

R.S. AJARA AND ORS. ETC.

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v.

STATE OF GUJARAT AND ORS.

MARCH 3, 1997

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

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*Service Law—Assistant Conservator of Forests (Gujarat Forest Service Class II) Recruitment Rules, 1981—Inter se seniority between the directly recruited officers and the promotee officers—Rules, providing for appointment and not for fixation of seniority—Government resolution of 1992 laying down the principle regarding fixation of seniority—Held, the resolution was not violative of the Rules—Inclusion of training period for purposes of seniority—Held, valid.*

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**In the State of Gujarat, the Assistant Conservator of Forests (Gujarat Forest Service Class II) Recruitment Rules, 1981 (the 1981 Rules) provided for appointment on the post of Assistant Conservator of Forests by promotion from amongst persons working as Range Forest Officers as well as by direct selection through, the Gujarat Public Service Commission. Under the Rules, candidates selected for appointment by direct selection are required to undergo a course in forestry for two years at an institution recognised by the Government and to obtain a diploma or degree in Forestry. The Rules make provision for payment of tuition fees, stipend and tour expenses for the said two years. After completion of training the selected candidate is appointed as Assistant Conservator of Forests on probation for a period of two years.**

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**Deputy Conservator of Forests is the next higher post. Recruitment to the said post is governed by the Deputy Conservator of Forests (Gujarat Forests Service) Recruitment Rules, 1987. Under it, appointment to the post is made by promotion from amongst persons holding the post of Assistant Conservator of Forests and who have put in at least eight years service. The said period of eight years included the training period in the Forest College.**

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**The appellants in the present appeal were appointed on the post of Assistant Conservator of Forests by direct selection in 1979. They were sent for training-in 1980. After two years training they were appointed as**

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A Assistant Conservator of Forests in 1982. In 1987, the Gujarat government issued a provisional seniority list for the cadre of Assistant Conservator of Forests. A final seniority list was issued in 1988. None of the lists contained the names of the appellants.

B In 1989, the government prepared a select list for the purpose of promotion to the post of Deputy Conservator of Forests. The list did not include the names of the appellants. Another provisional seniority list which was issued in 1990 included their names but their training period of two years was excluded. A civil suit was filed by the direct recruits seeking an injunction restraining the government from implementing the C 1990 seniority list. In the said suit, the Gujarat government filed a purshis agreeing in principle to take into consideration the training period of direct recruits for the purpose of seniority.

The promotee officers filed special civil application in the High Court praying it to restrain the government from revising the seniority list D of 1988 and to direct it to make promotions on the basis of the select list of 1989. Another special civil application was filed by the directly recruited officers for directing the government to consider the petitioners for promotion to the post of Deputy Conservator of Forests and to quash the select list of 1989. During the pendency of the said Writ Petitions the government E passed the impugned resolution dated January 31, 1992 and issued a provisional seniority list on January 29, 1992. The promotee officers challenged the resolution as well as the seniority list.

Both Writ Petitions were heard together and disposed of by a Single Judge, holding that the 1981 Rules did not make any provision regarding F fixation of seniority and that it was permissible for the government to lay down the principle for fixation of seniority of direct recruits by the 1992 resolution. The provisional seniority list of 1987 and the final seniority list of 1988 were declared invalid as they did not contain the names of direct recruits who were selected in 1979. The select list that was prepared for G the purpose of promotion to the post of Deputy Conservator of Forests was declared illegal. The 1992 resolution was upheld as valid. Quashing the 1989 list, the Judge directed that a fresh list be prepared.

The Division Bench of the High Court, on appeal by the promotee officers, reversed the judgment of the Single Judge and held that the 1992 H resolution violated the 1981 Rules. The final seniority list of 1988 was

upheld as valid. Feeling aggrieved by the judgment, the directly recruited officers as well as the State of Gujarat preferred the present appeal. A

Allowing the appeal, this Court

**HELD : 1.1.** The Assistant Conservator of Forests (Gujarat Forest Service Class II) Recruitment Rules, 1981 deal exclusively with the matter of recruitment and appointment on the post of Assistant Conservator of Forests and do not make any mention with regard to fixation of seniority of persons so appointed. The heading of the Rules also indicate that they are recruitment rules. [609-B] B

**1.2.** The 1981 Rules do not lay down any principle in the matter of fixation of seniority. Since the Rules are silent it was open to the State Government to lay down the principle for fixation of seniority by an administrative order. The 1992 resolution cannot be held to be bad on the ground that it is inconsistent with the 1981 Rules. [610-G] C

*Prafulla Kumar v. Prakash Chandra Misra & Ors.*, [1993] Supp. 3 SCC 181, distinguished. D

**2.** It cannot be disputed that normally, seniority is measured by the length of service. But this does not preclude a different prescription provided the constitutional tests are satisfied. There have been cases where the period of training prior to the date of appointment has been reckoned for the purpose of seniority. [610-H, 611-A-B] E

