

(2011) 04 GUJ CK 0109

In the Gujarat High Court

Case No : Special Civil Application No. 3375 of 2011

Bhanuprasad B. Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 335

Citation : (2011) 04 GUJ CK 0109

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : K.B. Pujara and Kashyap K. Pujara, for the Appellant; Maulik G. Nanavati, learned Asst. Government Pleader for Respondent Nos. 1 and 2 and D.G. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Maulik G. Nanavati, learned Assistant Government Pleader waives service of notice of Rule for Respondents Nos. 1 and 2. Mr. D.G. Shukla, learned Counsel waives service of notice of Rule for Respondent No. 3.

2. The Petitioner has preferred this petition under Article 226 of the Constitution of India, inter alia, praying for the issuance of a writ of mandamus or any other appropriate writ or direction to quash and set aside the revised list of the Preliminary Examination as published by the Gujarat Public Service Commission ("GPSC" for short) on 14-02-2011 for six posts of Child Marriage Prevention Officer-Cum-District Social Defense Officer, Class-II, pursuant to advertisement No. 12/09-10 dated 08-04-2009. It is further prayed that the

30-10-2009, by the impugned Revised List published on 14-02-2011, whereby the Petitioner has been excluded from participating in the oral interview, be held to be null and void, and bad in law.

3. Briefly stated, the relevant facts of the case are that Respondent No. 3-GPSC initiated the recruitment process for six posts of Child Marriage Prevention Officer-Cum-District Social Defense Officer, Class-II by issuing advertisement No. 12/09-10 dated 08-04-2009. The Petitioner holds the educational qualifications of B.A. (Special) (Psychology), M.A. (Psychology) and Shiksha Visharad of Hindi Sahitya Sammelan which, according to him is equivalent to the B. Ed. Examination. The Petitioner also holds a Professional Diploma in Educational Management (PDEM) from the M.S. University, Baroda, B. Ed. from Indira Gandhi National Open University (IGNOU) and Ph.D. Degree. Apart from this, it is stated that the Petitioner possesses experience of more than 17 years as a Teacher in a Primary School and Junior Lecturer in a PTC College. Pursuant to the above-mentioned advertisement, the Petitioner applied for the post in question. The Petitioner was permitted to sit for the Preliminary Examination on 30-09-2009. On 30-10-2009, the GPSC declared a list of 41 successful candidates. The Seat Number of the Petitioner, which is 250, appeared in the list of 41 candidates who have successfully cleared the Preliminary Examination and were to be called for the oral interview. However, on 14-02-2011, the GPSC announced the Revised List of the Preliminary Examination, whereby the Petitioner has been excluded from the list of seven candidates who are to be called for the oral interview on the ground that he does not fulfill the requirements as stipulated in the advertisement. Aggrieved thereby, the Petitioner has approached this Court by filing the present petition.

4. Mr. K.B. Pujara, learned advocate for the Petitioner has forcefully submitted that:

(a) The requirements as stated in the advertisement, that the candidate should possess a Graduation Degree or Diploma or Post Graduation Degree in Social Service or Social Sciences of any recognised University; and that the Post Graduate candidate should possess approximately 2 years" experience of Social Work and Graduate candidate should possess about 5 years" experience, after obtaining necessary educational qualifications preferably in fields such as Probation, Parole, Rehabilitation of Proclaimed Offenders and Institutional Management with knowledge of Social Laws, are very vague. It is stated in the advertisement that it is desirable that a candidate who possesses experience and training in the area of Family and Child Welfare shall be given priority. However, the term "Social Work" has not been defined anywhere in the advertisement. Moreover, the advertisement speaks of preference to be given to experience in Social Work in the fields mentioned. In State of U.P. and Another Vs. Om Prakash and Others, , the Supreme Court has held that preference would operate only when candidates are assessed to be equally positioned. The Petitioner has the requisite qualifications for the post and his experience is also sufficient. The

preferential fields are merely illustrative and the Petitioner cannot be excluded on the ground that he does not possess the requisite experience in the preferred fields.

