

P. C. PATEL AND ORS.

v.

SMT. T. H. PATHAK AND ORS.

September 22, 1976

[A. N. RAY, C.J., M. H. BEG AND P. N. SHINGHAL, JJ.]

Civil service—Seniority—Irregular recruitment—Regularisation—Appointments through Public Service Commission—Recruitment through centralised recruitment scheme.

The respondents Nos. 1 to 10 who were Writ Petitioners in the High Court, were appointed as clerks between June, 1963 to January, 1967 on temporary basis and were promoted to higher posts thereafter. They contended that at the relevant time there was no rule or order requiring that appointments to their posts shall be made through Public Service Commission. The Gujarat Government issued Gujarat Non-Secretariat Clerks, Clerk Typists and Typists (Direct Recruitment Procedure) Rules, 1970. Thereafter, by resolution dated 15-4-1971, it was stated that seniority of the candidates who were to be selected for the posts of Clerks, Clerk typists and typists shall be determined as if their allotment or appointment was from 17-4-1970 irrespective of the question whether they were in service or not, and that their names shall be arranged in a common seniority list in order of merit in accordance with the principles laid down in the Rules.

The Writ petitioners filed a Writ Petition in the Gujarat High Court feeling aggrieved by the said 1970 Rules and the 1971 resolution.

The Writ Petitioners contended that the Government should be directed to treat their entire service as regular and that their seniority should be fixed on the basis of the dates on which they had joined their respective posts.

The State Government in its counter affidavit pointed out that the Writ Petitioners were not recruited through proper channel; that even though the centralised recruitment scheme was in existence and was applicable with effect from January, 1963, the Writ Petitioners did not come through the employment exchanges that their appointments were by way of a stop-gap arrangement. The State, however, admitted in its affidavit that the Writ Petitioners were not under the purview of the Gujarat Public Service Commission at the time of their appointment. The State contended that the Writ Petitioners were irregularly appointed and that 1970 Rules were framed on humanitarian considerations to regularise their appointments and that, their seniority could not be counted from the dates of their appointment and could be counted only from 17th April, 1970.

The High Court came to the conclusion that the Centralised Recruitment Scheme was not applicable when the Writ Petitioners were appointed and that the posts were also not within the purview of the Gujarat Public Service Commission until March, 1969. The High Court therefore, held that the appointments of the petitioners were regular and were not required to be regularised under the 1970 Rules. It also held that the State Government had no power to issue the circular under rule 30 of the Rules for allotment and fixation of a seniority and that the instructions contained in the resolution of 1971 were not applicable to the Writ Petitioners. The High Court allowed the Writ Petition, struck down the seniority list, and directed the State Government and the Director of Civil Supplies to treat the services of the petitioners as regular from the dates when they were appointed initially and not to apply the instructions contained in the resolution of 1971 to compute their seniority.

The appellants, who claimed to have been appointed regularly from the beginning and who contend that the appointments of the writ petitioners were irregular filed appeal by Special Leave. The appellants contended :

1. That the initial appointment of the Writ Petitioners was irregular, being in violation of the centralised recruitment scheme, since the office

A of the Director of Civil Supplies became a part and parcel of the Directorate of Civil Supplies, and that the centralised recruitment scheme was applicable to the recruitment of the Writ Petitioners.

2. The appointment to the posts held by the Writ Petitioners were required to be made through Public Service Commission, but as they were not made through P.S.C. the appointments were irregular.

B Dismissing the appeal with a modification,

HELD : 1. The High Court has rightly negated both the contentions of the appellants. The State in its affidavit had admitted that the posts, the Writ Petitioners were not within under the purview of the Public Service Commission at the time of their appointment. The High Court has also rightly held that by describing the cadre in question as a "State Cadre", it could not be said that the modified scheme was made applicable to the Directorate. It is clear from the scheme that it governed the recruitment to the regional offices and not to the offices of the Directorate. [680 C—E, F—G]

C 2. Rule 29 of the 1970 Rules can apply only if the initial appointment was irregular, *i.e.*, if the Public Service Commission was not consulted when the consultation was required and if the recruitment had not taken place through the Centralised Recruitment Scheme when it was necessary to do so. In the present case Rule 29 cannot apply because the appointments of the Writ Petitioners were regular. [681 G—H]

D 3. The view taken by the High Court is quite justified and does not call for interference. [681 F]

4. The High Court, however, was not justified in directing that the seniority should be counted from the respective dates of the appointment of the Writ Petitioners. The High Court ought to have left the matter to the State Government to re-examine the question of fixing the seniority to give effect to their intention of ameliorating the lot of the writ petitioners. [682 A—B]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1022 of 1975.

