

(2010) 12 GUJ CK 0131
In the Gujarat High Court

Case No : Special Civil Application No. 2715 of 1994

Kumudiniben Ramanlal Darji

APPELLANT

Vs

Dist. Primary Edu. Officer

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0131

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Kb. Pujara, for the Appellant; Anand L. Sharma, Asst. Government Pleader, 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) To quash and set aside as illegal and bad in law, the action of the Respondent in not giving appointment to the Petitioner on the post of primary teacher pursuant to the Petitioner's interview on 3-3-92 as per the interview call letter dated 24-2-92 as per Annexure-`B"; and be further pleased to direct the Respondent to give appointment to the Petitioner, and also to give all the consequential benefits of seniority and pay;

(B) Pending the admission, hearing and final disposal of this petition, be pleased to direct the Respondent to give provisional appointment to the Petitioner, subject to the result of this petition;

(C) To grant costs of this petition and to grant any other appropriate and just relief/s;

2. Briefly stated, the case of the Petitioner is that, the Respondent issued an Advertisement on, or around, 10.04.1991, inviting applications for the posts of Primary Teachers to be filled up in accordance with the provisions of the Gujarat Panchayats Service (Recruitment of Primary Teachers) Rules, 1970. The

Petitioner has passed her SSC examination in 1986, PTC examination in 1988, Intermediate Drawing Examination in 1986, Rashtrabhasha Kovid Hindi Examination in 1988 and WCGM - Tailoring Examination in 1990. As stated in the petition, being eligible for the post advertised, the Petitioner applied in response to the said advertisement. By letter dated 24.02.1992, the Respondent - District Primary Education Officer called the Petitioner for interview along with other candidates. The interview was held on 03.03.1992 and the Petitioner appeared for the same. The case of the Petitioner is that she ranks very high on merit as per Circular dated 07.08.1989 issued by the State Government, and, according to the formula set out in the said Circular for determining merits, the Petitioner is entitled to 64.47 percentage. However, the Petitioner came to know in April 1992 that several candidates possessing lesser merit than the Petitioner have been issued appointment orders by the Respondent, but the Petitioner was not offered appointment. The Petitioner made a representation to the Respondent on 30.04.1992 which was not responded to. In this factual background, the Petitioner has approached this Court by filing the present petition.

3. It is significant to note that the petition has been filed on 24.02.1994. Rule was issued by this Court on 25.02.1994. However, till date, no reply has been filed by the Respondent. The Court is, therefore, left with no other option except to refer to the averments made in the petition.

4. Mr. K.B. Pujara, learned advocate for the Petitioner, has submitted that the action of the Respondent in not giving appointment to the Petitioner, whereas several candidates having lesser merit having been appointed, is arbitrary, discriminatory and liable to be quashed and set aside. It is further submitted that according to the formula for determining merits of the candidates in the Circular of the State Government dated 07.08.1989, the Petitioner, who has passed SSC and PTC examinations, as also the special examination of Drawing, Hindi and Tailoring, is entitled to 64.47 percentage of marks, yet, she has not been appointed. Reference has been made by the learned Counsel for the Petitioner to the names of eleven candidates having lesser merit than the Petitioner.

5. Mr. Anand L. Sharma, learned Assistant Government Pleader for the Respondent, is not in a position to take any stand, in absence of the affidavit-in-reply being filed by the Respondent.

6. The Petitioner has set out the names of the following eleven persons along with their percentage, as below:

Sr.No.	Name of the persons	Percentage
1.	Chamar Keshabhai Maganbhai	63.2%
2.	Kyadayata Vasantkumar Kanjibhai	62.89%
3.	Vankar Madhuben Maganbhai	62.81%
4.	Parmar Vimalaben Nathabhai	63.46%
5.	Parmar Chandaben Narottambhai	63.30%
6.	Vankar Chandrikaben Lalabhai	63.60%
7.	Parmar Jashiben Kantilal	63.50%
8.	Bhanbhi Jashodaben Hirabhai	62.34%
9.	Ranchhod Ishwarbhai Somabhai	62.80%
10.	Bhanbi Hansaben Govabhai	63.73%
11.	Parmar Mahesh Sarjibhai	63.15%

7. The case of the Petitioner is based upon Government Circular dated 07.08.1989, according to which she ought to have been given 64.47% marks, which is more than the percentages of the eleven candidates named herein above. The prayer of the Petitioner is not directed against those eleven candidates, but is confined to grant of appointment to the Petitioner herself.

8. On the facts and in the circumstances, as no affidavit-in-reply has been filed by the Respondent since 1994, the interest of justice would be met, if the Respondent is directed to consider the case of the Petitioner for appointment as Primary Teacher on the basis of Government Circular dated 07.08.1989 and the eligibility criteria that was required to be fulfilled at the time when the Petitioner applied for the post. Accordingly, the following order is passed:

9. Respondent shall consider the case of the Petitioner for appointment as Primary Teacher keeping in mind the eligibility criteria and educational qualifications on the date of application of the Petitioner and in light of Government Circular dated 07.08.1989. The Respondent may take a decision in the case of the Petitioner as expeditiously as possible, but not later than a period of three months from the date of receipt of a copy of this order. Needless to say that the decision shall be taken in accordance with law.

10. The petition is disposed of in the above terms. Rule is made absolute to the aforesaid extent only. There shall be no orders as to costs. Direct Service is permitted.