

Jacob Yahannan

Vs

H.P. Vora

(CJI J.S. Verma, S.P. Kurdukar JJ)

24.07.1997

JUDGMENT

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S.P. KURDUKAR,J.

1. These two appeals by Special Leave arise out of the judgment and order dated 10th April, 1992 passed by Central Administrative Tribunal, Bombay Bench, Bombay in O.A. No. 558 of 1989 filed by H.P. Vora, the first respondent in both the appeals. Civil Appeal No. 256 of 1993 is filed by Jacob Yahannan whereas Civil Appeal No. 1689 of 1993 is filed by the Administrator and the Collector, Dadra and Nagar Haveli, Silvassa.

2. The facts set out in Civil Appeal No. 1689 of 1993 are as under:-

The collector, Dadra and Nagar Haveli on 28th March, 1989 published a provisional gradation list of Deputy Engineers/Assistant Engineers/Assistant surveyors of Works (Civil) as on 1st January, 1984 and invited objections, if any, to the said provisional gradation list. The first respondent filed representation against the said gradation list alleging that Assistant Engineers/Assistant Surveyors of Works (Civil) could not have been bracketed along with the Deputy Engineers since they did not belong to the cadre of Deputy engineers. The Collector negated the objections filed by the first respondent and on 22nd June, 1989 published a final gradation list of Deputy engineers/Assistant Engineers/Assistant Surveyors of Works (Civil). Incidentally, it mentioned that in this gradation list, the first respondent is at serial No. 3 whereas Jacob Yahannan (appellant in civil appeal No. 256 of 1989) and J.M. Lad have been placed at serial Nos. 6 and 7 respectively. J.M. Lad is the third respondent in Civil appeal No. 1689 of 1993. Undisputedly therefore, the first respondent is shown senior to Jacob Yahannan and J.M. Lad. Being aggrieved by the final gradation list, the first respondent filed O.A. No. 558 of 1989 in the Central Administrative Tribunal, Bombay Bench, Bombay (for short 'CAT', Bombay) praying therein that the said gradation list be quashed and set aside being null and void and further not to consider or appoint Sh. Jacob Yahannan or J.M. Lad to the post of Executive Engineer and the said post be not filled in any manner even by making a direct recruitment. According to the first respondent, the cadre of Deputy engineer is distinct and separate from that of Assistant Engineer and assistant surveyor of Works (Civil). The Collector while preparing the final common gradation list has committed a serious illegality in clubbing together the Deputy Engineers, Assistant engineers and Assistant Surveyors of Works (Civil) as equals and formed one cadre. The Assistant Engineers and Assistant Surveyors of Works (Civil) should not have been

included in the common gradation list of the Deputy Engineers. The Deputy Engineer's cadre is the feeding cadre to the cadre of Executive Engineer. He (first respondent) alone is entitled to be considered and promoted to the post of Executive engineer to the exclusion of Jacob Yahannan, J.M. Lad and other similarly situated employees. The first respondent, therefore, prayed that the final gradation list be quashed and set aside and he alone be considered for promotion to the cost of Executive Engineer.

3. The appellant joined the issue and contended, inter alia, that the Sectional Officer cadre is the feeding cadre to the posts of Deputy Engineers, Assistant engineers and the Assistant Surveyors of Works (Civil). As and when the vacancies arose in the cadre of Deputy Engineers, Assistant Engineers and Assistant Surveyor of works (Civil), the selection was to be made according to the Rules from amongst the eligible Sectional officers. In accordance with the exigencies of services, such selected Sectional Officers on promotion were appointed as Deputy Engineers, Assistant Engineers and Assistant Surveyors of Works (Civil). All these three posts carry identical pay scales and are also interchangeable. This practice was followed in the past and well understood by everyone concerned in the PWD Department of the Administration of Dadra and Nagar Haveli. In the year 1974, such a common gradation list was prepared which was neither disputed nor challenged by anybody. Consistent with this practice, the impugned final gradation list was prepared by the Collector of Silvassa and, therefore, there is no substance in the contentions raised on behalf of the first respondent. It was pleaded that the past record in the this behalf confirms the then prevailing practice. The first respondent was also appointed and worked as Assistant Surveyor of Works (Civil) in the past before he was given the charge as Deputy Engineer in the year 1982. Several other instances were cited to support the contention of interchangeability since all these three services form one cadre although nature of work differs.