(b) "Social Work" as defined in the Oxford English Dictionary (Second Edition-Volume XV) means-

Work of benefit to those in need of help, esp. professional or voluntary service of a specialized nature concerned with community welfare and family or social problems arising mainly from poverty, mental or physical handicap, maladjustment, delinquency, etc.

Further, the Random House Dictionary of the English Language defines "Social Work as-

organized work directed toward the betterment of social conditions in the community, as by seeking to improve the condition of the poor, to promote the welfare of children, etc.

In the Webster's New Twentieth Century Dictionary of the English Language Unabridged (Second Edition), "Social Work" has been defined as-

any service or activity designed to promote the welfare of the community and the individual, as through health and psychology clinics, recreation halls and playgrounds, aid for the needy, the aged, the physically handicapped, etc.

In addition thereto, the definition of "Social Work" in the Wikipedia is as under:

a professional and academic discipline committed to the pursuit of social welfare, social change and social justice. The field works towards research and practice to improve the quality of life and to the development of the potential of each individual, group and community of a society. Social workers perform interventions through research, policy, community organizing, direct practice and teaching. Research is often focused on areas such as human development, social policy, public administration, program evaluation and international and community development. Social workers are organized into local, national, continental and international professional bodies. Social work, an interdisciplinary field, includes theories from economics, education, sociology, medicine, philosophy, politics, psychology, and as well as anti-oppressive and anti-racist discourse.

The Petitioner fully satisfies the above definitions of Social Work and possesses the requisite experience of 2 years Social Work in the related field, as specified by the advertisement.

(c) The reliability of material sourced from Dictionaries and Wikipedia has been approved by the Supreme Court in D. Velusamy Vs. D. Patchaiammal, The Certificates sent by the Petitioner to the GPSC after the submission of the application and before the declaration of the Revised List, show that he possesses the requisite experience of 2 years of Social Work, which ought to

have been taken into consideration by the GPSC. The GPSC has not taken the said Certificates into consideration but has only relied upon the Certificates submitted by the Petitioner at the time of submission of the application, pursuant to the advertisement. The candidature of the Petitioner has been rejected without assigning any specific reason as to how and why the Petitioner does not fulfill the requirement of experience.

(d) In Letters Patent Appeal No. 876 of 2010 a Division Bench of this Court, by order dated 06-05-2010, allowed the appeal of the Appellant and the Respondents therein were directed to consider the case of the said Appellant on the basis of his relative merit by awarding him marks for possessing the driving licence, which were denied to him even though he possessed such licence at the time of assessing his marks on different parameters. Similarly, the Certificates submitted by the Petitioner after the advertisement ought to be considered in order to judge his experience in the field of Social Work.

(e) In case the GPSC was not satisfied with the documents submitted by the Petitioner regarding his experience, it ought to have called him and afforded him an opportunity of hearing. However, without doing so, the Petitioner has been debarred from appearing in the interview on the ground that he does not possess the requisite experience, which decision is violative of the principles of natural justice and vitiated by non-application of mind.

(f) There is ample material on record to show that the type of work the Petitioner has performed in the field of Social Work will entitle him to the post in question. The Respondents were duty bound to consider the documents sent by the Petitioner subsequently, therefore, the impugned decision debarring the Petitioner from appearing in the interview is based on non-consideration of relevant documents. Public bodies are bound to act fairly and in the present case, the Respondents have failed to maintain procedural fairness, causing grave injustice to the Petitioner.

