

(1999) 06 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 7323 of 1997

Dodia Dilipbhai Prabhatsinh

APPELLANT

Vs

Secretary

RESPONDENT

Date of Decision : 30-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2000) 1 GLR 597

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : H.S. Myliya, for the Appellant; H.H. Patel and 2 and M.N. Popat, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—The petitioner under Article 226 of the Constitution praying for issuance of direction to the respondent to exhaust the select list and keep it alive which is prepared in pursuance of advertisement dated 28/2/1991 for making appointments on the post of Secretary, Gram Panchayat till the new select list is prepared. It is the case of the petitioner that he was placed by the Selection Committee in the merit list at Sr. No.16, which has been prepared in the year 1992. The petitioner stated that in Bharuch district also the process has been undertaken for making the selection on the post of Secretary, Gram Panchayat / Talati-cum-Mantri etc. For this, advertisement was published in the year 1990. The petitioner gives out for the alleged ground that as the State Government has put ban on appointments, he was not given appointment. It is the grievance of the petitioner that the State Government as well as the Appointing Authority has acted arbitrarily and exhibited a clear example of the favouritism and nepotism in dealing with these matters and has made hostile discrimination in making the appointments. If the ban is there it is there throughout the State but what the petitioner submits, in Bharuch District the appointments have made whereas in Kheda district the appointments have not been made. This action of the

respondents what the learned counsel for the petitioner contended, is totally unconstitutional. It is clearly what the learned counsel for the petitioner urges exhibit an example of favouritism, nepotism as well as gives out that the candidates, who are having relations with the highly placed supporters they can get the rule or the government decision moulded according to their convenience.

2. The respondent No.1, Secretary, Panchayat, Gram Gruh Nirman & Gram Vikas, Gandhinagar contested this petition by filing affidavit in reply. The respondent No.1 admitted that in Kheda district an advertisement dated 29/1/1991 bearing No.21 to 28/90-91 was issued inviting applications for filling up the posts of Secretary in the Gram Panchayat by selection through the Gujarat Panchayat Services Selection Board, Ahmedabad. In response to that advertisement, applications were received on 9/2/1992, a competitive written test was held and the results were declared in the month of July, 1992 and pursuance thereof a list of 27 candidates in order of the merits as well as waiting list were prepared. It is also not in dispute in the merit list / select list the petitioner's name is there at Sr. No.16.

3. It is the say of the respondent No.1 that in the meantime under the Government resolution dated 20/10/1991 of the Finance Department in relation to economic measures in the Government Expenditure issued directions and one of the directions was that a review of strength of staff in various cadres in each administrative department and in the heads of office under their control etc. be made and 10% reduction in each cadre be made and such posts are to be segregated. As a result of the same, the posts which become vacant and the posts those may fall vacant on account of death, retirement of employees etc. are to be abolished stage-wise. Prior approval is necessarily to be obtained from the Government by the concerned Appointing Authority for the purpose of filling up the vacant posts in the cadre of Secretary, Gram Panchayats. The respondent No.1 averred that the Department concerned prayed for grant of necessary approval from the Finance Department vide letter dated 24/9/1992 and same was accorded for giving appointments to first six candidates in the select list. It is not controverted by the respondent No.1 that for filling remaining vacancies, the matter for obtaining approval / sanction was pending with the Finance Department. The respondent No.1 stated that no approval / sanction was accorded to the appointing authority for filling up remaining vacancies due to economic measures. the reference has been made in reply to the fact that on 24/2/1993 the District Development Officer, Kheda had discussed the matter with the Secretary (Expenditure), Finance Department and the request made for sanction / approval for filling up by appointments seven posts of Talati-cum-Mantri, it is the say of the respondent the request aforesaid of the District Development Officer, Kheda was not accorded. In the reply the reasons given, for not accepting the request of the District Development officer, Kheda for grant of approval / sanction to fill in seven posts by the Finance Department is very important and I consider it to be appropriate to reproduce the same :

"However, the said request was also not acceded to, in taking into consideration the prevailing orders for economic measures and also it was not accepted the demand on account of the fact that demands for relaxation may come forward from other districts also".

