

A GUJARAT HOUSING BOARD ENGINEERS
 ASSOCIATION AND ANR.

v.

STATE OF GUJARAT AND ORS.

B NOVEMBER 5, 1993

[J.S. VERMA, N.P. SINGH AND S.P. BHARUCHA, JJ.]

*Service Law : Gujarat Housing Board Act, 1961/Gujarat Housing Board
Services Classifications of and Recruitment Regulations, 1981 :*

C *Sections 74(c), 82/Regulation 3—Appointment to the post of Assistant
Housing Commissioner (Technical) on deputation—Directions issued by
State Government—Whether deputation could be resorted to without first
considering eligible, suitable Executive Engineers of Housing Board—State
Government's power to give directions not to extend to a matter contrary to
D the Regulations.*

**The first appellant, an Association of the Engineers of the Gujarat
Housing Board and the third appellant, the employees of the Housing
Board preferred a writ petition in the High Court challenging the direction
E given to the Housing Board by the State Government to appoint to the post
of Assistant Housing Commissioner (Technical) an officer on deputation
from the Building and Communication Department of the State Govern-
ment. The High Court found that the decision was not unjust and arbitrary
or based on irrelevant or extreneous considerations and dismissed the writ
petitions.**

F **In this appeal before this Court, the appellants contended that no
appointment on deputation could be made to the said post unless and until
it was found that no suitable eligibile candidate was available for appoint-
ment to the said post by promotion from among the eligible Executive
G Engineers of the Housing Board.**

**On behalf of the respondents, it was contended that sub-clause (b)
of clause (1) of Regulation 3 of the Gujarat Housing Board Services
Classifications of and the Recruitment Regulations 1981 was resorted to
in this case, and that it was not necessary that the appointment should be
H so made only if no suitable eligible candidate was avilable for appointment**

by promotion from among Executive Engineers of the Housing Board.

Allowing the appeal, this Court,

HELD : 1. Clause (3) of Regulation 3 of the Gujarat Housing Board Services Classification of and Recruitment Regulations, 1981 does not set out an additional, fourth mode of filling in the post of Assistant Housing Commissioner(Technical) but is only a provision which sets out how and when an Executive Engineer from the State Government's Building and Communication Department can be appointed to the said post on deputation. It provides that such an appointment can be made to the said post on deputation only if a suitable eligible candidate is not available for appointment by promotion from among the Executive Engineers of the Housing Board. Regulation 3 must, therefore, be read as providing that the said post must be filled by promotion of eligible Executive Engineers of the Housing Board on the basis of seniority-cum-merit. It is only if no suitable candidate is available for promotion to the said post from among the eligible Executive Engineers of the Housing Board that the appointment by be made on deputation from among the Executive Engineers of the State Government's Building and Communication Department. Failing this, the appointment can be made by direct selection from among candidates called for interview. [643-E-H; 644-A]

2. Regulation 3 can be read in no other manner. To construe it otherwise would mean that it provides no guidelines. [643-F]

3. Admittedly, the suitability of eligible Executive Engineers of the Housing Board for appointment to the said post by promotion was not considered before resort was directed to be had to the provisions of sub-clause (b) of clause (1) of Regulation 3 for filling the said post by deputation of an officer of the State Government's Building and Communication Department. Therefore, the State Government was patently in error in directing the Housing Board to fill the said post by deputation. [644-B-C]

4. It is also not open to the State Government to give such directions to the Housing Board under Section 82 of the Gujarat Housing Board Act, 1961 which are contrary to the Regulations made under the said Act with its previous sanction. [644-E]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6059 of 1993.

From the Judgment and Order dated 17.11.92 of the Gujarat High Court in S.C.A. No. 395 of 1990.

B P.K. Manohar for the Appellants.

D.A. Dave, Nandini Gore, M. Karanjawala and S.C. Patel, for the Respondents.

C The Judgment of the Court was delivered by

BHARUCHA, J. : Special leave granted.

Heard.

D This appeal requires a true and correct interpretation to be placed upon Regulation 3 of the Gujarat Housing Board Services Classifications of and Recruitment Regulations, 1981. The appeal arises thus : The first appellant is an association of the Engineers of the Gujarat Housing Board (the second respondent). The second and third appellants are employees of the Housing Board. They filed a writ petition in the Gujarat High Court challenging the direction given to the Housing Board by the State of Gujarat (the first respondent) to appoint to the post of Assistant Housing Commissioner (Technical) an officer on deputation from the Building and Communication Department of the State Government. The writ petition was dismissed. The High Court relied upon the fact that the decision to appoint to the said post on officer of the rank of Superintending Engineer from the Building and Communication Department of the State Government had been taken by the State Government for reasons stated in its affidavit in reply and the said decision could not be said to be unjust or arbitrary or based on irrelevant or extraneous considerations.

G The Gujarat Housing Board Services Classifications of and Recruitment Regulations, 1981 are made under the provisions of Section 74(c) of the Gujarat Housing Board Act, 1961 (now called "the said Act") with the previous sanction of the State Government. Regulation 3 in Part-V thereof prescribes the qualifications, age, experience and procedure relating to recruitment to the post of Assistant Housing Commissioner (Technical), H now called Superintendent Engineer. The relevant portion thereof reads

thus :

"The post may be filled in either :

(1) (a) by promotion of employees working as Executive Engineer in Board's Higher Services on the basis of seniority cum merits,

OR

(b) by calling Executive Engineer on deputation from State Building and Communication Department.

OR

(c) by direct selection from amongst the candidates called for interview;

(2) To be eligible for promotion, Executive Engineers (i) should have rendered atleast 4 years continuous service as Executive Engineer;

On promotion, the officers will be on trial for one year on expiry of which he may be finally promoted or his trial may be extended or he may be reverted to the post from which he was promoted as the case may be looking to his performance during the trial period. On the expiry of the extended trial, period, his case will be again reviewed and dealt in same manner.

