

(2017) 03 GUJ CK 0167
In the Gujarat High Court
Case No : 7646 of 2009

KOKILABEN A PARMAR

APPELLANT

Vs

NORTH GUJARAT UNIVERSITY & ORS.

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 03 GUJ CK 0167

Hon'ble Judges : Bela M. Trivedi

Bench : Single Bench

Advocate : ANSHIN DESAI, VENU H NANAVATY, MITUL K SHELAT, SHALIN MEHTA, PRAVIN P PANCHAL

Judgement

1. The present petition has been filed by the petitioner seeking following relief as contained in para 19-B : - "19 (B) Your Lordships may be pleased to issue writ of mandamus and/or any other appropriate writ, order or direction directing the respondent - University to comply with the direction issued by the State Government vide its communication dated 30.05.2008 (Annexure-D) and 17.03.2009 (Annexure-F) and direct the respondent-University to appoint the petitioner on the post of Professor (Chemistry) forthwith."

2. The Court on 06.10.2009, had passed following order : - "1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate Writ, direction and/or order directing the respondent University to comply with direction issued by the State Government vide communication dated 30.05.2008 (Annexure D) and 17.03.2009 (Annexure -F) and direct the respondent-University to appoint the petitioner on the post of Professor (Chemistry) forthwith. 2. In response to the notice issued by this Court Shri Mitul Shelat, learned Advocate has appeared on behalf of respondent No.1 North Gujarat University. An affidavit -inreply is filed on behalf of the respondent University affirmed by one Shri Arjanbhai Rupabhai Makwana, Chief Accounts

Officer who is reported to be in-charge of the Administration Department. In para No.4 of affidavit-in-reply it is submitted that communication dated 30.05.2008 and 17.03.2009 do not direct the respondent University to offer appointment to the petitioner on the post in question. It is submitted that by the aforesaid communication, University has been directed to consider appointment of Mr.Vora against the post in question as ad-hoc till and until suitable candidate of reserved category is available. It is submitted that in compliance with aforesaid directions Executive Counsel of the University resolved to issue advertisement inviting applications for appointment for the post in question and in terms of above advertisement has been issued on 24.06.2009. It is further stated in the affidavit-in-reply that Selection Committee will be duly constituted as per statute - 181 of the University and selection committee shall conduct the interviews of the applicant and others and make its recommendations. It is further stated in the affidavit-in-reply on affidavit that upon appointment being made on the post in question, Mr.Vora shall be relieved of the post.

3. Mr.Mitul Shelat, learned Advocate appearing on behalf of the respondent University under the instructions from the concerned Officers has stated at the Bar that entire recruitment process right from interview to actual appointment shall be completed within a period of 6(six) weeks from today.

4. In view above, concerned respondents are hereby directed to act as stated herein above and complete entire recruitment process right from conducting interviews till actual appointment on the post in question within a period of 6(six) weeks from today without fail. All concerned are directed to cooperate respondent No.1 University in completing entire recruitment process as stated herein above. On the appointment being made on the regular basis, concerned respondents are directed to act as per statement made in para 4 of the affidavit-in-reply more particularly with respect to discontinuance of Mr.Vora as it is specifically stated in affidavit-in-reply that upon appointment being made on the post in question Mr.Vora shall be relieved of the post. With these, present Special Civil Application is disposed of. Direct service is permitted. "3. The said order was challenged by the present petitioner by filing Letters Patent Appeal No. 583 of 2011 and by the present respondent No. 5 who has been subsequently impleaded in the petition, by filing Letters Patent Appeal being No. 2160 of 2009. Both the Letters Patent Appeals came to be disposed of by the Division Bench vide the order dated 12.09.2014 on the ground that the respondent No.5 was not heard by the learned Single Judge. The Division Bench allowed the said Letters Patent Appeal No. 2160 of 2011 by observing inter alia that the learned Single Judge ought not to have discontinued the appellant (respondent No. 5) from the post in question without hearing him. The Division Bench therefore remanded the matter to this Court for deciding the matter afresh on merits after hearing both the parties, keeping all the contentions open. Accordingly, the respondent No. 5 was impleaded in the petition. The respondent No. 5 has filed the affidavit-in-reply as well as the additional affidavit, challenging the maintainability of the petition and also the locus of the petitioner to file the petition.

