

(1999) 12 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No. 7509 of 1999

Dakshaben Narandas Patel and Another

APPELLANT

Vs

Gujarat Panchayat Service Selection Board

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 203, 323

Citation : (1999) 12 GUJ CK 0079

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : A.K. Clerk, for the Appellant; S.P. Hasurkar, for the Respondent

Judgement

1. The present petition was filed in this Court on 27-9-99 on behalf of the two petitioners herein seeking a direction that the omission on the part of the respondent - Board to call the petitioners for interview for the post of Mukhya Sevikas is illegal and that Board may be directed to call the petitioners for interview for the post of Mukhya Sevikas pursuant to the advertisement dt. 23-11-98 and to consider the petitioners for the post of Mukhya Sevikas.

2. The petitioners have come with the case that an advertisement No. 11/98-99 appeared in the news papers on 23-11-98 inviting applications for 367 posts of Mukhya Sevikas in different District Panchayats. In response to the aforesaid notice inviting applications, the petitioners applied for the said post. The petitioners case is that they possess the educational qualification of HSC pass and, thereafter, they had obtained Bachelor degree in Rural Studies from Mahila Gram Vidyapith, Nardhipur. Petitioner No. 1 has obtained the degree of Bachelor of Rural Studies in April/May 1989 and the petitioner No. 2 has obtained the same degree in April/May 1996. It is also the case of the petitioners that both these petitioners have been working as Anganwadi Supervisors for last seven years. It has been submitted that Balvikas Seva Yojna is run by a public Trust. It is also stated that the post of Anganwadi Supervisor and the post of Mukhya Sevika, which has been advertised by the respondent - Board, are the same.

Petitioners thus claim experience of more than seven years of working as such in the Public Trust.

3. When the interviews for the first batch of the candidates, who applied in the response to the aforesaid notice inviting applications dt. 23-11-98 issued by the Gujarat Panchayat Service Selection Board, Ahmedabad, were to be held on 30-9-99 and the petitioners herein were not called for the interviews, they preferred the present petition on 25-9-99. On 30-9-99 notice returnable on 5-10-99 was issued by this Court and on the returnable date i.e. 5-10-99 time was obtained on behalf of the respondent to seek instructions. Time was again sought on behalf of respondent on 12-10-99 and the reply dt/1-11-99 was then filed by the respondent and thereupon an affidavit-in-rejoinder dt/21-11-99 was filed by the petitioner. When the matter came up before this Court on 2-12-99, the matter was heard for some time. Since the Court time was over, the matter was kept for further arguments today i.e. 3-12-99. Having heard learned counsel for both the sides and looking to the length at which the arguments were made, a suggestion was made to Mr. Hasurkar that let this matter be finally decided as all the relevant pleadings had already become available on behalf of the parties and no useful purpose can be served now by keeping the matter pending any more. However, Mr. Hasurkar has prayed that the matter may be kept pending and only rule may be issued. In the facts and circumstances of this case, this Court finds that Mr. Hasurkar's request is not reasonable. When the matter has been heard at length, after notice to the other side, and the matter can be decided at this stage on the basis of the facts, which are not in dispute on the question of law and on the documents, which have been filed by the respondent itself, the matter should not be allowed to end just to observe the formality of issuing the rule and then hearing it after long time, more particularly when it is a case in which the recruitment for the post of Mukhya Sevikas is going on and it may create further complications In case the recruitment is held without considering the petitioners case and other similarly situated candidates, who may be available. Such an approach on the part of the respondent to keep the matters pending in the Court without any justification cannot be encouraged and cannot but be deprecated. Hence while issuing Rules, this Court thinks it proper to decide this matter finally at this stage itself as both the sides are duly represented, are before the Court with complete exchange of pleadings.

4. The only question, which requires consideration in this case, is as to whether petitioners herein holding qualification of degree of Bachelor in Rural Studies from Mahila Gram Vidyapith, Nardhipur (Mehsana) should be treated to be eligible for the post of Mukhya Sevika as has been advertised through notice inviting application dated 23-11-99 published in the news paper, the copy of which has been placed on record as Annexure "A". The eligibility of the present petitioners is opposed by the respondent on the ground that they do not hold degree of Bachelor in Rural Studies from any of the Universities as had been enlisted and enclosed with the Resolution of the Government of Gujarat dt. 29-7-99 and that Mahila Gram Vidyapith, Nardhipur is neither recognized nor

deemed University or Institution included in the list, which has been enclosed with the aforesaid Resolution dt. 29-7-99, copy of which has been placed on record with the affidavit-in-reply dt/1-11-99.