*N.K. Chauhan & Ors. v. State of Gujarat & Ors.*, [1977] 1 SCR 1037; *Ram Janam Singh v. State of U.P. & Anr.*, [1994] 2 SCC 622; *Prabhakar & Ors. v. State of Maharashtra & Ors.*, [1976] 2 SCC 890 and *H.V. Pardasani & Ors. v. Union of India & Ors.*, [1985] 2 SCC 468, relied on. F

**3.1.** The law is well settled that benefits accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs vested rights. [611-H, 612-A] G

*State of Gujarat & Anr. v. Ramānlal Keshavlal Soni & Ors.*, [1983] 2 SCR 287; *Ex Captain K.C. Arora & Anr. v. State of Haryana & Ors.*, [1984] H

A 3 SCR 623; *T.P. Kapur & Ors. v. State of Haryana & Ors.*, [1987] 1 SCR 584; *Uday Pratap Singh & Ors. v. State of Bihar & Ors.*, [1994] Supp. 3 SCC 451, relied on.

B 3.2 It cannot be said that the 1992 resolution alters an existing principle regarding fixation of seniority. The State Government in this matter had not taken a decision as to the principle regarding the fixation of seniority before the 1992 resolution. [613-D]

C 3.3. The Single Judge has rightly held that the provisional seniority list of 1987 and the final seniority list of 1988 were not valid. The seniority list of 1990 was provisional in nature and does not confer any rights on the promotee officers. The list was challenged by the direct recruits and the State Government filed purshis agreeing in principle to take into consideration the training period of directly — recruited officers. [614-G]

D 3.4. The select list of 1989 for promotion to the post of Deputy Conservator of Forests, which was approved on July 19, 1990 has been rightly found to be defective by the Single Judge since the selection was to be made for 15 posts and as per the Handbook published by the General Administration 45 candidates were to be recruited from the cadre of Assistant Conservator of Forests and the Departmental Promotion Committee which prepared the select list had considered only 23 candidates from the cadre. The promotee officers cannot claim that any right to promotion had accrued to them on the basis of the said list. [615-B-D]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4787 of 1994 Etc.

From the Judgment and Order dated 4.5.94 of the Gujarat High Court in L.P.A. No. 196 of 1993.

G D.A. Dave and P.P. Rao, Ms. Meenakshi Arora, Bharatbhai Naik, Mrs. Hemantika Wahi, Bhargava V. Desai, Ms. Neetu Singh and Ms. Sumita Hazarika, M.N. Shroff, S. Bhowmick for the appearing parties.

The Judgment of the Court was delivered by :

H S.C. AGRAWAL, J. : Special leave granted in Special Leave Petitions Nos. 11270 of 1994 and 20271-20278 of 1996.

These appeals are directed against the judgment of the Division Bench of the Gujarat High Court dated May 4, 1994 whereby the High Court has held that the resolution of the Government of Gujarat dated January 31, 1992 and the seniority list of officers in the Gujarat State Forest Service Class II as on January 1, 1992 published under resolution dated January 29, 1993 are illegal and void. By the resolution dated January 31, 1992, the Government of Gujarat has decided that the training period of directly recruited Assistant Conservators of Forests shall be taken into account for the purpose of seniority and that the seniority of Assistant Conservators of Forests selected through direct recruitment in and after the year 1979 shall be determined from the date of their being sent for training.

In the State of Gujarat the post of Assistant Conservator of Forests falls in Gujarat Forest Service Class II. Recruitment to the said Service is governed by the Assistant Conservator of Forests [Gujarat Forest Service Class II] Recruitment Rules, 1981 (hereinafter referred to as 'the 1981 Rules'). The said Rules provided for appointment on the post of Assistant Conservator of Forests by promotion from amongst persons working as Range Forest Officers as well as by direct selection through the Gujarat Public Service Commission. Appointment by promotion and direct selection is to be made in the ratio of 2:1 of the vacancies available. Under Rule 6 of the 1981 Rules candidates selected for appointment by direct selection are required to undergo a course in Forestry for two years at an institution recognised by Government and to obtain a diploma [or degree in Forestry] from the institution. The Government pays an annual sum of Rs. 3,500 as tuition fees. Earlier there was a provision for payment of stipend @ Rs. 500 per month and tour expenses of Rs. 2,400 for two years for each selected candidate sent for training. The candidate is required to execute an agreement with two sureties binding himself to work diligently at such institution and serve the Government for not less than five years after obtaining a diploma [or degree] in Forestry from the institution and he is required to refund the amount spent by the Government on his training with interest @6 percent per annum if he fails to carry out the terms or is found unsuitable for employment due to misconduct. By notification of the Government of Gujarat dated March 31, 1982, instead of the stipend of Rs. 500 per month it has been provided that the trainees who have been selected for recruitment on the post of Assistant Conservator of Forests would draw the minimum of the time scale of the pay of that post, i.e., Rs.

