

(2013) 02 GUJ CK 0067

In the Gujarat High Court

Case No : Special Civil Application No. 14705 of 2012

Joshi Anilkumar Jayntilal and 23 Ors.

APPELLANT

Vs

State of Gujarat and 2 Ors.

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) 02 GUJ CK 0067

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.

Heard learned advocate for the petitioners.

1. The petitioners by way of this petition under Article 226 of the Constitution of India have approached this Court with following main prayers:- (A) Your Lordships be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, holding the impugned advertisement of recruitment dated 18/11/2011 arbitrary, unconstitutional, illegal and contrary to law, and further be pleased to quash the same in the interest of justice as well as the recruitment;

(B) Your Lordships be pleased to issue appropriate writ, order or direction, commanding the respondents to provide age relaxation for those who are already in service and further be pleased to direct them to issue fresh advertisement for recruitment on the post of Municipal Accounts Officer for 159 municipalities;

(C) Your Lordships be pleased to stay recruitment process on the posts of Municipal Accounts Officer Class-II, III & on the post of Municipal Engineers in pursuance of the impugned advertisement of recruitment, or in the alternate, may be pleased to order that any such recruitment shall be subject to outcome of the present petition.

Thus what is under challenge is omission on the part of respondents in providing for age relaxation in advertisement dated 18/11/2011 released for filling the posts mentioned there under. 2. The facts in brief leading to filing this petition as could be gathered from memo of the petition indicate that the petitioners are appointed for 11 months pursuant to their selection in selection procedure which was undertaken as per the advertisement of year 2010 produced at page-20, which specifically contain that it is for making appointment on ad-hoc basis for 11 months only. The petitioners contended that they were required to be granted benefit of age relaxation as per the Recruitment Rules read with rules of Gujarat Civil Services (General) Rules 1967 as they are in Government service.

3. This Court (Coram: K.S. Jhaveri, J.) on 8/11/2012 issued notice and made it returnable on 10/12/2012. It is pertinent to note at this stage that no relief in any manner by way of interim relief was granted. The selection procedure is complete and as a result thereof appointment orders have been issued for which the petitioners also filed civil application being Civil Application No. 2209 of 2013 which came to be withdrawn today with a view to file substantive petition on the cause of action.

4. Learned advocate for the petitioners relying upon the decision of this Court in case of Ajit K. Shahani and Another Vs. Gujarat Public Service Commission and Another, , contended that plain reading of Rule 8(5) may not straightway help the cause of the petitioners, yet the second proviso which is subject matter of decision and consideration in case of Ajit Shahani (supra) may help the petitioners in this petition.

5. This Court is of the considered view that this petition is required to be dismissed for following reasons:- (a) The selection procedure where under the petitioners came to be selected and appointed was pursuant to an advertisement which was released in year 2010 and in that advertisement it is clearly mentioned that selection and appointments were made for 11 months on, ad-hoc basis, and it was also mentioned that no other benefits otherwise available to the employees of the State would be available to the petitioners. The appointment orders issued pursuant thereto have to be looked into in that angle and therefore in my view the petitioners did not have any claim for age relaxation as such.

(b) The subsequent advertisement which is subject matter of challenge in this petition on account of it did not contain any age relaxation clause, it can be said that, that advertisement in unequivocal terms mentions it was a selection by way of direct recruitment for the posts mentioned there under and the first proviso embedded in the rule itself, i.e. Rule 8(5) of Gujarat Civil Services (General) Rules 1967 in unequivocal terms makes it clear that the age limit prescribed would be applicable if in case selection is based upon competitive examination and or is by way of direct recruitment. In the instant case plain reading of advertisement it clearly indicates that, that was direct selection and was based upon the selection procedure prescribed there under, which on account of the first proviso to the Rule itself need not provide for any age relaxation, the

petitioner could not have claimed any age relaxation on this count.

(c) Learned AGP appearing for the State relying upon the decision of the Apex Court in case of Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, , contended that the ad-hoc appointees have no right to claim any age relaxation as could be seen from the observations made there under. Said judgment is of no avail to the AGP in supporting his contention that age relation could not have been claimed straightway as in the instant case atleast the present petitioners cannot be characterized as illegal appointees and/or appointees dehors the rules. It is a different matter altogether on account of their appointment orders and terms in appointment orders the State did not confer upon them any specific right otherwise available to Government servants. But plain reading of Rule 8(5) would clearly show that the age relaxation benefit was available to temporary Government servants also and therefore on this count also petitioners could not have been nonsuited. Therefore this judgment is of no avail to learned AGP. But the Court dismisses this petition in view of the fact that in first proviso to Rule 8(5) it clearly indicate that selection procedure if it was by way of direct recruitment or is of competitive in nature, then in that case, age relaxation is not available to the candidates even if they are Government or no-government and age relaxation is provided only for the class of candidates being S.C/S.T. and physically handicapped candidates, which is not otherwise available in law.

This petition is thus required to be dismissed as it being merit less and is accordingly dismissed. Notice discharged. However, there shall be no order as to costs.