

(2002) 01 GUJ CK 0007
In the Gujarat High Court

Case No : Special Civil Application No. 6149 of 1999

Mukeshchandra Ambalal Patel

APPELLANT

Vs

Joint Director (College)

RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Constitution of India, 1950 — Article 309

Gujarat Affiliated Colleges Services Tribunal Act, 1982 — Section 14(1)

Citation : (2002) 01 GUJ CK 0007

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : Jayant Patel, for the Appellant; Hardik C. Rawal, for the Respondent

Final Decision : Allowed

Judgement

K.M. Mehta, J.—Mukeshchandra Ambalal Patel, a practising lawyer of this court has filed this petition for a writ of mandamus or a rit of certiorari or any other appropriate writ direction or orders quashing and setting aside the judgment and order dated 23.11.1998i passed by the Gujarat Affiliated Colleges Services Tribunal, Ahmedabad(hereinafter referred to as the Tribunal) in Application No. 42 of 1996. The petitioner has further prayed for quashing and setting aside the disapproval dated 3.12.1998 and the petitioner also prayed for a declaration that the petitioner is qualified to be appointed as part time lecturer in the subject of Business Law in Sardar Vallabhbhai Patel Commerce College, Ahmedabad - the respondent no.2 herein. This petition was filed somewhere on 11.8. 1999. When the matter was placed before this court, this Court (Coram: S.K.Keshote-J as he was then) has issued Rule on 18.8.1999 making it returnable on 21.9.1999.

2. The facts giving rise to this petition are as under:

2.1 The petitioner passed his third LL.B Examination in the year 1986. The petitioner thereafter applied for Sanad and after obtaining Sanad from the Bar Council of Gujarat on 24.7.1986 he started his practice as an advocate before

this Court as well as other lower courts in this behalf.

2.2 The Principal Sardar Vallabhbhai Commerce College at Ahmedabad respondent no.2 herein invited application for the post of Part time Lecturer in the subject of Business Law in the month of August 1994. The petitioner applied for the same and thereafter the petitioner was selected and appointment order was given to the petitioner on 25.8.94 . The petitioner resumed duties as a Part time Lecturer in the subject of Business Law in the respondent no.2 college and started taking classes from 1.9.1994.

2.3. It may be noted that the petitioner was appointed as part time Lecturer in Ahmedabad College. In 1998 the petitioner was teaching in Sardar Vallabhbhai Commerce College, Ahmedabad. The Government passed an order dated 3.12.1998 disapproving the appointment of the petitioner as part time Lecturer. In view of the disapproval of the petitioner's appointment by the Government as part time Lecturer, Ahmedabad College-respondent no.2 herein, the services of the petitioner were terminated. Being aggrieved and dissatisfied with the said action the petitioner filed an Application No.. 42 of 1996 before the Tribunal challenging the said disapproval.

2.4. The petitioner was also appointed as part time Lecturer in Maniben Bhikhabhai College of Commerce, Dehgam also. In that college the petitioner was appointed somewhere in October 1993 and the Selection Committee duly considered his case and his appointment was also approved by the Gujarat University on 29.12.1993 and the Government has also approved the said appointment on 15.3.1994 in this behalf. However, the Jt. Director of Education (College) had sent a letter dated 23.2.1995 to the Principal of the Dehgam College and in this letter it was stated that the petitioner is not possessing the requisite qualification for appointment as part time Lecturer. In view of the same, the Jt. Director of Education (College) proceeded further for termination of the services of the petitioner as per section 14(1) of the Gujarat Affiliated Colleges Services Tribunal Act. Being aggrieved and dissatisfied with the said appointment of the petitioner at Dehgam College, the petitioner filed Application No. 41 of 1996 before the Tribunal.

2.5 It is the case of the petitioner that both the Applications Nos 41 and 42 of 1996 were heard by the Tribunal on the same day and on the same day interim relief was also granted in both the Applications.

2.6 The Tribunal In Application No. 42 of 1996 [regarding Ahmedabad College] by its order dated 23.11.1998 was pleased to hold that the action of the Director, Higher Education, Government of Gujarat disapproving the appointment of the applicant as part time Lecturer is just , proper and legal. The petitioner was not possessing the requisite qualification to be appointed as part time Lecturer in Ahmedabad College and therefore dismissed the application of the petitioner.

