

Indravadan H. Shah

Vs

State of Gujarat and Another

Civil Appeal No. 2588 of 1985

(A. P. Sen, E. S. Venkataramiah, B. C. Ray JJ)

19.03.1986

JUDGMENT

RAY, J. :-

1. This appeal raises a very short though important question as to the validity and vires of the provisions of Rule 6(4)(i) and Rule 6(4)(iii)(a) of the Gujarat Judicial Service Recruitment (Amendment) Rules, 1979. The relevant rules are quoted hereinbelow :

(i) Appointment to the post of an Assistant Judge shall be made by the Governor in consultation with the High Court by promotion of a person from amongst such persons (comprising of those holding the post of Civil Judges (Junior Division) and those in the cadre of civil Judges (Senior Division) whose names have been entered in the Select List referred to in clause (ii) before the have reached the age of 48 years and continue in that list on the date of appointment :

Provided that no person shall be eligible for such appointment unless he has -

(a) Served for a period of not less than seven years as a Civil Judge (Junior Division); or worked on Civil side for a period of not less than three years if he belongs to the cadre of Civil Judge (Senior Division).

(ii) A Select List of members who are considered fit for appointment by promotion to posts of Assistant Judges shall be prepared annually by government in consultation with the High Court. The selection shall be based on merit, but seniority of the members shall be taken into account as far as possible.

(iii) (a) The name of a candidate entered in the Select List shall be struck out of it on his reaching the age of 49 years if during the interval, he is not appointed as an Assistant Judge.

2. The appellant was born on April 6, 1934 and in accordance with the provisions of Gujarat Judicial Service Recruitment Rules 1961 as amended in 1964 to 1969, the Appellant being in the cadre of Civil Judge (Senior Division) was considered for selection for inclusion in the Select List to be considered for appointment by promotion to the post of Assistant Judge in the year 1980-81 and 1981-82, but he was not found suitable. He was, however, found suitable and his name appeared in the Selection List prepared for the year 1982-83. His turn did not come up and the Select List lapsed with the expiry of April 30, 1983. On that date as he had already completed 48 years, his

name was not put on the Select List for the following year, namely 1983-84. It is against this non-appearance of his name in the Select List of 1983-84, the appellant assailed the validity of the aforesaid provisions of Rules 6(4) (i) and 6(4) (iii) (a) of the Gujarat Judicial Service Recruitment Rules, 1961 as amended upto 1979 on the ground that is unreasonable, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India by a Writ Petition in the High Court of Gujarat being Civil Application. 2332 of 1984, whereon a rule was issued on December 17, 1984. The said rule after notice to the parties was discharged and it was held that the impugned rules were not arbitrary, unreasonable or irrational and they are not also discriminatory.

3. The Governor of Gujarat framed the Gujarat Judicial Service Recruitment Rules 1961 under proviso to Art. 309 of the Constitution of India read with Art. 234 of the Constitution laying down the mode of recruitment to the Gujarat Judicial Service. These rules as amended upto 1979 provide that the Gujarat Judicial Service shall consist of two branches namely (i) Junior Branch and (ii) Senior Branch. The junior branch shall consist of two classes, i. e. (a) Class I comprising the cadre of Civil Judges (Senior Division) (b) the judges of the Court of Small Causes and (c) Class II comprising Civil Judges (Junior Division) and judicial Magistrate of First Class. In accordance with the amended recruitment rules 1979 the cadre of Civil Judge (Senior Division) shall consist of -

(a) all judicial Officers holding on the said date the post of -

(i) Civil Judge (Senior Division) : (ii) Chief judicial Magistrate; and (iii) Metropolitan Magistrate

(b) Officers recruited to the said cadre under sub-rule (i) of Rule 4.

4. The Senior Branch shall consist of District judges, Principal Judge and Judges of Ahmedabad City Civil Court. The Chief Metropolitan Magistrate, the Chief Judge of Small Causes Court, Ahmedabad, the Additional Chief Metropolitan Magistrate, Ahmedabad and the Assistant Judges. Rules 6(4) (i) and 6(4) (iii) (a) clearly provide that a civil Judge (Senior Division) after completing 48 years of age will not be eligible for consideration for promotion to the post of Assistant Judge and his name appearing in Select List will be struck out from the Select List on his completion of 48 years, i. e. on reaching 49 years of age.

