The conditions of service applicable to them included not merely the rules made under the proviso to Article 309 of the Constitution. It also included a liability to be subjected to any other rule that might be made under that proviso till May 1, 1960 by the State of Bombay. The States Reorganisation Act, 1956 was also applicable to them. It would be remembered that under the States Reorganisation Act, 1956 the new State of Bombay included not merely the pre-reorganisation State of Bombay but also areas of Kutch, Marathwada from the old Hyderabad State and the Vidharba region from the old Central Provinces and Berar. In respect of all Government servants who were allotted to the reorganised State of Bombay Section 115(7) of the States Reorganisation Act applied. It was under the proviso to that section that the above mentioned circular of May 11, 1957 was issued by the Government of India. Under that circular it was open to the reorganised State of Bombay to make any rules for promotion of its servants which were not applicable to them before the formation of the reorganised State of Bombay. In other words the reorganised State of Bombay had the right to make rules regarding those Government servants including the parties in this case. The reorganised State of Bombay could have made rules making the G.D.C. & A. a necessary qualification for promotion even though there was no such rule earlier. Therefore, the conditions of service of the servants of the reorganised State of Bombay before 1st of May, 1960 included a condition that they would be subject to any rule made by that State in respect of their promotion. The power granted to the reorganised State of Bombay should be deemed to accrue to the successor States, that is, the States of Maharashtra and Gujarat.

8. We may in this connection refer to Section 87 of the Bombay Reorganisation Act, 1960 which reads :

87. Territorial extent of laws. - The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Bombay shall until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

Law is defined in that Act in Section 2(d) as follows :

"law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the State of Bombay;

The memorandum of Central Government, dated 11th May, 1957 was an approval in terms of the proviso to sub-section (7) of Section 115 of the States Reorganisation Act. It is, therefore, an order or other instrument having the force of law for the purposes of the definition of 'law'. That circular

had certainly the force of law in the whole of the State of Bombay and as Section 87 provides that that law would continue to be in force within the territories of the State of Bombay immediately before the appointed day which included the territories of the State of Maharashtra as well as the State of Gujarat the reference to the State Government in the circular would include reference to the Governments of the State of Maharashtra and the State of Gujarat. It should, therefore, be held that even in terms of the circular of the Central Government dated 11th May, 1957 the Gujarat Government was competent to make the rules which they had made in 1962. The argument on behalf of the petitioners, therefore, that no approval could have been given in terms of Section 87 of the Bombay Reorganisation Act by a circular issued even in 1957 before that Act was passed had no force.

9. The result is that the order of the Government of Gujarat State of 1962 laying down the G.D.C. & A. examination as a necessary qualification for promotion should be held to be valid. The appeal is, therefore, allowed and the judgment of the Gujarat High Court set aside. We, however, make it clear that no recovery shall be made from the respondents. In the circumstances of this case there will be no order as to costs.

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