

G.H. Sheth Vs. State and ors.

G.H. Sheth Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/741250

Court : Gujarat

Decided On : Jun-16-1982

Reported in : (1983)1GLR467

Judge : B.K. Mehta, J.

Appellant : G.H. Sheth

Respondent : State and ors.

Judgement :

B.K. Mehta, J.

1. The Petitioner, who at all the relevant times of this petition, was working as an Administrative Officer, Class II, in Directorate of Medical Services (ESI) at the ESI Hospital, Baroda, has, by this application under Article 226 of the Constitution, prayed for appropriate writs, orders and direction enjoining respondent No. 1 to consider him for promotion to the post of Administrative Officer, Class II (Senior Scale) in the Directorate of Health Services (Medical) and restraining the said respondent from according promotion to the said post to his junior, inter alia, on the ground that according to the Government resolutions in that behalf made from time to time, the State Government was under an obligation to accord promotion on the basis of the common seniority list of Administrative Officers working in different directorates.

2. The brief narration of the facts which compelled the petitioner to move this Court is as under. In the Department of Health and Family Welfare in the State Government originally there were two directorates, namely, Director of Health Services (Health) and Director of Health Services (Medical). By the Government resolution in the Health and Industries Department of December 5, 1962, it was, inter alia, directed that all the posts of Personal Assistants to the Directors, Deputy Directors and Assistant Directors of Health and Medical Services be brought into one cadre and the incumbents of the posts in the cadre were liable for inter-directorate transfer. It appears that the third directorate, namely, Directorate of Medical Services (ESI) was established in pursuance of the Government resolution in the Panchayat and Health Department dated September 3, 1965 under the charge of Directorate of Medical Services (ESI). The said resolution, inter alia, directed that the persons who have been transferred from Medical and Ayurvedic Departments to the Director of Medical Services (ESI) should be allowed to continue to work in this third directorate. It appears further that the State Government decided to create a fourth directorate known as Directorate of Health Services (Medical Education and Research) and a resolution of May 20, 1975 was issued in that behalf. The State Government in the Health and Family Planning Department issued a resolution of December 8, 1976 incorporating the decision arrived at in a joint meeting of all the directors in the matter of the problems, inter alia, relating to sharing of staff. In paragraph 6 of the said resolution of December 8, 1976, it was stated as under:

(6) Other Personnel: The existing personnel working in the Director of Medical Education and Research and the Director of Health Services (Medical) shall stand allocated to the respective Directorate; and in future they will seek promotions in the respective Directorate.

At this stage it is necessary to refer to the two decisions taken by the Government in 1965 and 1973 which were recorded in the letter of Deputy Secretary, Panchayat and Health Department, Ahmedabad addressed to all Deans, Superintendents and Civil Surgeons of the Government hospitals in the State, and the Government resolution of June 19, 1973 issued in Panchayat and Health Department. In the aforesaid letter of the Dy. Secretary, the attention of Deans etc.

was invited to the earlier letter of the Medical Department dated 3-4-1964 in connection with the common cadre of Personal Assistants in Medical and Public Health Department. It has been further observed in the said letter which is dated 24-11-1965 that the Government orders regarding creation of common cadre have been issued under Government resolution in Health and Industries Department on 5-12-1962 and to prepare common seniority list of Superintendents working in both the departments within a month's time, and that the appointments to the posts of Personal Assistants, which are now redesignated as Administrative Officers, to Deans and Civil Surgeons should be made from the said seniority list. The Government resolution of 5th December, 1962 directed that all the posts of Personal Assistants specified herein which were in the time scale of Rs. 220-650 as well Rs. 180-400 should be brought into one cadre and that the incumbents of these posts should be liable for inter-transfer. Similarly a Government resolution of June 1973 in effect provided that with a view to achieve more independence in selection of suitable persons for ministerial posts by the Director of Medical Services (ESI) there should be, firstly, separate seniority lists for all categories of ministerial posts upto the posts of Superintendents under the ESI Scheme; secondly, the persons transferred to the ESI Directorate from the Director of Medical (Medical) should have an option either to continue in the ESI Scheme or to go back to their parent department, namely, Medical Department, and which option should be exercised within a period of four months from the date of the resolution, and, thirdly, the Superintendents working under the ESI scheme should have a common seniority along with the Superintendents working in the Medical and Public Health Department for purposes of promotion to the next higher posts of Personal Assistant available in different Directorates. In spite of the aforesaid directions by the various resolutions set out above, the concerned authorities in the State Government failed to prepare a common seniority list of Administrative Officers working in different directorates. It should be noted that the petitioner joined the Medical Department in the erstwhile State of Bombay on October 4, 1947. He was promoted as Administrative Officer, Class II (Junior Scale) which carried a time scale of Rs. 650-1040 which was revised pursuant to Desai Pay Commission. It further appears that the Petitioner was, prior to his posting at the ESI Hospital at Ahmedabad, was working as an Administrative Officer attached to