- A 700-1300 along with admissible allowances thereof without normal increment. In addition to obtaining a diploma or degree from the institution the selected candidates are required to undergo a course of practical training of 8 weeks under a Deputy Conservator of Forests and to undergo a test of the ability to make in four hours a journey of 25 kms. on foot. After completing both courses of training the selected candidate is appointed to
- B Class II of the Gujarat Forests Service as Assistant Conservator of Forests on probation for a period of two years. The next post higher to the post of Assistant Conservator of Forests is the post of Deputy Conservator of Forests. Recruitment to the said post is governed by the Deputy Conservator of Forests [Gujarat Forests Service] Recruitment Rules, 1987
- C (hereinafter referred to as 'the 1987 Rules'). Under Rule 2 of the 1987 Rules appointment to the post of Deputy Conservator of Forests is made by promotion from amongst the persons holding the post of Assistant Conservator of Forests and who have put in at least eight years service on the said of Assistant Conservator of Forests. The said period of eight years service includes the training period in the Forest College. The recruitment rules that were in force prior to the promulgation of the 1981 Rules also made similar provision regarding appointment on the post of Assistant Conservator of Forests by way of promotion as well as by way of direct selection and the selected candidates were required to undergo a course of Forestry for two years at an institution recognised by Government and to obtain a diploma [or degree] in Forestry from the institution. There was provision for payment of tuition fees, monthly stipend and tour expenses for two years for each candidate selected for training subject to his executing an agreement with two sureties binding himself to serve the Government for not less than five years and to refund all money expended by the
- E Government on his training at the institution with interest @ 6 per cent per annum if he failed to carry out the terms or was found unsuitable for employment due to mis-conduct. On satisfactory completion of training the selected candidates were appointed as Assistant Conservators of Forests on probation for two years.
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- G The appellants in C.A. No. 4787 of 1994 were appointed on the post of Assistant Conservator of Forests by direct selection by the Gujarat Public Service Commission in the year 1979. They were sent for the two-year training in January 1980 and after completing the said course in Forestry they were appointed as Assistant Conservators of Forests in
- H February, 1982, Respondents Nos. 3 and 4 in the said appeal were

promoted as Assistant Conservators of Forests prior to the appointment of the appellants. On August 5, 1987, the Government of Gujarat issued a provisional seniority list for the cadre of Assistant Conservator of Forests as on January 1, 1987. In the said seniority list the names of the appellants were not included. Thereafter a final seniority list was issued on October 27, 1988. The said list also did not contain the names of the appellants. Special Civil Application No. 877 of 1988 was filed by the directly recruited officers wherein provisional seniority list published on August 5, 1987 was challenged. Special Civil Application No. 1109 of 1988 was filed by promotee officers wherein they challenged the 1987 Rules relating to the promotion on the post of Deputy Conservator of Forests. On October 24, 1989 the Government of Gujarat prepared a select list for the purpose of promotion on the post of Deputy Conservator of Forests. None of the appellants was considered for promotion for the purpose of preparing the said select list. The said select list was approved by the Gujarat Public Service Commission on July 19, 1990. In the meanwhile another provisional seniority list had been issued on January 8, 1990. In the said seniority list the names of the appellants were shown but the period of two years spent on training was excluded. A Civil Suit [No. 699 of 1990] was filed by the direct recruits seeking an injunction restraining the State Government from implementing the seniority list dated January 8, 1990. In the said suit the Government of Gujarat, on February 8, 1991, filed a purshis agreeing in principle to take into consideration the training period of directly recruited Assistant Conservators of Forests for the purpose of seniority with retrospective effect. Special Civil Application No. 896 of 1991 was filed in the High Court by the promotee officers to restrain the State Government from revising the seniority list of 1988 and to direct the Government to make promotions on the basis of the select list of October 24, 1989. Another Special Civil Application [No. 1447 of 1991] was filed by the directly recruited officers for directing the State Government to consider the petitioners for promotion to the post of Deputy Conservator of Forests and to quash the select list prepared on October 24, 1989. During the pendency of the said Writ Petitions the State Government passed the impugned resolution dated January 31, 1992 and issued a provisional seniority list on January 29, 1993 of Assistant Conservators of Forests as on January 1, 1992. Special Civil Application No. 1403 of 1993 was filed by promotee officers challenging the said resolution dated January 31, 1992 and the seniority list dated January 29, 1993.

