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SALES TAX COMMISSIONER ETC. ETC.

v.

B.G. PATEL ETC. ETC.

JANUARY 3, 1995

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

Service Law : Gujarat Civil Services Classification and Recruitment (General) Rules, 1985—Rule 11-A and Proviso—Number of posts reserved for Scheduled Tribes remaining unfilled due to lack of persons possessed of minimum experience as prescribed in the rule—Respondents, belonging to Scheduled Tribes, having completed the period of service specified in the proviso—Held, proviso enables appointing authority to relax the rule—Respondents to be considered for promotion.

D

Interpretation of Statutes : Harmonious construction—Rule prescribing minimum qualifying service for promotion—Proviso providing for relaxation of rule to two-thirds of qualifying period where a person having prescribed minimum experience not available—Held, proviso does not have the effect of rendering the main part of rule redundant—Proviso and rule should be harmoniously read.

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A number of posts reserved for STs remained unfilled due to lack of persons possessing the experience prescribed for promotions under Rule 11-A of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1985. The Proviso to Rule 11-A provides that where no persons are available possessing the requisite experience, the appointing authority may consider for promotion persons who have experience of no less than two-thirds of the period specified in the rule. The respondent-senior clerks who belonged to the Scheduled Tribes represented to the Government to accord them the benefit of the Proviso. The Government's denial was challenged in the Gujarat Civil Services Tribunal which directed the Government to consider the cases for promotion of the respondents, giving them the benefit of the Proviso. The order was confirmed by the High Court.

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On appeal, it was contended for the petitioner that the interpretation adopted by the Tribunal and the High Court would render the main part

of Rule 11-A redundant, and the Proviso would become operative in each case. A

Dismissing the appeal, this Court

HELD : 1. Rule 11-A of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1985 is the normal rule. The proviso only enables the appointing authority to relax the rule where no candidate is available fulfilling the minimum experience prescribed in the rule. It is not disputed that a number of posts reserved for Scheduled Tribes remained unfilled due to lack of persons possessed of the minimum experience specified in the rule. Instead of dereserving the post for non-availability, the proviso would enable the appointing authority to relax the period of experience prescribed in the rule, and consider the claims of the respondents, who have completed the period specified in the proviso, for appointment by promotion. [25-D-H, 26-B] B C

2. The petitioner has taken a technical view of the matter and committed an illegality by failing to exercise the power under the proviso to Rule 11-A. [26-B] D

3. If the contention of the State is accepted, the proviso would be rendered otiose and ineffective. The proviso and the main part of the rule are to be harmoniously read together and interpreted to give effect to the object of the provision. [25-F, D] E

4. The Tribunal and the High Court were right in holding that the cases of the respondents require to be considered for promotion. [26-B]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) F
Nos. 1383-92 of 1995.

From the Judgment and Order dated 22.11.93 of the Gujarat High Court in S.C.A. No. 12748-57 of 1993.

Anip Sachfhey for the Petitioners. G

The following Order of the Court was delivered :

Delay condoned.

This petition for special leave arises from the order of the High Court H

A of Gujarat in Special Civil Application Nos. 12748 to 12757 of 1993.

The respondents-senior clerks who belonged to Scheduled Tribes represented to the Government to accord them the benefit of the proviso to Rule 11A of Gujarat Civil Services Classification and Recruitment (General) Rules, 1985 (for short, 'the Rules'). On denial thereof, they
B approached the Gujarat Civil Services Tribunal which by its order dated 5.2.1993 directed the petitioner to consider their cases for promotion giving them the benefit of the proviso. The Tribunal followed its earlier Full Bench Judgment and had given direction accordingly. On revision, the High Court has confirmed the same.

C Shri Dave, the learned counsel appearing for the petitioner has contended that the interpretation given by the Tribunal and the High Court, if found acceptable, renders the main part of Rule 11-A redundant and the proviso would become operative in every case. Therefore, the matter requires consideration by this Court. We do not find force in the
D contention.

