

(2008) 01 GUJ CK 0031
In the Gujarat High Court

Case No : Letters Patent Appeal No. 22 of 2008 in Special Civil Application No. 23734 of 2007 and Civil Application No. 426 of 2008 in Letters Patent Appeal No. 22 of 2008

Desai Neeta Harjibhai

APPELLANT

Vs

Gujarat Public Service Commission and Others

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Constitution of India, 1950 — Article 309
Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 — Rule 8, 8(8)
Gujarat Educational Service (Administrative Branch) Class I Recruitment Rules, 2002 — Rule 2, 3

Citation : (2008) 1 GLH 326 : (2008) 1 GLR 641

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : K.B. Pujara, for the Appellant; V.S. Pathak, Asst. Government Pleader for Respondent 2 and S.K. Patel, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—This Appeal preferred under Clause 15 of the Letters Patent arises from the common judgment and order dated 13th December, 2007 passed by the learned Single Judge in so far as the above Special Civil Application No. 23734 of 2007 has been rejected. The appellant is the writ petitioner.

2. Pursuant to the advertisement given by the Gujarat Public Service Commission (hereinafter referred to as "the Commission") published on 17th March 2006, the appellant writ petitioner had applied for selection and appointment to the post of District Education Officer Class-I (Administrative Branch) or equivalent post. The appellant was called upon to take elimination test. The appellant successfully took the said elimination test. Nevertheless she was not called for the interview. The reason given out was that she did not possess the requisite qualifications. Upon further inquiry, the petitioner was informed that she did not possess the

requisite experience. Feeling aggrieved, the petitioner preferred the above writ petition, which has been rejected by the learned Single Judge. Therefore, the present Appeal.

3. By the above referred advertisement published on 17th March 2006, applications were invited from eligible candidates for appointment as District Education Officer or equivalent post Class-I (Administrative Branch). The requisite educational qualifications were Bachelor's degree in First Class of a recognized university or a Bachelor's degree with a Master's degree and the degree in Education. The candidates were also required to possess at least seven years' teaching or supervisory or administrative experience. According to the petitioner, she has the requisite teaching experience. She has been teaching as an Assistant Teacher in Stree Adyapan Mandir (PTC College) Harijan Ashram, Ahmedabad since 1st January 1992. It is, however, undisputed that the petitioner acquired Bachelor's degree in the year 1992 and a degree in Education in the month of May 1999. It is admitted that on the last date of submitting application i.e. on 17th April 2006, the petitioner had not completed seven years' experience since her acquiring the requisite education qualifications.

4. The only question that arises is, whether for considering the eligibility of a candidate, total experience should be considered or should it be the experience gained after obtaining the requisite educational qualifications. The appointment to the posts in Gujarat Educational Service (Administrative Branch) Class-I are governed by the Gujarat Educational Service (Administrative Branch) Class I Recruitment Rules, 2002 framed under the proviso to Article 309 of the Constitution of India. Rule 2 of the said Rules provides for appointment to the said service by promotion or by direct selection. Rule 3 of the said Rules provides for the eligibility for appointment by direct selection. Clause (b)(i) and (b)(ii) thereof provide for minimum educational qualifications. Clause (c) thereof provides for minimum experience, which reads, "Have at least seven years' experience in teaching or inspection or administration or in any one of them."

5. Mr. Pujara has vehemently submitted that the said clause does not contemplate experience gained after obtaining the requisite educational qualifications. In other words, the total experience gained by a candidate should count for considering eligibility of such candidate.

6. We are unable to agree with Mr. Pujara. It is true that the aforesaid Rules do not specifically provide how the experience should be counted. For that, we have to resort to the Gujarat Civil Services Classification And Recruitment (General) Rules, 1967. The said Rules are made applicable to services and posts, the recruitment to which is regulated in accordance with the rules made under Article 309 of the Constitution of India. Rule 8 thereof provides for the condition as to prescribed qualifications. Sub-rule 8 of the said Rule 8 reads as under:

(8) Where the qualifications prescribed for any service or post include a qualification as to practical experience for a given period and applications are

invited for such service or post the period of practical experience shall be computed -

(a) Unless otherwise provided in recruitment rule from the date on which requisite qualifications are obtained.

(b) With reference to the last date fixed for receipt of such application.

7. Thus, it is clear that in absence of specific provision made in relevant recruitment rules, the experience relevant for the purpose of considering eligibility of a candidate would be that experience which is gained after obtaining the required educational qualifications. In the present case, as recorded hereinabove, the Recruitment Rules do not specify the manner in which the period of experience should be computed. For that purpose we are required to invoke the above referred Rule (8) Sub-rule (8) of the Rules of 1967. That is, only that experience which is gained after obtaining the requisite educational qualification can be considered for computation of period of experience. It is not disputed that the petitioner had fallen short of the requisite seven years' experience by 20 days, if the experience gained after obtaining the educational qualifications were counted.

8. We reiterate that, experience which is gained after obtaining the requisite educational qualifications alone shall count for eligibility. Admittedly, the petitioner did not possess the requisite minimum experience. Her candidature was rightly rejected.

9. The Appeal is dismissed in limine. Civil Application stands disposed of.