5. The only question for consideration is whether the provisions of aforesaid Rules 6(4) (i) and 6(4) (iii) (a) of the Gujarat Judicial Service Recruitment Rules, 1961 as amended upto 1979 are invalid being arbitrary, irrational, unreasonable and in contravention of the equality clause envisaged in Arts. 14 and 16 of the Constitution of India. To decide properly this question, it is relevant to consider in this connection Rule 6(2) (i), which provides for appointment to the post of District Judge. The relevant excerpt of the said rule is quoted hereinbelow :

The appointment to the post of District Judge shall be made by the Governor -

(a) in consultation with the High Court from amongst the members of the Junior Branch who have ordinarily served as Assistant Judges; or

(b) on the recommendation of the High Court from amongst members of the Bar who have practised as as Advocates or Pleader for not less than seven years in the High Court or Court subordinate there to :

Provided that a person recruited at the age of not more than 45 years (except in the

case of a person belonging to a community recognised as Backward by Government for the purpose of recruitment in whose case at the age of not more than 48 years) shall before he is appointed as a District Judge, be appointed in the first instance to be an Assistant Judge for such period as may, on the recommendation of the High Court, be decided by Government on the merits of his case.

6. It appears that regarding appointment to the posts of District Judges by promotion from amongst members of the Junior Branch who have ordinarily served as an Assistant Judge, there is no limit or bar of age unlike that of the appointments of an Assistant Judge by promotion from the members of Civil Judges (Senior Division) or from members of Civil Judges (Junior Division). It is only in the case of direct recruitment from amongst the members of the Bar to the post of District Judges there is an age limit of 45 years which is relaxed to 48 years in the case of recruitment of persons belonging to the community recognised as backward by the government. It was tried to be justified on behalf of the respondents particularly by the High Court of Gujarat by filing counter that this age restriction for promotion to the post of Assistant Judge was in vogue since 1924 or so even in the erstwhile State of Bombay though there was no age limit for selection to the post of District Judge from the Bar. It has been further stated that the rationale underlying the age restriction for recruitment to the post of Assistant Judge is that such Assistant Judges should have sufficient number of years left before they reach the age of superannuation, so that their service can be utilized as District Judges. There would be no point in selecting them as Assistant Judges if they have to retire only as Assistant Judges. It has been further stated therein that the present pay scale of Civil Judges (Senior Division) is Rs. 1300-1700/- p. m. and the same is the scale for the post of an Assistant Judge. So if an incumbent is taken as an Assistant Judge at an advanced stage he may have to retire only as an Assistant Judge with the result that he will not have any pecuniary gain by being promoted as an Assistant Judge from the post of Civil Judge (Senior Division). It has been further stated that the law-making authority might have considered that a Civil Judge (Senior Division) or Civil Judge (Junior Division) who completes 48 years of age may not be fully equipped with the physical and mental calibre for that higher post calling for essentially different type of duties, namely conducting sessions cases, appeals, etc. The High Court duly considered this aspect of the case and thereafter the rules in question were framed. No rejoinder has, however, been filed on behalf of the State.

7. Similar contentions were made before us by the learned counsel who appeared on behalf of the High Court to support the rationale behind the laying down of the age bar for the purpose of promotion to the post of Assistant Judge in case of persons already in service.

8. The Division Bench of the Gujarat High Court held that this system was in vogue for many decades, even in the bilingual State of Bombay. Though there was no restriction regarding age for selection from the member of the Bar to the post of District Judge, there was age limit for selection and appointment by promotion from the members of Junior Branch to the posts of Assistant Judges. This age restriction provided by the recruiting authorities for different cadres of posts is not repugnant to Article 14 of the Constitution. It was also observed that members of the Bar have got free atmosphere to work and there was enough scope for them to better develop their mental faculty. If in the interest of an important post like that of a District Judge, a member of the Bar is to be recruited in order to enthrone fresh blood at that important position of the service cadre, it can be said to be a different class altogether. As such there was no discrimination by introducing age bar in the recruitment rules so far as appointment to the post of Assistant Judges by promotion is concerned. The Class of Assistant Judges and the Class of District Judges for this purpose constitute two different classes.

9. This reasoning given by the High Court is totally unsustainable for the simple reason that if a person holding the post of Civil Judge (Senior Division) who has completed 48 year of age is considered to be not fully equipped with the physical and mental calibre for being appointed to the higher post of Assistant Judge, then on the same analogy how a member of the Bar will be considered at the age of 48 years to be most suitable for being appointed to the higher and responsible post of District Judge and such appointees will infuse fresh blood at that important service. On the other hand it is well established that with the coming of age and experience, a judicial officer becomes more suited and well equipped to perform and discharge the higher duties and responsibilities attached to the higher posts of Assistant Judge and that of District Judge.