4. Again on 15/5/1993 the District Development Officer, Kheda made a proposal to the Government for according approval / sanction for filling up four vacancies after reviewing the orders of the economic measures. It is stated that this request was also not accepted by the Finance Department. Vide note dated 26/5/1994 of the District Development Officer, Kheda made a request has been made for grant of approval / sanction for filling up all the remaining vacancies. In the meantime, what the respondent No.1 stated approval / sanction was sought for the back log vacant posts, but the same was also not accepted. It is the case of the respondent No.1 that the department after showing entire position of the staff concern, sought approval for filling up the vacant posts vide its Note dated 19/1/1996. It was also submitted to the Hon''ble Minister (Panchayat) and the Hon''ble Minister (Finance) but approval / sanction was not granted. It is admitted by the respondent No.1 that the Government had approved the existence / currency of the Select List up to 30/6/1997. The reference has been made to the fact that there were 146 vacancies in the month of August, 1996 under Kheda District Panchayat, out of which, 61 vacancies were filled in by giving appointments to dependents of deceased employees / officers on compassionate grounds and remaining 85 posts are lying vacant and some more vacancies may arise on account of retirement. It is the case of the respondent No.1 that pursuant to 10% reduction by way of economic measures as referred to above, 87 posts are kept vacant out of total posts of 873. This information was sent to the Finance Department. The District Development Officer, Kheda sent the necessary information showing position of the vacant posts as of 31/12/1996 and requested for grant of the sanction / approval to make the appointments on the posts from remaining candidates on the merit list. In the affidavit, the respondent No.1 stated that in pursuance to the proposal aforesaid made by the District Development Officer vide his letter dated 28/4/1997 for grant of approval / sanction giving promotions from Class - IV to Class III viz., Talati-cum-Mantri, the department has granted the same accordingly vide letter dated 11/7/1997 for filling up 11 posts by promotion. Then comes the reference made to the policy decision of the Government where under it is decided to fill up 30% posts of the Talati-cum-Mantri from women and accordingly it was decided to fill up 30% posts of Talati-cum-Mantri from women candidates first and thereafter to make appointments from male candidates. Summing up this part of the reply the respondent No.1 given out the explanation not to give appointment to the petitioner as a result of 30% vacancies are to be filled in from women candidates as per policy decision. On 19/10/1997 the competitive examination was held through the Gujarat Panchayat Service Selection Board and the selection committee has prepared a select list of 30 candidates of women reserved quota. It is the say of the respondent No.1 that those 30 women

candidates, who were selected also could not be given the appointments on account of general elections for Parliament was declared in the state.

5. The respondent No.1 did not produce on record what ultimately has been done by them with the women candidates select list. Though these additional facts are stated, but in para 7 of the reply to the Special Civil Application the respondent No.1 has admitted that under the letter dated 17/7/1997 the petitioner was informed that he was not given the appointment for the reasons first on account of ban imposed on fresh appointments and secondly on account of nonreceipt of sanction / approval from the Finance Department for appointments.

6. The respondent No.1 averred in the reply to the Special Civil Application that currency of the select list has been extended up to 30/6/1997, but the decision for its further extension of currency has not been taken so far.

7. Now I will deal with how the respondents have given the reply to the grievance made by the petitioner that in Bharuch district the select list has been exhausted fully. The respondent No.1 admitted that the District Panchayat, Bharuch issued advertisement No.55-56/89-90 dated 12/3/1990 for filling up the vacancies of 45 Talati-cum-Mantri and the last date for receipt of appointments was 12/4/1990. By issuing a corrigendum to this advertisement dated 22/3/1990 it was amended to the extent that total 65 vacancies are to be filled in. The breakup of the vacancies for different categories are as under :

27 : Unreserved 25 : Scheduled Caste 03 : Scheduled Tribe 07 : Socially & Educationally Backward 03 : Physically Handicapped