3. Being aggrieved by the aforesaid action, the petitioner has filed this present petition before this Court. Mr. Jayant N Patel learned advocate for the petitioner

has raised the following contentions in this behalf.

1. That the petitioner was possession requisite qualification to be appointed as part time Lecturer in Dehgam college as well as Sardar Vallabhbhai Patel Commerce College, Ahmedabad as per Ordinance No.97 of Gujarat University and in fact the University has approved the appointment of the petitioner. In fact the Government has also approved the appointment of the petitioner as part time Lecturer in Dehgam college.

2. Clause 6 of the Resolution dated 14.9.1988 provides for minimum qualification for appointment to the post of Lecturer in the scale of pay of Rs. 2200-4000 shall be Master's Degree in the relevant subject with attest 55% marks. This qualification is prescribed for full time Lecturer and not to a part time Lecturer and therefore, said Resolution is not applicable to the facts of the case of the petitioner.

4. The learned advocate for the petitioner has relied upon the Ordinance 97 of the Gujarat University which reads as under:

" 0.97: Every college and recognised institution shall report to the Executive Council all changes in its teaching staff within fifteen days from the date on which he has joined or is relieved, as the case may be. Those appointments which are not reported within this period shall not be approved for the said academic terms.

(Note: 1. In the case of Medical Colleges, they shall also report the changes in the staff of the Hospital where the students of these colleges are required to do their clinical work.

2. In case of colleges other than Government colleges or colleges maintained by the Government a certified copy of the recommendation of the Selection Committee be enclosed)

For recruitment to the post of lecturers including part time teachers and principals in affiliated colleges (other than Government colleges or colleges maintained by the Government) applications be invited by giving wide publicity, particularly by inserting advertisements in reputed newspapers. For selection of persons for the aforementioned posts there shall be Selection Committees which will consists of-

I Lecturers: (including part time teachers)

(a) Chairman of the Governing Body of the College or his nominee,

(b) A nominee of the Vice Chancellor.

(c) Two experts to be nominated by the Chairman out of the panel of experts approved by the University.

(d) Principal of the College.

- (e) Head of the Department concerned of the College, and
- (f) A representative of the Director of Education.

No selection will be considered valid unless at least one Expert is present. The recommendations of the Selection Committee shall be subject to the approval of the Vice-Chancellor."

5. The petitioner has also relied upon the minimum qualification for the post of Lecturer in an affiliated Law College prescribed by Gujarat University and clause 2 of which reads as under:

"MINIMUM QUALIFICATION FOR THE POST OF LECTURER IN AN AFFILIATED LAW COLLEGE:

Part-time Lecturer in Law:

(a) Person qualified to be a full time lecturer in Law as specified in (1) above will be eligible for the post of a part time lecturer in Law

OR

(b) Third LL.B.(Sp.) and having 5 years practice at the Bar will be considered eligible for the post of part time lecturer in Law."

6. He has also relied upon the Notification published in Gujarat Government Gazette issued by Education Department, Gujarat of Gujarat which has been issued under the proviso to Article 309 of the Constitution of India which provides Governor of Gujarat to make Rules for regulating recruitment to the post of Lecturers in Government Law Colleges in Gujarat Educational Service Class-II (Collegiate Branch) namely

1...

2. Appointment to the post of Lecturer in Government Law Colleges in Gujarat Education Service, Class-II (Collegiate Branch) shall be made by direct selection.

3. Appointment to the post of Lecturer in Government Law Colleges in Gujarat Education Service, Class II (Collegiate Branch) shall be made by direct selection.

7. The learned advocate for the petitioner has invited my attention to the circular dated 14.9.1988 particularly clause 6 of the said Circular, which reads as under:

"RECRUITMENT AND QUALIFICATIONS

6. Recruitment to the posts of Lecturers, Readers and Professors in universities and colleges shall be on the basis of merit through all India advertisement and selection, provided that Lecturers who fulfill the criteria prescribed in this scheme will be eligible for promotion to the posts of Readers. The minimum qualification required for appointment to the posts of Lecturers, Readers and Professors will be those prescribed by the UGC from time to time. Generally the minimum qualification for appointment to the post of Lecturer in the scale of pay of Rs.

2200-4000 shall be Master's degree in the relevant subject with atleast 55% marks of its equivalent grade and good academic record."

