

Maushami Amulkumar Ganguly & Ors. Versus Vs State of Gujarat & Ors.

Court: Gujarat High Court

Date of Decision: Jan. 20, 2025

Acts Referred: Gujarat Panchayats Act, 1993 â€” Section 227, 274

Gujarat Panchayat Services (Class-III), Departmental Examination (Second Amendment) Rules, 2023 â€” Rule 1, 2, 2(i), 3, 3(i), 4

Hon'ble Judges: Sunita Agarwal, J; Pranav Trivedi, J

Bench: Division Bench

Advocate: P A Jadeja, Kamal Trivedi, Vinay B Vishen

Final Decision: Dismissed

Judgement

Sunita Agarwal, J

1. The challenge in the present petition is to the provisions contained in the Rule 2(i) of the Gujarat Panchayat Services (Class-III), Departmental

Examination (Second Amendment) Rules, 2023 (in short as *the Rules, 2023*), whereby a proviso has been inserted in sub-rule (1) of Rule

3 of the Gujarat Panchayat Services (Class-III), Departmental Examination Rules, 2022 (in short as *the Departmental Examination Rules, 2022*) as under:-

2022) as under:-

2. In the Gujarat Panchayat Services (Class-III), Departmental Examination Rules, 2022, (hereinafter referred to as *the said*

rules), in rule-3,

(i) After sub-rule(1), the following proviso shall be inserted, namely:-

“Provided that the person who was eligible in all respect on the 1st September, 2022 for being promoted to the post mentioned in Part-II

Appendix-A shall be exempted from passing the examination.”

2. The original Rules 3(1) and 4 of the Departmental Examination Rules, 2022 is relevant to be extracted hereunder:-

3. Requirement to pass the examination

3(1) The person appointed to the post specified in Part-I of Appendix A shall be required to pass the Lower Level Departmental Examination

to be eligible for promotion to the respective post specified in Part-II of Appendix A.

4. Eligibility to appear in the examination-

(1) No person shall be eligible to appear in the examination unless he has completed two years of continuous service after his

appointment on the post of Part-I of Appendix A and Appendix B.

(2) No person shall be eligible to appear in the examination unless he has passed the post-training examination to existing post or he has

been exempted from passing post-training examination by the Competent authority, if any.

3. The grievance raised by the petitioners is about the exemption granted to the persons eligible in all respects as on 01.09.2022 from passing the

departmental examination, for being promoted to the post of Female Health Supervisor Class-III, from Female Health Workers Class-III. While

challenging the validity of the amended Rules inserting the exemption clause, the challenge has also been raised to the promotion of five incumbents

(respondents No.3 to 7 herein) to the post of Female Health Supervisor (Class-III) vide order dated 29.06.2024, by giving benefit of the aforesaid

exemption clause.

4. The submission of the learned counsel for the petitioners is that vide the Departmental Examination Rules 2022, notified on 23.08.2022, it

became necessary for every incumbent working on the post of Female Health Worker Class-III to pass the Lower level departmental examination to

be eligible for promotion to the post of Female Health Supervisor Class-III. Once the requirement of passing the departmental examination has been

brought into the rules within the eligibility criteria for the purposes of promotion, there was no justification to exclude those who were otherwise eligible

as on 01.09.2022, from the requirement of passing the departmental examination.

5. The contention is that as per the eligibility criteria, an incumbent working on the post of Female Health Worker Class-III is eligible to appear in the

departmental examination, as per Rule 3 of the Departmental Examination Rules 2022, on completion of two years of continuous service after her

appointment on the said post and completion of six months training and further passing of the post-training examination. The eligibility criteria, thus, for

each incumbent working on the post of Female Health Worker Class-III is universal that (i) completion two years of continuous service after

appointment on the said post; (ii) having passed, post-training examination to the existing post after completion of six months training.

6. However, the requirement of passing of Lower level departmental examination introduced with the Notification dated 23.08.2022 is in addition to

the above noted eligibility criterias for promotion to the post of Female Health Supervisor Class-III. The submission is that all the petitioners herein

possess eligibility criteria of having two years of continuous service and passing of the post-training examination on completion of six months training.

However, with the Rules 2023 brought into force by the notification dated 11.12.2023, with the insertion of the proviso to sub-rule(1) of Rule 3 of

the Departmental Examination Rules 2022, a new class of candidates eligible for promotion had been created who have been exempted from the

requirement of undertaking Lower level departmental examination, which has resulted in promotion of respondents No.3 to 7 who were juniors to the

petitioners.