(g) Once the result of the Preliminary Examination was declared on 30-10-2009 and the Petitioner was declared to be one of the 41 successful candidates, the GPSC ought to have called him for the interview. After 14 months of the declaration of the result, the GPSC has declared the Revised List on 14-2-2011, whereby the Petitioner has been excluded from the list of selected candidates. Only 7 candidates have been declared successful and will compete for 6 posts as notified in the advertisement, as per order dated 15-10-2009. The Petitioner has reason to believe that the GPSC has decided to call 15% of the total candidates for the oral interview. As the GPSC has received about 270 applications, 15% thereof would come to 41. Having decided to call 41 candidates for the interview, it is not open to the GPSC to revise the list and decide to call only 7 candidates for the oral interview and to exclude the Petitioner, as is sought to be done by the impugned Revised List dated 14-2-2011. Such action of the GPSC is arbitrary and irrational and deserves to be quashed and set aside.

(h) That as per the Revised List, 4 candidates have been included who did not figure in the list of the 41 candidates who were successful in the Preliminary Examination. This, on the face of it, smacks of arbitrariness and illegality in the functioning of the GPSC and is violative of the fundamental rights of the Petitioner under Articles 14 and 16 of the Constitution of India.

5. On the above grounds, it is prayed that the petition be allowed.

6. The petition has been strongly opposed by Mr. D.G. Shukla, learned advocate for the Respondent-GPSC by submitting;

(a) That though the Petitioner possesses the requisite educational qualifications, he does not possess the required experience of two years of Social Work, preferably, in the filed of probation, parole, rehabilitation of offenders and institutional management with knowledge of social Legislations, after acquiring the required educational qualifications, as specified in the Recruitment Rules as well as the advertisement. The Petitioner has worked as a Teacher at Vankod Primary School, Taluka Devgadhi Bariya for a period from 4-10-1993 to 8-2-1999 and, thereafter, as a Teacher with the G.H. Board Gayatrinagar Primary School, Taluka Halol, for the period from 9-2-1999 to 1-11-2004. Thereafter, the Petitioner has worked as a Teacher with Rajendranagar Baug Primary School, Taluka Himatnagar from 2-11-2004 to 28-2-2006 and, as a Junior Lecturer with the District Education and Training Center, Idar, with effect from 1-3-2006 to 13-2-2007. The Petitioner has worked as a Teacher in Rajendranagar Baug Primary School, Taluka Himatnagar from 14-2-2007 to 23-4-2007 and, lastly, he joined the District Education and Training Center, Idar, as a Junior Lecturer, on 24-4-2007 on which position he was working on the date of making the application. From the above it is clear that the Petitioner does not possess the required experience of about 2 years in the related field of Social Work, as specified in the advertisement and required by the Rules, therefore, his candidature has been rightly rejected by the Respondent-Commission vide result declared on 14-2-2011.

(b) That the Respondent-Commission has conducted the Preliminary Test for the post in question on 30-9-2009 and the result of the 41 candidates to be eligible for scrutiny on the basis of qualifying norms was published on the Notice Board of the Respondent-Commission on 30-10-2009. It is clearly mentioned in the said order that if eligible candidates for the personal interview are not available then, applications of more candidates will be scrutinized. Nowhere has it been mentioned in the said order that the 41 candidates, whose Seat Numbers are mentioned therein, are to be called for personal interview. Office Order dated 15-10-2009 clearly specifies that for the purpose of scrutiny after the Preliminary Test at the time of the first result, a list of four times or six times the number of candidates will be published and after scrutiny, if the required candidates are not available, then the additional list of Seat Numbers will be supplied by the Confidential Branch of the GPSC after obtaining the permission of the Secretary, as per procedure laid down in office order dated 15-10-2009. Therefore, as a

sufficient number of eligible candidates were not available, a list of 118 candidates was considered for scrutiny. Accordingly, the total number of candidates considered for scrutiny were 159 (41+118), out of which the final List has been declared on 14-2-2011 and 7 candidates have been found suitable to appear in the personal interview.