4. After having heard the learned advocates for the parties at length, and perusing the documents on record, it appears that the respondent - University had earlier issued the advertisement on 26.05.2005 inviting applications for the post of Professor in Chemistry for General category, pursuant to which the present petitioner and the respondent No. 5 had applied. After the due selection process, the respondent No. 5 was appointed on the said post vide the order dated 04.01.2006 as Professor in Chemistry for the University Department of Hemchandraacharya North Gujarat University. The present petitioner thereafter by filing the petition being Special Civil Application No. 10421 of 2007, had challenged the said recruitment process and also the appointment of the respondent No. 5 on the said post without impleading the respondent No. 5 as party respondent in the said petition. The Court, while disposing of the said petition, vide the order dated 30.10.2007, directed the petitioner to make representation in respect of the grievances raised by her in the petition and directed the University to consider the said representation.

5. It appears that pursuant to the said representation made by the petitioner, the University as well as the State Government in Education Department issued two communications dated 30.05.2008 (Annexure "D") and 17.03.2009 (Annexure "F"), whereby the University was directed to issue fresh advertisement treating the said post as the post for reserved category and treating the appointment of respondent No. 5 as ad-hoc appointment on the reserved post. Pursuant to the said direction, the respondent - University therefore had issued the advertisement on 27.06.2009, however, due to pendency of the present petition and the aforesaid Letters Patent Appeals, the said advertisement was not acted upon.

6. It is sought to be submitted by the learned Senior Advocate Mr. Desai for the petitioner that the respondent - University is bound to carry out the directions issued by the State Government in the communications dated 30.05.2008 (Annexure "D") and 17.03.2009 (Annexure "F"), and issue the advertisement for reserved category treating the appointment of respondent No. 5 as ad-hoc on the reserved category. According to him, the State Government after considering all the aspects, had rightly directed to treat the said post for the reserved category and the petitioner being eligible for the said post on reserved category was required to be appointed as such. However, the learned Counsel Mr. Mitul Shelat appearing for the respondent No. 1 - University submitted that the respondent No. 5 having been appointed on the said post, advertised in the year 2005, and also having been made permanent on the said post, the University has recommended to the State Government to reconsider the said directions given in the Annexure D and F. The learned Senior Counsel Mr. Shalin Mehta for the respondent No.5, however, vehemently submitted that the petitioner had not come with clean hands and had sought orders from the Court behind back of the respondent No. 5, by not impleading him as party respondent in the earlier petition as well as in the present petition. He also drew the attention of the Court from the reply filed by the respondent No. 5, that the petitioner having

participated in the recruitment process pursuant to the advertisement issued in the year 2005, could not have challenged the recruitment process or the appointment of the respondent No. 5 made after following the due process of law and more particularly, when she herself had not remained present in the interview in the said process.

7. In the instant case, it is not disputed by the petitioner that she had participated in the recruitment process which had taken place pursuant to the advertisement issued in the year 2005 for the post of Professor in Chemistry for the General category. It is also not disputed that she had not remained present in the interview though call letter was issued to her. It is also not disputed that though the respondent No. 5 was appointed on the said post pursuant to the said advertisement, vide the order dated 04.01.2006 as mentioned in the earlier petition being Special Civil Application No. 10421 of 2007, she had challenged the appointment of the respondent No. 5 without impleading him as party respondent in the said petition. It is also not disputed that the said petition was disposed of by the learned Single Judge without granting any substantive relief to the petitioner except directing her to make representation to the University. As such no liberty was granted to the petitioner to approach the Court again.

8. As stated hereinabove, in the present petition also, the petitioner had initially not impleaded the respondent No. 5 as party respondent though his appointment was sought to be affected if the prayers sought in the petition were granted by the Court. From the said conduct of the petitioner, the Court is of the opinion that the petitioner, as such, had tried to seek orders from the Court against the respondent No.5 without joining him as the party respondent at both the times. She had also suppressed the material fact that though she was called in the interview, she did not remain present. Under the circumstances, the petitioner having participated in the recruitment process but then left half way, had no right to challenge the process alleging that the post should have been advertised for the reserved category and she should have been appointed on the said post. It is needless to say that nobody has any fundamental right or legal right to be appointed on the particular post. So far as the prayer with regard to the compliance of the directions issued by the State Government to the University is concerned, the Court is not inclined to grant the same for the simple reason that the said directions as such were already complied with by the University by issuing the advertisement on 27.06.2009, however considering the subsequent events, the University has already recommended the State Government to reconsider the said directions contained in the said communications.

9. As stated by the respondent No.5 in the reply, he has already been made permanent on the post of Professor in Chemistry, which appointment was made after following the due process of recruitment. As against that the petitioner after having participated in the said process, had not remained present in the interview, and therefore it did not lie in the mouth of the petitioner to say that she should have been appointed on the said post treating it as the post for the

reserved category.

10. In that view of the matter, the petition being sans the merits, is dismissed.