
(2009) 11 GUJ CK 0071
In the Gujarat High Court

Case No : Special Civil Application No's. 8070, 10213 and 10416 of 2008

Harsora Gitaben Parshottambhai and Another	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Citation : (2009) 11 GUJ CK 0071

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Shalin N. Mehta, for the Appellant; Soni, Asstt. Govt. Pleader for Respondents 1 - 2, R.V. Acharya, for Respondent 3 and F.B. Brahmbhatt, for Respondents 4 - 7, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—In all the petitions, common question arise for consideration and therefore, they are being considered by this common judgment.

2. The short facts of the case appears to be that in the year 1979 vide Resolution dated 19.07.1989, for the post of Music Teacher, the qualification required was S.S.C. and the passing of examination of Sangit Visharad. Thereafter, same position continued and even in Resolution dated 11.06.1998, the qualification of S.S.C. was continued. On 21.06.2000, it was modified to the effect that there may be qualification of H.S.C. or S.S.C. and whichever was the higher marks, was to be considered. Thereafter on 04.04.2007, the direction was given by the Director of Primary Education for the schedule of filling up of the post and it provided that the requirement would be of S.S.C. Certain District Panchayats insisted for qualification of H.S.C. only and the same became the subject matter of the petition before this Court in Special Civil Application No. 11513/2007. Since, at the relevant point of time, the policy of the Government provided for the eligibility criteria of S.S.C. or H.S.C., this Court permitted the candidates holding qualification of S.S.C also to be considered for the post based on the aforesaid instructions issued by the Director of Primary Education. However, at

para 11 in the said decision dated 24.05.2007 in Special Civil Application No. 11513/2007, it was observed as under :

11. It is clarified that the aforesaid arrangement is confined to the present recruitment processes. It is expected that before the next recruitment process for the post of Vidya sahayaks is initiated, the State Government will bring an end to the confusion that prevails due to different standards being adopted by different District Primary Education Officers and ensure that the same policy is uniformly adopted and applied all over the State.

3. It is the case of the petitioner that the respondent Authorities based on the aforesaid observation, considered the matter and vide impugned Resolution dated 11.04.2008, the qualification is provided for H.S.C only. The said alteration in the qualification for considering the candidate who has passed H.S.C. only vide the aforesaid resolution, is under challenge in the present petitions.

4. Heard Mr. Mehta for the petitioner and Mr. Soni, learned AGP for the State.

5. The first contention raised on behalf of the petitioner is that there is unexplained departure from the long standing precedent, therefore, decision of altering the policy is arbitrary and capricious.

6. As such in a matter where the higher qualification is provided for the post in question, the principles of unexplained departure from the long standing precedent would hardly have any applicability. It is domain of the administration to provide for the qualification for the post in question and higher qualification if provided for the post in question, cannot be said to be arbitrary and capricious since it has a nexus to be achieved for recruiting the candidate holding the higher qualification. It is undisputed position that H.S.C. is a higher qualification than S.S.C.. Therefore, merely because for the earlier long period, S.S.C was the requisite qualification and is altered by higher qualification of H.S.C, that cannot be tested on the basis of alteration of the long standing precedent as sought to be canvassed. On the contrary by development of higher education in the society, if the higher qualification is provided and the lower qualification is done away for the recruitment of the post, such would meet the test of rationale and object to be achieved for change in the policy.

7. The reliance placed upon the decision of the Apex Court in case of Haryana State Industrial Dev. Corp. Vs. Shakuntla and Others, is of no help to the petitioner in as much as in the said decision also, the Apex Court while reiterating the principles laid down in case of Union of India (UOI) and Another Vs. International Trading Co. and Another, considered that the policy or the action has to meet with the test of reasonableness. If the higher qualification is provided for the post in question in the field of education by the Government, it can hardly be said to be unreasonable. Therefore, if the Court finds that such a policy is meeting with the test of reasonableness, it cannot be said that such would be arbitrary or capricious on the ground as sought to be canvassed.

8. The learned Counsel for the petitioners next contended that there should be reasonable notice to the proposed change in the qualification. He contended that had the petitioners knew about the alteration in the qualification, they could have pursued the education and could have passed H.S.C. and abrupt change in the qualification results into dis-entitling the petitioners to apply for the post, therefore, such would not meet with the test of reasonableness hence, arbitrary and deserves to be quashed and set aside. In furtherance to his submission, he attempted to rely upon certain observations of the decision of Bombay High Court in case of Manjeri Vijaysinh Patil v. State of Maharashtra and Anr. reported in 2009(1) MLJ 371 and contended that the policy of change in the qualification ought not to have been undertaken abruptly.

