

(2022) 07 GUJ CK 0099

In the Gujarat High Court

Case No : R/Special Civil Application No. 14031 Of 2022

Harpalsinh Haradevsinh Jadeja

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 07 GUJ CK 0099

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Nimesh M Patel

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Learned AGP waives service of notice of rule on behalf of respondent State.

2. The prayer in this petition has already been decided by this court vide order dated 21.07.2022 rendered in Special Civil Application No. 3088 of 2021 and allied matters which reads as under:

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1. Rule returnable forthwith. Ms. Shruti Pathak, learned Assistant Government Pleader waives service of notice of Rule for the respondent – State in all these petitions.

2. With the consent of the learned advocates for the respective parties, all these petitions alongwith Civil Applications are taken up for final hearing today.

3. Heard learned advocates for the petitioners. They would fairly submit that the issue was decided by the Coordinate Bench of this Court vide order dated 15.07.2022 passed in SCA No.8191 of 2020 and allied matters. The order reads

as under:

"1. Since the common issue is involved in this group of petitions and the facts of each writ petition is also common; the present group of petitions are heard together and decided analogously by this common oral order.

2. In some of the petitions, the petitioners have prayed to permit them to appear in the examination which was being conducted for the promotion to the post of Assistant SubInspector (Class-III).

3. By interim orders, such a permission was granted and the petitioners were permitted to appear in promotional examination with clear understanding that they would not claim any right of promotion and such appearance in the examination will not create any equity in their favour.

4. At the outset, learned Government Pleader Ms. Manisha Lavkumar Shah, has submitted that the issue is squarely covered by the judgment passed this Court dated 02.02.2022 in Special Civil Application No.19220 of 2018 and allied matters, which has been confirmed by the Division Bench by the judgment dated 05.05.2022 passed in Letters Patent Appeal No. 429 of 2022.

5. In all these writ petitions, the petitioners have prayed for to allow them to appear in the promotional examination and direct them to promote on the higher post. The issue raised in all these petitions is that all of the petitioners lack the criteria of completion of requisite number of service in their feeder cadre.

6. Learned advocate Mr. Abhichandani, has submitted that in a similar situation, in the earlier round of recruitment, this Court vide order dated 19.02.2019 passed in Special Civil Application No.8808 of 2017, when such an action was under challenge, the State Government had taken a policy decision to relax the age criteria and the petitioners may also be given the similar treatment .

7. In response to aforesaid submissions, learned Government Pleader Ms.Manisha Lavkumar Shah, has submitted that the aforesaid order and judgment was considered by this Court in the group of petitions being Special Civil Application No.19220 of 2018 and allied matters, after examining the relevant Rules and Regulations, the writ petitions were dismissed by this Court.

8. I have heard the learned advocates for the respective parties. I have also perused the relevant documents relied by learned advocates for the respective parties.

9. At the outset, all the learned advocates appearing for the respective parties are ad idem that the core issue with regards to fulfillment of the completion of requisite number of years, in the feeder cadre of Police Department was considered by this Court and vide judgment dated 2. 02.2022 passed in Special Civil Application No. 19220 of 2018 and allied matters, this Court had dismissed the said petitions. The aforesaid decision was subject matter of challenge before the Division Bench in Letters Patent Appeal No.429 of 2022. By the order dated

5. 05.2022, the Division Bench after considering the array of judgment of the Hon'ble Apex Court has held thus : -

"15. The learned Single Judge has succinctly considered this aspect and has observed thus:-

"19. The legal proposition that emerges from the settled position of law as enumerated herein above is as under:

a) The right to participate in the selection process, without possessing the prescribed eligibility conditions, is guaranteed, is not correct; the right is guaranteed only if the candidate concerned fulfills the requisite eligibility criteria, on the stipulated date. A candidate acquiring the stipulated qualifications subsequent to the prescribed date cannot be considered and also, one not fulfilling the conditions cannot be allowed to participate.

b) There is clear authority to the proposition that eligibility of any candidate is to be reckoned, not from the date of his or her selection, but in terms of the rules, or the advertisement for the post.

c) An advertisement or notification issued/ published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it.

d) A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. e) Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court.

20. In the present case, though by the interim orders, the petitioners are directed to undergo the physical test and the written test, subsequently the same would not make any difference since as on the cutoff date as specified in the advertisement and in the recruitment rules, the petitioners did not fulfill the eligibility criteria. The Apex Court has held that the proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one.

21. The applications of the petitioners at the very outset were not required to be entertained since they were not eligible to apply for the aforesaid post and thus, in wake of their lacking the eligibility for the post, their applications cannot be accepted since appointing such persons would amount to serious illegality.

