

(2014) 03 GUJ CK 0041
In the Gujarat High Court

Case No : Special Civil Application Nos. 9134 to 9140, 9180, 18000, 18389 of 2011 and 12099 of 2012

Anitaben Ranchodbhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 LLN 133

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : S.I. Nanavati, Sr. Advocate, Ms. Anuja S. Nanavati, Advocate in S.C.A. Nos. 9134 to 9140 of 2011, Mr. Dhaval Dave, Sr. Advocate, Mr. D.N. Kiratsata, Advocate in SCA No. 12099 of 2012 and Mr. K.B. Pujara, Advocate in S.C.A. Nos. 9180, 18000 and 18389 of 2011, Advocate for the Appellant; Neeraj Ashar, Asstt. Govt. Pleader for State in S.C.A. Nos. 9134 to 9140 of 2011 and 12099 of 2012, Mr. Ronak Raval, Asstt. Govt. Pleader for State in S.C.A. Nos. 9180, 18000 and 18389 of 2011 and Mr. H.S. Munshaw, Advocate for Panchayat, Advocate for the Respondent

Judgement

C.L. Soni, J.—The petitions being Special Civil Application Nos. 9134 of 2011 to 9140 of 2011 and 12099 of 2011 shall be referred as "FIRST GROUP OF THE PETITIONS" and the petitions being Special Civil Application No. 9180 of 2011, 18000 of 2011 and 18389 of 2011 shall be referred as "SECOND GROUP OF THE PETITIONS".

2. In the first group of the petitions, the petitioners have challenged the orders cancelling their appointments and removal from service without any disqualification for future service. In the second group of the petitions, the petitioners have prayed to direct the respondents to give them appointments forthwith as Vidyasahayaks/primary teachers as per their merits pursuant to the advertisement dated 22.4.2008.

3. The petitioners of both the groups of petitions participated in the selection

process undertaken pursuant to the above-said advertisement. The above-said advertisement was issued for the purpose of preparing select list for 785 vacancies for Vidyasahayaks in the primary schools under Jamnagar District Education Committee, Jamnagar. As per the advertisement, applicants were required to attach certified copies of the necessary certificates of their qualification and certified xerox copies of other certificates.

4. It appears that though there is no mention in the advertisement about giving 5% weightage to the candidates holding certificates in Sport in the merit list, such weightage of 5% was given to the petitioners of first group with other candidates (total 84 candidates) on the basis of the Government Resolution while preparing final select list for appointment to the post of Vidyasahayaks, as a result of which, the petitioners of second group were pushed down and kept out of the select list.

5. It appears that there were allegations of malpractice in the matter of consideration of Sport certificates while preparing the select list and on the basis of the representation made by one Shri Dharmendrasinh M. Jadeja, Member of Jamnagar District Panchayat, inquiry was handed over to Dr. Bharatbhai Pandit, Deputy Education Director who gave his report with finding that there were irregularities in the matter of consideration of sport certificates of 84 candidates for preparing the select list for Vidyasahayaks.

6. It appears that earlier, two petitions being Special Civil Application No. 8875 of 2010 with Special Civil Application No. 9412 of 2010 were filed by the candidates on merit list seeking appointments on the ground that they were wrongly kept out of the select list. The petitions were disposed of after taking note of the report as regards the alleged irregularities pertaining to the certificates in Sport and about taking departmental inquiry against the concerned Officer who was responsible with other persons for alleged irregularities.

7. It appears that thereafter, the petitioners of the first group with other candidates who were selected and appointed on the basis of the Sport certificates were dismissed from service on the ground that they were not entitled to preference by claiming weightage of 5% on the basis of sport certificates.

8. The petitioners of the first group and other candidates, therefore, preferred Special Civil Application Nos. 1868 of 2011 to 1874 of 2011 challenging the orders of their termination. In those petitions, the orders of their termination came to be set aside on the ground of violation of the principle of natural justice and the Court directed the petitioners to appear before the Committee constituted by the State Government and the Committee was directed to complete the inquiry within a period of three months. The Court also directed to keep 84 posts vacant till conclusion of the proceedings of the Committee and not to give effect to the order passed by the Committee if adverse to the petitioners of the first group and other candidates for a period of 30 days from the date of

communication of the order.

