

T. K. Patel and Others

Vs

J. S. Rama and Others

Civil Appeal Nos. 1675 and 1870 of 1984, 713-14 of 1978 and Writ Petition Nos. 4265 of 1978  
With 11085-94 of 1984

(O. Chinnappa Reddy, G. L. Oza, K. N. Singh JJ)

02.05.1986

JUDGMENT

OZA, J. –

1. This is a group of matters involving the identical questions for our consideration. We are dealing here with the first i.e. Civil Appeal 1675/84 which will dispose of all the other matters simultaneously.

2. Civil Appeal 1675 of 1984 arises out of the judgment of the Gujarat High Court on leave granted by this Court. By the impugned judgment dated December 16, 1983, the High Court disposed of a number of petitions filed by the petitioners who belonged to the Subordinate Revenue Service of the State of Gujarat. It is alleged that from the Subordinate Revenue Service (Lower Division) Clerks they could be promoted as Deputy Mamlatdars and the necessary requirement for being promoted as Deputy Mamlatdars, was, passing a qualifying examination. The questions which arose before the High Court in these petitions were :

- (1) The Deputy Mamlatdars who have passed the lower revenue qualifying examination at the first trial claim seniority over their colleagues who have passed such examination within specified chances but at more than one trial and also over those who have passed such examinations beyond specified chances. These petitioners also challenge the vires of Rule 9 of Examination Rules.
- (2) One group of petitions is of those who have passed the lower revenue qualifying examination within specified chances and time but they are apprehensive of reversion by the revenue authorities from their existing post of Deputy Mamlatdar in a lower post of clerks to accommodate Deputy Mamlatdars who have passed the lower revenue qualifying examination beyond the specified chances.
- (3) In this category the petitioners who are working as Deputy Mamlatdars and who have passed the lower revenue qualifying examination in specified chances claim seniority vis-a-vis the concerned respondents who have passed the said examination beyond the specified chances and these petitioners also challenge the vires of Rule 7 and of Rule 9.
- (4) In some petitions the petitioners who have passed lower revenue qualifying examination in more than three chances in August, 1982 claim seniority over the

concerned respondents who have passed in three chances but who according to the petitioners have not been promoted as Deputy Mamlatdars prior to August, 1982. Reliance was placed on the proviso to Rule 7.

(5) In one group of petitions the petitioners who have passed the lower revenue qualifying examination in August, 1982 in specified chances claim seniority over the respondents who have passed the examination in specified chances in May, 1982. As the concerned respondents are admittedly junior to the petitioners in the lower cadre of clerks neither the petitioners in this group nor the concerned respondents have been promoted till April 1983 however, the petitioners' juniors, the concerned respondents are promoted on May 5, 1983 by Collector, Amreli on the ground that the respondents have passed the lower revenue qualifying examination earlier than the petitioner. The petitioners have been promoted as Deputy Mamlatdars later on and they are apprehensive of being reverted in preference to the concerned respondents. Reliance is placed on Rule 9 of the examination Rules.

(6) In another group of petitions the petitioners are clerks who have not passed the lower revenue qualifying examination before attaining the age of 45 years. Some of them have not passed the said examination although they have yet not crossed the age of 45 years. They are disqualified persons as defined by the Examination Rules. It was contended that those who have crossed the age of 45 years should be exempted from appearing in the examination as was the case in some other categories of the services of the State of Gujarat.

(7) Yet another group consists of petitioners according to whom merely because they did not appear at the concerned examination it could not be said that they have lost their chances for appearing at the said examination and these cases are covered by Rule 12 of the Examination Rules. The main contentions which were raised before the High Court and which were repelled and which are once again raised before us are :

(a) That proviso to Rule 7 of Examination Rules as substituted by the government notification dated May 20, 1982 is ultra vires Articles 14 and 16 of the Constitution.

(b) Provisions of Rules 4(1) and 6(2) and the proviso to Rule 7 of the Examination Rules are inconsistent with the Recruitment Rules of 1966 and hence they are void.

(c) Rule 8 of the Examination Rules is violative of the guarantees of Articles 14 and 16 of the Constitution.

(d) Rule 9 of the Examination Rules is void as it conflicts with the equality clause as enshrined in Articles 14 and 16 of the Constitution.

(e) On a correct interpretation of relevant rules comprised in the Examination Rules especially Rules 6, 7, 8 and 9 it was contended that the petitioners contentions deserve to be accepted.

(f) Government resolution dated December 28, 1962 still holds the field despite the subsequent framing of the Examination Rules under Article 309 of the Constitution of India, firstly, in 1970 and on later occasion by promulgation of Examination Rules

in 1978 and consequently, the cases of the petitioners are required to be decided in the light of the said resolution of 1962.

(g) In any case, as there is a conflict between the proviso to Rule 7 of the Examination Rules and Rule 9 thereof with the resolution of 1962, both these rules or either of them will be inoperative.

(h) That the petitioners who are ex-Saurashtra State servants are not liable to be reverted from their present posts of Deputy Mamlatdars to the lower posts of clerks especially when at the time of their initial promotion as Deputy Mamlatdars or to the then existing equivalent posts of Aval Karkuns in the revenue service of that State passing of the lower revenue qualifying examination was not a condition of eligibility for being promoted to the posts of Aval Karkuns equivalent to the posts of Deputy Mamlatdars.

3. So far as the question of the employees of the erstwhile Saurashtra State are concerned, the High Court observed that on the facts of this case the Saurashtra State employees have themselves appeared in examination pursuant to the present rules and have stated their claim for being promoted to the cadre of Deputy Mamlatdar as per Rule 7. Thus they having acquired the eligibility for promotion to the higher post on the basis of Rule 7 they will have to follow the mandate of Rule 7 and they cannot fall back upon the old historical position.

4. Learned Judges after referring to the history of the formation of the service of various rules and decisions taken by the government on different occasions considered each of these contentions advanced by the petitioners at great length and repelled these contentions. It was further directed that the respective Collectors of the districts will prepare the seniority lists and consider the cases in the light of the decision regarding reversion of anyone who was already working as a Deputy Mamlatdar.

5. We have heard learned counsel for the petitioners at great length and gone through the judgment of the High Court in respect of various contentions raised by the learned counsel for the petitioners. Learned counsel for the petitioners was not in a position to challenge any of the conclusions reached by the learned Judges of the High Court except in respect of some hypothetical propositions enunciated by the learned counsel for the petitioners. It was contended that the conclusions in such circumstances will not be justified either on the basis of the interpretation put on the rules by the High Court or if that interpretation is to be accepted the rules themselves will have to be held bad. In spite of all efforts, however, the learned counsel for the petitioners was not able to point out any particular case or cases which would fall within the hypothesis which was sought to be raised.

6. The directions contained in the High Court's judgment itself indicate that in accordance with the observations in the judgment, the District Collector shall consider the cases of the petitioners wherever it raises a question of seniority or where it is apprehended that they would be reversed and it is clear that after the decisions taken by the Collector in respect of particular cases, if the petitioners have any grievance it will be open to them to approach the appropriate authorities and if necessary the High Court. It could not be said that any of the conclusions reached by the learned Judges of the High Court cannot be sustained. We therefore see no substance in this appeal. It is, therefore, dismissed. In the circumstances of the case parties are directed to bear their own costs. For the reasons stated in our judgment, Civil Appeals 713-14/78, 1870/84 and Writ Petitions 4265/78 and 11085-94/84 are also dismissed.

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