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N.K. Chauhan and Others Vs State of Gujarat and Others

Court: Supreme Court of India

Date of Decision: Nov. 1, 1976

Citation: AIR 1977 SC 251 : (1977) LabIC 38 : (1977) 1 SCC 308 : (1977) 1 SCR 1037

Hon'ble Judges: V. R. Krishna Iyer, J; S. Murtaza Fazal Ali, J; P. N. Bhagwati, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Krishna Iyer, J-This is a typical "service" appeal, by special leave which prompts the topical question:Is it wiser national policy to process disputes

regarding seniority, promotion, termination and allied matters affecting the public services, through the docket-bound, form alised, methodology of

the judicature adopting its traditional, time-consuming, tier-upon-tier system and handicapped by absence of administrative expertise, accessibility

to critical information and other limitations on the mode and extent of relief, or, alternatively, through built-in, high-powered, but credibility-wise

less commanding agencies of composite skills and processes and flexible remedial jurisdictions? "Justice and Reform" is a recurrent interrogation.

2. Our civil services, if only the static and stratified system were transformed and the men properly oriented and activated, may well prove equal to

the dynamic challenges of our times but for the pathetic phenomenon of numbers of officials being locked in long forensic battles. This litigative

pathology of the members of the public services deplorably diverts the undivided energies, sensitive understanding and people-based disposition

demanded of them for the fulfilment of the Nation"s Tryst with Destiny through implementation of massive and multiform developmental plans.

Hopefully constructive thinking on impregnable, competent and quick-acting (but not derobed or devalued) infra-structures and procedures for

improving and accelerating the system of justice to the public services, is currently under way.

3. Now to the merits. The briefs are big and the arguments long, but the factual matrix and the legal conflict lend themselves to be condensed

without detriment. The competition between two categories of members borne on the cadre of Deputy Collectors of the State of Gujarat viz.,

direct recruits and in-service promotees, on the issue of seniority inter se, with its futuristic career overtones, is the crunch question in this civil

appeal. The grey area of ''service jurisprudence'' covered before us encompasses several decisions and if ''by good disputing, shall the law be well

known'', there has been so much disputation of learned length at the bar that the legal points should have been more pellucid than the precedents

read and re-read made us feel. ''The aid of the purifying ordeal of skilled argument'' when too lapidary and finical reaches a point of no return,

despite Magarry, J., to the contrary in Cordell v. Second Clanfield Properties Ltd., (1968) 3 All ER 746.

4. Seven Deputy Collectors, arriving by direct recruitment in, and after 1963 claim to be ahead, in the gradation list, of their more numerous

counterparts, former mamlatdars, whose promotional incarnation as Deputy Collectors, dates back to the years 1960-63. The title of these

younger incumbents to be elder in the Civil List is primarily founded on a basic Resolution of Government of July 30, 1959 regulating recruitment to

the Deputy Collectors'' cadre by the then Bombay State adopting a quota basis. The Gujarat State, carved out of Bombay and formed on May 1,

1960, continued the system; and so, simplistically presented, the fate of the ''seniority'' struggle critically turns on the construction the Bombay

Resolution of 1959 bears, the rival versions having been alternately frowned upon or favoured at the original and appellate decks of the High

Court. There are other matters of moment debated at the bar and we will pass on some of them at later stages. In administrative and legal terms,

this case is the projection of the common rivalry for promotional positions between fresh, young recruits and old, seasoned promotees, between

alleged excellence of talented youth and tested experience of mellowed age. Sympathies may sway either way and reasons often spring from

sympathies.

5. To be captiously wise in retrospect may itself border on vice. Even so, we are constrained to observe that when government orders, as here,

have the flavour of law and impact upon the fundamental rights and equal opportunities of citizens, they have to be drafted with the care that legal

orders deserve lest avoidable litigation should thrive for no better reason than that administrative orders or subsidiary legislation have been drawn

up with a casualness that betrays the skills of insouciance. Law must be precise, simple, clear, comprehensive and there is a duty on the law-maker

at every level not to injure the community by tangled webs of rules, orders and notifications whose meaning is revealed only through transcendental

meditation or constant litigation. In a socialistic pattern of society there is hardly any part of national life or personal life which is not affected by

some legal rule or other. When men have to look to the law from the cradle to the grave, making of even subsidiary laws demands greatest

attention.

6. To begin with the legal beginning is best done with the Bombay Government Resolution of 1959 after giving a thumbnail sketch of the relevant

service structure and other minimal particulars.

7. The composite Bombay State, for purposes of Revenue Administration, had been divided into Divisions which were separate units for

promotional prospects, liability to transfer etc., of deputy collectors. The routine source of recruitment to these posts used to be mamlatdars who

were transferred as deputy collectors by promotion. As early as 1939, a different recruitment policy had been evolved for picking suitable hands

from the open market by direct nomination. The inevitable concomitant of a plurality of recruitment categories is the evolution of a workable rule of

inter se seniority. So, by an order of 1941, the mode of determining seniority between ''nominees'' and ''promotees'' was settled. Service, for

seniority purposes, so far as direct recruits were concerned, was to run from the date of their appointment on probation and, in the case of

promotee officers, such service was to begin with promotion in substantive vacancies, if continued without break. For reasons obscure, the direct

recruitment scheme of infusion of fresh blood-to use the usual validating vascular metaphor - to invigorate the Administration. hibernated from

1950 until 1959, However, the crucial government decision of July 30, 1959, not merely re-activated the mode of direct recruitment but fixed the

proportion in which recruitment from the two sources was to be made referred to conveniently as the quota system. The heart of the debate before

us is whether a quota prescription, will-nilly, does postulate ex-necessitate a rota process in practice. We may here read the resolution itself:

Deputy Collectors:

Recruitment of probationers

GOVERNMENT OF BOMBAY REVENUE DEPARTMENT

Resolution No. RCT. 1157/99153-D Sachivalaya, Bombay, 30th July, 1959

Read - Government Resolution No. 9313/45, dated the 6th February, 1950

Government Resolution No. 9313/45, dated the 24th July, 1951

RESOLUTION:

Government had for sometime under consideration the question of reviving the system of direct recruitment of the cadre of Deputy Collectors. It

has now been decided that in the interest of administration the revival of that system is quite necessary. Government is accordingly pleased to

cancel the orders contained in Government Resolution No. 9313/45, dated 6th February, 1950 and those in Government Resolution No.

