

(1991) 10 GUJ CK 0023
In the Gujarat High Court

Jitendra Jinabhai Makwana

APPELLANT

Vs

Dist. Primary Education Committee and Another

RESPONDENT

Date of Decision : 15-10-1991

Acts Referred:

Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970 — Rule 4

Citation : (1992) 1 GLR 382

Hon'ble Judges : C.K. Thakker, J

Bench : Single Bench

Judgement

C.K. Thakker. J.

1. This petition is filed by the petitioner against the cancellation of the appointment order passed by the District Primary Education Committee, District Panchayat, Bhavnagar, respondent No. 1 on March 12, 1991, by which an appointment of the petitioner as Primary Teacher came to be cancelled.

2. For the purpose of the present controversy few facts may now be stated.

The petitioner's birth date is November 7, 1971. In pursuance of the advertisement issued by the first respondent, Annexure "A/1" to the petition; the petitioner made an application within stipulated time, the last date to apply was August 31, 1989. In pursuance of the interviews which were held on November 6, 1989, the petitioner came to be appointed by an order dt. February 6, 1991 and the petitioner was communicated about the said order on February 14, 1991 that he was posted at Sukhapur-Gariadhar. By the impugned order dt. March 12, 1991, earlier order of appointment was cancelled and the said order is challenged by the petitioner by filing the present petition.

3. It is contended by Mr. N.D. Nanavati, for Mr. V.H. Desai, learned Counsel for the petitioner, that the impugned action is contrary to law, violative of the principles of natural justice and requires to be quashed and set aside. It is contended that the relevant date must be as per the provisions of the Gujarat Panchayats Service (Recruitment of the Primary Teachers) Rules, 1970.

Explanation to Rule 4 provides for qualification of the candidate, which reads as under:

For the purpose of this rule, a candidate shall be deemed to have attained the age limit on 1st July of the year in which the recruitment is made.

4. The learned Counsel, for the petitioner, therefore, argued that a deeming fiction has been made by rule making authority and it is provided that a candidate shall be deemed to have attained the age limit on "1st July" "of the year in which recruitment is made". It is, therefore, contended that the relevant date is not 1st August, but 1st July and that too of the year in which recruitment is made. The learned Counsel contended that the appointment of the petitioner was made on February 6, 1991. The petitioner had completed 18 years of age on November 6, 1989, i.e., the date on which he appeared for interview. He was posted for the first time at Sukhapur-Gariadhar by an order dt. February 19, 1991. In these circumstances, he had completed 18 years of age not only in 1991 when he came to be appointed but before more than one year that is when he appeared for interview. If this is the position the argument proceeds the impugned order requires to be quashed and set aside since there was no basis for holding that the petitioner was under age and, therefore, not eligible to be appointed to the post of the Primary Teacher.

5. In the alternative, it was also argued by the learned Counsel for the petitioner that when he came to be appointed by an order dt. February 6, 1991 and posted at Sukhapur by an order dt. February 14, 1989. That order could never have been cancelled without issuing notice asking for explanation and affording reasonable opportunity of being heard. On that ground also the impugned order required to be quashed and set aside.

6. Mr. K.H. Baxi, on the other hand submitted that the impugned order is clearly legal and valid and in accordance with law. He drew my attention to the advertisement at Annexure "A/I" to the petition wherein it is specifically mentioned that the candidate must have completed 18 years of age on August 1, 1989. He further submitted that so far as minimum age limit of eligibility criteria is concerned, there is no provision for relaxation also and ineligibility goes to the root of the matter. Mr. Baxi contended that it is an admitted fact that the petitioner had not completed 18 years of age on 1st of August, 1989 and, therefore, the action is clearly legal and valid.

7. Mr. Baxi, further contended that even if the advertisement is to be ignored or it is treated as contrary of the statutory provisions, namely, explanation to Rule 4 of the Rules, then also it does not help the petitioner inasmuch as he would not be eligible on 1st July, 1989. On the contrary he would have been younger by one month and ineligible. He, therefore, submitted that whatever date may be taken for the purpose of present controversy, namely, 1st August, 1989 as per the advertisement or 1st July, 1989 (as per statutory rules) the petitioner would not be eligible to apply and could not have been appointed to the post in

question. If this is the position, the learned Counsel for the respondent submits that there was no question of issuing any notice asking for explanation or complying with the principles of natural justice and the impugned order cannot be set aside.

8. After hearing the learned Counsels for the petitioner as well as the respondent, in my opinion, petition requires to be allowed. So far as the 1st August, is concerned, it is obviously contrary to the settled rules. When a deeming fiction is provided by rule making authority it is not open to the respondent No. 1 to fix a particular date and the said date must be in accordance with the statutory rules. Therefore, it must be 1st July, in all cases and not any other date. The question then remains with regard to the year in question. The explanation extracted above provides for 1st July, of the year in which the recruitment is made. Therefore, it has something to do with regard the recruitment. It is not stated in the affidavit when the recruitment was made. The date which are not disputed even by the respondents are on record and those dates are as under:

November 6, 1989 Interviews were held. February 6, 1991 Appointment order was made and was communicated to the petitioner on February 14, 1991. In view of the fact that the affidavit-in-reply is silent with regard to the recruitment year and in view of the fact that the interviews were taken in November 1989 and the appointment was made in the month of February 1991 I am inclined to accept the submission of Mr. Nanavati, the learned Counsel for the petitioner that the recruitment year could never have been 1988-89. As per the explanation to the Rule 4 1st July, to the recruitment year is to be seen and if that is to be seen then obviously the petitioner was found to be eligible inasmuch as he had completed 18 years of age on the day on which he appeared at the interview. Similar view is taken by a single Judge of this Court in Special Civil Application No. 4523 of 1988 and companion matters by judgment and order dt. August 19, 1988 (Coram: R.A. Mehta, J.). In these circumstances and in view of the specific provision in the Rules, the ratio laid down by this Court in Kanubhai Babubhai Patel Vs. Gujarat Electricity Board and Others, . is not applicable and the impugned order requires to be quashed and set aside. Even on the grounds of violation of the principles of natural justice also the impugned order requires to be quashed and set aside since admittedly the impugned action visits the petitioner with civil consequences and it ought to have been taken after following the principles of natural justice,

9. In the result, on both the grounds, this petition is allowed.

10. Rule is made absolute and the respondents are directed to treat the impugned order Annexure "A" dt. March 12, 1991 as void, inoperative and as if the same would never have been passed. The petitioner is accordingly entitled to all the benefits in accordance with law. Rule is made absolute with no order as to costs.