

(2023) 03 GUJ CK 0042

In the Gujarat High Court

Case No : R/Special Civil Application No. 9135 Of 2008

Acharya Mihilkumar Rameshchan-Dra

APPELLANT

Vs

State Of Gujarat & 1 Other(S)

RESPONDENT

Date of Decision : 10-03-2023

Acts Referred:

Citation : (2023) 03 GUJ CK 0042

Hon'ble Judges : Aniruddha P. Mayee, J

Bench : Single Bench

Advocate : RC Jani, Ayaan Patel

Final Decision : Disposed Of

Judgement

Aniruddha P. Mayee, J

The present Special Civil Application is filed praying for the following relief:-

"14 (A) admit and allow this petition;

(B) issue appropriate writ, order or directions;

(i) declaring that the letter dated 19.03.2008 addressed by the respondent no.2 as well as the Resolution dated 01.05.2007 issued by the Finance Department, are not applicable to the case of the petitioner on the ground that both these documents mention regarding the appointment on part time basis, whereas the petitioner has been shown in the Select List at Sr. No.6 for regular and permanent post;

(ii) direct the respondents herein to appoint the petitioner on regular and permanent post as per the select list dated 18.12.2004;

(C) pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the respondents herein to initiate proceedings for appointment of the petitioner on regular and permanent basis in view of the select list dated 18.12.2004 and further may be pleased to direct the

respondents herein to keep one post vacant so that the case of the petitioner herein may be considered;”

2. The factual matrix in the present case is that, the name of the petitioner figured in the select list for the post of Peon in the establishment of the Gujarat Public Works Arbitration Tribunal, Ahmedabad [“Tribunal” for short]. The Tribunal had given advertisement on 26.9.2001 for the recruitment of Peon (Class-IV) six posts in existing as well as future vacancies. The petitioner had applied to the same. The petitioner’s name figured at Sr.No.6 in the select list dated 18.12.2004. Despite the correspondence of the respondent No.1, only five posts came to be sanctioned for the post of Peon in the Tribunal. Since the petitioner was at Sr.No.6, the petitioner could not get any appointment. The respondent No.1 requested the respondent No.2 to sanction the 6th post of Peon, however, the same is not sanctioned till date.

Aggrieved, the petitioner has filed the present Special Civil Application.

3. Mr. R.C.Jani, learned advocate appearing for the petitioner, submits that the petitioner had successfully qualified the selection process and figured in the select list for the 6 posts of Peon advertised by the respondent No.1. He submits that only five posts came to be sanctioned and the 6th post was not sanctioned by the respondents and therefore, the petitioner, though, was eligible and selected could not get appointment to the said post. He submits that the Tribunal has in its communication to the State Government requested that the 6th post of Peon is required and the 6th post of Peon be granted sanction. However, as no sanction was accorded by the respondent No.2 - State Government, the said 6th post of Peon could not be filled-up by the select list. He, therefore, submits that appropriate direction ought to be passed and the petitioner be directed to be appointed to the 6th post of Peon after due sanction from the respondent - State Government.

4. Per contra, Mr. Ayaan Patel, learned AGP appearing for the respondents, submits that though the respondent No.1 had in its communication dated 18.6.2007 submitted that six posts of Peon were advertised, out of which, only five posts have been sanctioned by the State Government. He submits that as sanction was not accorded for the 6th post, the said post could not be filled-up by the respondents. He further submits that the select list prepared by the authority has to be operated within a period of 2 years and the same expires after completion of 2 years period. In the present case, no post came to be sanctioned and the select list has since expired after 2 years. He, therefore, submits that the present Special Civil Application be dismissed.

5. Heard learned advocates for the parties and perused the evidence on record.

6. The record reveals that the Tribunal had advertised for six posts of Peon. Accordingly, select list of 14 persons came to be published on 18.12.2004. A perusal of the correspondence between the respondent No.1 and respondent No.2 shows that despite repeated requests of respondent No.1, the 6th post of

Peon was not sanctioned by the State Government and therefore, only five posts could be filled-up. The petitioner was placed at Sr. No.6 in the select list. Admittedly, the select list had expired in December 2006. The petitioner was only a selectee. He has no right whatsoever to the post of Peon. In the present case, 6th post was never sanctioned and therefore, there was no post to which the petitioner herein could have been appointed. In view thereof, the prayers of the petitioner cannot be granted. No direction can be issued for creation and sanction of the post. Even otherwise, the select list has expired in the year 2006 long before the filing of the present Special Civil Application and the same cannot be made operative. By passage of time, the prayers of the petitioner are rendered infructuous.

The present Special Civil Application is devoid of merits and is disposed of accordingly.

7. Mr. R.C.Jani, learned advocate for the petitioner, submits that the petitioner may be permitted to make appropriate representation to the State Government for considering his case for appointment.

If such a representation is made by the petitioner, the same shall be decided on its own merits and in accordance with law uninfluenced by the disposal of the present Special Civil Application. Such representation may be disposed of within a period of 4 weeks upon its receipt.

Present Special Civil Application accordingly stands disposed of. Rule is discharged.