PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
A.C. SHAH AND OTHERS

DATE OF JUDGMENT16/03/1993

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
AGRAWAL, S.C. (J)

CITATION:
1994 AIR 1269 1993 SCR (2) 383
1993 SCC Supl. (4) 690 JT 1993 (3) 591
1993 SCALE (2)307

ACT:
Constitution of India, 1950 : Article 136--Appeal--Relevant facts and circumstances not placed before the High Court remanding the matter back to High Court for reconsideration. Civil Service : Gujarat State Public Works Department--Electrical Engineering Branch--Trifurcation of Cadres--Promotion to the posts of Deputy Engineers High Court's direction to provide criterion for promotion--Quota rule at the ratio of 2:1--Legality of--Facts and circumstances not placed before the High Court--Effect of.

HEADNOTE:
The appellant-State by resolution dated 10.7.1972, trifurcated the services, in the Electrical Engineering Branch of the Public Works Department into three cadres, namely, (1) Junior Engineers, (2) Supervisors and (3) Overseers, w.e.f. 1.5.1972. At the relevant time there was only one Overseer and he stood retired. Therefore, In substance it was a bifurcation between Junior Engineers and Supervisors the former being graduates and the latter being diploma holders.
In a writ petition before the High Court exercise of the State was challenged.
The High Court directed the State to provide for a criterion for promotion from the three independent cadres, for working out the trifurcation.
In compliance of the order of the High Court, the appellant adopted a Resolution dated 26.9.1975 introducing a quota rule effective from May 1, 1972 at the ratio of 2:1 for Junior Engineers and Supervisors respectively for promotion to the posts of Deputy Engineers.
The respondents challenged the trifurcation and also the quota rule in a writ petition before the High Court.
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The High Court struck down the ratio of 2:1 holding it to be unjustified as also the disparity in qualifying service from both the channels.
Hence this appeal by special leave by the State, being aggrieved against a mandamus-issued by the High Court not to impose the ratio of 2:1 while working out the quota rule.
As the appellant was unsuccessful in obtaining a stay of

operation of the High Court's judgment, it had to obey the mandate of the High Court and the ratio of 2:1 could not be enforced.

This Court on 18.12.1980 ordered the Government to frame a fresh quota rule consistent with the High Court judgment for the purpose of making promotions during the pendency of the appeal and under Article 309 of the Constitution, a Rule was framed. Earlier the appellant had framed the Deputy Engineer (Electrical) Recruitment Rules, 1978 under Article 309 of the Constitution, which were not brought to the notice of the High Court nor the Rules, 1978 were challenged.

Allowing this appeal, this Court,

HELD:1.01. The matter in the High Court proceeded on the assumption that an executive action of the State was under challenge. The necessary assumptions and presumptions, well known to law and the placement of onuses went unnoticed. In this background and facing the situation so arising the State Government issued a Notification on April 12, 1982 by causing a substitution in the earlier Rules of 1978 by fixing the promotional ratio from both sources at 1:1, but subjected them to the result of the instant litigation emerging from this Court. [387D-E]

1.02. The High Court judgment is silent as to the basis on which it was persuaded to strike down the ratio of 2:1 for Junior Engineers and Supervisors respectively. The tenor of the judgment of the High Court does however suggest that the executive flexibility, with which the Government works could not justify the fixation of the ratio of 2:1. The High Court could not and did not substitute what was the right ratio in the circumstances and left it to the Government to devise another ratio. Had the factum of the legislation on the subject i.e. the Rules dated 4.7.1978, been brought to its notice, perhaps the High Court's angle of vision would have been different [387F-G]

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1.03. The State has no doubt compulsively carried out the mandate but has done so with reservation so as to meet the eventuality. No such measure can ever be permanent that would hold good for all times, to meet not only the present needs but also future exigencies as well. Hands of the State cannot be so tied down. 'Mat would be a step retrograde to the growth and working of a democracy. [387H, 388A]

1.04. It was on the Writ petitioner's (now respondents) to lay data before the High Court and bear the onus to show that the legislative measure was unfair and arbitrary, violative of Article 14 of the Constitution. No such data appears to have been placed before the High Court. [388B]

1.05. On these circumstances the case is remanded to the High Court for reconsideration. [388C]

Roop Chand Adlakha & Om v. Delhi Development Authority & Ors., [1989] Supp I SCC 116, referred to. [388D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1749 of 1980.

From the Judgment and Order dated 26.3. 1980 of the Gujarat High Court in Special Civil Application No. 1606 of 1975.

D.A. Dave, Vimal Dave, R. Karanjawala, Mrs. Manik Karanjawala, Jitender Singh and P.K Mullick for the Appellant.

R.R. Goswami, S.K Dholakia, P.H. Parekh, Fazal, H.K Rathod and S.C. Patel for the Respondents.

