

(2020) 01 GUJ CK 0105
In the Gujarat High Court

Case No : R/Special Civil Application No.4290, 4830, 4959, 5075 Of 2018, Civil Application (Fixing Date Of Early Hearing) No. 1 Of 2018

Maheshkumar Gordhandas Prajapati APPELLANT

Vs

Gujarat Public Service Commission & 27 Other(s) RESPONDENT

Date of Decision : 31-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Public Service Commission Procedure Rules, 1962 — Rule 3(2)(iii), 4(2)(ii)

Citation : (2020) 01 GUJ CK 0105

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Jitendra Malkan, Devanshi P Malkan, Vatsal M Parikh, Manisha Lavkumar, Manan Mehta, Chaitanya S Joshi, Tulshi R Savani

Final Decision : Dismissed

Judgement

N.V.Anjaria, J

1. While all the captioned petitions involve similar facts and identical issue to be treated for disposal by this common order, it is Special Civil Application No.5075 of 2018 which is considered as main for the purpose of recording of the representative facts.

1.1 Heard learned advocate Mr.Jitendra Malkan with learned advocate Ms.Devanshi Malkan for the petitioners, learned Government Pleader Ms.Manisha Lavkumar assisted by learned Assistant Government Pleader Mr.Manan Mehta for respondent No.2 - State and learned advocate Mr. Chaitanya Joshi for respondent No.1 - Gujarat Public Service Commission.

2. By presenting the petitions under Article 226 of the Constitution, what is prayed by the petitioners in all petitions is to set aside the result of the oral interview dated 15th February, 2018 conducted for the post of Assistant Professor (Gujarat Educational Services) Class-II. As the said prayer is common

and concurrent in all the petitions, the petitioner of Special Civil Application No.5075 of 2018 has further prayed to direct respondent No.1 - Gujarat Public Service Commission (GPSC) to amend and correct the allotment of seats providing posts to the women candidate and treating the candidate at Serial Nos.2 and 13 in open general category.

2.1 The challenge of the petitioners to the result in question is rested on the ground that the result suffered from the arbitrariness of non-fixation of criteria by respondent No.1 - GPSC for allocation of marks at the interview. It was also a ground raised by that respondents did not calculate correctly the total number of women candidates in the 33% reserved quota.

3. Noticing the relevant facts, respondent No.1 GPSC issued advertisement Nos.60/2016-17 to 94/2016- 17 dated 15th November, 2016 for the post of Assistant Professor (Gujarat Educational Services), Class-II. It was stated that total 554 posts were to be filled in. The petitions pertain to 26 posts of Assistant Professor in the subject of Gujarati, out of which 15 posts were earmarked for General Category whereas 04 posts and 07 posts respectively were reserved for Scheduled Tribe and Socially and Educationally Backward Class candidates. Woman's reservation was also provided by keeping 04 posts out of 15 in General, 01 out of 04 in Scheduled Tribe and 02 posts out of 07 posts in the SEBC category.

3.1 The petitioners submitted their on-line form, they belonged to SEBC category. Petitioner of Special Civil Application No.5075 of 2018 held the degree of Master of Arts and had also cleared State Eligibility Test. She passed H.S.C. Examination with distinction and also B.A. Examination from Saurashtra University. Like this petitioner, all the petitioners claimed that they possessed eligibility to the post.

3.2 Petitioners were required to appear in the written examination bearing 300 marks in the selection process. It is the case of the petitioners that they secured high marks. Petitioner of Special Civil Application No.5075 of 2018 was allotted 173 marks out of 300 marks, calculated at 28.82 as per the norms of the GPSC. This petitioner as well as other petitioners who had also scored good marks in the written examination according to their case, were called for oral interview. In the final outcome of the selection process, all the petitioners were failed and not selected.

3.3 The petitioners contended that their non-selection attributable to giving low mark in the interview. Due to low weightage given in the interview, it was submitted that notwithstanding the high mark obtained in the written examination, the petitioners were failed. The petitioner of Special Civil Application No.5075 of 2018, giving her details stated that, she was given 9 weighted marks to make the total 37.82 out of 100 marks. It is the another contention of this petitioner that 33% quota for women candidate was not maintained considering 26 posts and that instead of 09 posts which ought to

have been reserved, 07 only was provided.

4. The whole case and the grievance of the petitioners based on the premise that respondent No.1 - GPSC did not prescribe criterion for interview. It was submitted that marks under different heads were not indicated. In view of this, it was submitted that the interview committee could exercise unguided powers and allotted marks in the manner arbitrary to vitiate the entire process resulting into breach of 14 of the Constitution. It was also attempted to be submitted that the members of the committee were influenced in their mind against the candidates belonging to SEBC category to which the petitioners belonged, to allot them low marks against the higher marks secured in the written examination.