Civil Surgeon at Limdi Hospital in Saurashtra. He had by his letter of July 2, 1974 addressed to the Director of Health Services (Medical) reminded the authority about the assurance given by the Department that he would be considered for transfer to Ahmedabad whenever a suitable vacancy arises and having regard to the difficulty of maintaining two establishments on account of ever rising costs of living, he requested for his transfer to the post of Administrative Officer, ESI Hospital, Bapunagar, Ahmedabad, which was going to fall vacant in the month of August, 1974, as a result of superannuation of the then incumbent Shri. K.I. Jani. The petitioner, therefore, requested the Director to consider his case sympathetically for transfer. The petitioner was accordingly transferred in August, 1974 as Administrative Officer at the ESI Hospital, Bapunagar, Ahmedabad. It should be recalled that the policy of the Government as recorded in the various resolutions set out above was to treat the cadre of Administrative Officers in different directorates as common cadre and the incumbents of the posts were liable to inter-directorate transfer. The cause which has given rise to this petition is that the State Government has by its resolution of November 18, 1980 made in the Health and Family Welfare Department directed the framing of separate seniority lists for the posts upto the level of Personal Assistants in the various directorates of Health Department with the result that the petitioner's right for promotion to the post of Administrative Officer, Class II (Senior Scale) and further promotion to the post of Administrative Officer, Class I was likely to be affected prejudicially and the Petitioner, therefore, made a representation pointing out the anomalies as position arising in his case and invited the attention of the Government that he should be considered for promotion in Medical Section and no injustice should be done to him as he was sent to the Directorate of Health Services (ESI) when the avowed policy was to have a common seniority list of Administrative Officers for purposes of further promotion. The first representation was made by the petitioner by his memorandum of February 10, 1981 and the second on March 21, 1981. The petitioner also called on the Secretary in the Health Department on March 18, 1981 when he was assured that no injustice would be done to him in the matter of promotion. The petitioner, having learnt that persons junior to him in the cadre of Administrative Officers, Class II (Jr. Scale) like respondent No. 4 as well one Shri R.C. Pandya were likely to be promoted to the Senior Scale who were working in

the Directorate of Health Services (Medical) ignoring the case of the petitioner, he moved this Court for appropriate writs, orders and directions as stated above.

3. Rule was issued on this application and was directed to be alongwith Special Civil Application No. 3401 of 1980 and the ad-interim relief directing that all promotions to Administrative Officers, Class II (Sr. Scale) shall be made subject to the result of the petition.

4. This petition has been resisted by the State Government by filing reply affidavit of Deputy Director of Medical Services, stating, inter alia, that it is competent for the State Government to bifurcate the services and if as a result of the bifurcation, the chances for promotion to the Government servant concerned are affected, it cannot be any cause for grievance since there is no violation of Articles 14 and 16 of the Constitution and the transfer of the petitioner from the Directorate of Health Services (Medical) to that of the ESI was on account of the request of the petitioner himself and, therefore, there cannot be any grievance on that count also that his right of promotion was affected as a result of the transfer. It is in this backdrop that I have to determine whether the petitioner is entitled to all or any of the reliefs.

5. I am of the opinion that this petition should be allowed obviously for the following reasons : In the first place, till the impugned resolution was made by the State Government on November 17, 1980, the accepted policy of the State Government was that all the posts of Personal Assistants in the time-scale of Rs. 220-650 and Rs. 180-400 should be brought into one cadre and the incumbents of these posts were liable for inter-directorate transfers. In the second place, even after the new Directorate of Medical Service (ESI) was set up in September, 1965, the State Government, in its resolution of June 19, 1973, did not decide to depart from the policy enunciated in the Government resolution of 5th December 1962 and the direction for preparing separate seniority lists for all categories of ministerial posts in the said Directorate was restricted upto the level of Superintendents. The Deputy Secretary in the Panchayat and Health Department had reiterated the policy of the State Government and invited the attention of Deans etc. by his letter of 24th November 1965 to the Government orders

