

K. S. Vora and Others

Vs

State of Gujarat and Others

Civil Appeal No. 712 of 1980

(Ranganath Misra, S. Ranganathan JJ)

27.10.1987

JUDGMENT

RANGANATH MISRA, J. –

1. This appeal by special leave is directed against the judgment of the Gujarat High Court in a dispute centred round seniority of government employees in the Gujarat Subordinate Secretariat Service.
2. The short facts necessary for disposal of the two contentions raised in this appeal are the following :
3. On May 1, 1960, the State of Bombay was bifurcated into two States - Maharashtra and Gujarat. Prior to that date the six appellants in this appeal had joined government service as Clerks-cum-typists. The Subordinate Secretariat Service was then divided into four grades (i) Clerk-cum-typist (ii) Junior Assistant (iii) Senior Assistant and (iv) Superintendent. Promotions were available from the lower tier to the upper one. When Gujarat became a separate State, government business in the Secretariat was divided into 9 departments separate in every respect so far as the Subordinate service was concerned. On October 12, 1960, by a government resolution the cadre of Superintendents became a common one covering all the departments in the Secretariat. Until then seniority was being determined departmentwise and promotions had also been regulated on the same basis in all the four grades. Under the new arrangement promotion to the post of Superintendent was handled by the General Administration Department out of a common list of Senior Assistants. On September 25, 1964, under another resolution of government the grades of Junior Assistants and Senior Assistants were merged into a single one, known as Assistants w.e.f. October 1, 1964, and a common seniority list of government servants working as Assistants was prepared. A quota system was introduced for recruitment of Assistants. At one stage, the ratio was 3 : 1, promotees being the smaller proportion and later it was changed to 2 : 1. On July 19, 1969, a seniority list of Assistants was prepared on quota basis and taking into account continuous officiation in the cadre of Assistant. The list was assailed before the High Court. The court found by judgment dated March 9, 1972 that promotees were in excess of the ration and accordingly gave direction for a fresh list to be drawn up. On October 11, 1974, government resolved to have a common cadre of Clerk-cum-typist and promotion to the post of Assistant was provided therefrom. In 1975, the October resolution of government was challenged before the High Court by filing two writ petitions. In the meantime, in 1977, a set of rules known as the Gujarat Subordinate Secretariat Service (seniority of Assistants) Rules, 1977 were framed under the proviso to Article 309 of the Constitution with retrospective effect from May 1, 1960. Rule 4 of the Rules laid down the principle for determining seniority by providing that seniority among the promotee Assistants inter se shall be fixed on the basis of their

length of service in the joint cadre of Clerk-cum-typist for all departments of the Secretariat as a whole. In December 1978, the two writ petitions were dismissed. The High Court held that the object of the Rules of 1977 was to equalise the chances of promotions to the selection cadre and since the rules took care of the promotee officers by ensuring non-reversion, the rules were indeed not retrospective. Several consequential directions were given. It is this judgment which is now under appeal.

4. The main contention advanced by Mr. Tarkunde in the appeal is that the rule regarding seniority is retrospective in operation and takes away the vested right of the appellants to prospects of promotions. In support of his submission he has relied upon three decisions of this Court, namely, *Mervyn Coutinho v. Collector of Customs, Bombay* ((1966) 3 SCR 600 : AIR 1967 SC 52), *Roshan Lal Tandon v. Union of India* ((1968) 1 SCR 185 : AIR 1967 SC 1889) and *State of Jammu and Kashmir v. Triloki Nath Khosa* ((1974) 1 SCR 771 : (1974) 1 SCC 19 : 1974 SCC (L&S) 49 : AIR 1974 SC 1). Each one of these is a decision of the Constitution Bench. We do not find that on facts any of these cases has any support to offer for the point in dispute. *Mervyn* case ((1966) 3 SCR 600 : AIR 1967 SC 52) was that of Appraisers of the Customs Department and challenge was to the validity of the rotational system in fixing the seniority of Principal Appraisers. The court struck down the method used by government in fixing the seniority of Principal Appraisers on a finding that there was denial of equality of opportunity. The dispute in this case is different from what came in *Mervyn* case ((1966) 3 SCR 600 : AIR 1967 SC 52) for determination. This will be apparent when we presently deal with what exactly is the problem in the matter before us. *Roshan Lal* case ((1968) 1 SCR 185 : AIR 1967 SC 1889) dealt with recruitment into one cadre from two sources. Even when recruitment from the two sources merged into one cadre, favourable treatment was given to recruits from one source regarding further promotion. The court found this to be violative of Articles 14 and 16 of the Constitution. This again is not relevant for resolving the dispute in hand. *Triloki Nath* Case ((1974) 1 SCR 771 : (1974) 1 SCC 19 : 1974 SCC (L&S) 49 : AIR 1974 SC 1) was dealing with the Engineering Service of Jammu and Kashmir. There was direct recruitment of degree holders in civil engineering is also by transfer of degree or diploma holders who had served as Supervisors for a period of not less than 5 years for recruitment to the cadre of Assistant Engineers. The relevant rule provided that recruitment to the post of Executive Engineers and above was to be made by promotion only and Assistant Engineers who possessed a degree in engineering alone were eligible for such promotion. This rule, therefore, disqualified diploma holders for being promoted as Executive Engineers and they challenged the constitutionality of the rule by contending that it was discriminatory. The court found that even after there was one cadre, for the promotional post therefrom, a higher qualification could be prescribed and those out of the common cadre who satisfied that requirement could be made eligible for promotion.

5. As we have already pointed out in the instant case the State decided at stages to switch over to the common cadre in respect of all the four grades of the Subordinate Service. Before common grades had been formed promotion was granted departmentwise. When ultimately a common cadre came into existence - and all that was done by 1974 - it was realised that if seniority as given in the respective departments were taken as final for all purposes there would be prejudice. Undoubtedly the common cadre was for the purpose of increasing the efficiency by introducing a spirit of total competition by enlarging the field of choice for filling up the promotional posts and in the interest of discipline too. After a common cadre was formed, the general feeling of dissatisfaction on account of disparity of seniority became apparent. The 1977 Rules were introduced in this background to ease the situation. The scheme of this rule protected the rank then held by every member of the service notwithstanding alteration of seniority on the new basis. This, therefore, made it clear that accrued benefits were not to be interfered with. To that extent the 1977 Rules were

not retroactive. In spite of the protection of rule regarding the post then held, the Rules brought about a change in the inter se seniority by adopting the date of initial recruitment and the length of service became the basis for re-fixing seniority. Total length of service for such purpose is a well known concept and could not be said to be arbitrary. Undoubtedly one of the consequences of the change in the basis was likely to affect prospects of promotion - a matter in future. Two aspects have to be borne in mind while considering the challenge of the appellants to this situation. It was a historical necessity and the peculiar situation that arose out of government's decision to create a common cadre with four grades in the entire Secretariat. We would like to point out with appropriate emphasis that there was no challenge to creation of the common cadre and certainly government was competent to do so. The second aspect to be borne in mind is that rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules to regulate seniority, if the rules were made bona fide and to meet exigencies of the service, no entertainable grievance could be made. If these are the tests to apply, we do not think the appellants have indeed any grievance to make. In our view, therefore, the High Court rightly dismissed the contention and found that appellants were not entitled to relief.

6. Mr. Tarkunde next urged about the quota. We find that the High Court has not dealt with the question. We do not propose to go into that aspect.

7. We accordingly dismiss the appeal but leave parties to bear their own costs throughout.

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