The respondent No.1 stated that it had consulted with the Finance Department for grant of approval / sanction for filling up 36 posts of the Talati-cum-Mantri in Bharuch District panchayat after given effect to 10% reduction of posts. The said matter was under process since 1992, however ultimately no sanction / approval was granted on account of arising many issues about norms for filling these posts. The respondent No.1 has made reference to the policy decision taken in 1996 by Government to give appointments to the dependents of the deceased employees on compassionate ground on vacant posts of Talati-cum-Mantri under the Panchayat. It is submitted that out of the selected list aforesaid 13 candidates were appointed vide order dated 21/7/92. Then comes the important admission made by the respondent No.1 that the Finance Department accorded sanction vide its letter dated 20/3/1997 to make the appointments of the remaining candidates from this select list i.e. of the candidates from Sr. No.14-65 on the posts of Talati-cum-Mantri. In pursuance to the approval / sanction of the Finance Department the District Development Officer, Bharuch vide its letter dated 22/4/1997 has given approval for issuance of the appointment to these selectees. This ground of discrimination raised by the learned counsel for the petitioner has been replied, "thus, the comparison which is made by the petitioner is not proper and therefore, it cannot be considered by this Hon'ble Court".

8. The learned counsel for the petitioner submitted that though the grounds given for nonappointment of the petitioner are that there is a ban on the appointment and secondly the Finance Department has not given approval / sanction for making the appointments but in the reply the respondents have made out are altogether a different case. Next it is contended that the case of the petitioner is identical to the case of the candidates, who have been selected in the year 1990 in Bharuch district. All the selected candidates from the Bharuch district were not given appointment on the ground of ban on recruitment but subsequently so far as those persons are concerned the Finance Department has given the sanction / approval but in the case of the petitioner it was not done. Lastly it is contended that the District Panchayat, Kheda has given out that sufficient number of posts were available even after giving effect to economy cut but still the Finance Department has not given sanction / approval. Concluding his submissions the learned counsel for the petitioner submitted that though in our country we have to act as per the rules and in accordance with the constitutional provisions but, here the Rule, Act and Constitution are to be read, interpreted and acted upon in favour of the person who are insisting for making of the appointments of their favourites. It is urged that the person of the mean or who are having the political support or somebody in higher ups is / are behind their back are getting the Rules, Acts, Constitution accordingly read, twisted, modified and are being benefited. What it is contended that it is a clear case of hostile discrimination. The respondents have failed to give out any reason more specific any good or satisfactory reason to justify this hostile discrimination.

9. On the other hand the learned counsel for the respondents submitted that the case of Bharuch district is altogether distinguishable and the appointment to the petitioner cannot be given.

10. I have given my anxious and thoughtful consideration to the submissions made by the learned counsel for the parties and perused the Special Civil application and the reply to the same filed by the respondents.

11. On the record of this Special Civil Application the respondent No.1 has not produced relevant correspondence with rests between the D.D.O., Kheda, the respondent No.1 and Finance Department. Not only this the respondent No.1 has not produced on the record of this Special Civil Application the relevant record i.e. the notings of the Finance Department regarding nongrantee approval / sanction for appointments to be made from the select list of Kheda district and granting sanction / approval for making appointments from the select list in Bharuch district. The respondents were under legal obligation to produce on record of this Special Civil Application this record.

12. Both in Kheda and Bharuch districts the process to make the recruitment on the post of Secretary, Gram Panchayat / Talati-cum-Mantri was started almost at the same time. The merit lists have also been prepared almost at the same time and taking into consideration the ban put on fresh appointments it was partially acted upon though list was kept alive for years together. The District

Development Officer, Kheda after determining the vacancies and giving effect to the ban imposed and as a result thereof the reduction of the posts informed to the Finance Department that sufficient posts are still available which may be permitted to be filled in from select list. In the case of Kheda district every time the Finance Department was not granting sanction / approval, though for what reasons it is not on the record. For Bharuch district ultimately in the year 1997 the sanction has been granted to make the appointments of the candidates from Sr. No.14-65 and it is not the case of the respondents that those appointments have not been made. I do not find any distinction in between two cases. The respondents have failed to produce any material on the record and the ground on which the approval / sanction was given to act upon the select list of the Bharuch district. Even in the case of Bharuch district the number of the total vacancies available are not given conveniently by the respondent No.1. In Bharuch district also the appointments are to be given to the dependents of the employees died while in service and this 30% reservation for women is also to be given effect to in that district. But conspicuously, respondent No.1, so far as Bharuch district is concerned has kept silence to disclose all these material facts and details of the posts, which are to be filled in by giving compassionate appointments and by selection of the female candidates. The concealment of these material and important facts from this court by the respondent No.1 is very serious. The respondent No.1 has felt contended to say that there is no comparison between the case of petitioner and the candidates of Bharuch district. Where such a serious question of discrimination has been raised by the petitioner it is obligatory on the part of the respondent No.1 by producing the record of the Finance Department as well as of its own to show that there were no comparable reasons and grounds in between the case of the petitioner and the case of candidates of Bharuch district.

