

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 363/86.

Dr. Prabhakar Ramchandra Honwad
M.Sc., Ph.D.
C/o. I.J. Naik, Parkota Street
DAMAN - 396 210.

... Applicant.

V/s.

1. The Union of India.

2. The Secretary, Ministry of
Education, New Delhi.

3. The Administrator of Goa,
Daman and Diu.

4. Union Public Service Commission,
Shah Jahan Road, New Delhi.

... Respondents

Coram: Hon'ble Vice-Chairman B.C. Gadgil,
Hon'ble Member J.G. Rajadhyaksha.

Appearance :

1. Advocate for the applicant : Mr. S.R. Atre

2. Advocate for the respondent : Mr. H.V. Mehta for
Mr. M.I. Sethna.

ORAL JUDGMENT

(Per B.C. Gadgil, Vice-Chairman)

Dated : 28-1-1987.

The applicant who is holding the post of Senior Lecturer in the Government College at Daman is challenging certain actions that are being taken by the Goa, Daman and Diu Administration for filling the post of Principal of the said College.

The applicant joined service as lecturer in Chemistry in the said college on 4-11-1968. In 1971, he was selected as a direct recruit for the post of senior lecturer and in 1975 he was confirmed in that post. In the present litigation we are concerned with

the post of Principal of the said college. Under the recruitment rules of 1975 (vide exhibit 11 of the application) the post of the Principal was to be filled in by promotion from amongst the eligible employees. The age limit was 45 years. A Senior Lecturer with 5 years' experience was eligible to be considered for promotion. The age was relaxable in the case of Government servants. If such promotion was not possible, the post could be filled in by direct recruitment. These rules have been modified in 1983 (vide exhibit p-3). Under the new rules, the post of the Principal was to be filled in by Direct recruitment only. The candidate must be holding a Doctorate degree and must be below 45 years of age. Of course, the age is relaxable upto five years in case of Government servants. On 26-7-86 the Union Public Service Commission issued an advertisement (vide exhibit p-7) inviting applications for direct recruitment to the post of Principal of this college. The post was also reserved for Schedule Caste candidate to be 'dereserved' if such candidate was not available. Now it cannot be disputed that the applicant was not eligible to apply for the post as he was 52 years of age on the prescribed date. The present incumbent of the post of Principal is one Mr.S.C. Arya. He has already completed the age of 58 in November, 1986. However, there is a letter dated 29-10-86 prescribing that the superannuation of the Principal of the college would be at the age of 60 years.

The applicant by this application has raised two points which need to be considered. In the first place he contends that the 1983 rules would be bad as they take away the right of the applicant for promotion to the post of Principal which was available to him

under the 1975 rules. The second point is that the action of the Government in fixing the superannuation age of Principal and Lecturers is 60 years is bad.

It is true that under the 1975 rules, the applicant had a chance of being promoted as Principal. It is equally true that under the 1983 rules that chance has been taken away as the post of the Principal is to be filled in by direct recruitment from amongst those persons who would be fulfilling certain eligibility conditions. The post was now open to Scheduled Caste and a person not exceeding 45 years of age. But the promotional avenue for the Senior Lecturer which existed under the 1975 rules was taken away by these rules. Applicant is a Senior Lecturer.

Mr. Atre relied upon the Supreme Court judgment in the case of Moti Ram Deka Vs. General Manager, North East Frontier Railway reported in AIR 1964. In that case the Railway Board had framed a rule 148 which permitted the Railway Administration to terminate the services of a permanent employee by giving him a notice of prescribed period. This rule was contended as contravening article 311(2) of the Constitution. The Supreme Court held that the termination of services of permanent servant otherwise than on the ground of superannuation or compulsory retirement must, per se amount to his removal within the meaning of Article 311 of the constitution. In our opinion, this decision will not be of any use for the purposes of considering the controversy before us. Another decision on which Mr. Atre has relied is that of Indravadan H. Shah Vs. The State of Gujarat reported in AIR 1986 SC 353. It was a case where the principles underlying articles 14 and

16 were involved. The post of an Assistant Judge as well as District Judge were included in the Senior Branch of the Judicial Service. However, the rules treated these two posts as different. For example, an age limit was prescribed for one class of the post for being considered for promotion of District Judge while for the other class there was no such age limit. The Supreme Court held that this age discrimination violated the equality clause envisaged by articles 14 and 16. This decision is also not of any use for deciding the contention of Mr. Atre.

It cannot be disputed that the service rules can be changed, altered and modified unilaterally by following the procedure mentioned in Art. 309 of the constitution, and such rules thus changed would be applicable to all, whether they were in service at the time of the change or whether they enter later on. Such a change with respect to the promotions has been considered by the Supreme Court in the case of The State of Jammu and Kashmir V/s. Shri Triloki Nath Khosa and Others reported in 1974 SCC(L & S) 49, The Supreme Court held that the change in the promotional Rules would apply also to the employees who have ~~not~~ been in service before the change was introduced. Mr. Atre submits that the applicant is a senior lecturer and that in that capacity he can seek promotion to the post of the Principal. It would be very difficult for Mr. Atre to validly contend that the rules of 1983 are valid, but the 1975 rules should apply so as to permit the applicant to seek promotion to the post of Principal, even though the 1983 rules prescribe only direct recruitment. It is clear that the question of filling

the post of Principal will be governed by the 1983 rules, and there would be direct recruitment only. As we have already observed the applicant is not eligible to seek direct recruitment to the post as he has crossed the prescribed age limit. The contention of the applicant has to be rejected when he says that he would be eligible to the post of Principal on promotion even though the rules of 1975 have been expressly repealed by the rules of 1983.

It was then urged by Mr. Atre that the decision of the Government to fix the superannuation age of Principal at 60 years is bad. We do not intend to consider this contention inasmuch as the applicant himself is not eligible to seek direct recruitment to the post of Principal. Ordinarily, and generally a person who is not eligible to claim a particular post cannot challenge the action taken by the Government. It is for this reason that we are not inclined to consider the question as to whether the retirement age of the Principal is correctly prescribed at 60 or it should be 58.

It was faintly suggested by Mr. Atre that if this retirement age is fixed at 58, the applicant might be able to hold the charge of Principal till direct recruitment is made and it is in this way that the applicant is interested in agitating the question about the age of superannuation. In our opinion, the applicant is not legally entitled to hold the said post even after the retirement of

the Principal. It would be a stop-gap arrangement which would not permit him to have a hold on the post of Principal. The net result is that the application fails and the same is dismissed.

There are no orders as to costs.

B.C. Gadgil

(B.C. GADGIL)
VICE-CHAIRMAN

(J.G. RAJADHYAKSHA)
MEMBER(A)

Recd. Copy of Judgement
on behalfs to Applicnts

S/Recd
26.2.87 S.R. ATRE

Adv. for the Applicnts.