9. As per the above directions issued by the Court, three members Committee, consisting of Deputy Secretary, Education Department, Deputy Director of Education and District Primary Education Officer then issued show cause notices to 84 candidates including the petitioners of the first group, and gave them opportunities to appear before it to satisfy about the genuineness of the certificates of Sport produced by them. After giving full opportunities to the petitioners of the first group of petitions, the Committee found that the candidates failed to produce any evidence as regards genuineness of their certificates in sport. On the basis of the report of the Committee, the District Primary Education Officer, Jamnagar then passed impugned orders against the petitioners of first group cancelling their appointments and removing them from service without disqualification for future service. These orders are under challenge in the first group of petitions. The petitioners of the second group have sought direction to forthwith operate the merit list of all candidates and to fill up the vacancies now occurred on account of cancellation of appointments of 84 candidates.

10. I have heard learned advocates for the parties.

11. Learned senior advocate Mr. S.I. Nanavati appearing with Ms. Anuja S. Nanavati and learned advocate Mr. Dhaval Dave with Mr. D.N. Kiratsata for the petitioners of the first group of petitions submitted that the allegations made against the petitioners are self contradictory inasmuch as, on one hand, it is alleged that the petitioners had not attached the sport certificates with the applications whereas on the other hand, it is alleged that the sport certificates have not been certified. Mr. Nanavati submitted that as confirmed by the Gujarat State Kabaddi Association, the petitioners participated in Kabaddi at the National level for which the Secretary of the Gujarat State Kabaddi Association submitted list dated 21.5.2011 mentioning the names of the candidates participated in different years in National sport at different places. Mr. Nanavati submitted that in view of the confirmation given by the Kabaddi Association, there was no reason to doubt the genuineness of the sport certificates produced by the petitioners.

11.1. Learned senior advocates submitted that it was natural on the part of the petitioners not to remember the names of their coach, vehicle in which they traveled to reach the place where the national events took place and other details after a period of more than 10 years. Learned senior advocates submitted that simply because the certificates produced by the petitioners could not be verified at the verification camp at Gandhinagar, the same could not be a ground to doubt the genuineness of the certificates produced by the petitioners. Learned senior advocates submitted that it is not the case that the petitioners have not produced copies of the sport certificates with the applications. What is alleged against the petitioners is that xerox copies of the certificates produced with the applications were not certified. Learned senior advocates submitted that

subsequently, when the respondents got it confirmed from the Gujarat State Kabaddi Association that the petitioners had taken part in the national event, xerox copies of the sport certificates produced by the petitioners with their applications would stand certified on account of confirmation given by the Gujarat State Kabaddi Association. Learned senior advocates submitted that the resolution for giving 5% weightage since does not provide that the candidates must have taken part in the sport events organized by the school or college, it was not open to the respondents to doubt the genuineness of certificates on such aspect of the matter for the purpose of cancellation of the appointments of the petitioners. Learned senior advocates submitted that the petitioners have been discharging their duties satisfactorily for last two years and since the sport certificates produced by the petitioners cannot be said to be false, the District Primary Education Officer was not justified in cancelling the appointments of the petitioners. They thus urged to allow the petitions and quash and set aside the impugned orders.

12. Learned Assistant Government Pleaders Mr. Neeraj Ashar and Mr. Ronak Raval appearing for the State submitted that three members Committee on going through the details of 84 candidates found that the said candidates were helped out to produce false certificates of sport after the merit list was prepared, and therefore, impugned order based on such inquiry cannot be said to be in any way illegal. Learned Assistant Government Pleaders submitted that when the advertisement clearly required production of the certified copies of other certificates which would include sport certificates and when such condition was not complied with by the petitioners, the petitioners of the first group of petitions cannot claim any right to be appointed to the post of Vidyasahayaks. Learned Assistant Government Pleaders submitted that the requirement of production of certified copies of other certificates was in consonance with the instructions of the Director of Primary Education for making verification of about genuineness of the certified copies of such certificates. Learned Assistant Government Pleaders submitted that there was also no verification made of the certificates of the petitioners in verification camp as per the instructions of the Director of Primary Education dated 21.5.2008, 22.5.2008 and 11.6.2008. Learned Assistant Government Pleaders submitted that the petitioners of the first group were also not in a position to give satisfactory replies to any of the points put to them in the show cause notice for the purpose of ascertaining the genuineness of the sport certificates produced by them. Learned Assistant Government Pleaders submitted that when three members Committee after giving full opportunities of hearing to the petitioners of the first group of petition found as a matter of fact that the petitioners of the first group did not produce the certified copies of the sport certificates with their applications and did not get their certificates verified in the verification camp as per the instructions of the Director of Primary education, the petitioners of the first group of petitions could not be said to have produced genuine sport certificates and complied with the instructions contained in the advertisement and that of the Director of Primary Education and therefore,

they are not entitled to the benefits of weightage of 5% in the merits for the purpose of selection to the post of Vidyasahayaks. Learned Assistant Government Pleaders submitted that when the impugned order is based on such inquiry, this Court may not interfere in the impugned order while exercising the powers u/s 226 of the Constitution of India.