(c) The learned advocate for the GPSC has relied upon the decision of this Court in *Jayantilal Dwarkadas Patel v. State of Gujarat and Anr.* reported in (1986) 1 GLR 254, by submitting that it has been held by the Supreme Court that the Petitioner cannot pray for the issuance of a writ of Mandamus, as no legal, fundamental or infeasible right of his has been violated.

(d) Further, reliance has been placed on a decision of the Supreme Court in *A.P. Public Service Commission Vs. Baloji Badhavath and Others*, wherein the Supreme Court has held that how the Commission (in that case Andhra Pradesh Public Service Commission) would judge the merit of the candidates is its function and unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the superior courts would not ordinarily interfere therewith.

7. On the strength of the above submissions, it is urged that the petition be dismissed.

8. Mr. Maulik G. Nanavati, learned Assistant Government Pleader for Respondents Nos. 1 and 2 has submitted that the decision whether the Petitioner fulfills the requisite qualifications and experience is to be taken by the GPSC, who has prescribed the said qualifications on the basis of the Recruitment Rules. The decision of not calling the Petitioner for the interview has been taken on the basis of Certificates submitted by the Petitioner and as those certificates do not disclose, upon a bare reading, that the Petitioner possesses the necessary experience in the field of Social Work for the required period of three years, no fault can be found in the decision of not calling him for the interview. It is emphasised that documents submitted by the Petitioner subsequent to the making of the application, cannot be looked into as that would open the door to mischief. It is, therefore, prayed by the learned Assistant Government Pleader that the Court may not grant the prayers made in the petition.

9. I have heard the learned Counsel for the respective parties, perused the documents on record and considered the submissions made, as above.

10. The Recruitment Rules for the post of Child Marriage Prevention Officer have been placed on record by way of an affidavit filed by the State Government. The said Rules have been notified by Notification dated 27-7-1972. Thereafter, the nomenclature of the post has been changed by Government Resolution dated 24-3-1982, to Child Marriage Prevention Officer Cum Social Defence Officer. The Recruitment Rules were amended by Notification dated 17-6-1983. In the Rules, as they now stand, the eligibility criteria for the post of Child Marriage Prevention Officer Cum Social Defence Officer, Class-II, which is the post in question, are as

follows:

3. To be eligible for appointment by direct selection, to the post of Child Marriage Prevention Officer a candidate must-

(i) Be not more than 30 years of age;

(ii) Possess-

(a) a post graduate degree or a post graduate diploma of a recognized university or institute in Social services or Social sciences and about 2 years experience of social work, preferably in the field of probation, parole, rehabilitation of offenders and institutional management with knowledge of Social Legislation;

Or (b) A degree or diploma of a recognised university or institute in Social services/ Social sciences and about 5 years experience of social work, preferably in the field of probation parole, rehabilitation of offenders and institutional management with knowledge of Social Legislations.

Provided that the upper age limit may be relaxed in favour of a candidate possessing exceptionally good qualifications or experience, or both:

Provided further that the upper age limit may be relaxed in case of a person already in the service of the Government of Gujarat, in accordance with the provisions of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967.

Provided further that preference may be given to a candidate with case work orientation training and equipped with training in the field of Family and Child Welfare work. (emphasis supplied)

The same eligibility criteria are mentioned in the advertisement for the said post. For the purpose of this petition, the eligibility criteria, as mentioned in Rule 3(a) is relevant. A perusal thereof reveals that it is clearly stated that to be eligible for appointment by direct selection to the said post, the candidate should possess a Post Graduate Degree or a Post Graduate Diploma of a recognized University or Institute in Social Services or Social Sciences and about two years experience of Social Work, preferably in the field of probation, parole, rehabilitation of offenders and institutional management with knowledge of Social Legislation. There is no ambiguity or vagueness attached to the eligibility criteria prescribed in the Rules and replicated in the advertisement, therefore, the submission made by the learned advocate for the Petitioner that the eligibility criteria mentioned in the advertisement are vague, does not appear to be well founded. In any case, it is clear that the eligibility criteria, as mentioned in the advertisement is the same as that stated in the Rule and as no challenge has been raised to the Rules, this submission of the learned advocate for the Petitioner cannot be accepted.

