

(2013) 02 GUJ CK 0009

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1578 of 2012 in Special Civil Application No. 1905 of 2000

M.P. Bhatt (Dead) and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) 138 FLR 140 : (2013) 3 LLN 215

Hon'ble Judges : Mohinder Pal, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : P.V. Hathi and Bhargav Karia, for the Appellant; K.V. Gadhia and Dhawan M. Jayswal, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The present appeal is directed against the order dated 11.10.2012 passed by the learned Single Judge in Special Civil Applications No. 9016 of 2000 and 1905 of 2000, whereby the learned Single Judge, for the reasons recorded in the order, has dismissed the petitions.

We have heard Mr. Karia, learned Counsel for the appellants, Mr. Gadhia, learned Counsel for respondent No. 2 and Mr. Jayswal, learned AGP for respondents No. 1 and 3.

It is an undisputed position that the qualification of the original petitioners-appellants herein was non-metric and it is also undisputed position that the departmental examination was required to be passed to be qualified for higher promotion.

2. Unless a person is qualified for higher promotion, higher pay-scale cannot be granted. As per the Scheme of the Government, essential purpose is that if a person is qualified for higher promotion and is not granted higher promotion on account of non-availability of higher post, a stagnancy may not be created and he should be granted higher pay-scale after completion of requisite length of

service, but the qualification for higher post is not to be done away. In the case of the appellants, they have not passed any departmental examination. Therefore, as it is, they cannot be said as qualified for higher post and consequently, higher pay-scale.

3. Attempt made by the learned Counsel for the appellants, to contend that since they had crossed the age of 45 years, they would be entitled for exemption automatically, is also ill-founded, inasmuch as if the employee concerned has crossed 45 years of age and departmental examination could not be cleared, he has to apply for exemption and it is only after the exemption is granted, one could be said as qualified for higher post. As it has not happened in the present case, because it is not even the case of the appellants-original petitioners that they had applied for exemption to be granted.

4. In view of the above, we find that the ultimate decision taken by the learned Single Judge does not call for interference. Hence, the present appeal is dismissed.

No order as to costs.