10. The posts of Assistant Judge as well as of District Judge are included in Senior Branch of Gujarat Judicial Service. It is incomprehensible how these two cadres of Assistant Judges and District Judges can be treated as two different classes altogether, thereby justifying the introduction of age restriction in regard to selection and appointment by promotion to the post of Assistant Judge while doing away with any such sort of age limit or restriction in respect of appointment to the post of a District Judge by promotion from amongst the members of the Junior Branch who have served as Assistant Judges. Articles 14 and 16 of the Constitution ensure that there should not be any discrimination in the matter of appointment in service, nor there will be any arbitrariness or unreasonableness in the rules of recruitment providing for appointment to the service either by promotion or by direct recruitment. There is no nexus to the object sought to be achieved by introducing the age restriction as regards the promotion by appointment to the post of Assistant Judge from amongst the members of the Gujarat Judicial Service (Junior Branch), as provided in Rules 6(4) (i) and 6(4) (iii) (a) of the said Rules. But in respect of appointment to the higher post of District Judge by promotion from amongst the members of the Junior Branch who have served as Assistant Judges, no such restriction of age has been provided in Rule 6(2) (i) (a) and (b) of the said Rules. There is obviously no, rationale nor any reasonableness for introduction of this age bar in regard to appointment by promotion to the post of an Assistant Judge. The rule, is, therefore, arbitrary and it violates the salutary principles of equality and want of arbitrariness in the matter of public employment as guaranteed by Articles 14 and 16 of the Constitution. It is pertinent to refer in this connection to the observations of this Court in the case of *E. P. Royappa v. State T. N.* which are in the following terms : [SCC p. 38, para 85, SCC (L & S) p. 200, para 85].

Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species, Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination.... Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law...

11. Similar observations have been made in the case of *Maneka Gandhi v. Union of India*. It has been observed that : (SCC pp. 283-4, para 7)

Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The

principles of reasonableness which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence...

12. The reach and ambit of Article 14 has been very succinctly reiterated again by this Court in the case of R. D. Shetty v. International Airport Authority of India as follows : (SCC p. 511, para 21)

It is now well settled... that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational relevant principle which is non-discriminatory : it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action whether it be under authority of law or in exercise of executive power without making of law.

13. We have already stated hereinbefore that the provisions or Rules 6(4) (i) read with 6(4) (iii) (a) are irrational, arbitrary and unreasonable inasmuch as there is no nexus to the object sought to be achieved by introducing the age restriction in regard to appointment of Assistant Judge by promotion from amongst members holding posts of Civil Judges (Junior Division) and those in the cadre of Civil Judges (Senior Division) whose names have been entered in the Select List. We have also held that though the post of Assistant Judge as well as the post of District Judge belong to the Senior Branch of Gujarat Judicial Service, yet in the higher cadre of District Judge no such age bar has been introduced. Moreover, as has been stated by the learned counsel appearing on behalf of the High Court of Gujarat that this rule regarding age restriction which was originally introduced in the recruitment rules of Judicial Services in the bilingual State of Bombay has subsequently been deleted and discontinued in the relevant Recruitment Rules of Maharashtra Judicial Service, it is curious that this archaic, unreasonable and irrational rule which is ex facie arbitrary and discriminatory has been allowed to continue in the Gujarat Judicial Service Recruitment Rules, 1961 as amended up to 1979.

14. We wish to make it clear that our observations made hereinbefore should not be construed to mean that there cannot be any fixation of age of superannuation in different grades of other service namely armed forces, air force and naval force. In such services the fixation of different age of superannuation in different grades may be made in public interest in order to ensure excellence in service as well as merit and efficiency which to a great extent depend on physical fitness apart from merit.

15. In the premises aforesaid, the provisions of rule 6(4) (i) and Rule 6(4) (iii) (a) of the Gujarat Judicial Service Recruitment (Amendment) Rules, 1979 is invalid and bad as it is unreasonable, irrational, arbitrary and discriminatory, and violating the equality clause envisaged in Articles 14 and 16 of the Constitution of India.

16. These rules insofar as they impose age restriction in the matter of promotion to the post of Assistant Judge are liable to be quashed and set aside and the judgment of the High Court of Gujarat is also set aside. We direct that the name of this appellant shall be deemed to have been continued in the Select List of 1983-84 and his case for appointment to the post of Assistant Judge shall be considered on that basis by the authorities concerned. If he is so appointed to the post of Assistant Judge, he shall get his due seniority and all retiral benefits reckoning his service on that basis. The appeal is accordingly allowed. There will be no order as to costs.

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