

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5951 of 1996

with

SPECIAL CIVIL APPLICATION No 7185 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GK BRAHMBHATT

Versus

STATE OF GUJARAT THROUGH SECRETARY

Appearance:

1. Special Civil Application No. 5951 of 1996
MR PARESH UPADHYAY for Petitioners
MR DA BAMBHANIA for Respondent No. 1
SERVED for Respondent No. 2
2. Special Civil Application No 7185 of 1996
MR CB DASTOOR for Petitioners
MR DA BAMBHANIA for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

ORAL JUDGEMENT

Petitioners in both these petitions are officers serving under the Department of Ports and Fisheries of the Government on various cadres in Class-III service. All the aforesaid officers claimed right to be considered for promotion to the posts of Superintendent of Fisheries and Fisheries Training Officer in Class-II service of the Fisheries Department.

2. Appointments to the posts of Superintendent of Fisheries and Fisheries Training Officer in Class-II service are governed by the statutory rules framed by the Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution. The said Rules are, thus, statutory and legislative in character. Rule-1 of the said Rules, under the Heading "Superintendent of Fisheries and Fisheries Training Officer" reads as under :-

1. Appointment shall be made either -

(a) by promotion from among the members of the Class-III staff of the Fisheries Department with atleast 5 years service in the cadres of Assistant Superintendent of Fisheries, Fisheries Officer, Survey Assistant, Shore Officer and Senior Research Assistant of proved merit and efficiency ;

OR

(b) by direct selection ".

It is undisputed that the cadres of Assistant Superintendent of Fisheries and Shore Officer have been abolished for a long time. Thus, under the above referred Rules, promotion to the posts of Superintendent of Fisheries and Fisheries Training Officer can be made from amongst - (a) Fisheries Officers; (b) Survey Assistants; and (c) Senior Research Assistants. Under Government Resolution dated 16th May, 1992, the cadre of Survey Assistant is redesignated as "Assistant Superintendent of Fisheries (Sr). It appears that under

Government Resolution dated 20th February, 1991, the functions of training, research and development carried on by the Fisheries Department have been transferred to the Gujarat Agricultural University alongwith its establishment, properties, lands and buildings. In view of the said transfer to the Gujarat Agricultural University, most of the Senior Research Assistants earlier serving under the Government have been transferred to the Gujarat Agricultural University. However, some of the Senior Research Assistants have opted to continue with the State. Petitioners in Special Civil Application No. 5951/96 are some of these Senior Research Assistants who have continued in the State service. Petitioners in Special Civil Application No. 7185/96 are Fisheries Officers and Survey Assistants {Assistant Superintendent of Fisheries (Sr)}. It is the claim of all the petitioners in Special Civil Application No. 5951/96 that in view of the above referred Recruitment Rules, they are entitled to be considered for promotion to the post of Superintendent of Fisheries and Fisheries Training Officer in Class-II service. However, the respondents in utter disregard of the above referred rules, have favoured the Survey Assistants { Assistant Superintendent of Fisheries (Sr)} in matter of promotion and the petitioners have been excluded from consideration for such promotion. Similar is the complaint made by petitioners in Special Civil Application No. 7185/96 who are the Fisheries Officers serving under the Fisheries Department. They, however, further claim that since the cadre of Senior Research Assistant has been transferred to Gujarat Agricultural University, those Senior Research Assistants who opted to remain with the State service, need not be considered for further promotion.

3. Be it noted that some of the Senior Research Assistants had earlier preferred a writ petition being Special Civil Application No. 904/78 before this court. The said petitioners challenged the above referred Recruitment Rules and contended that Fisheries Officers which is a cadre inferior to the cadres of Senior Research Assistant and Survey Assistant, could not have been clubbed together for promotion to Class-II service and the said Rules in so far as it makes the Fisheries Officers eligible for such promotion is unconstitutional and ultra-vires. The Division Bench of this court (Coram : Hon'ble Mr. Justice S.B.Majmudar & Hon'ble Mr. Justice S.L.Talati) under its judgment and order dated 22nd August, 1984, upheld the contention and held that the Rule in so far as it made the Fisheries Officers eligible for promotion to Class-II service, was ultra-vires. The court further directed the State

Government to prepare a combined Gradation List of Survey Assistants and Senior Research Assistants on the basis of continuous officiation and to operate the same for the purpose of further promotion. The said judgment was challenged by some of the Fisheries Officers before the Supreme Court in Civil Appeal No. 4374/86. The said appeal was allowed on 1st December, 1986. The court set aside the above referred judgment of this court and restored the writ petition No. 904/78 to its original number in order to enable the High Court to dispose it of on the merits after hearing the appellants before the Supreme Court. In view of the above referred order of the Supreme Court, Special Civil Application No. 904/78 has been restored to the files of this court. The said matter is still pending for re-hearing and disposal. Today when the said matter was taken up for hearing alongwith the present two petitions, learned counsel Mr. B.P.Tanna appearing for the said petitioners informed the court that the services of the said petitioners stood transferred to the Gujarat Agricultural University and the cause of action, therefore, did not survive. He, therefore, made a statement on behalf of the said petitioners that none of the petitioners desire to press the said petition. In view of the said statement, separate order shall be made on Special Civil Application No. 904/78.

4. In aforesaid circumstances, the Recruitment Rules reproduced hereinabove, is subsisting in toto and require to be implemented scrupulously. Neither of the petitioners in both these petitions has challenged the validity of the said Rule and I, therefore, do not enter into the question of validity of the said Rule.

5. In my view, the Recruitment Rules being statutory and legislative in character, have to be followed scrupulously. The Senior Research Assistants as well as the Fisheries Officers have a right to be considered for promotion to Class-II service i.e. to the posts of Superintendent of Fisheries and Fisheries Training Officer. The action of the State Government in not considering the officers belonging to these two categories, certainly requires to be deprecated. The Government for many years have favoured the Survey Assistants (Assistant Superintendent of Fisheries (Sr)) and considered them for further promotion excluding the other eligible candidates belonging to the above referred two cadres. It may however be noted that neither of the petitioners has challenged the particular orders of

promotion made in favour of the Survey Assistants. Further under the above referred Recruitment Rules, no quota for promotion from amongst the different feeder cadres has been prescribed.

5. In view of the above discussion, both the petitions are allowed. It is declared that all the officers belonging to the cadres of Fisheries Officer and Survey Assistants { Assistant Superintendent of Fisheries (Sr)} and Senior Research Assistants are entitled to be considered for promotion to Class-II service, if otherwise eligible under the said Rules. It is, therefore, directed that the State Government and the Commissioner of Fisheries shall hereafter consider the cases of officers belonging to the aforesaid three categories viz. Fisheries Officer, Survey Assistant {Assistant Superintendent of Fisheries (Sr)} and Senior Research Assistant for promotion to Class-II service. While considering the cases of officers belonging to the aforesaid three categories for promotion to Class-III service, their inter-se seniority determined on the basis of continuous officiation in the respective cadre shall be taken into consideration. For the said purpose, the State Government shall prepare a combined Gradation List of the eligible officers belonging to the above referred three cadres. Such Gradation List shall be prepared and published within two months from the date of the receipt of writ of this court. It is further directed that no promotion to the posts of Superintendent of Fisheries and Fisheries Training Officers in Class-II service shall be made without express permission of this court till the combined Gradation List is prepared and published as directed hereinabove. Rule in both these petitions is made absolute accordingly. The parties shall bear their own costs.

JOSHI