

(2010) 01 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 12453 of 2009

Dr. D.S. Maru

APPELLANT

Vs

Gujarat Public Service Commission and Another

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

University Grants Commission Act, 1956 — Section 3

Citation : (2010) 1 GLH 496 : (2010) 51 GLR 649

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Paresh Upadhyay, for the Appellant; D.G. Shukla and Manisha Narsinghani, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D.H. Waghela, J.—Petitioner has applied for the post in Gujarat Educational Service Class-II (Administrative Branch) pursuant to the advertisement issued by respondent No. 1 (G.P.S.C.) on 23-8-2007. His candidature has been cancelled by impugned order dated 18-11-2009 on the basis that he is not possessing the requisite qualification. Admittedly, the recruitment is governed by the recruitment rules called Gujarat Educational Service Class-II (Administrative Branch) Recruitment Rules, 1969 of which the relevant provisions read as under:

3. To be eligible for appointment by direct selection to the post mentioned in Rule 2, a candidate must:

- (a) be not more than 30 years of age,
- (b) have a Bachelor's degree in Arts, Science, Commerce, Agriculture or Law of a statutory Indian or foreign University;
- (c) have passed B.T./B.Ed. or an equivalent Degree or Diploma of a recognized University.
- (d)....

(e)....

2. The petitioner is possessing educational qualification of B.R.S. and has also undergone post-graduate course for the degree of "Parangat" which is translated by the University as "Master of Arts". The petition is pressed mainly on the ground that, by Resolution dated 5-10-1991 of General Administration Department of the State, it is specifically resolved and declared that the degree of B.R.S. (Bachelor of Rural Studies) conferred by specified Institutes shall be considered to be equivalent to the degree of B.A. (Bachelor of Arts) for the purposes of employment and recruitment on the posts under the State Government. By another Circular dated 16-1-1978 of the State Government, it is further provided that, in case of degrees/diplomas awarded by Universities in India which are incorporated by an Act of the Central or State Legislature in India and other educational Institutes established by an Act of Parliament or declared to be deemed as Universities u/s 3 of the University Grants Commission Act, 1956, no formal orders recognizing such degrees/diplomas should be issued by Government. Such degrees/diplomas should be recognized automatically, for the purpose of employment under the State Government. The Institution granting B.R.S. degree to the petitioner is a statutory University. It is held by this Court in order dated 24-9-1997 in Special Civil Application No. 6953 of 1997 that, in view of the aforesaid Resolution dated 5-10-1991 of the Government, a particular department cannot take a different view. That matter having been carried in appeal, Division Bench has in the judgment dated 2-11-2009 in Letters Patent Appeal No. 1348 of 1997, reiterated that the degree of B.R.S. was considered equivalent to degree of B.A. by the State Government by way of its resolution, and hence, the view taken by learned Single Judge did not suffer from any infirmity. Thus, equivalence of the degree of B.R.S. is confirmed and established by the resolution of the Government as well as orders of this Court.

3. It was, however, argued by learned Counsel Mr. Shukla, appearing for the G.P.S.C., that the Recruitment Rules of 1969 clearly made a distinction between educational qualifications and the provisions for equivalent degree in Clauses (b) and (c) of Rule 3 which need to be scrutinised. He submitted that, if any degree equivalent to the degree of B.A. were to be accepted, such provision has to be found in the rule itself and wherever it was permissible to accept an equivalent degree, it was so specified in the rules. He, therefore, submitted that no degree other than the Bachelor's degrees mentioned in Rule 3(b) could fulfill the condition of educational qualification. Learned A.G.P. has supported the arguments of Mr. Shukla.

4. It is too late in the day to hold that equivalence of the degree of B.R.S. granted by the Resolution dated 5-10-1991 could be disregarded while applying the Recruitment Rules of 1969 in view of the aforesaid decisions of this Court. The subsequent developments pursuant to which the Resolution dated 5-10-1991 would have been issued would not have existed at the time of framing of the rules, and hence, the Government has in its wisdom issued the subsequent

Resolution dated 5-10-1991 specifically for the purpose of granting equivalence to the degree of B.R.S. for the purpose of recruitment for the posts under the Government. Therefore, the Recruitment Rules of 1969 are practically supplemented by the aforesaid resolution and it does not have the effect of altering the Rules nor is it inconsistent therewith. It cannot lie in the mouth of the Government itself or the recruitment agency to say that the Recruitment Rules have to be strictly applied disregarding the Government's policy enunciated in the Resolution dated 5-10-1991. This view of the matter finds support in observations of the Apex Court in O.P. Lather and Others etc. Vs. Satish Kumar Kakkar and Others,

5. In the facts and for the reasons discussed hereinabove, the petition is allowed with the direction that the impugned order dated 18-11-2009 shall stand quashed. Since, under the order of interim relief the petitioner has been allowed to participate in the selection process and is stated to have been selected after interview, as a necessary consequence, he may be declared to have been selected and appointed unless there are any other reasons for not doing so. Rule is made absolute with no order as to costs.