22. The petitioners have placed reliance on the orders passed by this Court in other writ petitions being Special Civil Application No.9647 of 2017 with allied matters. The group of writ petitions were disposed of by a common order dated

17.10.2019. The same reveals that in fact an Office Order was issued by the Director General of Police, Gandhinagar allowing those candidates, who had cleared the physical test and thereafter, cleared objective and written test in which the recruitment process and relaxation was granted by the concerned authorities and accordingly, the writ petitions were disposed of. Since, a policy decision was taken by the Deputy Secretary, Home Department to offer the appointment to those candidates, who have passed the departmental preliminary examination, without working for 5 years as the Assistant SubInspector and who fulfill the requirement of 40 months of experience, the writ petition was disposed. In the present case, neither there is any policy decision of the State Government nor the authorities have offered any relaxation in the eligibility criteria of 3 years as envisaged in the recruitment rules and in the advertisement and hence, the respondent authorities cannot be compelled to give any relaxation. As noted hereinabove, the Apex Court has clarified that the respondent authorities are bound by the provisions of the advertisement and no benefit of relaxation can be granted de hors the recruitment rules and the criterion stipulated in the advertisement. Thus, it is not open for the respondents to grant relaxation in the recruitment rules, which are statutory in nature without issuing a notification amending the Rules. 23. The issue raised in the present writ petitions is no more res integra. It is well settled principle of law that the candidates, who apply for the particular post should fulfill the eligibility criteria as specified in the advertisement and the recruitment rules, failing which such candidate cannot be considered even eligible for filling up the application for seeking the appointment to the concerned post, for which the advertisement is issued."

16. We are in total agreement with the conclusion arrived at by the learned Single Judge considering the binding decisions of the Hon'ble Apex Court. As discussed hereinabove, it is an admitted position that the appellants do not fulfil the requirements and hence, the candidature of the appellants cannot be considered for the post of Police SubInspector. In facts of this case, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot modify, rescind or alter any eligibility criteria provided as per the Rules in the advertisement to accommodate or to suit the eligibility of the appellants as held by the Hon'ble Apex Court in the case of the State of Himachal Pradesh & Anr. Vs. K.P. Nayar (supra). No case for interference is made out. The appeals, being bereft of merits, deserve to be dismissed and are hereby dismissed. However, there shall be no order as to costs."

10. Thus, the Division Bench has confirmed the order passed by this Court and has held that the such candidates like the present petitioners, who are members of the Police Department, cannot seek relaxation as a matter of right or they cannot in any manner claim relaxation in eligibility criteria de hors the Recruitment Rules. The Court has held that the eligibility of any candidate is to be reckoned, not from the date of his or her selection, but in terms of the rules, or the advertisement for the post. A candidate acquiring the stipulated

qualifications subsequent to the prescribed date cannot be considered and also, the candidate not fulfilling the conditions cannot be allowed to participate. It is further held that a person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law, and finally, it is held that lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity and such a person cannot approach the Court for any relief for the reason that he does not have a right which can be enforced through the Court. In the present case, the petitioners are permitted to appear in the promotional examination by the interim order passed by this Court, which was the same situation in the group of petitions, which have been dismissed by this Court.

11. Merely because the petitioners are directed to undergo the physical test and the written test, subsequently, the same would not make any difference, since as on the cut off date, as specified in the advertisement and in the Recruitment Rules, the petitioners did not fulfill the eligibility criteria. The Court has reiterated the principle of law enunciated by the Apex Court that the propositions that their applications are called for, prescribing a particular date as a last date for filling the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone. Indubitably, all the petitioners get their qualifications on the eligibility date.

12. The issue is thus raised in this group of petitions is squarely covered by the decisions of this Court, and accordingly, all the writ petitions are dismissed in terms of the judgment dated 02.02.2022 passed in Special Civil Application No.19220 of 2018, and confirmed in Letters Patent Appeal No.429 of 2020 vide order dated 05.05.2022 by the Division Bench. Notice is discharged.

13. All the connected civil applications also stand disposed of accordingly.”

4. In view of above, all these petitions stand dismissed. No order as to costs. Rule is discharged.

5. All the connected Civil Applications also stand disposed of accordingly.”

3. In view of the above, since the issue involved in the present petition is similar to the aforesaid petition, the order dated 21.07.2022 passed in SCA No. 3088 of 2021 and allied matters shall be applicable in the present case also.

4. Accordingly, petition stands dismissed. Rule is discharged.