

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2100 of 1992

with

SPECIAL CIVIL APPLICATION No 2139 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

D S PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2100 of 1992
MR BP TANNA for Petitioner No. 1-7
GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED for Respondent No. 2
 2. Special Civil Application No. 2139 of 1992
MR BP TANNA for Petitioner No. 1
GOVERNMENT PLEADER for Respondent No. 1
-

Date of decision: 27/02/2004

ORAL JUDGEMENT

Since the common issues are involved in both these petitions, they are being disposed of by this common judgement.

2. In both these petitions, the petitioners have prayed for quashing and setting aside the impugned order dated 17.3.1992 passed by the respondent no.2 i.e. Joint Controller (Establishment) Legal Metrology, Weights & Measures Department, Government of Gujarat. The petitioners had also sought for the declaration that the petitioners are not required to undergo training as mentioned in the order dated 17.3.1992 as they were appointed prior to 7.7.1984 when the rules came into force. The petitioners have also prayed for stay against the execution and operation of the order dated 17.3.1992 passed by the respondent no.4 and the interim relief was granted in terms of Para 13 of the petition staying the execution and operation of the impugned order dated 17.3.1992. As per the order dated 17.3.1992, the petitioners were directed to go for training of 4 months from 1.4.1992 at Ranchi and to complete their training at their own costs and to take leave for 4 months i.e. the period of training. The reason for such an order was that the petitioners had been sent for training at an earlier point of time but they have not successfully completed the said training and hence, they were again directed to go for training by passing the impugned order in respect of the petitioners.

3. As far as SCA No.2100 of 2002 is concerned, there are in all 7 petitioners and they can be divided into 3 categories, the petitioner nos.1 to 4 were recruited prior to 7.7.1984 i.e. the date on which publication of rule requiring to go to training, the petitioner no.5 was recruited after publication of rule and he was unsuccessful in his first attempt and thereafter went for training at own cost taking leave and successfully completed training but he is placed much lower in the seniority list taking into consideration the date of passing of the training. The petitioner no.6 and 7 were recruited after publication of rule and they were unsuccessful in first attempt.

The petitioner in SCA No. 2139 of 1992 is a Senior Inspector of Legal Metrology who was recruited

before the impugned rule came into existence and he had been sent for training to Ranchi from 1.12.184 but not completed the same successfully. On 31.3.1990, the petitioner had been promoted as Senior Inspector of Legal Metrology.

4. Mr.B.P.Tanna, Ld. Senior Advocate appearing for the petitioners submits that the impugned order dated 17.3.1992 was issued under Rule 6 of the Junior Inspector of Weight and Measures Recruitment Rules, 1994 which reads as under:-

"A selected candidate shall have to undergo successfully the basic training programme for four months at the Indian Institute of Legal Metrology at Ranchi or at any other place within two years from the date of his appointment. If the candidate fails to undergo such training successfully within the stipulated period, he shall not be allowed to complete his probation period and he will be junior to all those who have undergone such training unsuccessfully. However, if the candidate could not be sent for training for any reason or other, the period will not be counted towards the stipulated period referred to in this rule. If the Inspectors who have been recruited before issue of this notification will also have to undergo training successfully within two years from the date of issue of such notification."

5. On the basis of the aforesaid provision, he submits that if the Department's interpretation of the said Rule is accepted and its consequences are taken into account, it would be at the great disadvantage to the petitioners. He further submits that rules which alter the service conditions of an employee cannot be allowed to operate retrospectively as the persons who have been recruited before this rule came into force cannot be directed to complete training by an recruitment rule which was not in existence when they were recruited.

5. Mr.Tanna further submits that the said rule in so far as it seeks to alter position of an employee who was recruited before the rule itself came into existence is bad. He further submitted that an employee who has been recruited prior to this rule coming into existence cannot be directed by this rule to complete training as envisaged in the rule. He has submitted that the petitioners-employees were being informed after five to ten years later that they have not completed the training

successfully so they have to attend the training de-novo. He has further submitted that the Department seeks to impose upon the petitioners conditions which are not in existence in the rule itself. The rule does not contemplate going for training at one's own cost in case the candidate could not successfully complete the training in the first attempt, nor does the rule contemplate the employee having to take leave for going for training. He has, therefore, submitted that it would be unwise to interpret rule to mean that a candidate, who was unsuccessful in the first attempt but later on completed the training successfully shall have to be placed below all persons who, though junior, have completed training in the interregnum. He, therefore, submitted that there cannot be such intention of any such rule and the interpretation followed by the Department is arbitrary and illegal.

6. Mr.Tanna has further submitted that the delay caused by the Department in informing the petitioners about they having become unsuccessful in the training has prejudiced the petitioners greatly. It is submitted that after five to ten years of having been sent for earlier training, the petitioners have been informed that they have not completed the same successfully and therefore, they have to go there at their own costs. He has submitted that the order dated 17.3.1992 was nothing but an attempt by interested elements in the Department to push down the chances of the present petitioners for promotion to the next higher post of Senior Inspector, Legal Metrology. He has, therefore, submitted that this Court should declare that the petitioners who were recruited before existence of this rule do not require to complete the training and they shall be granted their due seniority position from the date of appointment/confirmation. He has also requested the Court to consider the case of those employees who have been recruited post publication of rule and who were sent for training but not at their own cost and not having to take leave for the concerned period. It is also submitted that on successful completion of the training, the petitioners may be given their due seniority position.