5. In order to appreciate this controversy, the reference may straightway be made to the copy of the Draft Rules at page 28 to 30 enclosed with the copy of the letter dt/- 6-9-91 sent by the Deputy Secretary of the Panchayat and Rural Housing Department to the Secretary, Gujarat Panchayat Service Selection Board. This copy of the Draft Rules and the letter dt/- 6-9-91 have been placed on record by the respondent itself. In the letter dt. 6-9-91 with regard to the eligibility, the relevant requirement is degree in Home Science, Child Development and Nutrition. There is no mention that such degree has to be from a recognized University. It is of course true that in the Draft Rules, it was mentioned that the Degree must be in Home Science or Child Development or Nutrition of the recognized University, but the mention of the recognised University is conspicuously missing at item No. 2(k) of the letter dt/6-9-91 and in the end of this letter, it has been mentioned that it may be noted that the Draft Rules are not ultimate. Subsequently, the Government has passed a Resolution dt. 5-10-91, the copy of which has been placed on record at page 25 as Annexure "A" along with the reply of the respondent and in this Resolution, which has been issued by the G.A.D., in the matter of giving recognition to the degree of Bachelor of Rural Studies, it has been clearly resolved after consultation with the Gujarat Public Service Commission that the degree of Bachelor in Rural Studies awarded by the Institutions mentioned therein will be considered to be equivalent for the purpose of posts and services under the State of Gujarat and this degree shall be equivalent to degree awarded by any of the recognised Universities. In this Government Resolution, the name of the Institution, wherefrom the present petitioners have got the degree of Bachelor in Rural Studies, has been mentioned at Item No. 2. It is therefore, clear from this Government Resolution itself that the degree of Bachelor of Rural Studies from Mahila Gram Vidyapith, Nardhipur has to be treated as a degree equivalent to graduation i.e. B.A. for the purpose of recruitment to all the posts and services under the State of Gujarat and, therefore, there is no question of making any exception to such Resolution in the case of Panchayat services. A copy of this Resolution dt/5-10-91 had also been sent to the Secretary to the Gujarat Panchayat Service Selection Board as it is clear from the endorsement made in the document Annexure "A" at page 25. After the aforesaid Resolution, as had been passed and circulated by the General Administration Department, the Panchayat and Rural Housing Department also passed a Resolution on 1-1-92, copy of which has been placed on record with the petition as Annexure "E" and the correctness of which has not been disputed by respondent. In para 3 of this Resolution issued by the Panchayat and Rural Housing Department by the order of the Governor, it has been categorically mentioned that the degree of B.R.S. i.e. Bachelor of Rural Studies has to be treated as equivalent to B.A. as an educational qualification at par with degree of B.A. by recognised Universities for

the purpose of recruitment in the Panchayat Services and such candidates shall be eligible to apply for all such posts, wherever qualification B.A. recognised by the University has been prescribed as the essential qualification. The endorsement at Item No. 1 of this document Annexure "E" also shows that 10 copies of this Resolution were sent to the Secretary, Gujarat Panchayat Service Selection Board.

6. In face of the Resolution passed by G.A.D. and the Panchayat & Rural Housing Department on 5-10-91 and 1-1-92, there is no question of keeping the eligibility confined to only those, who had passed the graduation from recognised Universities. Mr. Hasurkar has submitted that since in the advertisement it has been mentioned as recognized Universities, the holders of the qualification from Institutions other than recognized Universities, as such, stands excluded and, therefore, the petitioners cannot be considered to be eligible. This would simply mean begging the question. This mention made in the advertisement itself is the subject matter of challenge for all practical purposes in this petition. To be precise, the petitioners' grievance is only this that why eligibility has been curtailed when they hold a qualification of degree of Bachelor of Rural Studies from an Institution, which has been treated at par with the Graduation from recognised Universities for the purpose of recruitment against the posts and various services under the State and the G.A.D. as well as the Panchayat department have stated that the candidates like the petitioner holding qualification from the Mahila Gram Vidyapith, Nardhipur, as has been specifically mentioned in Resolution dated 5-10-91 and Panchayat Department Resolution dated 1-1-92, on what basis the petitioners can be kept out of the race for appointment on the posts of Mukhya Sevikas.