Sub-rule (1) of Rule 11-A(2) speaks of minimum service of different classes of employees. It postulates that "where any rule or order relating to recruitment of promotion to any service or post including the State Service or subordinate service, possession of experience in a lower services
E or post for a specified period is not prescribed as a condition precedent to promotion to a Higher service or post, the provisions of sub-rule (2) shall apply. Sub-rule (2) prescribed the procedure. In case of promotion from a lower post in class III to a higher post in the same service a minimum of 5 years service has been prescribed in clause (a) to Rule 11-A
F (2). Similarly, from class III to class II service, experience of 7 years has been prescribed in clause (b). In clause (c) from a lower post in class II service to a higher post in the same service, a minimum experience of 5 years in the post from which a person is to be promoted has been prescribed. In clause (d) for promotion from Class II service to class I
G service an experience of 8 years in class II service has been prescribed unless he has experience of 8 years service in class II service from which he is to be promoted. The proviso which is relevant for the purpose of this case, reads thus :

H "Provided that where an appointing authority is satisfied that a person having an experience specified in clauses (a), (b), (c) or as

the case may be, (d) is not available for promotion and that it is in public interest to fill up the post or service by promotion of a person having experience for a lesser period. It may for the reasons to be recorded in writing promote such person who has experience for a period not less than two thirds of the period specified in clause (a), (b) (c) or (d) which applies to him".

It would thus be clear that clauses (a) to (d) of Sub-rule (2) of Rule 11-A prescribe a minimum experience in a lower post for promotion to a higher post, but the proviso enables the appointing authority on its satisfaction that the person required to have the previous experience prescribed under clauses (a) to (d) is not available for promotion and that in the public interest the post or service is required to be filled up by promotion, the provision postulates that such person has to put in, not less than two thirds of the period specified in either clauses (a) to (d). Then it enables the appointing authority for reasons to be recorded in writing to promote such person. It is settled law that the proviso and the main part of the Act or Rule are to be harmoniously read together and interpreted to give effect to the object of the provision. Rule 11A prescribes minimum period of previous experience in lower post for promotion to a higher post. It is normal rule. But, where the candidate is not available fulfilling the minimum experience but the exigencies of the administration require filling up the post or office by promotion and the appointing authority is satisfied that such a person has already put in not less than 2/3rd of the period specified in the relevant clause in sub-rule (2) to Rule 11-A and the candidate is otherwise eligible for promotion, then power has been given by the proviso to relax the balance period, for reasons to be recorded and to consider the case for promotion according to rules. If the contention of the State is accepted, the reverse would be the order, in other words, the proviso would be rendered otiose and ineffective. On an harmonious interpretation, as it was rightly done by the Tribunal and the High Court that in an appropriate case where the appointing authority is satisfied that a person having not less than 2/3rd of the period of experience specified in the relevant clauses (a) to (d) of Rule 11-A(2) is available and in the public interest it is necessary to appoint the person by promotion, the proviso enables the appointing authority to relax the balance 1/3rd period prescribed by the relevant clauses and make necessary appointment by promotion. It is seen, as fairly not disputed by Shri Dave, that number of posts reserved for Scheduled Tribes remained unfilled due to lack of

- A persons possessed of minimum experience prescribed under sub-rule (2) of Rule 11-A and the respondents have completed 2/3rd of the period specified in the relevant clauses. Instead of dereserving the post for non-availability, the proviso would enable the appointing authority to relax the balance period of experience and consider their claims for appointment by promotion. Instead, the petitioner has taken technical view of the matter and committed illegality by failing to exercise the power under the proviso
- B to Rule 11-A of the Rules. The Tribunal and the High Court, therefore, were right in holding that the cases of respondents require to be considered for promotion in the light of the interpretation given by them.

The SLP is accordingly dismissed.

U.R.

Petition dismissed.