7.A The learned advocate for the petitioner has also stated that as regards the judgment dated 7.9.1998 in Application No. 41 of 1996 in relation to Dehgam College the Tribunal has held that the Circular dated 14.9.1998 is not applicable in the case of the petitioner who is appointed as part time Lecturer in the college after following proper procedure and after considering the evidence on record. He submitted that the Tribunal has diametrically come to the opposite conclusion in Application No. 42 of 1996 qua regarding Ahmedabad College without assigning any reason.

My conclusions

8. I have considered the record of the case, the submissions made by the learned advocate for the petitioner, the Ordinance No. 97 issued by the Gujarat University, minimum qualifications for the post of Lecturer in an affiliated Law College prescribed by Gujarat University, the Notification published in the Gujarat Government Gazette and the Circular dated 14.9.1988 particularly clause 6 which has been relied upon by the Tribunal in this behalf.

8.1 In my view Ordinance No.97 provides for appointment of Lecturer including part time Lecturer in this behalf. In this case the appointment has been properly done as per Ordinance No.97. Clause 2 of the Minimum qualification for the post of Lecturer in an affiliated Law College provides that a person can be appointed as full time Lecturer provided he holds Masters degree in Law with at least 55% marks or its equivalent grade and good academic record. For part time Lecturer also same qualification has been prescribed. However, alternatively it has been provided that a person who has passed Third LL.B. (Sp.) and having 5 years practice at the Bar will be considered eligible for the post of part time Lecturer in Law College. In my view the petitioner was possessing the aforesaid qualification and therefore, his appointment as part time Lecturer in Law in Ahmedabad College as well as Dehgam College were legal and valid.

8.2 The reliance placed by the Tribunal to clause 6 of the circular dated 14.9.1988 is unjustified and unwarranted because it does not provide for appointment of part time Lecturer in Law College. Said circular only provides for appointment of full time Lecturer in Law College only which provides Master's degree in Law with 55% marks or its equivalent grade and good academic record; whereas the Gujarat University has prescribed qualification for Part time Lecturer in Law which provides that a person should have passed Third LL.B.(Sp.) and having 5 years practice at the Bar and this rule is prevailing in this behalf. Therefore, the Tribunal was not right in relying upon the the Circular dated 14.9.1988.

8.3 Over and above, as indicated earlier, this very Tribunal in the Application No.41 of 1996 filed by the very petitioner against Dehgam college, the Tribunal by its judgment dated 7.9.1998 set aside the disapproval of the appointment of

the petitioner and held that Circular dated 14.9.1999 is not applicable in this behalf and the appointment of the petitioner is legal and valid. In that case the Tribunal has also directed that the action of the Government as well as the College authority as well as the office of Director of Higher Education disapproving the appointment of petitioner as part time Lecturer was bad and the same was quashed and set aside and necessary relief was given to the petitioner.

8.4. In the case which is under challenge before this Court, the Tribunal has given judgment on 23.11.1998 and held that the petitioner is not possessing qualification and relied upon the said Government Circular in this behalf. However, the Tribunal has not referred earlier judgment passed in Application No. 41 of 1996 filed by this very petitioner. The Tribunal has also not given reasons as to why the Tribunal has disagreed with the said judgment. In my view the reasons given by the Tribunal is clearly illegal and bad and therefore, the same is liable to be set aside. In my view the petitioner is entitled to the relief as prayed for by the petitioner in this behalf.

8.5. In my view the Tribunal has committed grave error in coming to such a conclusion in this behalf.

9. In view of the same the petition is allowed. The order passed by the Tribunal in Application No.42 of 1996 on 23.11.1998 is hereby quashed and set aside. I therefore, direct the Government to regularise the appointment of the petitioner as part time Lecturer in the subject of business law in Sardar Vallabhbhai Commerce, Ahmedabad in this behalf. In view of this order the Government is directed to give the withheld salary of the petitioner with immediate effect. I am told that the salary of the petitioner was Rs.1500/- p.m. at the relevant time. The State Government as well as the respondent no.2 College authorities are directed to remit the said amount of Rs. 1500/- p.m. to the petitioner from the date of his appointment till he served the respondent no.2 college. Thus I direct the Government and Ahmedabad College to pay 4 months salary of the year 1994 , 12 months salary of 1995 and 10 months salary for the year 1996 to the petitioner at the rate of Rs. 1500/p.m. and the Government and Ahmedabad College will pay interest at the rate of 12% on the said amount from September 1994 till the receipt of the full amount by the petitioner. Rule is made absolute with no order as to costs.