13. Learned advocate Mr. H.S. Munshaw appearing for the respondent District Panchayat while adopting the arguments of learned Assistant Government Pleaders submitted that not only in the inquiry conducted by three members committee but in the preliminary inquiry also, it was clearly found that the officers of the department connived with 84 candidates in the matter of giving 5% weightage in the merit for selection of Vidyasahayaks. Mr. Munshaw submitted that the officers who were responsible were departmentally proceeded and dismissed from service. Mr. Munshaw submitted that not only the petitioners of the first group, did not produce the certified copies of the sport certificates with the applications but they did not get their certificates verified in the camp held as per the instructions of the Director of Primary Education. Mr. Munshaw submitted that the copies of the false certificates produced by petitioners were received by the erring officers after the merit list was prepared and based on such certificates, weightage of 5% was given to them which was not permissible. Mr. Munshaw submitted that the Committee had given full opportunities to the petitioners of the first group and other candidates to satisfy the committee as regards the genuineness of the certificates, however they failed to do so as recorded by the committee. Mr. Munshaw submitted that since the committee recorded such finding after giving opportunities to the petitioners of the first group and other candidates, this Court may not interfere with the conclusion arrived at by the committee and the impugned orders based on such conclusion of the committee, especially when genuine and meritorious candidates were deprived of their legitimate right to get into the select list for appointment to the post of Vidyasahayaks. Mr. Munshaw submitted that in fact, the impugned order is passed taking a sympathetic view of the matter inasmuch as it is clearly provided that the petitioners of the first group shall not be disqualified for future appointment. Mr. Munshaw thus urged to dismiss the first group of petitions.

14. Learned advocate Mr. K.B. Pujara appearing for the petitioners of the second group of petitions submitted that the petitioners of the second group of petitions are meritorious candidates and but for 84 candidates getting into the select list fraudulently, the petitioners would have been selected for the posts of Vidyasahayak. Mr. Pujara submitted that in at least two independent inquiries, findings are recorded that 84 candidates did not produce the certified copies of the sport certificates with their applications. It is finally proved that the petitioners were pushed down in the merit for no fault on their part. Mr. Pujara submitted that now when three members committee gave full opportunities to 84 candidates and reached to the findings that they failed to satisfy that their sport certificates were genuine, their appointments are rightly cancelled to give way to the meritorious candidates to take appointments on the post of Vidyasahayaks.

Mr. Pujara submitted that on account of cancellation of such appointments, the petitioners have become entitled to get appointments with effect from the date 84 candidates were given appointment, i.e. from the month of July 2009. Mr. Pujara submitted that at least from the date of cancellation of their appointment the petitioners of the second group of petitions should be made entitled to appointments as Vidyasahayak.

14.1. Learned advocate Mr. Pujara submitted that by interim order, 12 petitioners of Special Civil Application No. 9180 of 2011 have got appointments and the remaining petitioners of the second group are required to be now appointed.

15. Learned Assistant Government Pleaders Mr. Neeraj Ashar and Mr. Ronak Raval and learned advocate Mr. H.S. Munshaw submitted that the prayers for giving appointment to the petitioners of the second group of petitions may not be accepted as on account of cancellation of the appointment of 84 candidates, placement of these petitioners in the merit list and in the select list will be required to be adjusted and then the select list will be operated. Learned Assistant Government Pleaders and learned advocate Mr. Munshaw submitted that the petitioners also cannot be made entitled to benefit of effective date of appointment as the petitioners have got no indefeasible right to get appointment simply because their merit would go higher up on account of cancellation of the appointment of 84 candidates. They, therefore, urged not to give direction as sought for by learned advocate Mr. Pujara on behalf of the petitioners of the second group of petitions.