9313/45, dated the 24th July, 1951 in so far as they relate to the recruitment of Bombay Civil Service Executive Branch Deputy Collectors (Upper

Division) and to direct that, as far as practicable, 50 per cent of the substantive vacancies occurring in the cadre with effect from 1st January,

1959, should be filled in by nomination of candidates to be selected in accordance with the Rules appended herewith.

****

By order and in the name of the Governor of Bombay,

G. L. Sheth

Secretary to Government

8. We may also extract the portion from the annexed rules of recruitment pertinent to out purpose:

Appointment to the posts of Deputy Collector shall be made either by nomination or by promotion of suitable mamlatdars:

Provided that the ratio of appointment by nomination and by promotion shall, as far as practicable be 50:50.

The raw material government proceedings needed for our discussion will be complete if the 1941 Resolution also were read at this stage:

GOVERNMENT OF BOMBAY

Political and Services Department Resolution No. 3283/34

Bombay Castle, 21st November, 1941.

****

RESOLUTION:

Government is pleased to direct that the following principles should be observed in determining the seniority of direct recruits and promoted

Officers in the provincial services (except the Bombay Services of Engineers, Class I)

(i) In the case of direct recruits appointed substantively on probation the seniority should be determined with reference to the date of their

appointment on probation.

(ii) In the case of officers promoted to substantive vacancies, the seniority should be determined with reference to the (1) Date of their promotion

to the (2) substantive vacancies (3) provided there has been no break in service prior to their confirmation in those vacancies.

By order and in the name of the Governor of Bombay.

G. F. S. Collins,

Chief Secy. to the Govt. of Bombay

Political and Services Department.

9. Flowing out of the fixation of the ratio between the two species of recruits and having a bearing on the issue of seniority is another Resolution of

the Bombay Government (continued during the relevant period in Gujarat also by virtue of an omnibus circular of May 1, 1960) of February 3,

1960. This step became primarily necessary on account of the Reorganisation of States and the abolition of Divisions. The legal fiction of ''deemed

dated of commencement of service'' for the purpose of inter se seniority of personnel drawn from different pre-Reorganisation States and from the

Divisions within the State on conversion of the Deputy Collectors'' cadre into a Statewide one has been crystallised in this rule of February, 1960.

10. One more clarificatory proceeding of Government, dated May 27, 1960, has loomed large in Shri Patel''s submissions, especially the

Explanation portion thereof and, in a sense, it lends some push to the problematic conclusion. We therefore, read the relevant Government Circular

right here:

No. GSF-1060-F

Government of Gujarat

General Administration Department

Sachivalaya, Ahmedabad, 27th May, 1960.

CIRCULAR

Read:Government Circular No. GSF-1060, dated the 1st May, 1960.

Doubts have arisen as respects the directions given under Government Circular No. GSF-1060 dated the 1st May, 1960. ..... To remove

any doubt in that behalf, therefore, Government is pleased to direct that the following Explanation shall be and shall be deemed always to have

been added to the said circular, namely-

Explanation:- Nothing herein shall apply to appointments of officers, authorities or persons or to the constitution of tribunals or other bodies which

may be made by Government on or after the 1st May, 1960 and the conditions of service of the officers, authorities or persons appointed or the

members of the Tribunals or bodies so constituted.

By order and in the name of the Governor of Gujarat.

Sd/- V. Isvaran

Chief Secy, to the Government.

11. Reliance has been placed on the Explanation quoted above to emancipate Government from compliance with the Bombay rules regarding

appointments of officers or their conditions of service, an aspect we will expand, if needed. Prima facie, while we agree that the new State is not

bound by administrative directions of the parent State and may free itself from it by appropriate steps, an unguided power is suspect and a carte

blanche in doing what Government fancies with any of its servants is subversive of ordered societies. We have no further probe to make into this

Resolution in the present case and leave it at that.

12. The fact of the matter is that during 1959-62, no direct recruitments were made but many promotions were effected. Afterwards, i.e., in 1963

and later, direct recruits were appointed who, contrary to their legal aspiration, were not assigned seniority over earlier promotees of 1960-63

vintage, having regard to the factual position. The further hope that for post-1963 recruits, dates of appointment, and running of service with effect

therefrom, on the basis of a quota-allocation and rota system telescoped into it, proved a plain dupe in the seniority list prepared by Government.

The doubly chagrined direct recruits moved the High Court for relief, as stated earlier.

13. The anatomy, in outline, of Deputy Collector"s cadre in the Gujarat Government and the grievances of the writ petitioners (respondents before

us) thus emerge. On a 50:50 basis the vacancies in the cadre are filled from two sources viz., direct recruitment and promotion from among

mamlatdars. Once appointed, their seniority gains saliency and turns on length of service, and though no specific provisions to count

commencement of service is made in the 1959 Resolution, it has been understood as set out in the 1941 Resolution earlier mentioned. The

contesting respondents plead for pushing down promotees, based on the strict roster system of 1:1 going by each vacancy and demur to taking the

year as a unit for adjustment of ratio. Which view should prevail? Force, there may be, in the rival versions, individual injustice there can be

whichever view were accepted and precedential pushes and pressures may also be brought into play by either side if we surrender to scriptural

literality of decisions of this Court and miss the thrust of the ratio therein. In a finer sense, and within the frame of reference of leading precedents,

each case has an individuality and is a law unto itself.