7. It was vehemently argued by the learned counsel for the petitioner that the retrospective operation of the exemption clause from undertaking Lower

level departmental examination by providing a cut- off date, i.e. on 01.09.2022 by Rules 2023 notified on 11.12.2023, has resulted in creation of a

class within a class. This classification of those who were otherwise eligible on 01.09.2022 for exemption from departmental examination by giving

retrospective effect to the exemption clause is violative of Article 14 of the Constitution of India. There is no justification for the cut-off date which is

01.09.2022 for grant of exemption from the requirement of passing the Lower level departmental examination necessitated by the Departmental

Examination Rules 2022. It is further submitted that no departmental examination was conducted between 01.09.2022 upto 11.12.2022, when the

exemption proviso was inserted in sub-rule (1) of Rule 3.

8. Taking note of the above, suffice it to record that prior to the notification dated 23.08.2022 notifying the Departmental Examination Rules 2022,

the promotion to the post of Female Health Supervisor (Class III) from feeder cadre of Female Health Worker (Class III) was being conducted under

the Female Health Supervisor (Class-III) (Panchayat Service) Recruitment Rules, 1998) (in short as "the Rules 1998), notified on 19.11.1998

by the State in the exercise of powers conferred by Section 227 read with Section 274 of the Gujarat Panchayats Act, 1993. Rules 1,2, 3 and of the

Rules 1998 (at page No. 95 of the paper book) are relevant to be extracted herein:-

1. These rules may be called the Female Health Supervisor (Class III), (Panchayat Service) Recruitment Rules, 1998.

2. Appointment to the post of Female Health Supervisor (Class III), (Panchayat Service) shall be made by promotion of a person of proved

merit and efficiency from amongst the persons who have worked as Female Health Worker, (Class III), (Panchayat Service) for not less than

five years and who have passed the prescribed departmental examination.

3. A candidate appointed by promotion shall have to undergo such training for such period and pass the post-training examination and an

examination in Hindi or Gujarati or both as the case may be prescribed by the Government.

9. From a perusal of the said rules indicate that the appointment to the post of Female Health Supervisor (Class III), Panchayat Service) contemplated

under Rules 1998 by promotion from amongst the incumbents who have worked as the Female Health Worker Class-III (Panchayat Service),

having worked not less than five years and who have passed the prescribed departmental examination. Rules 1998 further requires the candidate

appointed by promotion to undergo training for such period and passing the post-training examination as also the examination in Hindi or Gujarati or

both, as may be prescribed by the Government of Gujarat.

10. It was placed before us that as no rules for conducting departmental examination was framed, Female Health Workers Class-III were being

promoted to the post of Female Health Supervisor (Class-III) merely on completion of requisite number of years of service along with passing of post-

training examination. There is no doubt about the said factual position.

11. It is, thus, evident that the requirement to pass the lower level departmental examination to be eligible for promotion to the Female Health

Supervisor (Class-III), (Panchayat Service) has been necessitated with the enforcement of the Departmental Examination Rules 2022, which

came into effect on 01.09.2022. For undertaking departmental examination, under the Departmental Examination Rules 2022, it is necessary that

the incumbent must possess the eligibility qualification of two years of service and passing of the post-training examination as per Rule 4 of the the

Departmental Examination Rules 2022.

12. The result is that those who possess the eligibility qualification as per the Old Rules 1998 as on 01.09.2022, on the date of implementation of

the said Rules 2022 have been exempted from passing the departmental examination inserted by Rules 3(1) of the the Departmental Examination

Rules 2022, inasmuch as, there was no requirement of passing of departmental examination prior to 01.09.2022.

13. The respondents No.3 to 7 herein (five in number), admittedly do possess the eligibility qualification as per Rule 4 and with the exemption granted

by the proviso to sub-rule (1) inserted by Rules 2023, with effect from 11.12.2023, they were not required to pass the departmental examination

as per Rule 3(1) of the the Departmental Examination Rules 2022.

14. We may also note that the petitioners herein began their six months training from 01.06.2022 and have acquired the eligibility qualification of

passing the post-training examination only on 30.11.2022. It is, thus, evident that the petitioners were not qualified for promotion under the Old

Rules 1998 prior to 30.11.2022, or on the date of implementation of the Departmental Examination Rules 2022, with effect from 01.09.2022.

It is clear that the petitioners were not qualified for promotion prior to implementation of the Departmental Examination Rules 1922, whereby the

requirement of passing of Lower level departmental examination has been necessitated by Rule 3(1) for promotion to the post of Female Health

Supervisor Class-III.