16. Having heard learned advocates for the parties and having perused the record of the petitions, it appears that one Shri Dharmendrasinh M. Jadeja, Member of Jamnagar District Panchayat complained vide his letter dated 11.1.1990 to the State Government alleging malpractice in the matter of recruitment to the posts of Vidyasahayak. As stated above, the Deputy Education Director conducted the inquiry and submitted his report. The Director of Primary Education then asked the District Primary Education Officer to take immediate action. It appears that based on such instructions given by the Director, the action was taken against 84 candidates including the petitioners of first group who then filed the above-referred petitions before this Court, wherein this Court directed the committee of three members to complete the inquiry as regards 84 candidates and also directed not to give effect to the order, if adverse to them for a period of one month from the date of the communication of the order. The three members committee consisted of (1) Deputy Secretary, Education Department, (2) Deputy Director of Education and (3) District Primary Education Officer, Jamnagar. Pursuant to the above direction issued by the Court, the Committee then called upon the petitioners of first group with other candidates by show cause notice dated 6.5.2011 to appear before it to answer the points raised therein. With the show cause notice, copy of the earlier inquiry made by the Deputy Director was given to the candidates and copies of the sport certificate were given to the petitioners. The petitioners of the first group of

petitions were given full opportunity before the Committee to satisfy as regards the genuineness of their sport certificates. The Committee then submitted its report to the Director of Primary Education with communication dated 9.6.2011, annexed at Annexure-I with Special Civil Application No. 9134 of 2011. For the petitioners of the first group of petitions, the Committee recorded following findings:-

(1) The certified copies of the sport certificates were not attached with the applications.

(2) As per the instructions of the Director of Primary Education dated 21.5.2008, 22.5.2008 and 11.6.2008, sport certificates are not got verified in the camp for verification.

(3) Points raised in the show cause notice are not answered with any material or evidence.

(4) The petitioners have not given any details of their taking part in the sport events of the school or college.

(5) The petitioners have not produced any material or documents nor have given any details in the oral or written representation before the committee as to at which place, name of the coach or manager, Identity cards or photographs, name of the opposite team or timetable or date of national event in respect of the sport event of Kabbadi.

17. The Committee recorded that in breach of the instructions given by the Director of Primary Education for verification of sport certificates, the petitioners of first group were given preference in the matter of appointment as Vidyasahayak.

18. Based on such report of the committee, the appointments of the petitioners of the first-group and other candidates came to be cancelled and they were removed from service without any future disqualification.

19. The Committee was constituted to give full opportunities to the petitioners of first group and other such candidates to meet with the allegations levelled against them. They were asked to come with necessary evidence on the points raised in the show cause notice. After giving them personal hearing, the Committee recorded finding that they had not produced certified copies of their sport certificates with their applications, that they did not get their certificates verified in the verification camp as per the instructions of the Director of Primary Education, that they did not bring any evidence as required of them by show cause notice to prove that they had taken part in the national events, that they could not provide any details about their taking part in sport event from their schools, colleges, about the name of the coach/manager who accompanied them in national event, about their identity cards or photographs, the name of the opposite team etc. Thus, on such inquiry when the Committee of three responsible officers was not satisfied on the genuineness of the sport certificates,

the District Primary Education Officer cannot be said to have committed any error in relying on the report of the Committee and in cancelling the appointments of the petitioners of the first group of petitions.

20. It is required to be noted that the petitioners of the first group of petitions had no indefeasible right to get appointment with the help of sport certificates. By virtue of the Government policy, vide resolutions dated 25.2.1980, 1.8.1990 and 11.10.2005, a candidate having sport certificate gets weightage of 5% marks for deciding the inter-se merits of the candidates. However, when the expert body, like the Committee constituted for the purpose of inquiring into genuineness of sport certificates finds that the candidates claiming weightage of 5% on the basis of sport certificates did not produce certified copies of certificates, did not get them verified and did not provide true and correct details to prove genuineness of the certificates and they were not deserving weightage of 5% marks in the merit list for selection for the post of Vidyasahayak, the Court will have no judicial review of such decision unless illegality or infirmity in decision making process is pointed out. It does not appear to the Court that there is any infirmity in the decision making process of the Committee. In such view of the matter, the contention of Mr. Nanavati that the Secretary of the Gujarat State Kabaddi Association confirmed the issuance of the sport certificates to the petitioners by sending the list to the District Primary Education Officer cannot be accepted as the Court would not like to substitute the conclusion arrived at by the three members Committee while exercising the powers under Article 226 of the Constitution of India.

21. It is needless to say that meritorious and deserving candidates have not found place in the select list on account of weightage of 5% marks given to undeserving candidates. It is required to be noted that one Shri K.N. Chauhan, Education Inspector, Taluka Panchayat, Jamjodhpur, who was responsible to give weightage of 5% marks to 84 candidates after the merit list was prepared, was departmentally proceeded and removed from service with disqualification for future service. The order of punishment passed against him is found annexed with the reply affidavit filed by the District Primary Education officer in Special Civil Application No. 12099 of 2012.

