

K.S. VORA AND OTHERS
v.
STATE OF GUJARAT AND OTHERS

OCTOBER 27, 1987

[RANGANATH MISRA AND S. RANGANATHAN, JJ.]

Seniority matter of government employees in the Gujarat Subordinate Secretariat Service—Gujarat Subordinate Secretariat Service—(Seniority of Assistants) Rules, 1977.

The appellants had joined the government service as clerks-cum-typists before the bifurcation, in May, 1960, of the State of Bombay into Maharashtra and Gujarat States. The Subordinate Secretariat Service then consisted of four grades—(i) Clerk-cum-typist, (ii) Junior Assistant, (iii) Senior Assistant, and (iv) Superintendent. On the formation of Gujarat State, Government business in the secretariat was divided into nine separate Departments so far as the Subordinate service was concerned. Later, by a government Resolution, a common cadre of Superintendents for all the departments was created, and promotion to the post of the Superintendent was directed to be made out of a common list of senior assistants, and by another resolution, the grades of the senior assistants and junior assistants were merged into one post termed as Assistant, and a common seniority list of the Assistants was prepared. In October, 1974, by another Resolution, a common cadre of the clerks-cum-typists was created and promotion to the post of Assistant was provided therefrom. This October Resolution of the government was challenged before the High Court by two writ petitions. In the meantime, the Gujarat Subordinate Secretariat Service (Seniority of Assistants) Rules, 1977, were framed, which were to come into operation with retrospective effect from May, 1960. Rule 4 of the Rules laid down the principle for determining seniority by providing that seniority among promotees—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.

The High Court passed an order, dismissing the two writ petitions. The order of the High Court is appealed against by Special Leave in this Court, mainly on the ground that the retrospective operation of the Rules regarding seniority takes away the vested rights of the appellants of their prospects of promotions.

Dismissing the appeal, the Court,

A **HELD:** A Common cadre was created for increasing efficiency and in the interests of discipline. After the formation of the common cadre, general feeling of dissatisfaction owing to disparity of seniority was generated. The 1977 rules were introduced to ease that situation. The scheme of the Rule regarding seniority protected the rank then held by every member of the service notwithstanding the alteration of seniority on the new basis. To that extent, the 1977 rules were not retrospective. [615B-C]

B There was no challenge to the creation of the common cadre. Secondly, the rules of seniority are a matter for the employer to frame, and even though the prospects of promotion were likely to be prejudiced by the introduction of some new set of rules to regulate seniority, if the rules were made *bona fide* to meet the exigencies of the service, no entertainable grievance could be made, and the appellants have no grievance to make. [615E-F]

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D *Mervyn v. Collector of Customs, Bombay and others*, [1966] 3 S.C.R. 600; *Roshan Lal Tandan v. Union of India*, [1968] 1 S.C.R. 185 and *State of Jammu & Kashmir v. Triloki Nath Khosa & others*, [1974] 1 S.C.R. 771, relied upon.

E **CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 712 of 1980.

From the Judgment and Order dated 20.12.1978 of the Gujarat High Court in Special C.A. No. 1073 of 1975.

F V.M. Tarkunde, Dr. D.Y. Chandrachud, S. Bharatari and P.H. Parekh for the Appellants.

P.S. Poti, M.N. Shroff, K.M.M. Khan and Mrs. H. Wahi for the Respondents.

The Judgment of the Court was delivered by

G **RANGANATH MISRA, J.** This appeal by special leave is directed against the judgment of the Gujarat High Court in a dispute centered round seniority of government employees in the Gujarat Sub-ordinate Secretariat Service.

H The short facts necessary for disposal of the two contentions raised in this appeal are the following:

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 department-wise 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 Assistants. The list was assailed before the High Court. The court found by judgment dated March 9, 1972 that promotees were in excess of the ratio 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 389 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 promotees 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.

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A Several consequential directions were given. It is this judgment which is now under appeal.

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 v. Collector of Customs, Bombay & Ors.*, [1966] 3 SCR 600; *Roshan Lal Tandan v. Union of India*, [1968] 1 SCR 185 and *State of Jammu & Kashmir v. Triloki Nath Khosa & Ors.*, [1974] 1 SCR 771. 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's case* 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* for determination. This will be apparent when we presently deal with what exactly is the problem in the matter before us. *Roshan Lal's case* 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's case* was dealing with the Engineering Service of Jammu & Kashmir. There was direct recruitment of decree-holders in civil engineering as 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.

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 purpose 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 refixing seniority. Total length of service for such purpose is a well-known concept and could not said to be arbitrary. Undoubtedly one of the consequences of the change in the basis was likely to effect 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.

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.

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

S.L.

Appeal dismissed.