11. Undoubtedly, the Petitioner does possess the required educational qualifications. However, as per the relevant Rules, as mentioned herein-above, the Petitioner is required to have about 2 years experience of Social Work,

preferably in the field of probation, parole, rehabilitation of offenders and institutional management with knowledge of Social Legislation. Upon scrutiny of the documents submitted by the Petitioner along with his application, according to the GPSC, the Petitioner lacks the requisite experience, for which reason he has been excluded from the interview for the post in question.

12. It is the case of the Petitioner that he had sent certain documents to the GPSC subsequent to the making of the application but before the declaration of the final Revised List which have not been considered. According to the Petitioner, these documents would show that he has the requisite experience for the post in question. The said documents have also been placed on the record of the petition and have been perused. It appears that they primarily relate to the teaching experience of the Petitioner in different Schools and educational Institutions. They also pertain to the Degrees and Educational qualifications of the Petitioner. The experience mentioned in some of the documents is regarding teaching. Prima facie, it does not appear from the documents annexed to the petition that the Petitioner possesses two years' experience as specified in the Rules and stipulated in the advertisement. The Rules clearly define the nature of experience that a candidate must preferentially possess. This requirement is in keeping with the nature of duties to be performed by the incumbent of the post in question. The preference envisaged in the field of experience relates to the nature of duties to be performed and cannot be taken to mean that the Petitioner has been excluded on the basis of the said preferences, as is sought to be contended on behalf of the Petitioner.

13. In *State of U.P. v. Om Prakash* (Supra), the factual matrix with which the Supreme Court was dealing with was on a different footing where the High Court had interpreted the word "preference" to mean en block preference irrespective of inter se merit and suitability of Degree and Diploma Holders, resulting in tilting toward Degree Holders. In this contest, the Supreme Court held that:

19... The word "preference" would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-a-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability.

14. In the present case, the material on record does not disclose that the Petitioner possesses the requisite experience, as prescribed by the Rules and mentioned in the advertisement, therefore, the contention that he cannot be excluded on the basis of preferential experience, is untenable. The GPSC has scrutinized the Certificates submitted by the Petitioner along with his application and found him lacking in the area of requisite experience for the post in question. This Court does not find any ambiguity or irregularity in the approach of the GPSC, in this regard.

15. In *Andhra Pradesh Public Service Commission v. Balaji Badhavath* (Supra), the question before the Supreme Court was whether shortlisting of candidates for the main examination for Group I Services in the State of Andhra Pradesh in the ratio of 1:50 to total number of vacancies basing on preliminary examination, and non-fixation of a community wise cut-off mark infringed the right to reservation of candidates belonging to reserved communities? Holding in the negative and allowing the appeal, the Supreme Court held that:

29. Indisputably, the preliminary examination is not a part of the main examination. The merit of the candidate is not judged thereby. Only an eligibility criterion is fixed. The papers for holding the examination comprise of general studies and mental ability. Such a test must be held to be necessary for the purpose of judging the basic eligibility of the candidates to hold the tests. How and in what manner the State as also the Commission would comply with the constitutional requirements of Article 335 of the Constitution of India should ordinarily not be allowed to be questioned.

....

32. Judging of merit may be at several tiers. It may undergo several filtrations. Ultimately, the constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office. Vacancies are not filled up by way of charity. Emphasis has all along been made, times without number, to select candidates and/ or students based upon their merit in each category. The disadvantaged group or the socially backward people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor.