14. Strictly speaking, the primary problem is one of fair interpretation of the basic government Resolution of 1959, illumined by the purposes and

motivations of good government and unravelling the implications embedded therein, against the background of the administrative structure, service

pattern and seniority principles, prevalent contemporaneously, as gleaned from the records of the case. The milieu aids the meaning although

lawyer"s law leans heavily, even lopsidedly, on judicialised lexicography. Counsel naturally took us through rulings bearing on the meanings of

words and canons of construction which merely restated time-honoured principles and dictionary culls and did not make us any the wiser in coming

nearer to a resolution of the conflict here. Likewise, arguments galore on the connotation of the quota system of recruitment with abstractions,

propositions and illustrations based on decided cases, were addressed to us, although we ''came out by the same door as in we went''.

Commonsense is the first aid in the art of interpretation. The only sure approach that judges make when confronted by complexity in construction

and necessity for rationalisation is on the lines Justice Cardozo frankly stated:1[1]

We may figure the task of the judge, if we please, as the task of a translator, the reading of signs and symbols given from without. None the less,

we will not set men to such a task, unless they have absorbed the spirit, and have filled themselves with a love, of the language they must read.

Two groups, the promotees who come from the lesser stations of life and the direct recruits who have had better advantages of higher education

fight for berths in the musical chair. In such situations, while construing rules, sub-conscious forces have to be excluded and objectification must be

attempted. Even so, the beautiful candour of Benjamin Cardozo whispers to us that we judges:

are ..... ever and always listening to the still small voice of the herd, and are ever ready to defend and justify its instructions and warnings, and

accept them as the mature results of our own reasoning. This was written, not of judges specially, but of men and women of all classes. The training

of the judge, if coupled with what is styled the judicial temperament, will help in some degree to emancipate him from the suggestive power of

individual dislikes and prepossessions.''''2[2]

15. Our effort in unlocking the meaning of the controversial Government Resolution of July, 1959 and of other official notifications may

inarticulately, minimally and unwittingly, be moulded by these broad under-currents. Other facts relevant for discussion of specific points urged and

other legal issues germane to the grounds of attack and defence formulated by counsel may be filled in as and when those points are taken up by

us, instead of inartistically cluttering up or en masse lugging together many government proceedings, sequences of events and clarification of

difficulties following on the division of Bombay into Gujarat and Maharashtra, even at this preliminary stage.

16. The pivotal questions - one an interpretative exercise and the other a facet of the fundamental right of equal opportunity - around which revolve

the other arguments may first be set out:(1) If the Gujarat Government has, by an administrative guideline or statutory rule directed that open

market recruits and in-service promotees will be appointed on a 50:50 basis with the qualification that this principle shall be adhered to, as far as

practicable, is Government free to ignore such a rule of conduct as if it were no inflexible directive, violation of which spells illegality on the

appointments made, or does this clause obligate the State fairly to try and comply, but if surprise circumstances or insurmountable exigencies arise

which make recourse to the rule impracticable, deviate from it without the risk of courts branding such deviant appointments void? In short, how

far can administrative pragmatics influence, without invalidation, the recruitment mechanics where a narrow rider providing for imponderable

exigencies writtens into the rule, provides for departure? (2) Assuming there has to be a proportion of 50:50 as above indicated, how is it to be

worked out? On a rotational basis of the direct recruits inexorably getting the first, the third, the fifth and such like vacancies or as an entitlement to

half the total number of vacancies arising in the cadre, in a particular year or other conventional period? Again, does it further imply an imperative

obligation on the part of Government to keep unfilled all vacancies allocable to direct recruits so that they may be available to be filled up in later

years with retroactive repercussions and, if such ear-marked posts are, for administrative exigencies, filled regularly, not ad hoc, in substantive

vacancies, not ex cadre posts by selection and promotion, they must be treated as provisional notionally filled by direct recruits who may arrive

long later? And consequentially, in counting seniority, reckon their (i.e., direct recruits) deemed dates of entry as prior to those of actually

officiating promotee deputy collectors by importing a sort of legal fiction that the direct recruits must be allowed to count service from the date

when the entitled vacancy for direct recruits arose? Maybe a diffusive, digressive discussion can be obviated and the focus turned on specific

issues if we start with a formulation of the major points urged by Sri D.V. Patel, counsel for the appellant, hotly controverted, of course, by Shri

R.K. Garg for the contesting respondents. Elimination of the minor clears the ring for the major bouts.

17. The appellants represent the group of promotee deputy collectors and the contestants are deputy collectors directly recruited. The Gujarat

State lines up with the former, more or less.

18. We now set out sequentially the six-point propositional formulation made by Shri Patel, for the appellants, although salience suggests the third

item as first - and, if we anticipate our conclusion, the last in importance.

19. The cornerstone of the case, as noted earlier, is the Bombay Government"s Resolution of 1959 fixing the proportion between direct recruits

and promoted candidates, with an emergency escape route to jump out of the fixed ratio. Shri Patel"s first point is that once the new State of

Gujarat was formed, mere administrative proceedings of the former government of Bombay State ceased to be in force proprio vigore unless

Gujarat adopted or continued or otherwise modified them, subject to statutory regulations and constitutional limitations. The state of Gujarat had

plenary executive power, granted by the Constitution, to fill up administrative posts in any manner it chose. The clarificatory government Resolution

of May 27, 1960, issued by the Gujarat Government becomes significant in this context as it contains an explanation which specifically provides

that the adoption of the Bombay Government Resolution of 1959 does not, in any way, fetter the Gujarat Government in making appointments of

officers on or after May 1, 1960. nor does the said 1959 Resolution in any manner restrict the conditions of service of such officers. Therefore, it is

perfectly open to the Gujrat Government to make fresh appointments to the posts of Deputy Collectors untrammelled by the ratio or other

restrictive conditions which may be read into the Bombay Government Resolution of 1959. In this view his clients cannot suffer even if the Bombay

Resolution has been breached. (2) Assuming that point No. 1 above has no force, Shri Patel submits that the various government Resolutions of

the Bombay and Gujarat Governments referred to by the parties are purely administrative directions and cannot have the binding status of statutory

rules. Therefore, no rights can be derived therefrom by the direct recruits or potential direct appointees and breach of such directives or rules

cannot invalidate appointments made. (3) On the further assumption that point No. (2) above is bereft of substance and the Government