regarding creation of common cadre of Personal Assistants as resolved in the Government resolution of 5th December 1962. In the third place, in the impugned resolution of November 17, 1980, even while directing that there should be separate seniority lists of ministerial staff working in different directorates upto the level of Personal Assistants and promotions in different cadres should be directorate-wise, it has been specifically directed that for purposes of promotion to Administrative Officer, Class I, there should be one seniority list of Personal Assistants working in different directorates and promotions should be given to suitable persons on the basis of that list and this common seniority list of the Personal Assistants working in different directorates should be maintained in the office of the Deputy Director, Health Services (Medical) and the recommendations of the names of suitable candidates to the posts of Administrative Officer, Class I, should be made to the Government on that basis. It is no doubt true that so far as the present petition is concerned, the petitioner is aggrieved by the likely promotion of Administrative Officer, Class II (Jr. Scale) to the Administrative Officer, Class II, Sr. Scale in the Directorate of Health Services (Medical). It is equally true that in the impugned resolution there is a direction for maintaining separate seniority lists of ministerial staff working in different directorates upto the level of Personal Assistants and the promotions from the lower cadres to higher cadres to be restricted to a particular directorate. However, the subsequent directions in the impugned resolution to have a common seniority list of Personal Assistants working in different directorates for purposes of promotion to the posts of Administrative Officers, Class I is very significant and it has by necessary implications the effect of controlling the earlier directions given in the said resolution. If the different directorates have been instructed to maintain a common seniority list of all Personal Assistants for purposes of promotions to the cadre of Administrative Officers, Class I, it would necessarily follow that these different directorates have to maintain common seniority list of all Personal Assistants and operate that list even for purposes of promotion from Administrative Officer, Class II (Jr. Scale) to that of Administrative Officer, Class II, (Sr. Scale). The reason is obvious. The promotion from Jr. Scale to Sr. Scale is accorded on the basis of the seniority-cum-merit and if, therefore, common seniority list of all Personal Assistants working in different directorates is not maintained and operated, even

for the purposes of promotion from Jr. Scale to Sr. Scale, it would result into such an absurd situation that some Personal Assistants working in a particular directorate may march over their senior colleagues working in other directorates and thereby qualify themselves much earlier for being considered for promotion to the posts of Administrative Officer, Class I. It should be noted here again that promotion from the post of Administrative Officer, Class II (Sr. Scale) to that of Administrative Officer, Class I is also governed by seniority-cum-merit. If, therefore, the entire channel of promotion from the post of Administrative Officer, Class II (Jr. Scale) to Administrative Officer, Class II (Sr. Scale) is governed by seniority-cum-merit, and if the direction of the State Government is to maintain and operate a common seniority list of all Personal Assistants working in different directorates for purposes of granting promotion to the posts of Administrative Officers, Class I, it must necessarily follow that there should be a common seniority list of Personal Assistants working in different directorates for all purposes of promotion including that from Jr. Scale to Sr. Scale in Administrative Officer, Class II cadre. There is an additional reason in support of the view which I am inclined to take in the matter. If it is permitted, as sought to be urged on behalf of the State Government, that there should be separate seniority lists of Personal Assistants working in different directorates, and the promotion to the cadre of Administrative Officer, Class I is to be granted on the basis of these separate lists, it would clearly violate the mandate of Articles 14 and 16 of the Constitution as held in *Ramchandra Shankar Deodhar and Ors. v. State of Maharashtra and Ors.* : (1974)ILLJ221SC . In Deodhar's case (supra), a similar question arose as to whether pro-motion to the State-wise posts from Divisional cadre would amount to denial of equal opportunity to the incumbents holding the same posts, but on a divisional basis, to State-wise higher posts, Bhagwati J., speaking for the Court, held in the context of the State Government according promotion to the cadre of Deputy Collector which was a State-cadre on the basis of divisional select list that the entire method of the State Government suffered from a serious infirmity inasmuch as it provided for promotions to the State cadre of Deputy Collectors to be made on the basis of divisional select lists, which clearly violated the equality rule by denying opportunity to the Mamlatdars in the State in the matter of promotions to the cadre of Deputy Collectors, and if for being promoted as