4.1 Decision of the Supreme Court in *Minor A. Peerrikaruppan v. State of Tamil Nadu* [AIR 1971 SC 2303] was pressed into service on behalf of the petitioners. It was harped that the interview committee had not divided the marks to be given at the interview under various heads and the list of the marks did not indicate that the allocation was not on itemized basis. It was submitted that Supreme Court took note of the said fact to pronounce it to be illegal. It was urged that because of non-prescription of marks under different heads, the interview process was rendered arbitrary and the marks were allotted unguided by any criteria.

4.2 Respondent No.1 - GPSC filed affidavit-in-reply in Special Civil Application No.5075 of 2018. In course of the submission, it was submitted that contents of affidavit would hold true for all the petitions. Accordingly, all the petitions were contested and the prayers were opposed. GPSC outrightly contended that all the petitioners - candidates took part in the selection process with awareness to stand disentitled thereafter to challenge the process and their non-selection.

4.3 It was contended that the interview committee had rightly assessed the relative merit. It was stated that all the candidates were given equal opportunity in the personal interview. It was given out that the interview was held in such a way that identity of the candidates was not revealed as provided in Rule 3(2)(iii) and Rule 4(2)(ii) of the Gujarat Public Service Commission Procedure Rules, 1962. It was submitted that the bio-data and any personal information of the candidates were not provided to the interview committee. The case that the bias was exercised against the candidates belonging to SEBC was emphatically negated. It was also explained in the affidavit-in-reply that 33% reservation for women was properly followed and provided for.

5. Having noticed the facts of the case and the rival contentions, it has to be observed at the outset that the petitions would deserve to be dismissed only on the count that the petitioners participated in the selection process and when they failed to be selected, they questioned the process. The Supreme Court in several decisions, has held that candidate once having taken a chance by participating in the selection, would be estopped from challenging the process and non-selection.

5.1 The above proposition of law is an oft-repeated principle applied in several

cases. In *Madan Lal v. State of Jammu & Kashmir* [(1995) 3 SCC 486] the Apex Court observed to hold thus,

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla*, AIR 1986 SC 1043, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioners appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner." (Para 8)

5.2 The Apex Court in *G. Sarana v. University of Lucknow* [(1976) 3 SCC 585] was a case where the petitioner had applied for the post of Professor of Anthropology in the University of Lucknow who appeared before the Selection Committee but failed to get the appointment, whereafter he filed a petition before the High Court alleging bias against him by three experts in the Selection Committee and questioning the constitution of the Selection Committee. The Supreme Court observed that it was not necessary for the court to go into the question of reasonableness of bias or real likelihood of bias because the petitioner appeared before the Committee and at the relevant time did not raise any finger against constitution of the Committee. It was ruled that petitioner voluntarily appeared before the Committee and took chance of favourable view of the Committee, but when he was not able to get the appointment, he turned around his face.

5.3 Similar principle has been enunciated in *Nanak Lal v. Prem Chand Singhvi* [AIR 1957 SC 425], *Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285], *Manish Kumar Shahi v. State of Bihar* [(2010) 12 SCC 576], *Amlan Jyoti Borooah v. State of Assam* [(2009) 3 SCC 227] and *Ramesh Chandra Shah v. Anil Joshi* [(2013) 11 SCC 309]. It has been emphasised that the conduct of the petitioner in taking part in the selection process would clearly disentitle him from questioning the selection. It was stated that the petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found

that his name did not figure in the merit list prepared by the Commission.

5.4 In *D. Saroj Kumari v. R. Helen Thilakom* [2017 (11) SCALE 366], the Supreme Court stated the principle the very principle that once a person takes part in the process of selection and is not found fit for appointment, such person is estopped from challenging the process of selection. In paragraphs 4 and 11 of the judgment, the Apex Court stated, which principle could be readily applied in the facts of the present case, thus,

"As far as the present case is concerned an advertisement was issued by Respondent No.6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid down by this Court. In view of this we need not go into the other issues raised." (Para 11)

5.5 *D. Saroj Kumari* (supra) was followed by the Division Bench of this Court in *Gujarat State Road Transport Corporation v. Sisodiya Balbhadrasinh Dineshsinh* being Letters Patent Appeal No.1487 of 2017 decided on 13th October, 2017 to reiterate the proposition in the following words.