Appeal by Special Leave from the Judgment and Order dated 27-2-75 of the Gujarat High Court in Spl. Civil Appln. No. 767/74.

S. K. Dholakia and R. C. Bhatia, for the Appellants.

F *Hardayal Hardy, K. R. Nagaraja, S. K. Mehta and P. N. Puri*, for Respondents 2, 4, 5, 7-10.

R. N. Sachthey, for Respondent No. 11.

The Judgment of the Court was delivered by

G SHINGHAL, J.—This appeal by special leave is directed against a judgment of the Gujarat High Court dated February 28, 1975, in a writ petition filed by Smt. T. H. Pathak and nine others, who are now arrayed as respondent Nos. 1 to 10 and will hereafter be referred to as the writ petitioners. They were appointed as clerks or accounts clerks from June 19, 1963 to January 12, 1967, on a temporary basis, in the office of the Director of Civil Supplies (Accounts), Gujarat, and were promoted to higher posts thereafter. They claimed that there was no rule or order until March 1, 1969, requiring that appointments on their posts shall be made through the Gujarat Public Service Commission, so that their appointments were outside the purview of the Commission and were regular. The State Government however made

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the Gujarat Non-Secretariat Clerks, Clerk-typists and Typists (Direct Recruitment Procedure) Rules, 1970, hereinafter referred to as the Rules, on April 17, 1970, and issued instructions for their enforcement, including instructions for determination of their seniority. That was followed by a resolution dated April 15, 1971, in which it was stated that the seniority of the candidates who were to be selected for the posts of clerks, clerk-typists and typists under clause (i) (a) of rule 29, shall be determined from April 17, 1970, as if their allotment and/or appointment was from that date irrespective of the question whether they were in service or not, and that their names shall be arranged in a common seniority list in order of merit, in accordance with the principles laid down in the Rules. The writ petitioners felt aggrieved against the provisions of the Rules and the Government instructions, as well as the seniority list which was published thereunder on April 18, 1974. They prayed for a direction requiring the authorities concerned to treat their service as regular, for quashing the aforesaid resolution dated April 15, 1971, and for a direction that their seniority may be fixed on the basis of the dates on which they had joined their respective posts.

The respondents to the writ petition traversed the contentions of the writ petitioners in their replies. The State Government stated in its reply that the writ petitioners were not recruited through proper channel even though the Centralised Recruitment Scheme was in existence and was applicable to their office with effect from January 21, 1963, that they did not come through the employment exchanges, that their appointments were by way of a stop-gap arrangement pending recruitment through Centralised Recruitment Scheme or the Public Service Commission, and that as they were "irregularly appointed" their services could be terminated at any time. It was pleaded that it was for that reason that the Government made a provision in rule 29 of the Rules, on humanitarian considerations, to regularise the appointments in accordance with the provisions of the Rules. It was accordingly contended that the writ petitioners could not claim seniority from the dates of their irregular appointments and their service, for purposes of seniority, could only be counted from April 17, 1970.

The High Court took the view that the Centralised Recruitment Scheme was not applicable when the writ petitioners were appointed in the Directorate of Civil Supplies (Accounts) or in the office of the Deputy Director of Civil Supplies (Accounts), and that their posts were also not within the purview of the Gujarat Public Service Commission until March 1, 1969. The High Court therefore held that the appointments of the writ petitioners were regular and were not required to be regularised under rule 29 of the Rules. It held that the State Government had no power to issue the circular under rule 30 of the Rules for "allotment" and fixation of seniority of the writ petitioners, and the instructions contained in the resolution dated April 15, 1971 were not applicable to them. It accordingly allowed the writ petition, struck down the seniority list dated April 18, 1974, directed the State Government and the Director of Civil Supplies (Accounts) to treat the service of the writ petitioners as regular from the dates when they were

A appointed initially, not to apply the instructions contained in the resolution dated April 15, 1971 to them, to compute their seniority from the dates of their respective initial appointments and to fix their seniority afresh on that basis. The appellants, who claim to have been appointed regularly from the very beginning, and challenge the appointments of the writ petitioners as irregular, feel aggrieved, and this is how the present appeal has come up for consideration before us.