16. In the present case as well, initially 41 candidates had been declared successful in the Preliminary Examination. Vide result dated 30-10-2009 it has been clearly stipulated that if the eligible candidates for personal interview were not available, then applications of more candidates, as per the merit list, will be scrutinised and the details of the same will be mentioned in the final Result. The said Result nowhere mentions that all 41 candidates whose seat numbers are mentioned therein will be called for the personal interview. It is clear from the order dated 15-10-2009 that it only specifies that after the Preliminary Test a list of 4 times or 6 times the number of candidates will be published if the required number of candidates are not available for scrutiny. In that eventuality, an additional list of seat numbers will be supplied by the Confidential Branch of the GPSC after due permission of its Secretary, as per procedure laid down in order dated 15-9-2010. Accordingly, a list of 118 candidates was considered for scrutiny. As per the affidavit-in-reply filed by the GPSC, the total number of candidates considered for scrutiny were 159 (41 + 118), out of which as per the Final List declared on 14-2-2011, 7 candidates were found suitable for personal interview.

17. As held in *Andhra Pradesh Public Service Commission v. Baloji Badhavath* (Supra), the Preliminary Examination is not part of the main examination and the merit of the candidate is not to be judged thereby and only an eligibility criterion is fixed. In the present case, judging by the eligibility criteria fixed as per Rules regarding experience, the Petitioner has been found lacking and has not been called for the interview. If, upon scrutiny, the required number of candidates fulfilling the eligibility criteria, including experience, are not found after scrutiny of the list of the Preliminary Examination, then the Respondent-GPSC is perfectly justified in scrutinizing the details of a larger number of candidates, as specified in order dated 15-10-2009, in order to prepare the Final List of the candidates who fulfill all the requisite eligibility criteria, including that of experience. In my view, this action of the GPSC is neither tainted by the vice of arbitrariness nor is it illegal, irrational or unfair. The recruiting body, in this case the GPSC, is entitled to select the best available candidates for the posts in question. Merely, because the Petitioner has cleared the Preliminary Test and his seat number is mentioned in the list dated 30.10.2009, he does not acquire any indefeasible legal right to be called for the interview. Judging the merit of a candidate may entail a process that requires several stages and re-scrutiny of the result of the Preliminary Test, in order to arrive at the final list of eligible candidates. The exclusion of the Petitioner is a result of such an extended scrutiny and cannot be said to be suffering from any illegality or irregularity. In fact, it appears that a large number of candidates were considered, over and above those who were initially declared successful in the Preliminary Test. The objective of the extended scrutiny, which is as per procedure prescribed by the GPSC, is to narrow down on the candidates who possess the prescribed eligibility criteria, including that of experience, for the purpose of shortlisting for the personal interview. As held by the Supreme Court in *Andhra Pradesh Public Service Commission v. Baloji Badhavath* (Supra), how, and in what manner the Commission would judge the merit of the candidate is its function and unless the procedure adopted by it is held to be arbitrary or against known principles of fair play, the superior court would not interfere with it. The learned advocate for the Petitioner has not been successful in establishing that the procedure adopted by the GPSC is irrational or against the known principles of fair play. The GPSC is entitled to evolve a procedure for judging the best possible merit of the available candidates, which it has done in the present case. The submissions advanced by the learned advocate for the Petitioner are, therefore, not accepted.

18. The learned advocate for the Petitioner has given various Dictionary meanings of "Social Work". Reference has also been made to the definition of "Social Work" in the Wikipedia. The said meanings and the definition have already been reproduced, earlier. Without entering into niceties or dissections of the said meanings and definition, which in my view is unnecessary, it is relevant to take note that the Rules, as also the advertisement, clearly stipulate the preferential nature of the experience required for the post. The eligibility of the Petitioner with regard to the experience possessed by him can only be judged by

the standards prescribed by the Rules and stipulated in the advertisement and not on the basis of the Dictionary meaning or definition of "Social Work" in the Wikipedia. When the Rules clearly specify the type of experience that shall be given preference, namely, in the field of Probation, Parole, Rehabilitation of Proclaimed Offenders and Institutional Management, with knowledge of Social Laws, there is no requirement of referring to the Dictionary meaning or definition of "Social Work" in the Wikipedia.

