

(2014) 03 GUJ CK 0133
In the Gujarat High Court

Case No : Letters Patent Appeal No. 732 of 2013 and Civil Appli. No. 5624 of 2013 in L.P.A. No. 732 of 2013

Mori Uttamkumar Raisinhbhai

APPELLANT

Vs

Gujarat Public Service Commission and Others

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 GLR 236

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Amrish K. Pandya, Advocates for the Appellant; Premal R. Joshi, Advocates for the Respondent

Judgement

Kaushal Jayendra Thaker, J.—By way of this appeal, the present appellant-petitioner has challenged the impugned judgment and order dated 2-5-2013 passed by the learned Single Judge in Special Civil Application No. 2161 of 2011, whereby, the petition filed by the appellant-original petitioner was dismissed. The facts of the present case are that pursuant to the advertisement, the appellant-petitioner applied on-line by giving details about the Non-creamy layer certificate required for the S.E.B.C. category post. Pursuant to the said application, the appellant-petitioner was permitted to appear in the preliminary examination. The appellant-petitioner passed out the said preliminary examination and became eligible to appear in the main examination. The appellant-petitioner then submitted the application for the main examination along with the necessary documents including Non-creamy layer certificate for the financial year as requires by the advertisement. However, the respondent-Commission declared appellant-petitioner ineligible on the ground that Non-creamy layer certificate submitted by the appellant-petitioner was not issued during the period between 1-4-2009 to 31-3-2010. Thereafter, the appellant-petitioner made a representation as per the order passed in Special Civil Application No. 172 of 2010 to the respondent-Commission pointing out that Non-creamy layer

certificate submitted by the appellant-petitioner was issued for relevant financial year as stated by the Mamlatdar, and therefore, the certificate submitted by him should be accepted and he should be permitted to appear in the main examination by deleting his name from the list of ineligible candidate. However, since respondent-commission has not accepted the representation of the appellant-petitioner, the appellant-petitioner has again preferred petition being Special Civil Application No. 2161 of 2011, which was dismissed by the learned Single Judge vide impugned judgment and order dated 2-5-2013, against which the present Letters Patent Appeal is preferred by the appellant-petitioner.

2. Since the appellant-original petitioner has been permitted to appear in the examination by order dated 23-5-2013, his result shall not be declared till the disposal of the present Letters Patent Appeal.

3. Mr. Pandya learned Advocate for the appellant-petitioner has raised the grounds in this appeal and submitted that the advertisement for recruitment on the post in question provided that a candidate should submit a Non-creamy layer certificate for the financial year ending on 31-3-2009. The said advertisement was issued on 1-3-2010 and therefore the appellant-petitioner had applied on 25-3-2010 for getting the said Non-creamy layer certificate for the financial year ending on 31-3-2009. Thus, the application was made by the appellant-petitioner well within the stipulated time period between i.e. 1-4-2009 to 31-3-2010. However, due to heavy workload on account of March ending in the office of the Mamlatdar, the appellant-petitioner could not get the said Non-creamy layer certificate before 31-3-2010 and the same could be issued to the appellant-petitioner only on 5-4-2010 i.e. within the extended time period of the advertisement which was undisputedly 6-4-2010 as provided by the respondent-commission. Under these circumstances, the learned Single Judge ought to have appreciated that the Non-creamy layer certificate dated 5-4-2010 produced by the appellant-petitioner was for the relevant financial year ending on 31-3-2009, and therefore, the learned Single Judge ought to have quashed the decision of the respondent-Commission of rejecting the candidature of the appellant for recruitment on the post in question.

4. It is further submitted that the learned Single Judge ought to have appreciated that the requirement in the advertisement is that the Non-creamy layer certificate should be for the financial year as on 31-3-2009 and the Non-creamy layer certificate produced by the appellant-petitioner is also for the financial year ending on 31-3-2009 and for period 31-4-2009 to 31-3-2010, and therefore, when the Non-creamy layer certificate produced by the appellant-petitioner was as per the requirement of the respondent Commission as prescribed in the advertisement, the candidature of the appellant-petitioner ought not to have been rejected on a hyper-technical ground that the said Non-creamy layer certificate is dated 5-4-2010.