7. In the facts and circumstances of this case and keeping in view the two Government Resolutions, to which reference has been made hereinabove, the exclusion of the candidates like the petitioners from consideration for the post of Mukhya Sevikas can only be said to be arbitrary and discriminatory to the core. Mr. Hasurkar has submitted that it was within the competence of the Gujarat Panchayat Service Selection Board to keep the eligibility confined only to those, who have passed from the recognised Universities. This submission in the facts of this case is wholly preposterous. Once General Administration Department of the Government of Gujarat and the concerned Administrative Department i.e. Panchayat Department has resolved in no uncertain terms that the candidates like the petitioners, holding degree of Bachelor of Rural Studies from the Institutions will be treated at par with the holders of the degree of recognised Universities for the purpose of recruitment to the posts and services under the State of Gujarat, which includes the Panchayat service, there was no question of limiting the eligibility to the holders of the degree of graduation from recognised Universities only as such by keeping the Government Resolution dt. 5-10-91 and 1-1-92 in oblivion, as if they did not exist. Had any statutory Rule been finalised and framed as contemplated under S. 323 read with sub-Section (3) of S. 203 of the Gujarat Panchayats Act, 1961, the things would have been very different and

in that case, no Government Resolution could override such Rule. Here is a case in which there is an admitted position that no statutory Rule with regard to the eligibility for recruitment for the posts of Mukhya Sevika have been framed. In absence of such Rules, merely because a copy of the Draft Rules were sent to the Panchayat and the Rural Housing Department and that too way back in the year 1992, it cannot be said that the letter dated 6-9-91 and Resolution dt/- 5-10-91 should be ignored. It is settled law that where statutory Rules are required to be framed and the same are not framed, till such time that the statutory Rules are framed, the executive instructions or guidelines may hold the field and, therefore, in the instant case, in absence of any statutory Rules, the matters have to be governed by relevant Government Resolution issued in this behalf. It may also be mentioned that the Gujarat Panchayats Act, 1961 is repealed in terms of S. 276(2) when the Gujarat Panchayats Act, 1993 was enacted and the powers with regard to Rules regulating Panchayat services have been given to the State under sub-section (5) of S. 227 of Gujarat Panchayats Act, 1993. In this view of the matter, I do find that the Government Resolution, as had been passed, has been ignored by the respondent while issuing the advertisement and while calling the candidates for interviews and the exclusion of the petitioner from being called for interview, appears to be wholly arbitrary and unjust.

8. Argument of Mr. Hasurkar is that many candidates holding qualifications like the petitioners may not have applied in response to the advertisement because in the advertisement the eligibility is confined to the holders of degree from the recognized Universities. Firstly, the argument itself is far-fetched. Secondly in case any person or party or candidate is aggrieved, it is for the concerned party to raise the grievance before the concerned authorities or before the Court. That does not mean that the candidates, who are found to be eligible and who have rightly applied in response to the advertisement being award of the correct position of the eligibility in terms of the Resolutions, should be denied the relief.

9. Mr. Clerk had also attempted to argue that in identical cases of candidates holding the same qualification, appointments have been given in past and even in the present recruitment, certain other candidates having degree of Bachelor of Rural Studies like the petitioners have been called for interview. These facts are disputed by Mr. Hasurkar and whereas the petition can be decided on the basis of adjudication, as aforesaid, I do not consider it necessary to go into this question, particularly when the facts are disputed by the other side.

10. Mr. Hasurkar has also placed for the perusal of this Court copies of the Gazette Notifications dated 29-4-98 and 19-11-98 saying that wherever equivalent qualifications were to be considered, it is mentioned in the body of the Rule itself that, "or an equivalent qualification". These two Notifications are the Notifications of statutory Rules and the portion that, "or an equivalent qualification" is a part and parcel of the statutory Rule. In the instant case, there is no such Rule and in face of the Resolutions by which the eligibility had been laid down and it was specifically held out that the candidates holding qualification

like the petitioners will be eligible, there is no scope for invoking the argument, as aforesaid and this argument cannot be said to be available to the respondent. The same is hereby rejected.

11. The upshot of the aforesaid discussion is that this Special Civil Application succeeds. The same is accordingly allowed. Respondent Gujarat Panchayat Service Selection Board is directed to call the petitioners and all other similarly situated candidates, holding degree like that of the petitioners, who have applied in response to the advertisement, for interview and proceed further with the recruitment in accordance with law. Rule is made absolute. No order as to costs.

12. Applications allowed.