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A Special Civil Application No. 896 of 1991 filed by promotee officers and Special Civil Application No. 1447 of 1991 filed by the directly recruited officers were heard together and disposed of by a learned Single Judge [S.D. Shah J.] by judgment dated November 20/23, 1992. The learned Single Judge held that the 1981 Rules do not make any provision regarding

B fixation of seniority and that it was permissible for the State Government to lay down the principle for fixation of seniority of direct recruits by resolution dated January 31, 1992 and the said resolution does not violate the provisions of the 1981 Rules. The contention urged on behalf of the promotee officers that the said resolution affects their vested rights was rejected. It was held that the provisional seniority list dated August 5, 1987

C as well as the final seniority list dated October 27, 1988 were invalid since those seniority lists did not contain the names of the directly recruited Assistant Conservators of Forests who were selected in the year 1979 and had been appointed after undergoing the course in Forestry. The learned Single Judge also held that the select list that was prepared for the purpose

D of promotion to the post of Deputy Conservator of Forests on October 24, 1989 and which was approved on July 19, 1990 was illegal since it was not prepared on the basis of seniority of Assistant Conservators of Forests and in the matter of considering the officers the requisite number as required under the guidelines prescribed for the purpose of consideration was not taken into consideration. The resolution dated January 31, 1992 was upheld

E as valid and the select list dated October 24, 1989 was quashed and it was directed that a fresh select list be prepared on the basis of the provisional seniority list.

The promotee officers filed Letters Patent Appeals Nos. 195-196 of

F 1993 against the said judgment of the learned Single Judge in Special Civil Application Nos. 896 of 1991 and 1447 of 1991 respectively. The said Letters Patent Appeals along with other Special Civil Applications [Nos. 877 of 1988, 4400 of 1993, 1109 of 1988, 1696 of 1991, 1403 of 1993 and 2124 of 1986] were heard and disposed of by the Division Bench of the High Court by the impugned judgment dated May 4, 1994. The learned

G Judges on the Appellate Bench reversed the judgment of the learned Single Judge and have held that the resolution dated January 31, 1992 is violative of the statutory rules (1981 Rules) of recruitment to the post of Assistant Conservator of Forests, more particularly Rule 8 and deserves to be struck down since it was inconsistent with the said rules. The said resolution was

H also held to be invalid on the ground it was given retrospective effect from

1979 and the seniority list which was published under the said resolution has also been struck down by the High Court. The learned judges have upheld the final seniority list published on October 27, 1988 as valid and legal and have upheld the select list which was prepared on the basis of the said final seniority list. On that view of the matter the learned judges have allowed both the Letters Patent Appeals filed by the promotee officers against the judgment of the learned Single Judge and on that basis Special Civil Application No. 896 of 1991 filed by the promotee officers was allowed and Special Civil Application No. 1447 of 1991 filed by the directly recruited officers was dismissed. As regards other Special Civil Applications the learned Judges have allowed Special Civil Application Nos. 4400 of 1993 and 1403 of 1992 filed by the promotee officers and have dismissed Special Civil Application Nos. 877 of 1988, 1109 of 1988, 1696 of 1991 and 2124 of 1986 filed by the directly recruited officers. Feeling aggrieved by the said judgment of the Division Bench of the High Court, the directly recruited officers as well as the State of Gujarat have filed these appeals.

Shri D.A. Dave, the learned senior counsel appearing for the directly recruited officers who are appellants in Civil Appeal No. 4787 of 1994 and in Civil Appeal arising out of S.L.P. (C) No. 11270 of 1994, has submitted that the learned Judges of the Division Bench of the High Court were in error in reversing the judgment of the learned Single Judge and that the learned Single Judge had rightly held that the 1981 Rules do not make any provision regarding fixation of seniority of directly recruited Assistant Conservator of Forests and since the 1981 Rules are silent it was open to the State Government to issue an administrative order laying down the principles for fixation of seniority of directly recruited Assistant Conservator of Forests and that the resolution dated January 31, 1992 does not suffer from any legal infirmity. The learned counsel has also submitted that the learned Judges of the Division Bench of the High Court were in error in holding that the said resolution is inconsistent with the 1981 Rules and that it is bad on account of having given retrospective effect. The submission is that the impugned judgment does not affect any of the vested rights of the promotee officers and that the learned Single Judge has rightly held that the provisional seniority list dated August 5, 1987 and the final seniority list dated October 27, 1988 were invalid and so also the select list of October 24, 1989. Shri Subhash Bhargava, the learned counsel appearing for the State of Gujarat, has taken the same stand.

A Shri P.P. Rao, the learned senior counsel appearing for the promotee officers, has, however, supported the judgment of the Division Bench of the High Court and has urged that the resolution dated January 31, 1992 is invalid being inconsistent with the 1981 Rules and furthermore it adversely affects the rights which accrued to the promotee officers in the matter of seniority and promotion on the basis of the principle of seniority which was being followed prior to the passing of the resolution dated January 31, 1992 whereunder seniority was determined on the basis of the date of appointment.