5. It is submitted that what is required to be seen is as to whether the Non-creamy layer produced by the appellant was of the concerned financial year or

not and not the date of issuance of the Non-creamy layer certificate. Therefore, the respondent-Commission ought to have appreciated that the Non-creamy layer certificate produced by the appellant-petitioner was for the relevant financial year and that the same is also certified by the concerned Mamlatdar. It is further submitted that the learned Single Judge has erred in recording a finding that the appellant-petitioner had got the certificate issued on 5-4-2010 on the ground that the date of on-line application was extended to 6-4-2010, and therefore, such certificate since issued on 5-4-2010 could not be said to be as required by the advertisement. In this regard, it is submitted that the appellant-petitioner had made an application on 25-3-2010 for issuance of Non-creamy layer certificate for the financial year ending on 31-3-2009. However, due to the reasons stated hereinabove, the appellant-petitioner was not issued the said certificate before 31-3-2009 and was issued the same only on 5-4-2010. Thus, there was no fault on the part of the appellant-petitioner as the appellant-petitioner had acted promptly by making an application for getting Non-creamy layer certificate well within the prescribed period, however, merely due to the fact that same could not be issued by the Office of the Mamlatdar could not be said to be a fault on the part of the appellant-petitioner depriving him from even competing in the recruitment process on the post in question. It is submitted that so far as endorsement made by the Mamlatdar is concerned, the same is dated 27-8-2010 and not 27-9-2010 as recorded by the learned Single Judge. Thus, there is some clerical error which would not go to the root of the matter as that was not the reason for rejecting the candidature of the appellant-petitioner. However, in this regard, it is submitted that undisputedly the respondent-Commission had issued an instruction on the website of the Commission on 21-8-2010 that the candidates will have to submit a copy of the Non-creamy layer certificate for the financial year ending on 31-3-2009, which should be for 1-4-2008 and onwards and between 1-4-2009 to 31-3-2010. The last date for filing of the application form for Main Examination was 30-8-2010 and under these circumstances, since the Non-creamy layer certificate of the appellant was dated 5-4-2010, it is submitted that the appellant-petitioner had requested the concerned Mamlatdar to make a clarificatory note on the Non-creamy layer certificate dated 5-4-2010 and under these circumstances, the concerned Mamlatdar had put a note on the said Non-creamy layer certificate in order to demonstrate that the said Non-creamy layer certificate is for the relevant financial year ending on 31-3-2009. Under these circumstances, it is submitted that the observation of the learned Single Judge that the certificate produced by the appellant-petitioner can never said to be a Non-creamy layer certificate for the relevant financial year ending on 31-3-2009 is erroneous, and therefore, interference is called for. It is further submitted that the learned Single Judge ought to have appreciated that what is relevant is the period during which a candidate is said to be having the Non-creamy layer certificate and not the date on which the certificate in that regard is issued by the authority. In the present case, when it is a matter of record that the appellant-petitioner belonged to Non-creamy layer during the financial year ending on 31-3-2009 and 31-3-2010, the

date of issuance of the certificate loses its significance, and therefore, the interference is called for and the impugned judgment and order passed by the learned Single Judge requires to be quashed and set aside.

6. Mr. Premal Joshi learned Advocate appearing for the respondent-Commission has vehemently argued and submitted that appellant-petitioner was required to submit the Non-creamy layer certificate issued between the period from 1-4-2009 to 31-3-2010, but the appellant-petitioner did not produce such certificate and produced the certificate issued on 5-4-2010 which was not the requirement of the advertisement. Mr. Joshi further submitted that the certificate produced by the appellant-petitioner is also not for the financial year ending on 31-3-2009, but the same is for the later financial year, and therefore, the respondent-Commission was justified in accepting the certificate of the appellant-petitioner and he was rightly placed in the list of ineligible candidate. Mr. Joshi submitted that even after specific instructions to all the candidates for providing the Non-creamy layer certificate issued between the period from 1-4-2009 to 31-3-2010, the appellant-petitioner did not produce the certificate issued between the said period. Mr. Joshi further submitted that there are many such candidates who did not produce their certificate issued between 12-4-2009 to 31-3-2009 and they are also included in the list of ineligible candidates and therefore the appellant-petitioner is not entitled to any benefit and the present Letters Patent Appeal deserves to be dismissed.