Officiating Deputy Collector, a Mamlatdar has to wait until a vacancy occurs in the posts of Deputy Collectors in his division, he cannot be promoted till such vacancy arises even though he is senior to Mamlatdar in another division and more suitable in the matter of competence and, therefore, the entry in the cadre of Deputy Collectors was made to depend not on the assessment of the relative merits of a Mamlatdar vis-a-vis the other Mamlatdars in the State but on the fortuitous circumstances as to when a vacancy in the post of Deputy Collector arises in the division to which the Mamlatdar belongs, and this was clearly violative of the equal opportunity clause because it is wholly unrelated to the object and purpose of promotion which was to secure an efficient cadre of Deputy Collectors. The necessary implication, therefore, of the directions contained in the impugned resolution of November 19, 1980 that there should be a common seniority of all Personal Assistants working in different directorates for purposes of promotion to Administrative Officers, Class I, is that even for purposes of promotions from the posts of Administrative Officers, Class II (Jr. Scale) to the Administrative Officers, Class II (Sr. Scale) there cannot be separate directorate-wise seniority lists. If the State Government had intended so, it would not have given the directions as it did by insisting that there should be a common seniority list of all Personal Assistants for promotions to the higher cadre of Administrative Officers, Class I. I do not think that the State Government was justified in refusing to consider the case of the Petitioner when his turn came for promotion from Jr. Scale to Sr. Scale on the ground that no vacancy in the Sr. Scale arose in the directorate in which the petitioner was working. The present case stands altogether on a different footing than the one which I had disposed of by my judgment and order of February 17/18, 1982 in Special Civil Application Nos. 3401 of 1980 with 1026 of 1978 where I was concerned with a challenge by some of the Superintendents allocated to the Directorate of Health Services (Medical, Education and Research) to this very resolution of November 17, 1980 which is challenged in the present petition. I have found in the said special civil applications that there was a lot of vaccination on the part of the authorities concerned which resulted into contradictory policies being pursued by the two Directorates, namely Directorate of Medical Services (ESI) and that of Director of Medical, Education and Research and therefore, in order to straighten out the situation, the Government ultimately by this impugned

resolution took the final decision in the matter after holding consultation with the representatives of the different Government Employees' Associations that there should be separate seniority lists in the different cadres in all these Directorates, and promotions in such cadres should be restricted to the respective directorate and if, therefore, the Government decided to divide the original Services into the Department of Directorate of Health (Medical) into four different services, namely, Directorate of Medical Services; Directorate of ESI; Directorate of Medical, Education, and Research and Directorate of Health Services, the policy cannot be assailed on the ground of breach of equality clause under Articles 14 and 16 of the Constitution since the Government has always a power to integrate or disintegrate the services. As a matter of fact, in the present case, the policy of the State Government was to treat all the Personal Assistants working in the different directorates as working in common cadre and subject them to the liability of inter-directorate transfer. It became a matter of condition of services of the incumbents of the posts of Personal Assistants in different Directorates. If, therefore, these settled conditions of services are sought to be disturbed by the impugned resolution, it would necessarily have the effect on the right of promotion of the persons like the petitioner working on the posts of Personal Assistants in different directorates. It is not merely chances of promotions as was the case in Special Civil Application No. 3401 of 1980, and in so far as the person junior to the petitioner, one Shri B.M. Shah, was promoted from Jr. Scale to Sr. Scale, the petitioner's right was over-ruled and he was, therefore, rightly aggrieved since it would amount to denial of equal opportunity enshrined under Articles 14 and 16 of the Constitution. For these reasons, therefore, the petition should be allowed.

6. In the result, this petition is allowed. Respondent No. 1 is enjoined to consider the petitioner for promotion to the post of Administrative Officer, Class II (Sr. Scale) in the Directorate of Health (Medical) and, if found fit for promotion, to accord him promotion with effect from the date on which respondent No. 4 was promoted, and to assign the deemed date of promotion to the petitioner accordingly, and to grant him all back benefits to which he would be entitled as a result thereof. In view of the fact that respondent No. 4 has retired it is not necessary to quash and set aside the order by which he was promoted.

Mr. Hathi for the petitioner states that the petitioner has been already promoted to Sr. Scale in the Director of ESI in January, 1982. To that extent the grievance of the petitioner may not survive. However, the State Government shall be required to decide as to whether the petitioner was fit to be promoted on the date on which respondent No. 4 was promoted and to grant him deemed date accordingly and give all back benefits to which he would have been entitled if he had been so promoted. Mr. Hathi wants that the State Government should be directed to transfer the petitioner from Surat to Ahmedabad which posting he would have got if he had been promoted vice Shri B.M. Shah at the appropriate time. It is open to the petitioner to move the authorities for his transfer to Ahmedabad and on such representation being made, the authorities shall sympathetically consider his representation and do full justice in the matter.

Rule is made absolute accordingly with no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com