Resolutions referred to have statutory character the very terms of the 1959 Government Resolution provide a sensible safety valve, wisely

anticipatory when we remember the pragmatic considerations and administrative exigencies that the slow-moving apparatus of the Government of a

newly formed State has to face or be puzzled with. The 1959 Resolution which is the "founding document" of the rights of the direct recruits itself

states that the proportion between the two categories is to be applied "as far as practicable". Therefore, the rule is neither exception-proof nor

abstractly absolute but realistic and flexibly true to life. Rigidly to read the rule is surely to misread it. Since it contemplates special situations of

impracticability, it is but right for the Court so to construe the Resolution, in the light of the explanation offered by the State for non-recruitment

directly until 1963, as to make it administratively viable and reasonably workable. If such an imaginative and informed judicial insight plays upon

the rule, the difficulties in making immediate recruitments from the open market by the Public Service Commission may sufficiently absolve the

State from the supposed violation of Government Resolution of 1959. So viewed, the orders of promotion of the appellants, are in order and

unassailable. (4) and (5). The mandate of equality ensconced in Articles 14 and 16 cannot handcuff justice by pushing down the promotees in the

Seniority List in the face of their actual service and legal appointment. The attack based on Article 16 that the roster method of filling up posts in

integral to the quota system is baseless. Quota without rota is also reasonable and constitutional as much as quota plus rota. The choice, both being

permissible and fair, is left to the Administration, the Court not ferreting or dissecting to detect deadly traces of discrimination or unreasonableness.

(6) The assignment of "deemed dates of commencement of service is not unreasonable but is often adopted by Governments when integrating into

a common cadre officers drawn from different States or Departments or divisions. Novel compulsions demand novel solutions and law accepts

life"s expediency save where the public power has been obliquely exercised or unreasonableness is writ large on the face of the process. Such a

stigma being absent, the promotees cannot be dislodged from their notches in the ladder.

20. We are mercifully absolved from making the discussional journey over a long mileage covering the poly-pointed a formulation since two

essential issues may virtually be decisive of the case. Both sides have agreed to this abbreviation and the other grounds have dropped out of

effective contest in the long course of arguments. Enough upto the day.

21. It is fair to state even at this stage that be the Bombay G. O. of 1959 merely administrative or really statutory, both the learned singly Judge

and the Division Bench have held the Gujarat State bound by it. The rule of law is the enemy of arbitrary absolutism and the discretion to disobey

is a doctrine of despotism and cannot be subscribed to by a Court merely because the State chooses to label a rule of conduct affecting the rights

of others an administrative regulation. In a constitutional order governed by the rule of law, whim or humour, even if benignly motivated,

masquerading as executive discretion is anathema to law. When power is vested under the Constitution or other statutes in the State to promulgate

rules of conduct affecting others, such rules must ordinarily govern the State and subject alike. When there are service rules affecting the public

services, they may either be in exercise of the executive power of the State under Article 162 or rules with legislative colour framed under the

proviso to Art. 309 of the Constitution. It is fair for the Administration in a democratic system employing expanding armies of government servants,

whose lot in life and career prospects will be governed by recruitment, conduct and disciplinary rules, to respect, beyond suspicion, the rule of law

by exercising statutory power as distinguished from executive power, even where it has an option. Of course, in exceptional situations, or sudden

exigencies and for new experiments to be tried, the framing of statutory rules under Article 309, proviso, may be postponed and executive orders

immediately promulgated. The best judge is the State Government exercising its power justly and efficiently. For the art of government is beset with

the perils of a journey through life''s jungle and textbook prescriptions can prove ruinous. We may point to another problem. It has often been

difficult to discover whether a particular set of rules is framed under the proviso to Article 309 or , in mere exercise of Article 162, although it is

desirable that the State makes it explicit. We are, however, not called upon to investigate this perplexing aspect because, as stated earlier, the High

Court has held that the State is bound by the Bombay G. O. of 1959. Counsel for the appellants, Shri Patel, and counsel for the State, Shri

Bhandare, have rightly acquiesced in that position and proceeded with their arguments on that footing . This point (which is the first) therefore,

does not need our pronouncement.

22. The other points, pedantically capable of being separately dealt with, highlight what we have earlier indicated as the two telling questions of law

that settle the outcome of the appeal. We will seek the light of common sense to solve them and later test the conclusions with reference to binding

rulings of this Court.

23. The first question that falls for consideration, therefore, is as to whether the 50:50 ratio as between direct recruits and promoted hands is

subject to the saving clause ''as far as practicable.'' Can government vary the ratio? Ordinarily, no. Is it permissible at all? Probably, yes, given

proof of the government''s case that it was not practicable for the State to recruit from the open market qualified persons through the specialised

agency of the Public Service Commission. The factual basis for this plea of extenuation will be examined presently but according to Shri R. K.

Garg, appearing for the contestants, even if the alibi of the State were true, it furnished no legal justification for deviation from the application of the

rule. He interpreted, ''as far as practicable'' occurring in the Government Resolution, in a very different way and submitted that to adopt the

appellant''s view on this aspect was to subvert the substance and nullify the conscience of the binding Bombay Resolution of 1959.

24. Shri Garg argued that the language of the critical G. O. was peremptory, that for the high purpose of improving administrative efficiency a

balanced mix of old experience (gained by long service) and young abilities (proved by competitive selection)was hit upon as half-and-half from

each category and the Court could not fall for any construction of the words "as far as practicable" which would frustrate this goal of overall

efficiency unless the semantic search left no other option. Far from there being no alternative interpretation, the benignant purpose of the Resolution

pressed forward to a reasonable meaning that "as far as practicable" related not to the tampering with the proportion of the mix but in permitting

provisional variations or ad hoc solutions or emergency arrangements to meet a difficulty of the Administration without making formal or regular

"appointments" to the posits meddling irrevocably with the proportion in the prescription. Later, when direct recruits were secured, they would be

entitled to their quota vacancies and commencement of seniority from the date of their appointment.