7. The short question which arises for consideration for this Court is that in the competitive examination, Non-creamy layer certificate was required to be produced by the appellant-original petitioner for the financial year beginning from 1-4-2009 to 31-3-2010 and the last date of depositing the form was 31-3-2010. If the respondents themselves have extended the date for depositing the forms to 6-4-2010 whether the date for obtaining the Non-creamy layer certificate would also be extended or the date would remain the same is immaterial or has bearing as certificate was to be produced later. It is not disputed that the petitioner has applied and he was issued the Non-creamy layer certificate on 5-4-2010 that was after the last date of submission of the form as per the earlier advertisement and he has deposited the form on-line on 6-4-2010. Therefore, it is absolutely clear that the petitioner has applied for Non-creamy layer certificate after 31-3-2010. Though the appellant-original petitioner has stated in the writ petition that he has applied for issuance of Non-creamy layer certificate on 25-3-2010, but there is no material to show this fact on record. In our opinion, once the last date for submission of form was 31-3-2010 and the Non-creamy layer certificate was deposited for the period between 1-4-2009 to 31-3-2010 and the respondents have extended the date for submission of the form to 6-4-2010, the requirement of depositing the Non-creamy layer certificate for the financial year from 1-4-2009 to 31-3-2010 has to be deemed to be extended up to 6-4-2010. It is also not disputed that the petitioner has received the Non-creamy layer certificate on 5-4-2010 and has deposited the same online along with the form before the date specified in the

advertisement.

8. The orders debarring the appellant-petitioner from appearing in the main examination will have to be reviewed as annunciated by the Court as to what orders on administrative side would be the subject of the judicial review. In this case, the validity of the order which has been challenged by the appellant-petitioner in the writ petition did not find favour with the learned Single Judge as the ground pressed in the said order of the authority was considered and the learned Single Judge felt unnecessary to analyze the same on the touch-stone of principles for judicial review. The learned Single Judge has dismissed the writ petition only on the premise that certificate is bad, which cannot be sustained, in view of the decision of the Hon'ble Apex Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and in case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

9. The touch-stone on which the judicial review of the orders of the authority impugned are and will have to be seen on the principle annunciated for judicial review in the aforesaid decisions. It cannot be said that this was a policy decision and the appellant-petitioner did not fulfill any of the criteria. Once the time slot was extended, the petitioner should have been permitted to submit the said Non-creamy layer certificate as it clearly goes to show that, in fact, the appellant-petitioner, had the Non-creamy layer certificate for the year for which of asked for. The same had to be submitted only when the final examination was to be taken, i.e. after July, 2010 and prior to September, 2010, which has been done by the appellant-petitioner. The respondent-authorities have endeavoured to raise that the alleged violation of terms of advertisement was fatal. Though this is despite the fact that the appellant-petitioner has produced the same and gave his explanation for the same. It appears that the authorities have not permitted him to appear in the examination on hyper technical ground which were not germane to the main purpose for which the Non-creamy layer certificate was supposed to be produced, and therefore, the principle annunciated would permit us to interfere with the impugned order as the same is bad in eye of law and is also against contours of administrative law, and therefore, even on the touch-stone of those principles, we deem it fit to interfere with the order of the authority as well as the order passed by the learned Single Judge.

10. The brief analysis of the impugned judgment and order passed by the learned Single Judge brings out the following and we shall now re-ton to the essential factor which shall determine out decision. The learned Single Judge had upturned the submission of the appellant-petitioner on the ground that though Mamlatdar has endorsed on the certificate dated 5-4-2010 that income of father of the appellant-petitioner for the year 2008-2009 was Rs. 2,40,000/-, but men he made further endorsement that income of the father of the appellant-petitioner for the year 2009-2010 was Rs. 3,25,000/-. Such endorsement is found made by the Mamlatdar subsequently as he signed the same on 27-9-2010. Not only this but because of the endorsement by the Mamlatdar as

regards the income of the father of the appellant-petitioner for the year 2009-2010, the certificate could not be taken to be the certificate for the financial year ending on 31st March, 2009. Therefore, certificate produced by the appellant-petitioner can never said to be Non-creamy layer certificate for the relevant financial year ending on 31-3-2009. In our view, the impugned judgment is indubitably one which cannot be sustained. In the case of Rashmi Metaliks Ltd. and Another Vs. Kolkata Metropolitan Development Authority and Others, , wherein, the Hon''ble Apex Court has observed in Para 16, as under:

"16. The following observations found in the celebrated decision in Mohinder Singh Gill v. Chief Election Commr. (supra) are relevant to this question:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji, (AIR 18, Para 9)

"9.....public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself"."

11. Therefore, it is a fundamental rights of a person to compete in a examination, and therefore, writ petition under Art. 226 of the Constitution of India was maintainable. In the case of Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, , the Hon''ble Apex Court stated that "the powers of the High Court under Art. 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression "for any other purpose" in Art. 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters."

12. As early as in the year 1964, the Hon''ble Apex Court in the case of State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, , has observed as under:

"Under Art. 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said Article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Art. 226 is not confined to cases of illegal invasion of his

fundamental rights alone. But though the jurisdiction of the High Court under Art. 226 is wide in that sense, the concluding words of that Article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegal invaded or threatened. The existence of a right is thus the foundation of a petition under Art. 226."

13. Thus, the fundamental rights of the appellant-petitioner is just and proper and the learned Single Judge ought to have protected the fundamental rights of the appellant-petitioner and issued a writ or direction.

14. Further, the facts reveal that the Non-creamy layer certificate was at least produced and submitted to the authorities by the appellant-original petitioner for the relevant period, which is at page 19 and also 20. The learned Single Judge despite the fact that there were no pleadings that the certificate is interpolated or forged, has come to the conclusion that the certificate produced by the petitioner can never said to be Non-creamy layer certificate for the relevant financial year.

15. We are unable to persuade ourselves to agree with the observation made by the learned Single Judge in Para 10 of the impugned judgment and order, and therefore, the order passed by the learned Single Judge requires interference on the ground that the appellant-petitioner had already submitted Non-creamy layer certificate which is dated 5-4-2010 which was issued prior to the main examination. It was nobody's case that there was any interpolation, and therefore, the finding of facts by the learned Single Judge, that there cannot be said to be a Non-creamy layer certificate, at all, requires to be interfered with.

16. It appears that another certificate at page 20 is also issued on 28-8-2010 for the financial year 2008-2009 and the certificate dated 5-4-2010 at Annexure-E at page 19 also for the same financial year 2008-2009 and the income of the family was Rs. 2,40,000 for the financial year 2008-2009 and for the year 2009-2010 was Rs. 3,25,000/-. A reference is made to the order passed by this Court in Special Civil Application No. 172 of 2010 Annexure-F page 21, and therefore, the order passed by the learned Single Judge cannot be sustained. There is another aspect of the matter about terms and conditions. In instruction No. 15, it is mentioned that the candidate belonging to the S.E.B.C., if not produce Non-creamy layer certificate after 1-4-2009, then his candidature shall stands cancelled for appearing in the main examination. What was required to be done was to submit the Non-creamy layer certificate for the financial year 2008-2009 between the period from 1-4-2008 to 31-3-2009, before the main examination is commenced. As far as reply is concerned, on 21-8-2010 the respondent-commission has asked to submit the Non-creamy layer certificate, and therefore, the appellant-petitioner had obtained the same and submitted it on 28-8-2010, and therefore, his case ought to have been considered for appearing in the main examination and he cannot be denied for his right. It is brought to our notice that by interim order dated 23-5-2013, the appellant-

petitioner was permitted to appear in the main examination and therefore the respondent-Commission shall also declare his result.

17. In the result, this appeal is allowed. The impugned judgment and order dated 2-5-2013 passed in Special Civil Application No. 2161 of 2011 is quashed and set aside. The respondent-Commission is also directed to declare the result of the appellant-petitioner along with other contesting candidates who have appeared in the competitive examination. As the main appeal is allowed, Civil Application No. 5624 of 2013 is also disposed of accordingly.