15. The petitioners and the respondents no.3 to 7, thus, belong to two different classes, the petitioner being belonging to the class; which did not

possess the requisite eligibility qualification as on 01.09.2022 and the respondents No.3 to 7 are those who were otherwise eligible for promotion under

the old Rules 1998, in operation on or before 01.09.2022. The first argument of the learned counsel for the petitioner that the Rules 2023

with the insertion of the proviso to sub-rule(1) of Rule 3 (exemption clause) of the Departmental Examination Rules 2022 has created a class

within a class and is hit by Article 14 of the Constitution, thus, is liable to be turned down.

16. As regards the justification about the cut-off date i.e. 01.09.2022, it is evident that all those who were otherwise eligible for promotion under the

Old Rules 1998 to the post of Female Health Worker Class-III, having possessed the requisite qualification and passing the post-training

examination on completion of six months training, have been given the exemption from the requirement of passing the Lower level departmental

examination brought into force with the Departmental Examination Rules 2022, notified on 23.08.2022 with effect from 01.09.2022.

17. It is evident that the proviso to sub-rule (1) of Rule 3 of the Departmental Examination Rules 2022 by the Second Amendment Rules, 2023

was inserted with the object that the Rule 3(1) of the Departmental Examination Rules 2022 should not operate to the prejudice of persons who

having regard to the qualifications prescribed in the Rules 1998 possessed the eligibility qualification for promotion. Exemption of those who

possessed eligibility qualification under the Old Rules 1998 is a rationale for bringing amendments by Rules 2023. The provision made for

granting exemption to such candidates, who otherwise fulfilled eligibility criteria as per the old Rules 1998 with the cut off date 01.09.2022 for

implementation of the requirement of passing the Lower level departmental examination with effect from the said date, for promotion to the post of

Female Health Supervisor Class-III, thus, cannot be said to have been brought without any rationale much less reasonable one.

18. The incumbents who possessed eligibility criteria of requisite number of years of service and passing of the post-training examination on successful

completion of six months training prior to 01.09.2022 constitute a distinct class which has rightly been treated separately insofar as the requirement of

passing the departmental examination inserted under the Rules 2022 is concerned. Such a classification of the candidates for the purpose of

applicability of the requirement of clearing the departmental examination has a rational basis which has a reasonable nexus with the object sought to

be achieved by the Departmental Examination Rules 2022, amended by Rules 2023.

19. The exemption granted by the proviso to sub-rule (1) of Rule 3 inserted by Rules 2023 from the requirement of passing the departmental

examination introduced by Rules 2022 brought into force with effect from 01.09.2022, has a rationale to the object that the Rules 2022 may

not cause prejudice to those who were otherwise eligible under the old Rules 1998, at the time of enforcement of the Rules 2022.

20. We are, therefore, unable to hold that the exemption granted by the Rules 2023 by the notification dated 11.12.2023 is violative of the right to

equality guaranteed under Article 14 of the Constitution of India.

21. Even otherwise, it is settled law that the choice of a date as a basis for qualification cannot always be dubbed as arbitrary even if no particular

reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. Undisputedly, those who fall within the

purview thereof would form a separate class. Such a classification having a reasonable nexus with the object would neither fall within the category of

creating class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

22. So far as the law pertaining to fixation of a cut-off date is concerned, we may note paragraph No. 33 of the decision of the Apex Court

in the case of Ramrao and others vs. All India Backward Class Bank Employees Welfare Association and others, (2004) 2 SCC 76, which provides

guidelines in the matter of challenge to the cut-off date being ultra vires Article 14 of the Constitution and reads as under:-

“33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the

wrong side of the cut-off date, but, the fact that some persons or a section of society would face hardship, by itself cannot be ground for

holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.”

23. The above view taken by us is also supported by the decision of the Apex Court in University Grants Commission vs. Sadhana Chaudhary and

others, (1996) 10 SCC 536, relied by the learned Advocate General.

24. The judgement in All Manipur Pensioners Association by its Secretary vs. State of Manipur and others, (2020) 14 SCC 625 relied by the learned

counsel for the petitioners stands on a different footing, inasmuch as, there was a dispute with respect to the grant of revised pension to the retired

employees, whereby fixing cut-off date, two classes were created viz. one retired pre-1996 and who retired post-1996. In the said facts of the case,

the Apex Court has held that all the beneficiaries form one class who were entitled to pension as per the pension rules, and such a classification has

no nexus with the object and purpose of grant of benefit of revised pension. No benefit, thus, can be derived from the said decision.

25. Thus, all the arguments made by the learned counsel for the petitioners to challenge the validity of the Rules 2023 are hereby turned down.

The challenge to the order dated 29.06.2024 for promotion of private respondent Nos.3 to 7 to the post of Female Health Supervisor (Class-II)

(Panchayat Service) in terms of Rules 2023, therefore, cannot be sustained.

26. In the result, the writ petition stands dismissed. No order as to costs.