25. Logomachic exercises are the favourite of the forensic system but too barren to fascinate the Court and too luxurious, in our penury of time, to

indulge. Should we chase decisions and dictionaries and finer verbal nuances with explorative industry? The sense of the setting, the "Why" the

author whispers through his words and the warning "not this, not this," that the objective understanding of the totality of the socially relevant

scheme instils - these light up the interpretative track along the criss-cross woods of case-law and lexicons. Led by that lodestar, we will eye the

situation afresh. In doing so, we must first set down the meaning Shri Patel suggests, and Shri Bhandare supports, and the manner in which these

appellants claim that their appointments and seniority are sequestered by the saving words "as far as practicable".

26. What does "as far as practicable" or like expression mean, in simple anglo-saxon? Practicable, feasible, possible, performable, are more or

less interchangeable. A skiagraph of the 1959 Resolution reveals that the revival of the direct recruitment method was motivated by "the interest of

administration" - an overriding object which must cast the benefit of doubt if two meanings with equal persuasiveness contend. Secondly, going by

the text, 50% of the substantive vacancies occurring in the cadre should be filled in by selection in accordance with appended Rules. "As far as

practicable" finds a place in the Resolution and the Rule. In the context, what does it qualify? As far as possible 50%? That is to say, if 50% is not

readily forthcoming, then less? within what period should the impracticability be felt? What is the content of "impracticability" in the given

administrative setting? Contrariwise, can you not contend that impracticability is not a license to deviate, a discretion to disobey or a liberty with the

ratio? Administrative tone is too important to be neglected but if sufficient numbers to fill the direct recruits" quota are not readily available,

substantive vacancies may be left intact to be filled up when direct recruits are available. Since the exigencies of administration cannot wait,

expediency has a limited role through the use of the words ''as far as practicable''. Thereby Government is authorised to make ad hoc

appointments by promotion or by creation of ex cadre posts to be filled up by promotees, to be absorbed in the 50% portion falling to the

promotional category in later years. In short ''as far as practicable'' means not interfering with the ratio which fulfils the interest of administration, but

flexible provision clothing government with powers to meet special situations where the normal process of the government Resolution cannot flow

smooth. It is a matter of accent and import which affords the final test in the choice between the two parallel interpretations.

27. We have given close thought to the competing contentions and are inclined to the view that the former is the better. Certainly, Shri Garg is right

that the primary purpose of the quota system is to improve administrative efficiency. After all, the Indian administration is run for the service of the

people and not for opportunities for promotion to a few persons. But theories of public administration and experiments in achieving efficiency are

matters of governmental policy and business management. Apparently, the State, having given due consideration to these factors, thought that a

blended brew would serve best. Even so, it could not have been the intention of government to create artificial situations, import legal fictions and

complicate the composition of the cadre by deviating from the natural course. The State probably intended to bring in fresh talent to the extent

reasonably available but not at the sacrifice of sufficiency of hands at a given time nor at the cost of creating a vacuum by keeping substantive

vacancies unfilled for long. The straightforward answer seems to us to be that the State, in tune with the mandate of the rule, must make serious

effort to secure hands to fill half the number of vacancies from the open market. If it does not succeed, despite honest and serious effort, it qualifies

for departure from the rule. If it has become non-feasible, impracticable and procrastinatory to get the requisite quota of direct recruits, having

done all that it could, it was free to fill the posts by promotion of suitable hands if the filling up of the vacancies was administratively necessary and

could not wait. ''Impracticable'' cannot be equated with ''impossible'' - nor with ''unpalatable'' - and we cannot agree with the learned judges of the

High Court in construing it as colossally incapable of compliance. The short test, therefore, is to find out whether the government, in the present

case, has made effective efforts, doing all that it reasonably can, to recruit from the open market necessary numbers of qualified hands. We do not

agree that the compulsion of the rule goes to the extreme extent of making government keep the vacancies in the quota of the direct recruits open

and to meet the urgent needs of administration by creating ex cadre posts or making ad hoc appointments or resorting to other out-of-the-way

expedients. The sense of the rule is that as far as possible the quota system must be kept up and, if not "practicable", promotees in the place of

direct recruits or direct recruits in the place of promotees may be inducted applying the regulate procedures, without suffering the seats to lie

indefinitely vacant.

28. The next question then is as to whether government has satisfied the Court that efforts had been made to secure direct recruits and failure to

secure such hands is the explanation for resort to promotions of mamlatdars. The reason for delay in making appointments of direct recruits during

the years 1960, 1961 and 1962 has been set out by the State before us. It appears that a requisition for 12 posts of Deputy Collectors was sent to

the Gujarat Public Service Commission on October 31, 1960, but the Commission raised some linguistic queries regarding the requirement of

adequate knowledge of Marathi and Gujarati by the candidates. Anyway, various points were raised from time to time in the correspondence

between the Commission and Government and, eventually, the former held a competitive examination for the posts of deputy collectors in July,

1962, declared the results in January, 1963, and sent up its recommendations in the following February. Government issued orders for

appointment of the candidates so selected by the Public Service Commission in May, 1963. This is a working explanation, prima facie good and

not rebutted as got up. If it is not necessary for the State Government to have recourse to recondite processes of ad hoc appointments and

creation of ex cadre posts and if government has taken active steps in the direction of direct recruitment, the exception to the Government

Resolution comes into operation. Direct recruitment ordinarily involves processing by the Public Service Commission, an independent body which

functions at its own pace. If Government had excluded the posts of Deputy Collectors from the purview of the Public Service Commission with a

view to achieve expeditious recruitment, it might have been exposed to the criticism that the normal method was being by-passed with oblique

motives. Having looked at the matter from a pragmatic angle, we are convinced that the government did what it could and need not have done

what is ordinarily should not have done. Therefore, the conclusion is inevitable - although Shri Garg"s argument to the contrary is ingenious - that

the State had tried, as far as practicable, to fill 50% of the substantive vacancies from the open market, but failed during the years 1960-62 and

that therefore it was within its powers under the relevant rule to promote mamlatdars who, otherwise complied with the requirements of efficiency.

