

(2002) 08 GUJ CK 0011
In the Gujarat High Court

Director General of Police and Others	Vs	APPELLANT
Husen Alias Gaha		RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Citation : (2002) 4 GLR 3559

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

Bench : Single Bench

Judgement

Ravi R. Tripathi, J.—The present Second Appeal is preferred challenging the judgment and Order dated 26th April, 1991 passed by the learned Joint District Judge, Bhavnagar, in Civil Reg. Appeal No. 141 of 1984, whereby the Court was pleased to pass the following Order:

The suit is decreed in favour of the plaintiff and it is declared that the defendants are bound to give appointment to the plaintiff for the post of electrician in the scale of Rs. 350-560 with effect from January, 1981 and defendants are also bound to give seniority to the plaintiff for the said post from January, 1981 and defendants are also bound to give all the benefits incidental to the said post to the plaintiff with effect from January, 1981.

The defendants are further directed to give appointment to the plaintiff in the post of electrician as per their Advertisement and interview held in January, 1981 within 14 days from today, and treat him in the continuous service as electrician from January, 1981 and give him all benefits incidental to said has from January, 1981, including the subsequent promotion and all financial benefits etc.

2. The case of the appellant is that on 7th July, 1980, the Superintendent of Police, Wireless, State of Gujarat issued a Circular inviting applications for the post of electrician from and amongst the police constable having education and qualification and from those who falls within the specified age group. A copy of that letter dated 7th July, 1980 is made available for perusal, wherein, it is stated that the police constables, who possess the following qualifications and

are willing to be recruited as electrician, their names should be sent by 31st July, 1980:

Educational qualification:

- (1) Knowledge of English reading and writing;
- (2) Licence of Public Works Department of Second Class Wireman;
- (3) Knowledge of Petrol Engine Charger and of Electric Fitting at Motor Generator Battery Wireless Station; and
- (4) Special preference to the candidates possessing Diploma in Engineering or its equivalent or qualification of radio service.

Age limit:

Minimum 22 years. Maximum 35 years. Relaxation to the Scheduled Caste and Scheduled Tribe, as admissible under the Rules.

It is the case of the appellant that pursuant to the said Circular dated 7th July, 1980, candidates were called for interview and practical test between 12th January, 1981 to 23rd January, 1981. Pursuant to the said interviews and practical tests, a waiting list as per the merits was prepared. In that waiting list, the name of the respondent herein was at Serial No. 6. It so happened that in the meantime, the recruitment Rules for the post of Electrician, Wireless were modified/changed, whereby the minimum educational qualification and other qualifications along with age criteria were substantially changed. The Home Department (Special) issued a notification dated 15th January, 1981 and modified the recruitment procedure to the post of Electrician in Gujarat Police Wireless Organisation in Police Subordinate Service Class-III. One of the change brought by the said notification was that minimum age was reduced from 22 years to 18 years and maximum age was reduced from 35 years to 25 years. It is the case of the appellant that the appellant prepared a fresh waiting list containing only 8 names in which the name of the respondent herein did not find place, as the respondent was not falling within the age-limit prescribed under the Notification dated 15th January, 1981. Being aggrieved of that, the respondent herein, original plaintiff, filed a Regular Civil Suit No. 516 of 1983 in the Court of the learned Civil Judge (S.D.), Bhavnagar. The reliefs prayed in the said suit were as under:

The plaintiff be appointed on the post of electrician having the pay-scale of Rs. 350-560; he should be granted benefit of seniority on that basis and he also be paid consequential benefits.

The learned 2nd Joint Civil Judge (S.D.), Bhavnagar, passed judgment and decree dated 5th July, 1984 dismissing the suit filed by the plaintiff, respondent herein.

Being aggrieved of that, the original plaintiff, respondent herein, filed Civil Reg.

Appeal No. 141 of 1984 in the Court of learned Joint District Judge, Bhavnagar, which came to be allowed by judgment and decree dated 26th April, 1991, which is impugned in the present Second Appeal.

3. This appeal involves a short question as to whether the respondent herein, who was selected, and was placed at Serial No. 6 in the list, but was not appointed on the post of electrician, should be given that appointment, as Ordered by the learned Joint District Judge, Bhavnagar.

4. The learned first appellate Judge had framed the following points for determination:

(I) Whether the plaintiff proves that he is wrongfully not given appointment as electrician even though he had passed in the interview held in the January, 1981?

(II) Whether the plaintiff proves that he is entitled to be appointed to the post of electrician under interview held in the year 1981?

(III) Whether the plaintiff proves that he has been wrongfully not called for the interview held in the year 1982?

(IV) Whether the defendants prove that plaintiff is not qualified for the post of electrician, and therefore, he was lawfully not selected for the post in the interview of Jan. 1982?