4. Mr. Jacob Yahannan filed the counter affidavit and supported the plea of the Administration of Dadra and Nagar Haveli.

5. Upon perusal of pleadings of the parties and the material on record, the CAT Bombay held that the posts of Assistant Engineers and Assistant Surveyors of works (Civil) from distinct cadres and cannot be equated with the cadre of Deputy Engineers. Reliance was placed on the recruitment rules of 1968 where the reference is made to the cadre of Deputy Engineer being a feeding cadre to the cadre of Executive engineer. Consistent with these findings, CAT Bombay vide this judgment and order dated April 10, 1992 granted the desired reliefs to the first respondent and directed the appellants to exclude Jacob Yahanna and J.M. Lad from the zone of consideration to the post of Executive Engineer. It is this judgment and order of CAT Bombay which is the subject matter of challenge in these two appeals.

6. The three questions which arise for our determination in the present appeal are; (1) whether the duties and responsibilities attached to the posts of Deputy Engineers and to that of Assistant Surveyors of Works and Assistant Engineers are identical? (2) whether can there be a common gradation list of Deputy Engineers, Assistant Engineers and Assistant Surveyors of Works(Civil)? and (3) whether the Assistant Engineers and Assistant Surveyors of Works(Civil) are eligible to be considered for promotion to the posts of Executive Engineer along with Deputy Engineer?

7. The Rules relating to the recruitment to the post of Deputy Engineer in Dadra and Nagar Haveli Administration were framed sometime in January, 1968 wherein reference is made only to the cadre of Deputy Engineer. The tabular statement annexed therewith sets out the procedure for

recruitment/appointment. Column 3 states that it is a selection post. Columns 6,7,8 and 9 prescribe age, qualification in order of preference. Column 11 deals with recruitment by promotion etc. and it reads thus:-

"Promotion to (sic) Sections Officers with (a) 3 years service in the case of degree holding and (b) 8 years service in the case of diploma holders. Transfer on deputation suitable officers of the rank of Asstt. Engineer from the State Public Works Department (Period of deputation ordinarily not exceeding three years)." These Rules were framed in 1968. They are required to be construed and interpreted in the context of expansion of the cadre of Deputy Engineer. Due to service exigencies, posts of Assistant Engineers and Assistant Surveyors of Works (Civil) were created from time to time and the feeder source thereof was from the Sectional Officers. They pay scales of all these posts remained identical and they were interchangeable. The nature of work of these three posts may be to some extent different but they were all along treated as connected with the P.W.D. Department. How these Rules were understood and what was the practice followed in the P.W.D. in Dadra and Nagar Haveli Administration is clear from the material produced on record. Annexure 'A' to Civil Appeal No.256 of 1993 sets out details relating to the posting of the first respondent H.P.vora. From 4th October, 1972 to July 1974, he worked as Deputy Engineer C.S.R.C. From April, 1974 till March, 1975 he was posted as Assistant Surveyor of Works (ASW) and was again transferred as Deputy Engineer in BDO Office in 1976, July, 1976 to June 16, 1977 worked as a Deputy Engineer MII, from 27th December, 1978 to 5<sup>th</sup> February, 1979 and 16th May, 1979 to 31st May, 1979, he held the post of Assistant Surveyor of Works (Civil). From July 1982 till July 1986, he was the incharge of both, namely, M.I.I. and M.I.P. From February, 1986 till January, 1990 he was working as A.S.W., Irrigation Division. The service card of H.P.Vora maintained in Form 25-B is at Annexure 'B' to Civil Appeal No. 256 of 1993. This card indicates that he was working as Assistant Surveyor of Works with effect from 1st April, 1974. So is the service record of Jacob Yahannan who held the post of Assistant Surveyor of Works (Civil from 8th April, 1982 to 29th September, 1982 and from 29th September, 1982 onwards as Deputy Engineer. Annexure 'D' sets out details of various other officers who worked as Assistant Surveyors of Works in PWD (Civil). The above record of services of the first respondent in the context of the Rules of 1968 relating to the recruitment to the post of Deputy Engineer, it would be clear that the post of Deputy engineer as treated for all practical purposes during these years as equivalent to that of the Assistant Engineer and Assistant Surveyor of Works (Civil) and was interchangeable. The pay scales of all these three posts were identical and continued to be so even today. The gradation lists of Executive Engineers and Deputy Engineers of Public Works Department (Civil Division) as on 1st January, 1984 would show that there were three permanent posts and six temporary posts of Deputy Engineers. Since there was increase in the work load as on 1st January, 1988, three more permanent posts and eleven temporary posts of Deputy Engineers were created. The record further indicates that from amongst the Deputy Engineers, some of them were posted as the Assistant Engineers or Assistant Surveyors of Works (Civil) under the Administration of Dadra and Nagar Haveli. The official documents produced on record, therefore, leaves no manner of doubt that the posts of Deputy Engineer, Assistant Engineer and Assistant Surveyors of Works (Civil) form one cadre and the services of officers working on these posts