13. I find sufficient merits in the contention of the learned counsel for the petitioner that in our country the Rules framed under Article 309 of the Constitution and/or Rules framed under any Act as well as constitutional provisions are of no value or substance for the respondent state. The officers of the State act and solely concern with to please their political or bureaucrat i.e. bosses. I find and satisfied that it is a clear case of favouritism and nepotism. The case of the petitioner was not distinguishable at all from the case of the candidates of the Bharuch district.

14. In this case that despite of economic measure the appointments have been made on compassionate ground as well as of women candidates. Figures were given with reference to the year 1996 of the vacant posts. Though 85 posts were available but same were stated to be kept vacant as a result of economic measure out of 873 posts. If we go by this facts then I fail to see how the appointments could have been made of women candidates. If the economic measure is to be relaxed it should have been relaxed for the petitioner also as it was made in Bharuch district. This economic cut measure is only on papers and it can suitably be modified with the desire, demand and commands of the persons,

who are at the helms of the affairs in the State. It is not the case where the vacancies are not available but only on the ground of economic measure cut the appointments were not made. It is not in dispute that Finance Department has power to relax or exempt this economic measure cut in appropriate case . The facts of the case and the substance of the matter have not been replied by the respondents that in case this exemption could have been granted and which has been granted in the case of Bharuch district in respect of merit list thereof, which was prepared almost at the same time why it has not been granted in the case of the petitioner. Whatever the explanation given by the respondents is absolutely immaterial, irrelevant and unwarranted. The petitioner is not against of giving the appointments on the compassionate ground or to the women candidates. His only grievance, which I do find it to be meritorious, is that a hostile discrimination has been made in the matter of the appointments. In case of Bharuch district exemption was granted for undisclosed reasons and in the case of Kheda district though vacancies were available the exemption has not been granted. In the absence of any cogent, good and satisfactory explanation to act differently in the similar case it has to be taken to be a clear case where discrimination is writ large. Economic measure is a state policy and it has to be made applicable and enforce uniformly throughout the state. In this case, it has been lifted for one district without any good, cogent and sufficient cause. Whatever the explanation given, at the cost of the repetition it has to be stated, equally applicable to the Bharuch district also, the respondent No.1 has failed to make out any case of distinction and it has felt contented and satisfied by saying that these two cases are not comparable. This action of the respondents is wholly arbitrary and perverse. I do not find any distinction in between the cases of the petitioner and that of the Bharuch district. Both in Kheda and Bharuch districts select lists were prepared almost at the same time and are not acted upon fully for the same reasons but at later point of time in one case this reason has been given good bye.

15. This is a clear case where the respondents have not given out any good, cogent and satisfactory reasons for making the distinction between these two districts which are for all the purposes are similar.

16. In the result, the Special Civil Application succeeds and the same is allowed. The respondent No.1 is directed to consider the case of the petitioner whose name is therein the select list for giving appointment on the post of Secretary, Gram Panchayat. It is made clear that the appointment may not be denied to the petitioner only on the ground there is a ban put on the fresh recruitment by the Finance Department and necessary order of appointment has to be made within a period of one month from the date of the receipt of the writ of this order. The rule is made absolute accordingly. The respondent No.1 is directed to pay Rs.2,000/- as costs of the petition. This amount has to be paid to the petitioner by account payee cheque. Liberty is granted to the petitioner for revival of this Special Civil Application, in case of difficulty.