C Before we deal with the aforesaid submissions of the learned counsel, we may briefly refer to the background in which the resolution dated January 31, 1992 was passed by the State Government. On November 17, 1981, the President of the Forest Research Institute & Colleges, Dehradun addressed a letter to the Secretary, Forest Department, in the various States and a copy of the said letter was also sent to the Inspector-General of Forests, Ex-officio Additional Secretary to the Government of India, Ministry of Agriculture. In the said letter, the President of the Forest Research Institute & Colleges has referred to the complaint of the trainees under-going training at State Forest Service Training Colleges at Coimbatore, Burnihat and Dehradun that because they were not treated as "in-service trainees" they were undergoing great hardship in matters of getting sufficient money to meet their training expenditure and further that due to their two-year training not being considered a part of their services they lose seniority when they are to be taken in the promotion quota of the Indian Forest Service subsequently. In the said letter it was stated that some states, like Jammu & Kashmir and Sikkim, send their State Forest Service trainees after appointing them in service. It was also stated that the trainees of the Indian Forest Service are appointed in services before joining the training college. The President has expressed the view that there is very strong case for the state Forest Service trainees to be treated as "in-service trainees" from the date they are selected by the respective State Public Service Commissions. He further stated that in order to raise their standard of training and morale as also to bring them at par with the Indian Forest Service training facilities, the state Forest Service trainees may also be treated as "in-service trainees", i.e., they may be appointed to the State Forest Service before they are sent for training in their respective colleges. Action on the basis of the said letter from the President, Forest Research Institute and College was taken by the Government of Gujarat in stages.

By resolution dated March 31, 1982 the grievance of the trainees regarding the allowances payable to them during the course of training was removed and it was prescribed that the directly recruited Assistant Conservators of Forests undergoing training shall draw the minimum of their time scale of pay in that post, i.e., Rs. 700-1300 together with admissible allowances thereof with immediate effect. By the 1987 Rules their grievance about the period of training not being counted for the purpose of promotion was redressed and it was provided that for the purpose of eligibility for promotion to the post of Deputy Conservator of Forests the period of training would be included. The other grievance with regard to seniority on the post of Assistant Conservator of Forests remained pending consideration with the State Government till the passing of the resolution dated January 31, 1992. The said resolution dated January 31, 1992 reads as under :-

*"PREAMBLE*

Officers being selected by direct recruitment in Indian Forests Service, are being sent for training in Diploma course in Forestry, and their training period is being taken into account during their probation period and for the purposes of seniority. The Government of India has, vide its letter dated 17.11.81, instructed the State Governments to treat the training period of directly recruited Assistant Conservator of Forests as part of their service. Pursuant to the said instructions of the Government of India, many State Governments have issued orders treating the training period of directly recruited Assistant Conservator of Forests as part of their service. As per Note-2, below Rule 15, Forest Manual Part-I, the training period is being taken into account for the purpose of pensionable service. During the training period, the trainees are also paid the pay of the cadre of Assistant Conservator of Forests. As per the amendment made in the Recruitment Rules of Deputy Forest Conservators, vide the Forests and Environment Department resolution dated 8.5.87, the training period is taken into account as minimum experience. Taking into consideration the abovestated reasons, the question of treating the training period of directly recruited Assistant Forest Conservators as part of their service and taking the same into account for the purposes of seniority, was under active consideration of Government. After scrutinizing all aspects of the instant matter, it is decided to take

A into account the training period of directly recruited Assistant Forest Conservators, for the purposes of seniority.

*RESOLUTION*

B It is hereby decided to take into account the training period of directly recruited Assistant Conservator of Forests for the purposes of seniority. The seniority of the Assistant Forest Conservators selected through direct recruitment in and after the year 1979 shall have to be determined from the date of their being sent for training.

C The provisional seniority list of the Class II officers of the Gujarat Forests Service showing their position as on 1.1.90 has been published under Resolution No. FST-1283-7075- V-1, dated 8.1.90, which will have to be modified as per this order and a fresh seniority list duly modified, shall have to be issued."

D The learned Judges on the Division Bench of the High Court have held that the resolution dated January 31, 1992 deserves to be struck down since the administrative instructions contained therein are violative of the 1981 Rules which are statutory in nature. It is, therefore, necessary to examine the scheme of the 1981 Rules to determine as to whether they lay down a principle for fixation of seniority of persons appointed as Assistant Conservators of Forests by direct selection. As stated therein, the 1981 Rules have been made to provide for regulating recruitment to the post of Assistant Conservator of Forests in the Gujarat Forests Service Class II. The heading of the said Rules also indicates that they are recruitment rules.