29. Now we move on to the more thorny question of quota and rota. Shri Garg urges that the rotational mechanics is implicit in the quota system

and the two cannot be delinked. To shore up this submission he relies on what he propounds as the correct command of the rule of "quota". In his

view, 1:1 simply means one direct recruit or promotee followed, vacancy by vacancy, by the other. To maintain the proportion in compliance with

the quota fixture, Government must go by each post as it falls vacant and cannot circumvent this necessity by year-war reckoning of vacancies and

keeping up the ratio. The counter-view put forward by Shri Parekh, for the appellants, is that quota and rota are not indissolubly wedded and are

separate and separable. In the present case, according to him it is an error to import "rota" where the rule has spelt out only "quota" as a governing

principle. The usual practice, sanctioned by rulings of this Court, is to go by the year as a suit for working out the quota.

30. Here again, we are not disposed to hold, having special regard to the recent decisions of this Court cited before us, that "quota" is so

interlocked with "rota", that where the former is expressly prescribed, the latter is impliedly inscribed. Let us logicise a little. A quota necessarily

postulates more than one source of recruitment. But does it demand the manner in which each source is to be provided for after recruitment,

especially in the matter of seniority? Cannot quota stand independent of rota? You may fix a quota for each category but that fixes the entry. The

quota methodology may itself take many forms - vacancy-wise ratio, cadre composition-wise proportion, period-wise or number-wise regulation.

Myriad ways can be conceived of. Rotational or roster system is a commonly adopted and easily understood method of figuring out the placement

of officers on entry. It is not the only mode in the code and cannot be read as an inevitable consequence. If that much is logical, then what has been

done here is legal. Of course, Shri Garg"s criticism is that mere "quota" is not viable without provision for seniority and, if nothing more is found in

the rule, the quota itself must be understood to apply to each post as and when it falls to be filled. If exigencies of administration demand quick

posting in the vacancy and one source (here, direct recruitment) has gone dry for a while, then the proper course is to wait for a direct recruit and

give him notional date of entry as of the quota vacancy and manage to keep the wheels of government moving through improvised promotions,

expressly stripping such ad hocist of rights flowing from temporary occupancy. We have earlier dealt with the same submission in a slightly different

form and rejected it. Nothing more remains to be said about it.

31. What follows and matters on entry into service is seniority which often settles the promotional destiny of the various brands of incumbents.

Naturally, the inter se struggle turns how best to bend the rules to one''s good account. Shri Garg criticised the thoughtways apparent in the

argument, backed by some rulings, that, quota being delinked from rota, annual intake is the unit for adjusting the seniority among candidates from

the two sources. This is an innovation de hors the rule, he says. We do not think so. The question is not whether the year being taken as the unit is

the only course but whether there is anything in the rule prescribing Government taking it as the unit or prescribing some other specific unit. It is

obvious that the Resolution of 1959 is silent on how to allocate or reckon the quota as also on how to compute seniority and Government has a

good alibi for taking the year as the unit and length of continuous service as determining seniority. The first is evident from the reading of the 1959

Resolution in the light of some rulings of this Court and the second from the 1941 Resolution. Moreover, there is nothing in the Resolution of 1959

preventing Government from treating a year as the unit.

32. We therefore, reach the following conclusions:

1. The promotions of mamlatdars made by Government between 1960 and 1962 are saved by the ""as far as practicable"" proviso and therefore

valid. Here it falls to be noticed that in 1966 regular rules have been framed for promotees and direct recruits flowing into the pool of Deputy

Collectors on the same quota basis but with a basic difference. The saving provision ""as far as practicable"" has been deleted in the 1966 rules. The

consequence bears upon seniority even if the year is treated as the unit for quota adjustment.

2. If any promotions have been made in excess of the quota set apart for the mamlatdars after rules in 1966 were made, the direct recruits have a

legitimate right to claim that the appointees in excess of the allocable ratio from among mamlatdars will have to be pushed down to later years

when their promotions can be regularised by being absorbed in their lawful quota for those years. To simplify, by illustration, if 10 Deputy

Collectors substantive vacancies exist in 1967 but 8 promotees were appointed and two direct recruits alone were secured, there is a clear

transgression of the 50:50 rule. The redundancy of 3 hands from among promotees cannot claim to be regularly appointed on a permanent basis.

For the time being they occupy the posts and the only official grade that can be extended to them is to absorb them in the subsequent vacancies

allocable to promotees. This will have to be worked out down the line wherever there has been excessive representation of promotees in the

annual intake. Shri Parekh counsel for the appellants has fairly conceded this position.

3. The quota rule does not, inevitably, invoke the application of the rota rule. The impact of this position is that is sufficient number of direct recruits

have not been forthcoming in the years since 1960 to fill in the ratio due to them and those deficient vacancies have been filled up by promotees,

later direct recruits cannot claim ""deemed"" dates of appointment for seniority in service with effect from the time, according to the rota or turn, the

direct recruits vacancy arose. Seniority will depend on the length of continuous officiating service and cannot be upset by later arrivals from the

open market save to the extent to which any excess promotees may have to be pushed down as indicated earlier.

33. These formulations based on the commonsense understanding of the Resolution of 1959 have to be tested in the light of decided cases. After

all, we live in a judicial system where earlier curial wisdom, unless competently overruled, binds the Court. The decisions cited before us start with

the leading case in Mervyn Continho v. Collector of Customs, Bombay (1966) 3 SCR 600 and closes with the last pronouncement in Badami v.

State of Mysore, (1976) 1 SCR 815. This time-span has seen dicta go zigzag but we see no difficulty in tracing a common thread of reasoning.