The following Order of the Court was delivered:
The State of Gujarat, the appellant herein, is aggrieved against a mandamus issued by the High Court of Gujarat on March 26, 1980 'in Special Civil Application No. 1606/75 whereby its decision to impose a ratio while working out a, Quota rule was upset.
The minimum facts are these:-
In the State Public Works Department there was an Electrical Engineering Branch. By Resolution dated July 10, 1972, the services in the said branch w.e.f May 1, 1972 were trifurcated on the same pattern as was
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done in other branches. The result was that the trifurcation ended into three cadres (1) Junior Engineers, (2) Supervisors and (3) Over-seers. The compartment of Over-seers is a surplus-age. There was only one Overseer at the relevant time and he stood retired. In substance it was a bifurcation between Junior Engineers and Supervisors, the former being graduates and the latter being diploma holders. This exercise of the State Government was challenged in a writ petition before the High Court in Special Civil Application No. 1855/73, which was negatived by the High Court by an order dated 2nd April, 1975. The High Court directed that in working out the trifurcation the Government must provide criterion for promotion from the three independent cadres. In compliance thereof, the State Government adopted a Resolution dated 26.9.1975 introducing a quota rule effective from May 1, 1972 at the ratio of 2:1 for Junior Engineers and, Supervisors respectively for promotion to the posts of Deputy Engineers. The nine contesting respondents herein preferred a writ petition being Special Civil Application No. 1606/75 before the High Court challenging the trifurcation as also the quota rule. The High Court repelled the challenge in so far as it related to the trifurcation and the adoption of quota rule but struck down the ratio of 2:1 holding it to be unjustified as also the disparity in qualifying service from both the channels. The High Court concluded as follows:

> "We are, therefore, of the opinion that though it was within the power of the State Government to bifurcate the unified cadre into two distinct cadres of Junior Engineers and Supervisors and though it was within the power of the State Government to prescribe a quota for both of them for the purpose of promotion to the higher posts of a Deputy Engineer there was no justification for prescribing the quota of 2:1 and a longer qualifying service for the Supervisors. Therefore, the promotional rule which prescribes unequal quota and an unequal length of qualifying service for Supervisors for promotion to the posts of a Deputy Engineer is liable to be struck down."
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> And accordingly it did by issuing a mandamus.

The State Government of Gujarat when appealing to this Court was unsuccessful in obtaining a stay of operation of the impugned judgment.
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As a consequence it had to obey the mandate of the High Court which was to the effect that the ratio of 2:1 could not be enforced. As a result the quota rule went out of gear. It was left open all the same to the State Government to make any other rational rule in that behalf. Even this Court on 18.12.1980, at that juncture, ordered, "Let the Government frame a fresh quota rule consistent with the High

Court judgment under appeal for the purpose of making promotions during the pendency of the appeal.' Pursuant thereto, it appears that the State Government was constrained to introducing of a Rule under Article 309 of the Constitution. But before we advert to that Rule it would be relevant to mention that earlier in point of time, by Notification dated July 4, 1978, Rules known as Deputy Engineer (Electrical) Recruitment Rules, 1978, were framed under Article 309 of the Constitution giving a statutory clothing to the Resolutions dated 10.7.72 and 26.9.75. Unfortunately, these statutory provisions were not brought to the notice of the High Court nor were they put to challenge. The matter in the High Court proceeded on the assumption that an executive action of the State was under challenge. The necessary assumptions and presumptions, well known to law and the placement of onuses went unnoticed. In this background and facing the situation so arising the State Government issued a Notification on April 12, 1982 by causing a substitution in the earlier Rules of 1978 aforementioned by fixing t he promotional ratio from both sources at 1:1, but subjected them to the result of the instant litigation emerging from this Court.

We stand deprived of the pleadings of the parties before the High Court. The pleadings now introduced do not help us. Significantly, the High Court judgment is silent as to the basis on which it was persuaded to strike down the ratio of 2:1 for Junior Engineers and Supervisors respectively. The tenor of the judgment of the High Court does however suggest that the executive flexibility, with which the Government works could not justify the fixation of the ratio of 2:1. The High Court could not and did not substitute what was the right ratio in the circumstances and left it to the Government to devise another ratio. Had the, factum of the legislation on the subject the Rules dated 4.7.1978, been brought to its notice, perhaps the High Court's angle of vision would have been different. The State has no doubt compulsively carried out the mandate but has done so with reservation so as to meet the eventuality. No such measure can ever be permanent that would hold good for all times, to meet not only the present needs but also future exigencies as well. Hands of the State cannot to so

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tied down. That would be a step retrograde to the growth and working of a democracy. The State is now left to devise a ratio other than the ratio of 2:1 and cause a variation. It cannot come to that ratio again. This appears to us an undesirable situation. It must be left to the State to get at, it again. Though obeying the mandamus of the High Court the State must be free to arrive at the original ratio of 2:1. On some basis the Governor of the State appears to have legislated on the subject. It was on the writ petitioner's (now respondents) to lay data before the High Court and bear the onus to show that the legislative measure was unfair and arbitrary, violative of Article 14 of the Constitution. As said before no such data appears to have been placed before the High Court.

On these circumstances, we are left with no option but to upset the judgment of the High Court and remand the matter back to it for reconsideration. In doing so we may set at rest the controversy regarding difference of length of qualifying service, from both sources. The controversy does not survive in view of Roop Chand Adlakha & Ors. v. Delhi Development Authority & Ors., [1989] Supp. I SCC 116. The High Court need not advert now to the disparity in length of qualifying service from the channels of promotion. In the

meantime, however, status quo needs to be preserved. The substituted Service Rules of 1982 shall continue to operate till the decision of the High Court and the promotions, as before, shall continue, subject to the result of the judgment of the High Court. In these terms we allow the appeal and set aside the judgment. The High Court may pass appropriate orders afresh, after permitting the parties to amend their pleadings, if necessary, and putting the onus on the writ petitioners to prove unfairness in the 1978 Rules, or violation of Article 14 of the Constitution. Since it is an old matter, we request the High Court to dispose it of as quickly as possible, preferably within six months. No Costs.

V.P.R.

Appeal allowed.

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