7. Ms.Harsha Dewani, Ld. AGP appearing for the respondents in both these petitions vehemently argued that the petitioners do not deserve any relief in this petition. First of all, she has made it clear that the submissions made by Mr.Tanna are different then the facts stated and averments made in the petition. She has submitted that nowhere in the petition, it is stated that

the petitioners were informed late about the outcome of the unsuccessful training earlier. It is for the first time in the written submissions filed before the Court and in the submissions of Mr.Tanna, the contention was raised that the petitioners were informed late about the outcome of the training. She has further submitted that there is no question of retrospective operation of the rule as the rule makes it clear that if the inspectors who have been recruited before issue of this notification will also have to undergo such training successfully within 2 years from the date of issue of such notification. She has further submitted that rule does not contemplate to take away any benefit from the employees which are already granted. The failure in the training within stipulated period would not result into deprivation of the services of the petitioners. The only requirement which is contemplated under the rule is that in case of failure, the employee would be placed junior to all those who have undergone such training successfully. She has further submitted that a condition with regard to sending the petitioners for training at their own costs and after taking necessary leave is only for the purpose that if the employees go on training frequently and would meet with the failure every time, the Department would be put into great difficulty and additional burden would i.e. on the Department with regard to the expenses of such training and the department will have to grant unnecessary leave.

8. Ms.Devani has further submitted that the petitioners have no right to seek any change or modification of the rule simply because it does not serve his purpose. Even otherwise, the petitioners have not challenged the legality and validity of the rules in this petition and it is only for the first time in written submissions they say that the rules are not legal or valid. In this connection, she placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Jammu Kashmir Vs. Shiv Ram Sharma and others reported in AIR 1999 Supreme Court 2012 wherein it is held that the law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts. The case put forth on behalf of the respondents was that when they joined the service, the requirement of passing the matriculation was not needed and while they were in service such prescription has been made to their detriment. But it is clear that there is no indefeasible right in the respondents to claim for promotion to a higher grade to which qualification could be prescribed and there is no guarantee that those rules

framed by the Government in that behalf would always be favourable to them.

9. She has further relied on the decision of the Hon'ble Supreme Court in the case of P.U.Joshi & Others Vs. Accountant General, Ahmedabad and others (2003) 2 Supreme Court Cases 632 wherein it is held that there is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

10. On the basis of the aforesaid two judgements, Ld. AGP has submitted that since the rules are not challenged in the present petitions, it is not open to the petitioners to make out such case for the first time in written submission and even if the same are challenged, then also it is not open for the petitioners to claim any relief on the ground that the rules are sought to be applied retrospectively and they are detriment to the petitioners. She has, therefore, submitted that both these petitions deserve to be dismissed.

11. After having heard Ld. Sr.Advocate Mr.Tanna appearing on behalf of the petitioners and the Ld. AGP and after having considered the oral as well as written submissions filed by Mr.Tanna and the authorities cited before the Court by both the sides, the Court is of the view that the petitioners are not entitled to any relief claimed in these petitions. First of all, the rules were framed on 7.7.1984 and immediately, thereafter, the petitioners were sent for training. However, they could not successfully complete their training. The petitioners were aware about the provisions of the rules framed in 1984 and if they could not successfully complete this training, they would not be allowed to complete their probation if they were on probation and they would be placed junior to all such persons who have completed their training successfully. Moreover, there was no averment made in the petition to the effect that the outcome of the training was not known to them. Looking to the dire consequences of the failure in the training, it was also obligatory on the part of the petitioners to inquire about the training. The Court is not prepared to believe that the petitioners were not informed about the outcome of the training as it is

natural phenomenon that as soon as the training is over and when its outcome is of much significance, on declaration of result, the concerned persons should immediately be informed. The petitioners were ordered to be sent for training in 1992 only because they have not completed the training successfully on earlier occasion. The prudent employer naturally expects that the employee should be given opportunity at its cost at least once and if 2nd opportunity is required to be given, it must be at the cost of the employee concerned and hence, if the condition as to the training at petitioner's own cost and after taking leave is imposed in the impugned order, the Court does not find anything wrong in the said condition. In no way, it strengthens the case of the petitioners in the present petitions.

12. The impugned rule did not take away any right of the petitioners which are already accrued to or conferred on them at the time of their initial appointments. If the rules are framed to the effect that on failure to complete the training successfully, their services would be terminated, in that case, one would inspire to argue that the rights which were already conferred on them are sought to be taken away by framing such rules. It is true that the petitioners' right to get promotion may definitely be affected if the petitioners are not completing the training successfully. In view of the aforesaid two judgments of the Hon'ble Supreme Court of India, the petitioners are not justified in raising the contention that by framing such rule, the petitioners' right to promotion was adversely affected. The Court is also not much impressed about the submission of Mr. Tanna that the rules are not legal or valid. The rule postulates that every employee who undertakes a particular job must get requisite training and it must also be completed successfully. If this is the condition precedent and that has not been fulfilled, the consequences flowing therefrom are bound to take place. An exception is, however, made in the present rule that is if the employee could not be sent for training for any reason, the period would not be counted towards the stipulated period of two years as referred to in the said Rule. This exception takes care of those employees who have not been sent to training but once they are ordered to be sent for training, they have to complete their training successfully and only after successful training, their cases are to be considered for promotion and other benefits, as otherwise, they would be placed in the list junior to all those who have completed the training successfully.

13. In the above view of the matter, the challenge made by the petitioners against the rule and impugned order passed on the basis of the said rule is not sustainable either on facts or in law and hence, both the petitions are dismissed. Rule discharged. Interim relief granted in both these petitions is vacated.

14. Mr.B.P.Tanna, the learned Advocate appearing for the petitioners submit that interim relief granted to the petitioners is in force all throughout during the pendency of petition and hence the same may be extended for two weeks so as to enable the petitioners to approach to the higher forum. This request was objected to by the learned AGP. Looking to the facts and circumstances and having considered the submissions, the interim relief granted earlier is extended for two weeks from today.

(K.A.Puj, J)

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