

(2011) 01 GUJ CK 0090

In the Gujarat High Court

Case No : Special Civil Application No. 16014 of 2005

Jayantibhai Chhotubhai Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 129 FLR 829

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : A.S. Supehia, for the Appellant; Janak Raval, for the Respondent

Judgement

Abhilasha Kumari, J.—This petition under Article 226 of the Constitution of India has been filed, with the following prayers:

(A) Quashing and setting aside the order dated 29.6.2005 (Annexure "B") terminating the services of the petitioner, and to reinstate him in service with back wages with interest.

(B) If the prayer (A) is not granted then direct the respondents to absorb the petitioner in any class-IV post.

(C) During the pendency and final disposal of this petition, the respondents may be directed to reinstate the petitioner in service.

(D) To grant such other and further relief's as may be deemed fit.

Briefly stated, the relevant facts for the decision of the petition are that the petitioner was appointed as Junior Clerk under respondent No. 2 (Conservator of Forests, Social Forestry, Bharuch) by letter dated 28.2.1996 on compassionate grounds. The father of the petitioner, who was serving as Forester, had expired while in harness, on 8.11.1992, therefore appointment on compassionate grounds was given to the petitioner. During the course of his service, the petitioner was called upon to pass the post-training examination. Being a

member of Schedule Tribe, the petitioner was given four chances to pass the said examination. He appeared for the examinations on 15/20-9-2003, 16/19-3-2004, 27/30-9-2004 and, lastly on 28/02-3/4-2005. The petitioner was not successful in any of the chances taken by him for passing in the examination, therefore, his services were terminated by order dated 29.6.2005, after he failed to pass the examination on the fourth chance. Being aggrieved by the impugned order of termination, the petitioner has approached this Court by filing the present petition.

Mr. A.S. Supehia, learned Counsel for the petitioner has submitted that, as the petitioner was appointed on compassionate grounds, it can be said that his appointment is a special appointment and not under the rules known as Gujarat Non-Secretariat Clerks, Clerk-Typists, Typists (Direct Recruitment Procedure) Rules, 1970. It is urged that only those candidates who have been appointed under these Rules are required to pass the examination and this requirement cannot be extended to cases of compassionate appointment, as held by learned Single Judge of this Court in the case of Kokilaben M. Pancholi v. Development Commissioner (1998) 2 GCD 1058. That, as per this judgment, an appointee on compassionate grounds is not required to pass the post-training examination, therefore the prayers made in the petition deserve to be granted.

2. The petition has been opposed by Mr. Janak Raval, learned Assistant Government Pleader, who has pointed out that the law laid down in Kokilaben M. Pancholi v. Development Commissioner (supra) is no longer good law, as the Full Bench of this Court in Sanjay D. Patel Vs. State of Gujarat and Others, , has, after taking into consideration the different judgments of this Court on this point, concluded that compassionate appointees are also bound to pass the examination. It is, therefore, submitted that in view of the law laid down by the Full Bench of this Court in Sanjay D. Patel v. State of Gujarat and others (supra), the petition may be dismissed.

3. I have heard the learned Counsel for the respective parties, and perused the averments made in the petition, as well as the judgment of the Full Bench of this Court referred to by the learned Assistant Government Pleader.

4. After examining the different judgments of this Court on the issue involved in the present petition, some of which were conflicting, the Full Bench has held as below:

14. We find difficult to accept this contention. Petitioners have opted to be considered and appointed on the post of Junior Clerk and having failed to clear examination inspite of getting three chances, petitioners cannot contend that they should be considered for Class-IV posts. Petitioners could not point out any such provision under the Compassionate Appointment Scheme for being considered for appointment to the Class-IV cadre on failure to clear pre-service training examination meant for Junior Clerk. If petitioners' contention is accepted, in that case, the authority will have to entertain several such claims

which will not be in the interest of smooth functioning of the administration. Such contention was in fact raised before the learned Single Judge in Special Civil Application No. 5883 of 2001 which was negatived and appeal was preferred by the petitioner therein being Letters Patent Appeal No. 726 of 2002 which was dismissed by the Division Bench. Against which, SLP No. 16972 of 2003 was preferred, which was also dismissed by the Hon"ble Supreme Court.

15. We are, therefore, of the view that having failed to clear post service training examination for appointment on the post of Junior Clerk, a claim of appointment on the Class-IV post cannot be entertained. We fully endorse the view of the Division Bench in Letters Patent Appeal No. 726 of 2002.

5. As the issue involved in the present petition is no longer *res integra* and has been concluded by the Full Bench, the prayers made in the petition cannot be granted. The petitioner, having failed to clear the examination in four chances available to him, cannot claim to be continued in service or cannot challenge his termination on the ground that it is arbitrary and illegal, in view of the law laid down in *Sanjay D. Patel v. State of Gujarat and others* (*supra*). In view of the above, the petition must fail. It is, accordingly, rejected. Rule is discharged. There shall be no orders as to costs.