9. A person holding a particular qualification has no vested right for the post in question. At the most he has right to be considered, if the process of recruitment has been undertaken and atleast the advertisement has been issued. Until such has arisen, no vested right can be read on the ground as sought to be canvassed. The matter was at the change in the policy and the advertisement was given. It is not the case of the petitioner that the petitioner was fulfilling the criteria applied for the post and there is alteration in the criteria of eligibility. Therefore, when the petitioner, on the basis of the lower qualification, is outside the zone of consideration, there is no question of giving reasonable notice on the ground as sought to be canvassed. In the decision of Bombay High Court, after appearance at the examination of Common Entrance Test, the criteria was altered and therefore, in facts of that case, Court recorded that such a criteria was unreasonable and the additional observations were made. The same is of no help to the petitioner in facts of the present case.

10. The learned Counsel for the petitioner next contended that the Government will have to satisfy the Court for the rationale change in the qualification and in absence thereof, the policy would be arbitrary and the policy would not meet with the test and would required to be quashed.

11. The pertinent aspect is that at para 4 of the affidavit-in-reply, the rationale given by the Government is stated, which reads as under:

At the outset, I say and submit that the petitioner has challenged the policy decision taken by the State Government vide Government Resolution dated 11/4/2008. I say that by way of the said Government Resolution, the State Government has clarified that for selection of Vidyasahayak for Musical purpose, H.S.C. and Sangit Visharad are the necessary qualification. It is relevant to note that vide order dated 24/5/2007, this Hon"ble Court (Coram : H.N.Devani, J.) passed in Special Civil Application No. 11513 of 2007 and allied matters in para 11 has held that ?It is expected that before the next recruitment process for the post of Vidyasahayak is intended, the State Government will bring an end to the confusion that prevails due to different standards being adopted by different District Primary Education Officers and ensure that the same policy is uniformly adopted and applied all over the State.? It is relevant to mention here that in

past, the different districts were adopting different standards while considering the merits of the candidates for Vidyasahayak (Music), and therefore, the State Government after considering all the aspects, framed the policy vide Government Resolution dated 11/4/2008. It is also relevant to note that not only with respect to Vidyasahayak (Music), but for the post of Vidyasahayak (PTC), Vidyasahayak (CPED) and Vidyasahayak (ATD) also the same qualification i.e. H.S.C. passed has been prescribed and now, this policy is implemented uniformly in the State of Gujarat.

12. So, two justifications are shown to the Court. One is to maintain the uniformity of the qualification for recruitment of the post of Music Teacher by all the District Panchayat. The second is that the qualification of H.S.C is provided for the present post and at par with the post of Vidyasahayak (PTC), Vidyasahayak (CPED) and Vidyasahayak (ATD) wherein the requisite qualification is H.S.C. Therefore, for the post of Vidyasahayak (Music), H.S.C. has been provided. Hence, it is not a case where there is no rationale explained nor any justifiable reasons brought on record by the Government for alteration of the qualification by changing the policy hence, the said contention cannot be accepted.

13. It was lastly contended by the learned Counsel for the petitioner that the posts advertised were of the year 2007, therefore, such were required to be filled up on the basis of policy prevailing then upto year 2007. If there is subsequent change in the policy then in that case, the available posts upto year 2007 were required to be filled up on the basis of qualification of S.S.C. only and not H.S.C.. He submitted that therefore, the advertisements incorporating those posts providing for the qualification as per the impugned resolution, would be bad and therefore, the appropriate directions deserves to be issued.

14. Even if it is considered that the posts included in the advertisements were also comprising of the posts available in the set up upto August, 2007 then also, unless the alteration in the qualification is found by this Court with any malafide or ulterior purpose, there is no reason to deny the implementation of the policy providing for higher qualification. The same appears to be in the larger interest of the education in as much as the teacher holding higher qualification would be recruited as against the teacher holding lower qualification. Further, the petitioner as observed earlier has no vested right on the ground as sought to be canvassed. It is not a case where the advertisement has been issued, the petitioner has applied and thereafter there is a change in the qualification. But is a case where the petitioner has yet not applied nor he was in possession of requisite qualification on the date of advertisement and the change is brought about. Therefore, on the basis of the policy prevailing on the date of advertisement, the petitioner has no right to be considered. Under these circumstances, it is not possible to accept the contention that merely because certain posts were carried forward or are included in the present advertisements, the requirement of higher qualification should not be made applicable.

15. The learned Counsel for the petitioner attempted to rely upon the decision of Apex Court in the case of State of Rajasthan Vs. R. Dayal and Others, in support of his submission that in the recruitment process, the available post is required to be filled up on the basis of the policy then prevailing when the vacancy arose. The pertinent aspect is that in the case before the Apex Court in case of State of Rajasthan (Supra), it was a case of considering the question of promotion of the employee already in service. When any Government employee is in service, he has a right to be considered for further promotion, subject to the fulfilling of the criteria. Whereas in the present case, the petitioner has not even applied for the post in question. Under these circumstances, the decision is of no help to the learned Counsel for the petitioner.

16. In view of the above, petitions are merit less hence, dismissed. Interim relief, if any, stands vacated. Rule discharged. No order as to cost.