19. Reliance has been placed by the learned advocate for the Petitioner on the decision of the Division Bench of this Court in Letters Patent Appeal No. 876 of 2010, in the case of Patel Sandipkumar Nalinbhai v. State of Gujarat, dated 6-5-2010. In that case, the Appellant had applied for the post of "Saathi Sahayak" pursuant to an advertisement, along with requisite documents. The advertisement had a Clause stating that if the candidate possesses a driving licence for Two Wheeler Vehicle, a copy thereof should be attached. The Appellant did not possess a driving licence at the time of making the application but acquired it before the date of interview and produced it for consideration before the Selection Committee. However, the marks prescribed for driving licence were not awarded to him as it had been acquired after the application was made. Relying upon a judgment of the Supreme Court, the Division Bench held that a candidate who had acquired eligibility for the post subsequently, should be given an opportunity to participate in the selection process. The said decision turns on its own facts. In the present case, there is no such stipulation in the advertisement that candidates possessing an additional qualification would be given more marks for the same. The eligibility of all the candidates, including the Petitioner, who applied pursuant to the advertisement, has been assessed and judged on the basis of the documents submitted by them along with their applications. To examine the subsequent documents sent by the Petitioner would result in adopting a procedure not prescribed by the GPSC and resulting in injustice to other candidates. The GPSC, as a recruiting body, is bound to maintain impartial and uniform standards for all participants in the recruitment and selection process. The Preliminary List in which the Petitioner was declared successful is based on the Certificates submitted by him along with the application. On one hand, the learned advocate for the Petitioner has relied on the said Result and, on the other, states that Certificate sent by the Petitioner subsequently, should have been considered before declaring the Final List. If such a procedure is adopted, then the norms evolved by the GPSC would be thrown to the winds and it would have to scrutinise all the material sent by other candidates subsequently, resulting in erosion of the sanctity and fairness of the recruitment process. In any case, no material has been placed before this Court in support of this contention, or to show that such a procedure is prescribed by the GPSC. In this view of the matter, the judgment of the Division Bench, being rendered in a totally different factual context, would not assist the Petitioner.

20. The learned advocate for the GPSC has relied upon the case of Jayantilal Dwarkadas Patel v. State of Gujarat and Anr. (Supra.), wherein this Court has

held that:

7. Secondly, relaxation which is also provided in the General Rules can only be granted by the State Government if the same is in public interest. But this is also discretionary power of the State Government, and for which this Court cannot issue a writ of mandamus. It is the settled law that for issuance of a writ of mandamus, (1) the applicant must show that he has legal right of the performance of a legal duty (not discretionary) by the party against whom mandamus is sought, and such right is subsisting, and (2) the duty enjoined by mandamus may be one imposed by Constitution, a statute, common law or by rules or orders having the force of law K.N. Guruswamy Vs. The State of Mysore and Others, No such right exists in favour of the Petitioner nor any corresponding duty to the authority. Since the Petitioner was not eligible at the date when he made the application, one cannot find any fault on the part of the Commission when it has not called the Petitioner for viva voce test though he had several other merits.

21. The above decision would squarely apply to the facts of the present case. As per the settled position of law, even a candidate whose name appears in the select list has no right for appointment. In the present case, the Petitioner, having been found to be ineligible due to lack of requisite experience, can claim no legal or vested right to be called for the interview. In this view of the matter, there is no requirement of calling the Petitioner in order to ascertain his eligibility, as submitted. There is no violation of the principles of natural justice in the present case, as alleged.

22. As a result of the aforesaid discussion, as no legal, fundamental or indefeasible right of the Petitioner has been violated, and as the impugned decision of the GPSC in debarring the Petitioner from appearing in the interview suffers from no legal infirmity, the petition fails. It is, therefore, rejected.

23. Rule is discharged. There shall be no orders as to costs.