F Rule 2 makes provision for appointment to the post of Assistant Conservator of Forests to be made either by promotion or by direct selection. Rule 3 prescribes the conditions for eligibility for appointment by promotion. Rule 4 prescribes the conditions for eligibility for appointment by direct selection. Rule 5 prescribes the ratio in which the appointment is to be made by promotion and by direct selection. Rule 6 prescribes that the selected candidate shall be required to undergo a course in Forestry for two years at an institution recognised by Government and to obtain a Diploma [or degree] in Forestry from the Institution, and also makes provision for payment of tuition fees, stipend and tour expenses for the said period of two years. Rule 7 makes provision for a course of practical

G training for eight weeks for the directly recruited candidates. Rule 8

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provides for appointment of a selected candidate to Class II of the Gujarat Forests Service as Assistant Conservator of Forests on probation for two years after he has satisfactorily completed the courses of training prescribed in rules 6 and 7. Rule 9 requires that the selected candidate shall be required to pass the Departmental examination and an examination in Gujarati or Hindi or both. Rule 10 makes a similar provision in respect of a candidate appointed by promotion. A perusal of the provisions of the 1981 Rules thus indicates that the said rules deal exclusively with the matter of recruitment and appointment on the post of Assistant Conservator of Forests and do not make any mention with regard to fixation of seniority of the persons so appointed.

The 1981 Rules differ from similar rules framed in the State of Orissa which came up for consideration before this Court in *Prafulla Kumar Swain v. Prakash Chandra Misra & Ors.*, [1993] Supp. 3 SCC 181. In that case, this Court has considered the provisions of the Orissa Forest Service Class II Recruitment Rules, 1959 and the regulations made thereunder relating to appointment on the post of Assistant Conservator of Forests. The said rules made provision for appointment on the post of Assistant Conservator of Forests by promotion as well as by direct recruitment and persons selected by direct recruitment were required to undergo a course in Forestry for a period of two years and they were to be appointed after successful completion of training at the institution. The question was whether service was to be reckoned from the date of actual appointment to the service or from the date of selection for training and the period of training could be counted for the purpose of seniority. It was held that seniority had to be reckoned from the actual date of appointment in view of the fact that there was an express provision in Regulation 12(c) wherein it was prescribed "such service will count only from the date of appointment to the service after successful completion of the course of training". In other words, in the regulations appended to the rules in that case there was an express provision that the period of training will not be counted as part of the service. This Court was of the view that in view of the said provision the period of training could not be counted for the purpose of seniority.

The learned Judges on the Division Bench of the High Court have referred to the decision in *Prafulla Kumar Swain* (supra) and have observed that this Court did not base its conclusion only on Regulation 12(c) and that the absence of a provision similar to Regulation 12(c) in the 1981

A Rules does not make any difference. We find it difficult to agree with the said view of the High Court. In *Prafulla Kumar Swain* (supra), it has been observed :

B "Regulation 12(c) in unmistakable terms says that the period of training will not count as service under Government. Such service will count only from the date of appointment to the service after successful completion of the course of training. (Emphasis supplied) We must give full meaning and effect to this Regulation".

C "Nowhere in the Recruitment Rules of 1959 it is specified that the services of a direct recruit under the Government shall be reckoned from the date of selection in the competitive examination. On the contrary, Regulation 12(c) is very clear that the period of training is not to be reckoned as Government service."

D It would thus appear that in view of the express provision contained in Regulation 12(c) it was held that the period of training could not be reckoned for the purpose of seniority. There is no provision similar to Regulation 12(c) in the 1981 Rules. In the absence of a provision similar to Regulation 12(c) in the 1981 Rules it is not possible to say that the 1981 Rules postulate that the seniority of directly recruited Assistant Conservator of Forests must be counted only from the date of their appointment and the period of training undergone by them prior to the appointment must be ignored. The learned Judges on the Division Bench of the High Court referred to Rules 6, 7 and 8 of the 1981 Rules and have observed that the statutory position emanating from the said rules is that the appointment of a direct recruit takes place only after his successful completion of training course. We are unable to construe these rules to mean that seniority should be counted from the date of appointment and the period training should be excluded. We must, therefore, proceed on the basis that the 1981 Rules do not lay down any principle in the matter of fixation of seniority of the Assistant Conservator of Forests who are recruited under the provisions of the said Rules. Since the Rules are silent it was open to the State Government to lay down the principle for fixation of seniority by an administrative order and the resolution dated January 31, 1992 cannot be held to be bad on the ground that it is inconsistent with the 1981 Rules.

