
(1995) 05 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 5558 of 1995

Dave Kirtikumar Rameshchandra

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 13-05-1995

Acts Referred:

Citation : (1995) 05 GUJ CK 0009

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

Bench : Single Bench

Judgement

M.R. Calla, J.—Rule. Mr Bambhania, Additional G.P. appearing for the respondents waives service of rule on behalf of respondents Nos. 1 and 2. At the request of both the sides, the matter was taken up for final hearing today.

2. It is not in dispute that the petitioner was selected for appointment as Class-IV employee, that is, for the post of peon/watchman/water server and jail warder. His name was included in the select list which was prepared way back on 9th July, 1991 and his name was at Sr. No. 12. The petitioner's date of birth is 25th October, 1967. Even after the selection, time was consumed and when the stage of issuance of appointment order came, it was 31st March, 1993, by which time, the petitioner crossed the upper age limit of 25 years and on that ground, appointment was denied to the petitioner despite his selection. At his juncture, present petitioner filed the petition challenging denial of appointment and is claimed that the petitioner was within the age limit when the recruitment was made. Merely because the stage of offering appointment consumed some time as a part of essential procedure or for want of vacancies so as to correspond with the petitioner's position in the select list which was prepared in July, 1991, was still operative and the only ground on which appointment was denied to the petitioner at the end of March, 1993 was that, he had crossed the upper age limit of 25 years by that time.

3. The identical controversy was considered by this Court in the case of S.G. Rathod v. District Judge, Bhavnagar reported in 1995 (1) GLH 584 and it was

held, that on such grounds, appointments cannot be denied. The petitioner's grievance raised in this petition is fully covered by the view taken in the case of S. G. Rathod (supra). Mr. Bambhania, Learned Additional G.P. submits that of course, the petitioner's grievance raised in this petition is covered by the aforesaid judgment, in some matter, on this question, letters patent appeal is pending. That may be so, but so far as this Court is concerned, in absence of any contrary orders of the Division Bench, the view taken in the aforesaid decision has to be followed.

4. The Learned Counsel for the petitioner has submitted that the petitioner foregoes his claim for any monetary benefits for the period in past.

5. Accordingly, this special civil application succeeds. The respondents are directed not to withhold the orders appointing the petitioner as Class-IV employee on the basis of the selections which were held and the select list which was prepared on 9th July, 1991 according to his merit position therein at Sr. No. 12 such orders shall be issued immediately in favour of the petitioner but in no case later than 13th October, 1995. So fast as the petitioner's entitlement to salary is concerned, same will start from the date he reports for duty before the concerned District Judge. Rule is accordingly made absolute with no order as to costs.

DS permitted.

5. Application allowed.