22. At this stage, it is required to be noted that the District Primary Education Officer in his affidavit filed in Special Civil Application No. 12099 of 2012 has pointed out that out of 84 candidates, at least 35 candidates had produced certificates of sport of Kabaddi. Consideration of such 35 certificates only for the sport of Kabaddi much after the merit list was prepared was strong suspicion against the genuineness of the sport certificates.

23. As per the policy of the State Government, what could be claimed by a candidate applying for appointment as Vidyasahayak was a preferential treatment on the basis of his participation in the sport event. Therefore, it was for the candidates who claimed such preferential treatment to satisfy the Committee as regards genuineness of their sport certificates. The committee has

specifically recorded that first group of petitioners had neither produced certified xerox copies of the sport certificates with their applications nor even their certificates were verified in the verification camp at Gandhinagar as per the instructions of the Director of Primary Education dated 21.5.2008, 22.5.2008 and 11.6.2008. Non-compliance of the above two requirements was sufficient not to give any weightage of 5% marks in the merit of the candidates claiming participation in sport event. However, as could be seen from the show cause notice issued by the committee, it gave full opportunities by calling for necessary evidence from the petitioners of the first group of petitions on about 26 points to enable the petitioners to satisfy the committee on their participation in national sport event and to prove genuineness of their sport certificates. As recorded by the committee, the petitioners of the first group of petitions could not provide any satisfactory evidence in support of their sport certificates. Under such circumstances, no illegality could be found in the orders impugned in the first group of the petitions.

24. The petitions of the first group, i.e. Special Civil Application Nos. 9134 of 2011 to 9140 of 2011 and 12099 of 2011 are therefore dismissed. Rule discharged.

25. There is no dispute about the fact that the petitioners of the second group were though on the merit list could not get chance to be on the select list. It is their case that if 5% weightage for sport certificates was not given to 84 candidates, they would not have been pushed out of the select list. Considering such grievance of the petitioners of the second group, while dismissing the petitions of the first group, the question is what relief could be granted to the petitioners of the second group of petitions.

26. Learned advocate Mr. Pujara pointed out that pending the petitions, all 12 petitioners of Special Civil Application No. 9180 of 2011 got appointment by virtue of the interim order passed by this Court. Whereas, since there was no interim order for five petitioners of Special Civil Application No. 18000 of 2011 and one petitioner of Special Civil Application No. 18389 of 2011, they are yet to get appointment. Mr. Pujara submitted that this Court may direct the respondents to finalize the appointments of 12 petitioners of Special Civil Application No. 9180 of 2011 by giving effect to such appointment from the date when 84 candidates were appointed. Mr. Pujara submitted that for the petitioners of Special Civil Application No. 18000 of 2011 and 18389 of 2011, this Court may direct the respondents to immediately give them appointment with benefits from the above-said effective date.

27. The Court finds that now when the first group of petitions are dismissed, the respondents will be required to re-adjust the merit of the candidates, including the petitioners of second group. Only after re-adjustment of the merits of the petitioners of the second group, the respondents will be in a position to decide as to whether the petitioners of the second group would stand included in the select list for the purpose of appointment as Vidyasahayak. Therefore, presently, the

only direction which could be given is to appoint the rest of the petitioners of Special Civil Application No. 18000 of 2011 and 18389 of 2011 of the second group and such appointments which may be given to the six petitioners of the two petitions and appointments which have been given to 12 petitioners of Special Civil Application No. 9180 of 2011, may not be disturbed till the respondents finalize the merits of the candidates and ultimately finalize the select list. After the select list is finalized, it will be for the respondents to pass necessary orders as per the placement of the petitioners of the second group in the select list. Therefore, at this stage, request of learned advocate Mr. Pujara to give effective date of appointment to the petitioners of second group from the date 84 candidates were given appointment cannot be accepted.

28. In the result, the petitions of the second group, being Special Civil Application No. 9180 of 2011, 18000 of 2011 and 18389 of 2011, are partly allowed. The respondents are directed to give appointment to the petitioners of Special Civil Application No. 18000 of 2011 and 18389 of 2011 within a period of FOUR WEEKS from the production/service of this order to them. The respondents are also directed to continue the appointment of the petitioners of Special Civil Application Nos. 9180 of 2011, 18000 of 2011 and 18389 of 2011 till the placement of the petitioners of the second group in the merit list as also in the select list is finalized and operated. On finalization of the merit list and the select list, it would be open to the respondents to pass necessary orders against any of the petitioners not found entitled to appointment as Vidyasahayak. The respondents are directed to complete the above-said exercise of finalization of placement of the petitioners of the second group in the merit list and the select list within a period of THREE MONTHS from the date of receipt of this order. Rule is made absolute to the extent stated above.