H As regards the principle that has been laid down in the resolution dated January 31, 1992, it cannot be disputed that normally seniority is

measured by the length of service. But this does not preclude a different prescription provided the constitutional tests are satisfied. [See : *N.K. Chauhan & Ors. v. State of Gujarat & Ors.*, [1977] 1 SCR 1037, at p. 1057 and *Ram Janam Singh v. State of U.P. & Anr.*, [1994] 2 SCC 622, at p. 627. There have been cases where the period of training prior to the date of appointment has been reckoned for the purpose of seniority. In *Prabhakar & Ors. v. State of Maharashtra & Ors.*, [1976] 2 SCC 890, Clause 7(1)(a) of the Bombay Police Officers (Combined Cadre) Conditions of Service Order, 1954 made under Section 5(b) of the Bombay Police Act, 1951 prescribed that seniority was to be fixed by taking into account the period of training in certain cases. The said provision was affirmed as valid by this Court and it was observed :

"There was nothing wrong, illegal or unreasonable in making a provision in sub-clause (a) that in such a situation the commencement of the period of training will be taken as the date for the purposes of fixation of seniority. There was a reasonable and rational nexus between the object and the rule. It was for the rule-making authority to decide and to choose in such a situation—either the date of commencement of the training or the date of appointment." [p. 894]

Similarly in *H.V. Pardasani & Ors. v. Union of India & Ors.*, [1985] 2 SCC 468, under Note 2 appearing below Rule 12(5) of the Central Secretariat Service Rules, 1962 certain period prior to the date of appointment of direct recruits was treated as approved service for the purpose of seniority. The said provision was held as valid on the view that in the process of direct recruitment there is a considerable delay and though the competitive examination is held in one particular year, by the time the selected officer comes to join the post, more than a year is lost and, therefore, a rational view had been taken of the situation and for the computation of length of service the particular provision had been made and the same was not open to challenge as arbitrary provision.

The resolution dated January 31, 1992 has been assailed by the promotee officers on the ground that it is retrospective in operation and affects their rights. The law in this field is well settled by the decisions of this Court. A benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory

A rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights. See : *State of Gujarat & Anr. v. Ramanlal Keshavlal Soni & Ors.*, [1983] 2 SCR 287; *Ex-Captain K.C. Arora & Anr., v. State of Haryana & Ors.*, [1984] 3 SCR 623; *T.P. Kapur & Ors. v. State of Haryana & Ors.*, [1987] 1 SCR 584; *Uday Pratap Singh & Ors. v. State of Bihar & Ors.*, [1994] Supp. 3 SCC 451. Can it be said that the resolution dated January 31, 1992 makes any change in the existing provision governing the seniority so as to take away or deprive the respondents of a right which has accrued to them or which has crystallized? As noticed earlier, the 1981 Rules do not contain any principle governing the seniority of Assistant Conservators of Forests appointed under the said Rules. Shri P.P. Rao has invited our attention to the Handbook for Personnel Officers issued by the General Administration Department of the Government of Gujarat. In Para 1 of Chapter V, dealing with SENIORITY, it is stated :

D "In the case of direct recruits appointed on probation, the seniority would be determined *ordinarily* with reference to the date of their appointment on probation while in the case of the promotees, seniority would be determined with reference to the date of their promotion to longterm vacancies". [Emphasis supplied]

E This is a general principle which is to be applied ordinarily. But there was nothing to show that this principle was applied by the State Government in the matter of fixation of seniority of directly recruited Assistant Conservators of Forests. The fact that it was not so applied is evident from the fact that in the provisional seniority list dated August 5, 1987 as well as in the final seniority list dated October 27, 1988 the names of the directly recruited Assistant Conservators of Forests were not included which indicates that the State Government had not taken a decision regarding the principle to be followed regarding fixation of seniority of such officers and the matter was under consideration of the Government. This fact is also borne out by the Preamble to the resolution dated January 31, 1992 wherein it is stated that the question of treating the training period of directly recruited Assistant Conservator of Forests as part of their service and taking the same into account for the purpose of seniority, was under active consideration of Government.

Shri P.P. Rao has also placed reliance on the resolution of the Government of Gujarat dated December 4, 1986. The said resolution relates to implementation of the judgment of this Court in *N.K. Chauhan* (supra) in the matter of allocation of vacancies ear-marked for direct recruits and promotees and adjustment of appointments made in excess of quota in a particular year by pushing down to the next year or years. In that context, in answer to the question about the manner of placement of officers appointed against "carried forward" vacancies, It has been stated, that "seniority *inter-se* of the officers has necessarily to be governed by the chronological order of dates of appointment". This order is also general in nature and on the basis of the same it cannot be said that the Government had taken a decision regarding the principle to be applied in the matter of fixation of seniority of directly recruited Assistant Conservators of Forests. It must, therefore, be held that prior to the issuance of the resolution dated January 31, 1992 the State Government had not prescribed any principle for fixation of seniority of directly recruited Assistant Conservators of Forests and it cannot, therefore, be said that the said resolution alters an existing principle regarding fixation of seniority of these officers.