However, there are divergencies in the ratiocination between Mervyn Continho (supra) and Govind Dattatraya Kelkar v. Chief Controller of

Imports and Exports, (1967) 2 SCR 29 on the one hand and S. G. Jaisinghani v. Union of India, (1967) 2 SCR 703 , Bishan Sarup Gupta v.

Union of India, (1975) Suppl. SCR 491 , Union of India v. Bishan Sarup Gupta, (1975) 1 SCR 104 and A. K. Subraman v. Union of India,

(1975) 2 SCR 979 on the other, especially on the rota system and the year being regarded as a unit, that this Court may one day have to

harmonize the discordance unless Government wakes up to the need for properly drafting its service rules so as to eliminate litigative waste of its

servant''s energies.

34. In Mervyn Continho (supra) the validity of the rotational system as applied in fixing the seniority inter se between promotees and direct recruits

fell for decision in the context of the specific rule applicable to Custom''s appraisers. One of the principles in the circular which contained the rules

related to the comparative seniority of the two categories. ''It provides'', says the Court in summarizing the rule,

that relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and

promotees which shall be based on the quota of reservation for direct recruitment and promotion respectively in the recruitment rules. It was

further explained that a roster should be maintained based on the reservation for direct recruitment and promotion in the recruitment rules. Where

for example, the reservation for each method is 50 per cent, the roster will run as follows:(1) promotion, (2) direct recruitment, (3) promotion, (4)

direct recruitment, and so on. Appointments should be made in accordance with this roster and seniority determined accordingly. A question has

been raised whether the circular of 1940 to which we have already referred survived after this circular of 1959; but in our opinion it is unnecessary

to decide that question, for the circular of 1959 itself lays down that seniority shall be determined accordingly, i.e., in accordance with the

rotational system, depending upon the quota reserved for direct recruitment and promotion respectively. It is this circular which, according to the

respondent, has been followed in determining the seniority of Appraisers in 1963.

In the face of such a plain directive in the relevant rule regarding relative seniority for the solution of the problem that arises before us where such a

seniority provision is absent and the relevant seniority provision is different, Mervyn Continho (supra) cannot be of any assistance. That case is

authority for the proposition it decides in the matrix of the special facts and rule therein. In view of the words of the Circular "that seniority as

between direct recruits and promotees should be determined in accordance with the roster which has also been specified ....."", the inextricable

interlinking between quota and rota springs from the specific provision rather than by way of any general proposition. Mervyn Coutinho (supra)

cannot therefore rescue the respondents. Nor does the reference to a ""service"" being divided into two parts, derived from two sources of

recruitment, help Sri Garg''s clients. The rule of ''carry forward"" struck down in T. Devadasan v. Union of India, (1964) 4 SCR 680 has no

relevance to a situation where the whole cadre of a particular service is divided into two parts. Apart from the fact that it is doubtful whether

Devadasan''s case survives State of Kerala v. N. M. Thomas, (1976) 1 SCR 906 there is no application of the ""carry forward"" rule at all in fact-

situations where two sources of recruitment are designated in certain proportion and shortfalls occur in the one or the other category. In such case,

what is needed is conformity to the prescription of the proportion and no question of carrying anything forward strictly arises. It is true that Mervyn

(supra) does not support the year by year intake as the yardstick; but the reason is obvious - the rule is specific.

35. Kelkar (supra) also dealt with the ratio prescribed as between direct recruits and promotees. Many grounds of attack were levelled there, one

of which was that the rotational system would itself violate the principle of equal opportunity enshrined in the Constitution (Article 16 (1)). The

Court repelled this contention. Of course, promotions made on an ad hoc basis confer no rights to the posts on the appointees as was clearly

pointed out in that decision. In the instant case it is common ground that the appointments are not on a purely ad hoc basis but have been regularly

made in accordance with the rules to fill substantive vacancies except that the promotees have exceeded their quota, direct recruits being

unavailable. Kelkar (supra) stands on a different footing, and hardly advances the position advanced by Shri Garg.

36. Jaisinghani (supra) which has had a die-hard survival through Bishan Sarup Gupta v. Union of India, (1975) Suppl. SCR 491 and Union of

India v. Bishan Sarup Gupta, (1975) 1 SCR 104 (if one may refer to the two cases flowing out of Jaisinghani (supra) in that fashion), has been

referred to by both sides at the bar. It was relied on by Mr. Garg for the strong observation of Ramaswami, J., that the absence of arbitrary power

is the first essential of the rule of law upon which our constitutional system is based. He has also drawn attention to the suggestion made in that

decision "to the government that for future years the roster system should be adopted by framing an appropriate rule for working out the quota

between direct recruits and the promotees .....". We may straightway state that our Constitutional system is very allergic to arbitrary power but

there is nothing arbitrary made out in the present case against the government. The second observation in Jaisinghani (Supra) is of a suggestion that

for future years the roster system linking up quota with rota, may well be adopted by government. It is not the interpretation of any existing rule nor

laying down of a rule of law, so much so we cannot have any guideline therefrom to apply to the present case. The Government could no doubt, if

it so thought expedient, frame a specific rule incorporating the roster system so as to regulate seniority. But we should not forget that seniority is the

manifestation of official experience, - the process of metabolism of service, over the years, of civil servants, by the Administration - and, therefore,

it is appropriate that as far as possible he who has actually served longer benefits better in the future. Moreover, the search for excellence receives

a jolt from the rule of equality and the State is hard put to it in striking a happy balance between the two criteria without impairment of

administrative efficiency. Broadly speaking, the Court has to be liberal and circumspect where the area is tricky or sensitive, since administration by

court writ may well run haywire.

37. Moving on, we may start off with the statement that the last case Badami (supra) lays down the incontrovertibly harmless principle that quotas

that are fixed are inalterable according to governmental exigencies. But there, unlike here, no saving provision "as far as practicable" existed and

here post-1966 promotees have to suffer a push down where their appointments are in excess of the promotee quota. Nothing directly bearing on

our controversy could be discerned by us in that decision.

