

(2016) 07 GUJ CK 0067

In the Gujarat High Court

Case No : Special Civil Application No. 12263 Of 2013

Edait Jhigaben

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 15, Article 16, Article 226

Citation : (2017) 2 GLR 1089

Hon'ble Judges : Mr. N.V. Anjaria, J.

Bench : Single Bench

Advocate : Mr. Shakeel A. Qureshi, Advocate, for the Petitioner No. 1; Mr. Robin Mogera, AGP and Notice Served by DS, for the Respondent No. 1; Mr. Ashish B. Desai, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

Mr. N.V. Anjaria, J.(Oral) - Arbitrariness knows no bounds, nor does it has any definition, for, it is characterised as an arbitrariness. Discrimination, on the other hand, may catch any criteria to operate discriminatory in myriad ways. Arbitrariness and discrimination are close allies.

2. The present petitioner is aggrieved because she was denied candidature for the purpose of appointment as Anganwadi Worker. Pursuant to an advertisement-cum-recruitment notice, she had applied on 10th April, 2013 together with necessary enclosures, for the employment. She possessed requisite experience, as had worked as Helper in the Anganwadi Center at Morzira-1 for three years from 1997 to 1999, experience certificate issued to her was also produced.

3. The advertisement mentioned the eligibility inter alia that the candidate should be local-village based and that she should be a married woman. On this count also, the petitioner produced requisite marriage certificate in confirmation of his status as marital. The petitioner satisfied all the requirements of eligibility mentioned in the advertisement.

4. The candidature of the petitioner however came to be rejected as per impugned order dated 25th June, 2013. It was on an eye-catching astonishing ground that the petitioner was a daughter of the village, but she was not the daughter-in-law. There cannot be more irrelevant and discriminatory ground than one on which the impugned order or decision or action in excluding the candidature of the petitioner from the zone of consideration are based.

5. Article 14 of the Constitution enshrines equality before law and equal protection of the laws. Arbitrariness is sworn enemy of the equality; unreasonableness in any action is the antithesis. Article 15 of the Constitution prohibits discrimination on the ground of religion, race, caste, sex or place of birth. As the discrimination on any of the grounds mentioned in Article 15 would become arbitrary, Articles 14 and 15 necessarily interacts with each other. The discrimination based on or traceable to any of the considerations, namely race, caste, sex or place of birth will be violative of fundamental rights.

5.1 Article 16 provides for equality of opportunity in the matters of public employment.

Article 16 is a spread of Article 14. Therefore, non-arbitrariness is part of Article 16. In *Kathi Raning Rawat v. State of Saurashtra* [AIR 1952 SC 123] the Supreme Court highlighted the meaning of the word "discrimination" observing that the expression "discrimination against" used in Article 15(1) and Article 16(2), means "to make an adverse distinction with regard to". It means "to distinguish unfavourably from others". The discrimination involves an element of unfavourable bias. It was observed that it is in that sense that the expression has to be understood. If bias is disclosed and is based on any of the grounds mentioned in Articles 14 and 16, the statute, it was observed, will, without more, incur condemnation as violating a specific constitutional prohibition.

5.2 When the petitioner is denied appointment on the ground that she was not a daughter-in-law from the village, implying that she was not married in the village, it was a consideration showing a clear bias. This bias was per se discriminatory. The requirement was only that the woman in order to be eligible to be appointed as Anganwadi Worker, should be married person. Place of marriage was nowhere mentioned, can in no way be a consideration. It really travels akin to the ground "place of birth" mentioned in Article 15 to become discriminatory and arbitrary.

6. The impugned action and the incidence thereof stands in violation of petitioner's right, under Article 14 read with Article 15 read with Article 16 of the Constitution, and further stands vitiated as tainted with facts and legal bias.

6.1 Having heard learned advocate Mr.Shakeel Qureshi for the petitioner and learned Assistant Government Pleader Mr. Robin Mogera, for the aforesaid reasons, the impugned decision cannot be allowed to stand. Learned advocate for the petitioner stated that even today the post of Anganwadi Worker at the place in question Morzira-1 is vacant. He further stated that in the nearby also in

the Dang district, there are other Anganwadi Centers. The petitioner, he stated, is willing to work at any place, if the vacancy is not available at Morzira-1 center.

7. The impugned decision dated 25th June, 2013 treating the petitioner as ineligible on the aforementioned ground is hereby quashed. The respondents are directed to consider the petitioner's case and offer appointment to her at Morzira-1 center if the vacancy is available at the said center or at any other center in the District.

8. The said exercise shall be completed within a period of three weeks from the date of receipt of this order.

9. Petition stands allowed and disposed of in the aforesaid terms.

10. Direct service is permitted.