B It has been argued by counsel for the appellants that the initial appointments of the writ petitioners were irregular and the High Court erred in taking the view that rule 29 of the Rules was not applicable to them. This argument has been advanced on the grounds that the office of the Director of Civil Supplies (Accounts) became a part and parcel of the Directorate of Civil Supplies and appointments to the posts
 C to which the writ petitioners were initially appointed were therefore required to be made through the Public Service Commission, and that the Centralised Recruitment Scheme was made applicable to those appointments in pursuance, at any rate, of the resolution dated July 9, 1964. We find that both these contentions have been examined by the High Court and it has given satisfactory reasons for taking the view that this was not so. It will be enough to say that the Directorate
 D of Civil Supplies (Accounts) was not included in appendix B to the Scheme which formed part of the resolution dated November 21, 1960 by which certain posts were brought within the purview of the Public Service Commission. It has in fact been admitted in the affidavit of K. K. Joshipura, Under Secretary to the State Government, dated September 4, 1974, that it was "true the office of the D.C.S.(A) was not under the purview of the Gujarat Public Service Commission at
 E the time of the appointment of the petitioners." There is therefore nothing wrong with the view which has prevailed with the High Court that the Directorate did not come under the purview of the Public Service Commission until March 1, 1969.

As regards the Centralised Recruitment Scheme and the resolution of January 21, 1963, the High Court has again rightly held that the
 F resolution applied to recruitment of clerks in district and regional offices and as the Directorate of Civil Supplies (Accounts) was not such an office, the Scheme did not apply to it. We have gone through the other resolution dated July 9, 1964, which modified the Scheme, but here again the High Court has rightly taken the view that merely because of use of the expression "state cadre", it could not be said that the modified scheme was made applicable to the Directorate. We have
 G gone through the whole of the Scheme and we have no doubt that it governed recruitment to district and regional offices, and there is no justification for the argument that it become applicable for recruitment of clerks in the Directorate of Civil Supplies (Accounts) as well.

As it is, nothing has been shown to justify the view taken by the State Government that the initial appointments of the writ petitioners were irregular and had to be regularised in accordance with the provisions
 H of rule 29 of the Rules. The rule provides as follows,—

"29. Notwithstanding anything contained in these rules the following cases shall be regularised in the manner shown

below in relaxation of their upper age, provisions of Recruitment Rules concerned and/or rules for pre-service training made by Government in this behalf to the extent indicated below :—

(1) (a) Persons initially recruited otherwise than through the Gujarat Public Service Commission, or Centralized Recruitment Scheme, as clerks, clerk-typists or typists in the offices to which the Rules apply, and who have rendered not less than 2 years' continuous service, as clerk or clerk-typist or typist, as the case may be, as on 31st December, 1968 in one or more offices and who are continuing in Government service as clerks, clerk-typists or typists, as the case may be, on the date of this notification or such persons whose names are kept on the Waiting List for provisional appointment for the reason that they had to be discharged for want of posts even though they had rendered 2 years' continuous service as on 31st December, 1968 shall be required to appear at the special interview and/or the special typing test to be held for them for their selection for appointment to the post of clerk, clerk-typist or typist, as the case may be."

Then follow the other sub-rules with which we are not concerned. The writ petitioners were initially recruited otherwise than through the Gujarat Public Service Commission and the Centralised Recruitment Scheme and they had rendered not less than two years' continuous service as clerk, clerk-typists or typists by December 31, 1968, but, as would appear from the history of their service, it could not be said that they were continuing in Government service as clerks, clerk-typists or typists on April 17, 1970, which was the date of the notification of the Rules. The State Government therefore again erred in thinking that their service was governed by rule 29(1)(a). So when the appointments of the writ petitioners were not irregular, and they were not continuing in Government service as clerks, clerk-typists or typists on April 17, 1970, rule 30 of the Rules was also not applicable to them and it was not permissible for the authorities concerned to determine their allotment and seniority under that rule. The view taken by the High Court is therefore quite justified and does not call for interference.

The writ petitioners had put in several years of service, and had received promotions from time to time. Their appointments were however temporary all through. It appears that the State Government thought of ameliorating their lot for that reason and attempted to do so by making the aforesaid rule 29 of the Rules. But, as has been shown, in doing so the State Government laboured under the impression that the initial appointments of the writ petitioners were irregular, and had to be regularised. As this was not a correct premise, and as rule 29 is not really applicable to the writ petitioners for the reasons mentioned above, it would perhaps be advisable for the State Government to re-examine the whole matter and to take appropriate action to give effect to their intention of ameliorating the lot of the writ petitioners. That is however not a matter for this Court to decide. The

- A High Court was therefore not justified in directing that the seniority of the writ petitioners should be computed on the basis that "their services with effect from the respective dates of their joining service as Clerks in the Directorate of Civil Supplies (Accounts) were regular and in accordance with law." As it would have been enough for the High Court to say that the State Government may re-examine the question of fixing the seniority of the writ petitioners and to take appropriate
- B action to ameliorate their lot as temporary employees, the operative part of the impugned judgment of the High Court is modified to this extent. The appeal otherwise fails and is dismissed. In the circumstances of the case, we leave the parties to pay and bear their own costs.

P.H.P.

Appeal dismissed.