In *V.T. Khanzode & Ors. v. Reserve Bank of India & Anr.*, [1982] 2 SCC 7, while upholding the validity of an administrative circular of the Reserve Bank of India whereby it was decided to combine the seniority of all officers on the basis of their total length of service [including officiating service] in Group I (Section A), Group II and Group III with retrospective effect which was assailed on the ground that it had adversely affected the existing seniority of officers, particularly of those in Group I, who were placed many places below their existing position of seniority, this Court has observed :

"Private interest of employees of public undertakings cannot override public interest and effort has to be made to harmonize the two considerations. No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and *mala fides* will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these. Vested interests are prone to hold on to their acquisitions and we understand the feelings of

A Group I Officers who have to surrender a part of the benefits which had accrued to them in a watertight system of groups." [p.29]

In *Union of India & Ors. v. Dr. S. Krishna Murthy & Ors.*, [1989] 4 SCC 689, Emergency Commissioned Officers/Short Service Commission Officers recruited to the Indian Forest Service and Indian Police Service had been given the benefit of earlier military service and as a result the year of allotment was changed. This was challenged by other officers on the ground that it affected their seniority. The said contention was negated by this Court and it was observed :

B  
C "The respondents have been given a particular seniority in accordance with the rules. The seniority of the respondents is not taken away or interfered with by the impugned rules. The year of allotment of the respondents remains the same and is not altered to their prejudice. The impugned rules only provide for giving weightage to the ECOs and SSCOs for their past services in the army during the emergency period and their year of allotment will be determined in accordance with the impugned rules. .... Nobody has any fundamental right to a particular seniority or to any chance of promotion." [p. 698]

E As regards the effect of the Resolution dated January 31, 1992 on the rights of the promotee officers in the matter of seniority and promotion, it may be stated that till the issuance of the resolution dated January 31, 1992 the *inter-se* seniority of directly recruited and promotee officers had not been determined and no final seniority list indicating the *inter-se* seniority of such officers had been issued. The provisional seniority list dated August 5, 1987 and the final seniority list dated October 27, 1988 did not include the names of the directly recruited Assistant Conservators of Forests even though they had been appointed in 1982 much before the publication of those seniority lists. The learned Single Judge has rightly held that these seniority lists were not valid. The seniority list that was issued on January 8, 1990 was provisional in nature and did not confer any rights. Moreover the said seniority list was challenged by the directly recruited officers by filing Civil Suit No. 699 of 1990 wherein the State Government filed a petition agreeing in principle to take into consideration the training period of directly recruited Assistant Conservators of Forests for the purpose of seniority with retrospective effect. It cannot, therefore,

be said that the seniority *inter-se* between the promotee and the directly recruited officers had been finally determined prior to the issuance of the resolution dated January 31, 1992 and the said seniority was being altered to the prejudice of the promotee officers. A

Similarly as regards the right to promotion it may be stated that the select list which was prepared on October 24, 1989 for the promotion on the post of Deputy Conservator of Forests and which was approved on July 19, 1990 has been rightly found to be defective by the learned Single Judge since the selection was to be made for 15 posts and as per the Handbook published by the General Administration Department, Government of Gujarat under the heading "Classification of Posts for the purpose of Promotion" 45 candidates were required to be considered from the cadre of Assistant Conservators of Forests and the Departmental Promotion Committee which prepared the select list on October 24, 1989 and considered only 23 candidates from the cadre of Assistant Conservators of Forests. The said select list was, therefore, rightly found to be invalid by the learned Single Judge. The learned Judges on the Division Bench of the High Court have not considered the said infirmity in the preparation of the select list. The promotee officers cannot, therefore, claim that any right to promotion had accrued to them on the basis of the said select list and the same has been adversely affected as a result of the resolution dated January 31, 1992. B C D E

For the reasons aforementioned, we are unable to uphold the judgment of the Division Bench of the High Court striking down resolution dated January 31, 1992 and the seniority list dated January 29, 1993. On that view of the matter, the judgment of the learned Single Judge dismissing Special Civil Application No. 896 of 1992 filed by the promotee officers and allowing Special Civil Application No. 1447 of 1991 filed by the directly recruited officers has to be restored. For the same reasons, Special Civil Application Nos. 1403 of 1993 and 4400 of 1993 have to be dismissed. Special Civil Application Nos. 2124 of 1986 and 877 of 1988 filed by the directly recruited officers and Special Civil Applications Nos. 1109 of 1988 and 1696 of 1991 filed by the promotee officers relating to fixation of seniority have become infructuous on account of resolution dated January 31, 1992. F G

In the result, the appeals are allowed, the judgment of the High H

- A Court dated May 4, 1994 in L.P.A. Nos. 195 and 196 of 1993 is set aside and the said appeals are dismissed and consequently the judgment of the learned Single Judge dismissing Special Civil Application No. 896 of 1992, filed by the promotee officers and allowing Special Civil Application No. 1447 of 1991 filed by the directly recruited officers, is restored. So also
- B Special Civil Application Nos. 1403 of 1993 and 4400 of 1993 filed by the promotee officers are dismissed. Special Civil Application Nos. 2124 of 1986, 877 of 1988, 1109 of 1988 and 1696 of 1991 are dismissed as having become infructuous. No orders as to costs.

J.N.S.

Appeal allowed.