38. Gupta I., (supra) an off-shoot of Jaisinghani (supra), proceeds on the assumption that the quota is for a year. Whether the rule stated so or not,

that was probably the practice and there was nothing reasonable in it. Even if the rule as such had expired, it could, according to that decision, be

followed as a guideline. Government had to follow some guiding principle and not be led by its fancy, as each occasion arose. Palekar, J.,

expressed the view of the Court thus:

When the rule is followed as a guideline and appointments made a slight deviation from the quota would not be material. But if there is an

enormous deviation, other considerations may arise."" In the present case, prior to 1963, there was departure from the quota system and that was

sanctioned by the rule itself because of special circumstances. For subsequent periods, if by taking the year as a unit there have been surplus

promotees beyond their allocation even after taking into account impracticability of getting direct recruits upto 1966 when new statutory rules were

enacted, then such spill-overs, could and should, as indicated by this Court, be set off and absorbed in the later allocable vacancies, the pro

tempore illegal appointments being thus regularised. Of course, appointees on an ad hoc basis are never clothed with any rights and have to quit

when the exit time arrives but here there are none. In Gupta II (supra) the Court ruled:

If there were promotions in any year in excess of the quota those promotions were merely invalid for that year but they were not invalid for all

time. They can be regularised by being absorbed in the quota for the later years. That is the reason why this Court advisedly used the expression

''and onwards'' just to enable the Government to push down excess promotions to later years so that these promotions can be absorbed in the

lawful quota for those years.

Such is the essence of the two Gupta cases (supra). Law conceptualises anew every time life inseminates it with new needs and we have in Gupta

the innovation of temporary invalidity of an appointment - clinically dead but later resuscitated? Jurisprudence burgeons from the felt necessities of

society.

39. A. K. Subraman, (supra) relying on Gupta II (supra) and going further, has silenced the direct recruits with reference to the precise contention

now urged by Shri Garg that rota being imbedded in the womb of the quota system their co-existence could not be snapped. While quota and rota

may constitutionally co-exist their separation is also constitutionally permissible, if some ''reasonable'' way, not arbitrary whim, were resorted to.

Even what is ''reasonable'' springs from sort of reflexes manifesting social sub-consciousness as it were. Nothing absolutely valid exist and

rationality and justice themselves are relatives. Within these great mental limitations the Court''s observations in Subraman (supra) have to be

decided.

40. This brief and quick survey of decided cases and the submissions, considered by us in the judicial crucible, yield the following conclusions,

leaving aside the question of ''confirmation'' in service which, in the Gujarat set-up, leaves our controversy untouched;

(a) The quota system does not necessitate the adoption of the rotational rule in practical application. Many ways of working out ''quota''

prescription can be devised of which rota is certainly one.

(b) While laying down a quota when filling up vacancies in a cadre from more than one source, it is open to Government, subject to tests under

Article 16, to choose ''a year'' or other period or the vacancy by vacancy basis to work out the quota among the sources. But once the Court is

satisfied, examining for constitutionality the method proposed, that there is no invalidity, administrative technology may have free play in choosing

one or other of the familiar processes of implementing the quota rule. We, as Judges, cannot strike down the particular scheme because it is

unpalatable to forensic taste.

(c) Seniority, normally, is measured by length of continuous, officiating service - the actual is easily accepted as the legal. This does not preclude a

different prescription, constitutionality tests being satisfied.

(d) A periodisation is needed in this case to settle rightly the relative claims of promotees and direct recruits. 1960-62 forms period A and 1963

onwards forms period B. Promotees regularly appointed during period A in excess of their quota, for want of direct recruits (reasonably sought but

not secured and because tarrying longer would injure the administration) can claim their whole length of service for seniority even against direct

recruits who may turn up in succeeding periods.

(e) Promotees who have been fitted into vacancies beyond their quota during the period B - the year being regarded as the unit - must suffer

survival as invalid appointees acquiring new life when vacancies in their quota fall to be filled up. To that extent they will step down, rather be

pushed down as against direct recruits who were later but regularly appointed within their quota.

41. On this basis, the judgment of the High Court stands substantially modified, but preparation of a new seniority list becomes necessitous. We set

aside the judgment under appeal but direct the State Government to draw up de novo a gradation list showing inter se seniority on the lines this

judgment directs. The subject has been pending so long that very expeditious administrative finalisation is part of justice. Officials live in the short

run even if Administrations live in the long run. We direct the State to act quickly. Lack of adequate articulation of simple points regarding rotation

and seniority, and the amber light shed by case-law on the questions raised, warrant the direction that parties shall bear their costs throughout.

42. The unlovely impact of these protracted and legalistic proceedings makes us epilogue, an unusual step in a judgment, but pathetically

necessitous for the renovation of the judicial process. Law is not a "brooding omnipotence in the sky" nor a sort of secretariat esoterica known

only to higher officialdom. But lengthy legal process, where administrative immediacy is the desideratum, is a remedy worse than the malady. The

fact that the present case has taken around 5 working days for oral arguments is a sad commentary on the system, which compels litigants to seek

extra-curial forums. Judge Brian Mckenna was right (and the Indian judicial process needs systemic change since his wise words apply also to our

judicature) when he said:

The fault is that the rules of our procedure which by their discouragement of written argument make possible extensively protracted hearings in

open court. Those responsible might think more of changing them. In civil cases a written argument supplemented by a short oral discussion, would

sometimes save a gret deal of time.

To streamline and to modernise court management is a Cinderella subject in India, as elsewhere. We conclude, by repeating what Chief Justice

Warren Burger of the U. S. Supreme Court said, in 1970, in his address to the American Bar Association:

In the final third of the century we are still trying to operate the courts with fundamentally the same basic methods, the same procedures and the

same machinery, Roscoe Pound said were not good enough in 1906. In the super-market age we are trying to operate the courts with craker-

barrel corner grocer methods and equipment - vintage 1900.

We too have miles to go for law and justice to meet.