"Thus, from the aforesaid latest decision rendered by the Hon'ble Supreme Court, it can be said that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection. Thus, we are of the view that the petitioners once participated in the OMR examinations without any objection having been failed to secure the minimum qualifying marks/failed to come within the zone of consideration, the petitioners are estopped from contending that GSRTC cannot conduct OMR examination in three different slots." (Para 21)

5.6 Only on the above well-settled principle, the petitions would have met the fate of dismissal. However, the dismissal of the petitions is not to rest on this ground alone.

"... as for the petitioner's allegation that when there are total of 26 seats for general category candidates, the sets reserved for female being 33% should be 8.58, I state that this approach of the petitioner is incorrect and contrary to policies of the Government. The posts for general category female are to be calculated based upon 33% of posts for general category males and accordingly 33% of 15 seats comes to 4.95. The Respondent No.2 Government of Gujarat, through the General Administration Department (GAD) has passed a Resolution clarifying that the decimal places should be ignored at the time of advertising the posts reserved for female and further that such decimals should be maintained in

a register and carried forward to the next recruitment process. Therefore, neither the Respondent Government nor the Commission committed any error in advertising 04 posts for female candidate as the same is in consonance with the revised statement in requisition dated 30.06.2016 as well as Resolution dated 01.08.2018 passed by the GAD, Government of Gujarat."

6. It was a contention canvassed in forefront as main plank of challenge that the separate heads were not provided for giving marks in the interview. This submission was sought to be buttressed on the basis of decision of the Supreme Court in *Minor A. Peerrikaruppan* (supra) the Supreme Court distinguished the cases related to the field of education and those in the service realm.

6.1 In *Lila Dhar v. State of Rajasthan* [(1981) 4 SCC 159] it was explained that the provision of marks for the interview cannot be same in respect of the admission to the colleges and for the purpose of entry in the public service. The Apex Court viewed the distinction in the following words,

"... In the case of admission to a college, for instance, where the candidate's personally is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. Therefore, the ratio of the decisions in *Minor A. Peeriakaruppan v. State of Tamil Nadu*, (1971) 1 SCC 38 : (AIR 1971 SC 2303) and *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : (AIR 1981 SC 487), in this regard, cannot be applied in case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied." (Para 6)

6.2 In *Dr. Keshav Ram Pal v. U.P. Higher Education Service Commission, Allahabad* [AIR 1986 SC 597] the Supreme Court held that the interview board was not obliged to sub-divide the marks and in absence of sub-division of marks, the selection for the post of Principal was not rendered arbitrary. In yet another decision in *Kiran Gupta v. State of Uttar Pradesh* [(2000) 7 SCC 791] the Court stated while dealing with the selection and appointment of the Head Masters in the recognised private aided intermediate colleges and secondary schools that there was on illegality in procedure of overall evaluation of the candidate without fixing marks for each of the items. The selection, it was held, was not liable to be held as arbitrary on that count.

6.3 Awarding of lump sum mark without specifying the head by the interview committee could be well viewed as a proper and justified recourse. The posts to be filled in public service and not for the admission in colleges or schools. The interview committee would have to keep in mind, while selecting the candidates, the overall performance of the candidate in the interview. The qualities of intelligence, general knowledge, personality, aptitude and suitability to the post would have to be judged which could be better adjudged by way of cumulative

assessment.

7. The contention about an influenced marking adopted to the injustice of the socially and educationally backward category candidates, and about absence of proper allocation of women candidate in 33% quota may be dealt with. In the affidavit-in-reply, the contention that the SEBC category candidates were deliberately assigned less marks at the interview could be finally demolished, when the facts were stated that the interview committee was not provided with bio-data of any candidate nor provided with the personal information of the candidates to interview. Every candidate was assigned a unique code number through a draw method which was undertaken just before commencement of interview. It was on the basis of such identity adopted for the candidate, the candidate could be interviewed by the committee. The interview committee therefore would not know that a particular candidate belongs to a particular class or category. The petitioner of Special Civil Application No.5075 of 2018 was identified by identification "EBE". The method adopted for the interview and the above process would leave no room for any bias. Therefore, the whole contention that there was "a subconscious bias against the members of SEBC, stood baseless and factually foundation less".

8. Nor was the substance in the contention of non-providence of requisite number in the 33% reservation for women. It could be successfully submitted thus, quoting from paragraph 16 of the affidavit.

9. For the reasons and discussion foregoing, all the Special Civil Applications stand meritless. Each of them is hereby dismissed. Notices in all are discharged. No orders as to cost.