(3) If a suitable candidate is not available for appointment by promotion from the Executive Engineers of the Board, a panel of names of Executive Engineers *having atleast 4 years* standing experience from the State B and C Department may be called for, with a proviso that no departmental inquiry should be pending against them. One of the names will be selected by the Board and the selected candidate will be appointed by the Board.

(4) To be eligible for appointment by direct selection a candidate

(i) should be not more than 45 years of age;

- A (ii) should possess a bachelor's Degree in Engineering of a recognised University or an equivalent qualification recognised by Board and
- B (iii) should have atleast 10 years practical experience of planning and building construction work in State or Central Government or a local authority or a Corporation owned or controlled by such Government or in renowned private firms of Engineers and Contractors in a responsible post.
- C Officers in Board's Higher Service who are eligible for direct selection as above, can also apply alongwith others.

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- D The contention on behalf of the appellants is that no appointment on deputation can be made to the said post of an officer serving in the State Government's Building and Communication Department until and unless it has been found that no suitable eligible candidate is available for appointment to the said post by promotion from among the eligible Executive Engineers of the Housing Board. On the other hand, it is contended on
- E behalf of the State Government that Regulation 3 provides three alternative modes of appointment to the said post in clause (1) and clause (3) provides yet another, fourth mode of appointment. The appointment in question was directed to be made under the provisions of sub-clause (b) of clause (1) and not under clause (3), so that the State Government and the Housing Board were not in any manner constrained in making the appointment and
- F it was not required that the appointment should be so made only if no suitable eligible candidate was available for appointment by promotion from among the Executive Engineers of the Housing Board.

- G Clause (1) of Regulation 3 provides that the post of Assistant Housing Commissioner (Technical) may be filled in by promotion of employees working as Executive Engineers in the Housing Board on the basis of seniority-cum-merit; or by calling Executive Engineers on deputation from the Building and Communication Department of the State Government; or by direct selection from among candidates called for interview. Clause (2) sets out who among the Executive Engineers of the Housing Board are
- H eligible for such promotion. Clause (3) states that if a suitable eligible

candidate is not available for appointment by promotion from among the Executive Engineers of the Housing Board, a panel of names of Executive Engineers having four years standing experience in the State Government's Building and Communication Department may be called for and one name out of the panel may be selected and appointed on deputation by the Housing Board. Clause (4) sets out the eligibility requirements of candidates for appointment by direct selection.

It is, therefore, clear that clause (2) of Regulation 3 has application to sub-clause (a) of clause (1); that is to say, clause (2) sets out the eligibility criteria of employees working as Executive Engineers in the Housing Board for appointment to the said post on the basis of seniority-cum-merit under sub-clause (a) of clause (1). Clause (3) sets out how and when an Executive Engineer from the State Government's Building and Communication Department can be appointed on deputation to the said post under the provisions of sub-clause (b) of clause (1). Clause (4) sets out the eligibility requirements for candidates to be appointed by direct selection under the provisions of sub-clause (c) of clause (1).

We have no doubt, therefore, that clause (3) does not set out an additional, fourth mode for filling in the said post but is only a provision which sets out how and when an Executive Engineer from the State Government's Building and Communication Department can be appointed to the said post on deputation. It provides that an appointment can be made of an Executive Engineer from the State Government's Building and Communication Department to the said post on deputation only if a suitable eligible candidate is not available for appointment by promotion from among the Executive Engineers of the Housing Board.

Regulation 3 can be read in no other manner. To construe it otherwise would mean that it provides no guidelines as to when the said post is to be filled up from among the Executive Engineers of the Housing Board, when by deputation from among the Executive Engineers of the Building and Communication Department of the State Government and when by direct selection. The interpretation that the court must place upon Regulation 3 must be such as avoids arbitrariness and the conferment of uncanalised power. Regulation 3 must, therefore, be read as providing that the said post must be filled by promotion of eligible Executive Engineers of the Housing Board on the basis of seniority-cum-merit. It is only if no

- A suitable candidate is available for promotion to the said post from among the eligible Executive Engineers of the Housing Board that the appointment may be made on deputation from among the Executive Engineers of the State Government's Building and Communication Department. Failing this, the appointment can be made by direct selection from among candidates called for interview.

B

It is an admitted position that the suitability of eligible Executive Engineers of the Housing Board for appointment to the said post by promotion was not considered before resort was directed to be had to the provisions of sub-clause (b) of clause (1) for filling the said post by deputation of an officer of the State Government's Building and Communication Department. In our view, therefore, the State Government was patently in error in directing the Housing Board to fill the said post by deputing an officer in the State Government's Building and Communication Department.

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Reference was made on behalf of the State Government to the provisions of Section 82 of the said Act and it was submitted that the State Government was thereby empowered to give to the Housing Board such directions as were in its opinion necessary or expedient for carrying out the purposes of the said Act and the Housing Board was obliged to comply with such directions. The short answer to the submission is that it is not open to the State Government to give directions to the Housing Board under Section 82 which are contrary to the provisions of Regulations made under the provisions of the said Act with its previous sanction.

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The appeal is allowed. The judgment and order under appeal are set aside. The direction given to the Gujarat Housing Board by the Government of Gujarat to fill the post of Assistant Housing Commissioner (Technical) (now called Superintendent Engineer) by appointment on deputation of a person in its service in the Building and Communication Department is set aside. For the purposes of filling up the said post, the Gujarat Housing Board shall proceed in the manner indicated above.

G

There shall be no order as to costs.

G.N.

Appeal allowed.