

(2005) 04 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 666 of 2005

Jagdish Kumar Vardaram Meena

APPELLANT

Vs

Airport Authority of India

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 142

Citation : (2005) 04 GUJ CK 0057

Hon'ble Judges : Bhawani Singh, C.J.;H.K. Rathod, J

Bench : Division Bench

Advocate : Rituraj Meena, for the Appellant; S.V. Raju, for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.—Petitioner was a student of Final Year (B.E.) Engineering when he applied for the post of Junior Executive Trainee

(Communication) pursuant to advertisement in Employment Newspaper dated August 23, 2003. He was given admit card, therefore, allowed to

appear in the examination. He states that he cleared the written examination conducted by the Airport Authority of India (AAI), called for interview

vide call letter dated 16.11.2004. It was kept at Mumbai on 13.12.2004 at 1:00 p.m. He left for Mumbai to appear in the interview and reached

at the interview center but he was not allowed to appear before the interview panel for unclear and vague reasons which were not supplied to him

on demand. He wrote to Director, AAI for the unjust treatment meted out to him but no reply has been received. Therefore, petitioner alleges that

he is fully qualified for the post of Junior Executive Trainee (Communication) as per advertisement, therefore, refusal to appear in the interview is

illegal and arbitrary. Allowing him to appear in the examination and disallowing him to appear in the interview breaches principle of estoppel and

legitimate expectation. Action of respondents violates Article 14 of the Constitution of India also, therefore, direction is sought against respondents

to take his interview.

2. Respondents interalia state that petitioner could not apply for the post since he did not hold degree in the engineering field mentioned in the

advertisement. Holding of degree in engineering was required qualification. Substance of case put up by respondents is that the petitioner was not

qualified for the post in question, therefore, he could not be interviewed.

3. Advertisement mentions 23.9.2003 last date for receipt of applications. It also mentions qualifications and experience for the post. Qualification

of engineering degree from a recognized University/ Institute is mentioned. Therefore, it is implicit that on the date of applying for the post,

candidate should possess engineering degree. Contention that advertisement does not mention that candidate should possess engineering degree on

the last date of application cannot be accepted since possession of engineering degree is implicit in advertisement. Further, reliance on interview

letter dated 16.11.2004 that candidate should fulfil requirement of qualification on the date of interview and petitioner had engineering degree on

this date cannot be accepted. The crucial date is the last date as mentioned for receipt of applications in the advertisement and interview letter

simply reiterates requirement of qualification necessary for permitting a candidate to appear in interview.

In *State of Uttar Pradesh v. Vijay Kumar Misra* (AIR 2002 SCW 2608), applicant did not possess prescribed qualifications on the date of

application. He acquired qualification subsequently. The Apex Court held that such candidate does not come within the zone of consideration,

therefore, cannot be considered for appointment in absence of any power in the appointing authority to relax qualification.

In *Shankar K. Mandal and Ors. v. State of Bihar and Ors.* (AIR 2003 SCW 2980), it is held that cut off date with respect to eligibility

requirement is either the one pointed out in the service rules, or in absence thereof, such date appointed for the purpose in the advertisement calling

for applications, and in absence, the last date by which the applications were to

be received by the competent authority. It is the last situation which is applicable in the present case.

In *Bhupinderpal Singh and Ors. v. State of Punjab and Ors.* (AIR 2000 SC 2011) the Apex Court said in paragraphs 13 and 15 that:

13. Placing reliance on the decisions of this Court in *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another*, *A.P. Public Service*

Commission v. B. Sarat Chandra (1990)4 SLR 235 (SC); *Dist. Collector and chairman, Vizianagaram (Social Welfare Residential School*

Society) Vizianagaram v. M. Tripura Sundari Devi (1990) 4 SLR 237 (SC); *Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and*

Others, Dr. M.V. Nair Vs. Union of India (UOI) and Others, ; and U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana,

the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public

employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be

appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be

applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the

High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are

certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the

Constitution vested in this Court so as to advance the cause of justice.

... ..

15. It is clear from the facts of the case that not only the applicants, thousands in number, but the authorities too were also belabouring under an

identical wrong impression. That is why the applications were entertained and the applicants called for interview though not eligible by reference to

the last date for receipt of applications. The selection process is complete. Even the appointment letters have been issued. The controversy arose

because several officers of the Education Department at the District level refused to join the selected candidates in spite of their being armed with

appointment letters. Admittedly with a stray exception of one or two, all the

applicants have acquired the requisite eligibility qualifications by 30-10-96, the extended date for making applications. From the corrigendum dated 17-10-96 it cannot be clearly spelled out that though the age requirement was to be determined by reference to 30-10-96, other eligibility requirements, i.e. those relating to education, were to be tested by reference to 15-2-96 and not 30-10-96. At least the corrigendum did not specifically say so. There are no malafides alleged. It has not been the case of anyone aggrieved and certainly not a finding arrived at by the High Court that satisfaction of eligibility requirement by reference to the last date of making of the applications was not rigorously insisted on by the authorities of Education Department or the Selection Board for the purpose of accommodating or obliging any favoured candidate or candidates. The enquiry set up pursuant to the orders of the High Court has also not brought out any finding enabling such an interference being drawn. The action on the part of the Selection Board and the authorities of the Education Department, though mistaken and unsustainable in law, was bona fide and a result of loose practice prevalent till then which has been discontinued now. In our opinion it would cause grave injustice to the several appellants before us if their selection and appointment were struck down and they were now asked to seek employment elsewhere. Most of them, if not all, must have crossed the upper age limit for seeking public employment and the ghost of unemployment is likely to chase them for the rest of their lives. It is not the case of the State Government that the entry of the several appellants before us as teachers in the Education Department, would be a disservice or cause any discontentment in the services or any other problem.

In *M.A. Murthy Vs. State of Karnataka and Others*, the Apex Court overruled the view taken by it laying down that "qualification acquired on the date of interview would be sufficient" holding the field at the time of selection. See also F.B. decision of this Court in *Prakashkumar Prahladbhai Patel v. District Primary Education Officer* (2000 (3) GLH 676).

4. Contention that principle of estoppel is applicable against the respondents because petitioner was permitted to appear in the examination cannot be accepted. It seems to be a case of mistake committed at initial stage and corrected at a later stage. Therefore, principle of estoppel is not

applicable to the facts of this case.

5. Consequently, there is no merit in this petition and the same is dismissed.
Notice discharged.