(V) Whether the plaintiff is entitled to declaration and injunction as sought by him?

(VI) What Order?

The learned first appellate Judge was pleased to held Point Nos. 1 and 2 in affirmative, while for Point No. 3, he came to the conclusion that the same does not survive. As regards Point No. 4, it was decided in negative, while Point No. 5 was also decided in affirmative, and Point No. 6 was answered by allowing the appeal of the original plaintiff-respondent herein.

As a result, the learned Judge was pleased to hold that the plaintiff is able to prove that, he was wrongfully denied the appointment as electrician, even though, he was selected in the interview held in January, 1981. Taking this point first, the conclusions reached by the learned first appellate Judge is erroneous on the face of it inasmuch as any person, who is selected in an interview, does not get a right to get an appointment, and therefore, to hold that though the respondent had passed in the interview and still he is not appointed amounts to wrongfully denying an appointment, is not correct. As contended by the appellant herein that at the time of interviews, which were held from 12th January, 1981 to 23rd January, 1981, what was prepared was a waiting list and as per the requirements, appointments were to be given from that list.

5. Mr. Supehia, learned Advocate for the opponent, submitted that a selectee, whose name is placed on a select list, gets a "right of appointment" unless on

germane and relevant considerations, he is denied such appointment. He submitted that in the present case, the respondent is denied appointment only on account of amendment of the Rules, which cannot be said to be "germane and relevant" to the selection, and therefore, the findings recorded in favour of the present appellant are legal and the judgment and decree passed requires to be upheld by this Court.

6. The learned Advocate for the respondent submitted that from that waiting list/selection list, persons were appointed, but he did not give the details of the persons appointed. He produced a copy of the document, which is marked as Exh. 17/2, wherein it is mentioned against Serial Nos. 1, 2, 4, 5 and 6, "Not given posting", and against Serial No. 3, Shri Jayantilal Ambalal Prajapati, the remark, which is handwritten, is not legible. The learned Advocate submitted that the same is to the effect that he is given promotion. Thereafter, it is mentioned in this document that, "from item No. 2 to 25, they are not given posting". Thus, only one person was given promotion from the said list. No other person is given promotion from the said list. In light of that, the conclusion reached by the learned first appellate Judge that, "the plaintiff was wrongfully not given appointment as electrician even though he had passed in the interview already held in January, 1981", is erroneous. The learned Judge has, then, held that the plaintiff has proved that he is entitled to be appointed to the post of electrician on the basis of the interview held in the year 1981. The learned Judge has relied upon a judgment of the Honourable Supreme Court in the matter between P. Mahendran and others Vs. State of Karnataka and others, , and while discussing the aforesaid judgment, he has observed that:

It is held in this audiority that if the selection of a candidate is made under the old Rules, and if during the process of said selection, the rules are amended, the amended rules, not being retrospective, will not affect the selection made under the old rules.

The learned Judge has, men, reproduced the following part of me said judgment:

It was well settled rule of construction that every status or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the Rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving me amendment retrospective effect nor there is anything therein showing the necessary amendment for enforcing the Rule with retrospective effect. Since, the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post. Moreover, as the process of selection had already commenced, when the

amending Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selections they possessed the requisite qualifications prescribed by the Rules before its amendment. Moreover, construction of amending Rule should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject-matter.

It is held in this Rule that if the selection of a candidate is made under the Rules and if they are processed the other selection, the Rule are amended, the amended Rules not being retrospective will not effect the selection made under the Rules, will not.

7. In the case on hand, there was a list prepared at the end of the interviews. According to the appellant, the said list was only a "waiting list" and was not even having the status of selection list. Be that as it may. According to Mr. Supehia also, only one person was given promotion from the said list. A It is a settled position of law that mere selection does not confer any right on the selectee to get the appointment. Assuming for the sake of argument, the plaintiff had his name in the select list, then also, no right had accrued in favour of the respondent, and therefore, he cannot claim an appointment on the post of electrician as a matter of right.

8. In view of the aforesaid discussion, the finding recorded by the learned first appellate Judge that the plaintiff is wrongfully not given appointment as electrician even though he had passed in the interview held in January, 1981 and that the plaintiff is entitled to be appointed to the post of electrician pursuant to the interview held in January, 1981, are erroneous and required to be quashed and set aside by this Court. The declaration sought for and granted is consequential to the aforesaid finding, and therefore, that too is erroneous and requires to be quashed and set aside.

9. In view of the aforesaid discussion, the present Second Appeal is required to be allowed. The judgment and decree passed by the learned first appellate Judge in Civil Reg. Appeal No. 141 of 1984 is hereby quashed and set aside. The Second Appeal is allowed. No order as to costs.