were interchangeable. The practice that was followed in the Administration of Dadra and Nagar Haveli in the PWD department was that the duties and responsibilities attached to the posts of Deputy Engineers and that of Assistant Surveyors of Works and Assistant Engineers were to some extent different because of exigencies of service but they were interchangeable. Their pay scales were identical. The feeder cadre was the Sectional Officer. If this be so, it is not possible to hold that the Deputy Engineers, Assistant Engineers and Assistant Surveyors of Works (Civil) do not form a common cadre. The CAT Bombay has committed an error while holding that the Assistant Engineer and Assistant Surveyor of Works (Civil) do not belong to the cadre of Deputy Engineers. We, therefore, set aside this finding and hold that the Deputy Engineers, Assistant Engineers and Assistant Surveyor of Works (Civil) form a common cadre and the common gradation list prepared by the Collector, therefore, cannot be faulted on any ground.

8. Having held that the common gradation list of Deputy Engineers, Assistant Engineers and Assistant Surveyor of Works (Civil) suffers from no vice, it must follow that all such officers do come within the zone of consideration to the post of Executive Engineer and are required to be considered in accordance with law to the said promotional post of Executive Engineer.

9. Mr. Krishan Kumar, learned Advocate appearing for the first respondent urged that Mr. Jacob Yahannan and Mr. J.M.Lad were never appointed as Deputy Engineers and, therefore, they do not fall in the feeder cadre i.e. Deputy Engineer to the promotional post of Executive Engineer. He urged that there is only one post of Deputy Engineer created under the Rules of 1968 and, therefore, Mr. Jacob Yahannan and Mr. J.M.Lad could not be treated as Deputy Engineers. This submission has no force because the order of Administration of Dadra and Nagar Haveli dated 29th November, 1989 unmistakably indicates that as many as five officials were promoted to the posts of Deputy Engineers from the cadre of Sectional Officer. It is obvious that this increase was referable to the exigencies of service. From the material produced on record, it is also clear that the cadre strength of Deputy Engineers increased from time to time having regard to the need felt by the Dadra and Nagar Haveli Administration. The impugned common gradation list prepared as on 1st January, 1988 indicated that there were three permanent posts and eleven temporary posts of Deputy Engineers. Therefore, there is no substance in the contention raised on behalf of the first respondent that the cadre strength of Deputy Engineer is only one.

10. It was then contended that the bye-laws/Rules framed by the Administration are binding on it and, therefore, the Administration of Dadra and Nagar Haveli cannot act contrary. Reliance was placed on two decisions of this Court (1) S.S.Minhas Vs. Indian Statistical Institute and others 1933 (4) SCC 582 in particular paras 23 and 24 and (2) D.D.Joshi and others Vs. Union of India and others AIR 1983 SC 420. However, we do not see any relevance of these decisions in the facts and circumstances of this case.

11. In the result, both the appeals are allowed. The impugned order dated 10th April, 1992 passed by CAT Bombay, is quashed and set aside and consequently O.A. No. 558 of 1989 filed by the first respondent is dismissed. In the circumstances of the case, parties are directed to bear their own costs.