

(2013) 07 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 3618 of 2005

Babubhai Nathabai Valand

APPELLANT

Vs

Secretary, Narmada Water Resources and Water Supply and
Another

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2014) LabIC 1091

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Tripathi, J.—Petitioner, since deceased, is now before this Court through his heirs and legal representatives consisting of son, daughter and wife. The reliefs prayed for in the petition are:

(A) YOUR LORDSHIP be pleased to admit the special civil application

(B) YOUR LORDSHIP be pleased to issue appropriate writ order or direction which the Hon'ble Court may deem fit and be pleased to quash and set aside the order passed by the Respondent Nos. 1 & 2 dated 30-9-2604, 22-7-2004, & 21-10-2004.

(C) YOUR LORDSHIP be pleased to issue appropriate writ order or direction which the Hon'ble Court may deem fit and be pleased to directed to the Respondent Nos. 1 & 2 to regularize a service of the petitioner from work Charge Compounder to Regular compounder and granted all consequential benefits from the date of his appointment dated 3.8.1973.

(Emphasis supplied)

Heard the learned advocate Mr. Ramnandan Singh for the petitioner. Learned advocate invited the attention of the Court to an order of appointment, a copy of which is produced at Page No. 14. The appointment is by "Establishment office

order dated 104 of 1973 which is dated 18.7.1973 and it is mentioned therein that, "the petitioner is hereby appointed as W.C. Compounder through Employment Exchange, Himatnagar in the office of the Deputy Engineer, Watrak Irrigation Project Sub-Division Modasa on the pay-scale Rs. 130-5-155-EB-7-190-EB-230-10-240 plus other allowance as may be admissible from time to time....."

2. It is really surprising, shocking and painful to learn that this petitioner continued to serve the department merrily for almost 3 decades. It was in the year 2001 that the petitioner made a representation to Deputy Secretary (Establishment), Narmada Water Resources and Water Supply Department, mentioning therein that, the petitioner be given similar treatment as was given to one Mr. B. A, Modi. It is mentioned that, "said Shri Modi is also possessing the same educational qualification as that of petitioner and in his case, the Government was kind enough to give exemption from the educational qualification". It is this letter/representation which came to be rejected by letter dated 22.7.2004 and challenging that rejection, the present petition is filed.

3. Learned AGP, Mr. Shukla, invited the attention of the Court to paras-5, 6, (i)(ii) (iii) and not last but the least (iv) of the affidavit-in-reply filed on behalf of respondent No. 1. All these paragraphs are reproduced for ready perusal:

5. At the outset by way of the present petition the petitioner has challenged the orders dated 22.7.2004 passed by Superintending Engineer, Himatnagar Irrigation Project Circle and also the order dated 30.9.2004 passed by the State Government. By the impugned orders the petitioner's request for relaxation in the education qualification of the petitioner and as a result thereof, regularizing the appointment of the petitioner as Work Charge Compounder is rejected. It is submitted that from the facts and circumstances narrated herein below, Hon"ble Court would be satisfied with present petition is thoroughly misconceived and base-less and therefore the same deserves to be dismissed.

6. It is submitted that the prayer of the petitioner to relax the educational qualification of the petitioner and to regularize the appointment of the petitioner may not be granted in view of the following main objections.

(i) The recruitment rules for the post of Compounder in medical department were framed by way of resolution dated 8.10.1956 wherein for being eligible appointment for the post of Compounder, the candidate shall be required to pass SSC examination or any other equivalent examination. The candidate should have also passed the prescribed examination for compounders or examination of practicing pharmacist training course conducted by Indian Pharmaceutical Association or should have passed diploma degree course in Pharmacy in recognized institute; and should have registered its name in the Bombay State Pharmacy Council. A copy of resolution dated 8.10.1956 is annexed herewith and marked as Annexure-A.

It is submitted that the petitioner is only SSC pass and hence is not having any or the qualification herein above and the recruitment rules do not permit any

relaxation and therefore the request of the petitioner to regularize the qualification was rightly turned down.

(ii) The next objection is that the petitioner is not appointed by following the regular selection procedure inasmuch as in view of urgent need for the post of compounder at the relevant time, a request was made to health department of the District Panchayat, Sabarkantha to send the select list which may have been prepared earlier and on the basis of such select list the petitioner was appointed. However while appointing the petitioner the applications from eligible candidates were not invited nor the Employment Exchange was requested to send the names of eligible candidates. Therefore, the petitioners appointment as work-charge Compounder is not made by regular selection procedure and therefore also the petitioners request to regularize his services was rightly turn down.

(iii) The next objection is that the petitioner was appointed as work-charge compounder in Vatrak Damsite Project at Bhempoda colony. However, the said project is completed in the year 2000 and therefore there is no requirement or any compounder and when from the 1995, the dispensary in which the petitioner was appointed as work-charge compounder is closed, the petitioner"s request for regularizing his services was not accepted.

(iv) It is submitted that the petitioner has retired on reaching the age of superannuation on 30.6.2005 and therefore also the present petition may not be entertained any further.

4. In para-6(iv) it is mentioned that the petitioner has retired on reaching the age of superannuation on 30.6.2005. This is mentioned to bring it on record that the person can successfully complete the service period and it was only at the fag end of the career seeking exemption in the year 2001 on the ground of parity applied like another person to get all benefits of the service.

5. Learned advocate for the petitioner submitted that what is mentioned in para-6(11) is not correct. In this regard, he invited the attention of the Court to the order of appointment again, wherein it is stated that the petitioner was given appointment after inviting application from the Employment Exchange. Be that as it may. The question is whether such petition at the hands of the petitioner who approached the Authorities admittedly In the year 2001 i.e. after almost 3 decades from the date of his entering into services is maintainable and whether such person should be given any indulgence. This Court is of the opinion that the answer is in the negative. If a person can sleep over his rights for 3 decades, he does not deserve even an iota of sympathy and therefore, the petition can have only one fate and that is dismissal. It is not difficult to infer the reasons for not approaching either the Government or the Court for long three decades. The petitioner must have an apprehension that in case he approaches the Government or the Court he may lose his services. Even if it is, it cannot be a ground for showing any sympathy and grant him relief as prayed for.

6. Incidentally, the example of Mr. B.A. Modi which is relied upon is of the year

1976. It is difficult to believe that a person would not have known about such incident which must have been the talk of the town at the relevant time. The say of the petitioner that he came to know about the same only in the year 2001 cannot be believed. This Court finds no substance in the petition. Therefore, the same is dismissed. Rule discharged.