

(2011) 02 GUJ CK 0170
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2970 of 2010 in Special Civil Application No. 11114 of 2010

Dr. Kanayalal A. Patel

APPELLANT

Vs

Veer Narmad South Gujarat University

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2011) 02 GUJ CK 0170

Hon'ble Judges : Jayant M. Patel, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : K.M. Patel and Dipen A. Desai, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The present appeal arises against the order dated 30th September, 2010 passed by the learned Single Judge of this Court in Special Civil Application No. 11114 of 2010, whereby the learned Single Judge has dismissed the petition arising from the order passed by the University Education Tribunal (hereinafter referred to as "the Tribunal" for the sake of convenience).

2. Heard Mr. K.M. Patel, learned Counsel appearing with Mr. Desai for the Appellant.

3. The contention raised on behalf of the Appellant is that the original Petitioner was fulfilling the eligibility criteria for being appointed to the post of Deputy Registrar. It was submitted that in the earlier proceedings before this Court being SCA No. 10899 of 2009, which was for challenging the appointment of the original Petitioner, the Registrar of the University had filed the affidavit contending, inter alia, that the decision for appointment was correct and the original Petitioner was fulfilling the requisite eligibility criteria of education and experience. It has been submitted that thereafter the said petition was

withdrawn and suddenly the Syndicate of the University has taken the decision of terminating the appointment of the original Petitioner on the ground that he was not holding the requisite qualification for the post of Deputy Registrar. It was submitted that the original Petitioner approached the University Education Tribunal, but the petition came to be rejected. The learned Single Judge also concurred with the view and did not interfere with the view of the University Education Tribunal and did not interfere with the decision and hence, the present appeal.

4. It was further submitted that the Petitioner had worked as office superintendent in the North Gujarat University from 1987 until his appointment and, therefore, such can be termed as fulfilling the requirement of experience in the educational administration and it was submitted that the said aspect has not been considered by the Tribunal and so by the learned Single Judge.

5. The pertinent aspect is that the original Petitioner was not holding the status as that of the permanent employee of the University, but he was appointed on probation as Deputy Registrar and the probation was to be completed on 22.10.2010, but prior that to, on 11.6.2010 a decision was taken and he was relieved from services on the ground that he did not possess the requisite qualification. The status of the permanent employee of the University and the status of the person appointed on probation during the period of probation, would stand altogether on different footing inasmuch as the employee becomes permanent employee of the University after, may be by implied conduct of the University or, express order. It is with this fact, right of the Petitioner, if any, was to be examined.

6. It appears that neither in the application before the university, nor before the Tribunal for fulfilling the requirement of experience in the Educational Administration, the ground of working as Office Superintendent/Head Clerk in the North Gujarat University was pressed in service and for fulfilling the requirement of Educational Administration experience the ground pressed in service was as that of experience in research department of the North Gujarat University. The Tribunal has considered the said aspects and at paragraph 16 onwards in the judgment of the Tribunal, there is a detailed discussion and it is found that such cannot be said to be satisfying the requirement. On the aspects of five years" experience discharging duty as office superintendent when was pressed in service, the Tribunal also found that it cannot be said that the original Petitioner was having five years" experience in administration as Assistant Registrar or in the equivalent post. It appears that the aforesaid view taken by the Tribunal cannot be said as by committing error apparent on the face of record, nor can it be termed as perverse to the record. If a person is holding a clerical post, may be of Head Clerk, which is re-designated as office superintendent, it cannot be placed at par with the administrative experience in the field of education. The educational criteria has been fixed by the UGC and various qualifications for the post of Deputy Registrar do convey that the experience has to be in the field of

educational administration, meaning thereby the experience has to be for administration of the educational activity like that of Head of the Department, or any Faculty Member looking after the educational activity, etc., etc., but the experience as a Clerk or even as a Head Clerk, which is not at all related to the actual imparting of education cannot be termed as experience in the educational administration. Therefore, we find that no error can be said to have been demonstrated to attract the power of this Court under Article 227 of the Constitution of India against the order of the University Educational Tribunal.

7. The second ground contended for the experience in research field and to be termed as meeting with the requirement of experience in the field of educational administration also cannot be accepted for the simple reason that the Tribunal has well considered the said aspect and has not accepted the contention. The contention that in the earlier proceedings of this Court being SCA No. 10899 of 2009, the affidavit was filed on behalf of the Registrar and, therefore, the contrary stand cannot be taken or ought not to have been accepted by the Tribunal is concerned, the same has been considered by the Tribunal at paragraph 20 of the decision and the Tribunal has recorded the distinction that in the earlier proceedings the University was not party and only Vice Chancellor of the University was party. Therefore, the University cannot be said as prohibited from justifying the action of the Syndicate and its principles. We find that the view cannot be said as perverse or by committing *ex facie* error by the Tribunal.

8. It was contended by Mr. Patel, learned Counsel for the Appellant that even if the original Petitioner was probationer, if the decision was found to be arbitrary, this Court may interfere under Article 226 of the Constitution of India.

9. Be it noted that it was not a petition under Article 226 of the Constitution of India before this Court, challenging the decision of the University, but it was a matter where the Tribunal constituted by the statute had looked into the matter and the original Petitioner did invoke the jurisdiction of the Tribunal as per the statute. The Tribunal could not examine the aspects of violation of Article 14 and has been rightly observed by the Tribunal in the impugned order. In a petition under Article 227 of the Constitution of India, such aspects as such cannot be gone into, nor such contention can be entertained, unless the very decision of the University was challenged by substantive proceedings, before this Court.

10. Apart from the above, in case of probationer, it is open to the employer to relieve the person or to discontinue him in service on the ground that the person concerned is not holding the requisite qualification. When the decision of the Members of the Syndicate of the University is fully scrutinized by the University and when the University Education Tribunal, which can be said to be well-versed, has undertaken the scrutiny and also found that the original Petitioner was not fulfilling the requisite qualification, the decision could not be termed as arbitrary on the ground as sought to be canvassed. Even otherwise also, the order or the action cannot be said as stigmatic to the original Petitioner, who was on probation. Hence, the said contention cannot be accepted.

11. Under the above circumstances, if the order passed by the Tribunal did not call for any interference under Article 227 of the Constitution of India, the ultimate decision taken by the learned Single Judge for dismissal of the petition would not call for interference in the present appeal.

12. Hence, the appeal is dismissed. No order as to costs.