
(2010) 10 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 10882 of 2010

Ilaben Balmukund Gandhi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Citation : (2010) 10 GUJ CK 0061

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Bipin P. Jasani, for the Appellant; Manisha Narsinghani, AGP, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—Heard learned Advocate Mr. Jasani for the Petitioner and learned AGP Ms. Manisha Narsinghani for the Respondent " State.

2. RULE. Ms. Manisha Narsinghani, learned AGP waives service of Rule on behalf of the Respondents.

At the request of the learned Advocate for the Petitioner, the matter is taken up for hearing, to which learned AGP has no objection.

3. The case of the Petitioner is that though she possessed SSC qualification on the date of her being appointed in Class-III, she was appointed in Class-IV on compassionate ground.

3.1 Learned Advocate for the Petitioner submitted that the authorities ought to have taken into consideration the fact that The Petitioner possessed SSC qualification on 08.06.1997, i.e. prior to the date of appointment. She was given appointment by order dated 12.08.1997 and the case of the Petitioner should have been considered for appointment in Class-III rather than in Class-IV.

4. The very fact that the case of the Petitioner was considered for appointment on compassionate ground, the authorities ought to have shown little more

compassion to the Petitioner and as she had passed SSC examination on 08.06.1997, her case should have been considered for appointment to Class-III rather than Class-IV.

5. Para Nos. 2.1 of the order passed by this Court on 24.09.2010 read as under:

2.1. May be that the Petitioner is not entitled to claim the benefits accruing to her, on account of her qualifications from the year 1997, as she did not approach this Court at the relevant time, but as submitted by learned Advocate Mr. Jasani she can definitely pray for a writ of mandamus directing the authorities to consider her qualification in light of Government dated 19.10.1985 for considering her case for promotion to the post of Clark.

(emphasis supplied)

6. Paras Nos. 5, 6, 7, 8 and 9 of the affidavit in reply filed by one Shri G.H. Upadhyay, Deputy Director of Technical Education read as under:

5. I respectfully submit that as per letter dated 13th October, 1975 of the Joint Secretary (i.e. Appointment of the dependents of deceased Government Servant-guidelines) a person who has studied up to only standard v. to X may be considered for appointment to class IV posts/services or such class III posts/services for which the educational qualification prescribed in the Recruitment Rules is below SSC exam and the person concerned possesses that qualification. The copy of the said letter is annexed hereto and marked as Annexure "R-II".

6. I respectfully say that Petitioner had passed SSC exam on 8.06.1997 and Certificate in Computer Concept (CCC-BAOU) on 11.01.2008.

7. I respectfully say that as per circular dated 15.07.1998 of Government of Gujarat whereby, it is stated that government employees can be appointed or promoted at the ratio of 8:2 (i.e. 8 by direct recruitment and 2 by promotion from Class IV to Class III). The copy of the said GR is annexed hereto and marked as Annexure "R-III".

8. I respectfully say that last promotion /recruitment from Class IV " Class III as per circular dated 15.07.1998 was done on 2.02.95.

9. I respectfully say that the case of the Petitioner will also be considered for promotion as and when there will be recruitment for promotion/recruitment from Class IV-Class III and the case of thePetitioner will be considered as per the conditions mentioned in the appointment letter dated 12.08.97.

(emphasis supplied)

6.1 In view of the aforesaid contents of the affidavit in reply, it is deemed fit that the petition be allowed and the Respondents be directed to consider the case of the Petitioner for giving her either promotion or appointment to Class-III post forthwith.

6.2 The Respondents shall pass necessary orders as early as possible but not

later than 30.11.2010.

6.3 At the request of learned AGP, it is clarified that the Petitioner will not be entitled to claim any monetary benefit for the period prior to her getting promotion /appointment in Class-III post pursuant to this direction.

6.4 It is also clarified that the Petitioner will not be entitled to claim actual monetary benefit for the period between 12.08.1997 till the date of passing of the new order, but that period will be considered as a period in Class-III for all other purposes.

7. The petition is allowed to the aforesaid extent. Rule is made absolute. No costs.

8. Direct service is permitted.

9. A copy of this judgment and order be made available to learned AGP for its onward communication for compliance.