

(1999) 05 GUJ CK 0048

In the Gujarat High Court

Case No : Special Civil Application No's. 2273, 3054, 3165 and 3310 of 1990, 2817 of 1991 and 1168, 1169 of 1995 and 841, 935, 969, 1006, 1246, 1247, 1293, 1477, 1478, 1479, 1981 and 2688 of 1998

Mukundbhai Haribhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 320

Citation : (1999) 05 GUJ CK 0048

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : D.P. Vora, for the Appellant; S.P. Hasurkar, for the Respondent

Judgement

S.K. Keshote, J.—These special civil applications are filed by the lecturers in different subjects, who are working at different government colleges having apprehension of termination of their services. It is not in dispute that these petitioners were given ad-hoc appointment on the post of lecturer, which is a selection post to be filled in through Gujarat Public Service Commission (G.P.S.C.) and these ad-hoc appointments are continuing for last many years. In some cases it is continuing for last 10-11 years. I fail to see any justification in the action of the respondents to give the ad-hoc appointments on the post, which has to be filled in through G.P.S.C. It is understandable that for short period when necessary arises or urgent need is there of the teachers these ad-hoc appointments are made. But, here it appears to be a rule where the State of Gujarat is acting contrary to the Article 14, 16 and 320 of the Constitution. If the ad-hoc appointments are made, it may open flood gate of the corruption and may result in nepotism, favouritism etc. Apart from this when the posts of lecturers is within the purview of the G.P.S.C. making of the appointments on ad-hoc basis is certainly frustrated the very purpose and object of the Constitutional mandate as contained in Article 320 thereof. What for the G.P.S.C. has been constituted. It has not been given any weightage and taken in its correct

perspective. Further more it has not been given effect by none other than the State of Gujarat. This constitutional authority has been constituted so that fair and impartial appointments are being made of meritorious persons in the public employment. Articles 14 and 16 of the Constitution confer the fundamental right upon the citizens of the country of their right of consideration for the public employment though subject to the condition of fulfillment of the requisite eligibility by them to ensure the fairness, impartiality and fair evaluation of the merit of the candidates. This duty is confirmed upon the G.P.S.C. - a constitutional authority. This has been done so that the people may not have the complaint against the departmental officers. To show and ensure the fairness, impartiality and meritorious selection, this authority is there. Not only in the Education Department but I have seen in the Medical Education and many other departments also that on the post which is within the purview of the G.P.S.C., this ad-hocism continues for years together. Whether it serves other purpose or not it is giving out numerous litigations before this court in the matter of the service dispute of the class of the employees, who otherwise have no right to continue on the post. This court has fed up with such litigations and these writ petitions are clearly exhibiting the same. In some of the petitions, filed in the year 1990 I have seen that the court has expected from the respondents to hold the selection through G.P.S.C. on the post of lecturers. The petitioners have been protected till the regular selection has been made for the post of lecturer in which they may have also apply and take a chance of selection. Despite of this expectation by this court, the respondents have not cared and they permitted these ad-hoc appointments to be continued for these years. However, in view of subsequent development, which has taken place, I do not consider it necessary now to adjudicate on merits of the claims of the petitioners. Though it is not felt necessary but, I am constrained to state that ad-hoc appointments continue as ad-hoc and ad-hoc appointee even if he has put a long service does not acquire the right to hold the post permanently. It continues to be and ad-hoc appointment and at any point of time the services can be terminated. Continuation of ad-hoc appointment for long period does not convert it in regular appointment and more so where the posts on which these appointments are made are within the purview of the G.P.S.C. Not only this on the post on which the appointments are to be given on the recommendation of the G.P.S.C. no question does arise of the regularization of those persons, who are holding the post on ad-hoc basis despite of the fact that they are holding the same for last many years.

2. As stated earlier, I am only making these observations to convey to the respondents that these ad-hoc appointments should not have been made or where the same were made those should not be allowed to continue for years together. Within reasonable time of making of the ad-hoc appointments the regular appointments should have been made on those posts through G.P.S.C. The petitioners are permitted by this court and they are continuing on the post on ad-hoc basis. Now, the State of Gujarat has already taken the steps to fill up

these vacancies by recruiting the candidates through G.P.S.C. Requisition has already been sent for selection of candidates for the lecturers in different subjects to the G.P.S.C. The G.P.S.C. has already invited applications from open market and in response to the said advertisement almost all the petitioners have already applied. Date of written test is fixed in the month of June, 1999 and thereafter interviews will be held within reasonable time. Mr. R.J.Oza, learned counsel for the G.P.S.C. is called and he admits the fact that G.P.S.C. has already started process to make selection on the posts of lecturers in different subjects in the Government colleges of State of Gujarat. He also given out that G.P.S.C. will complete the selection process within a period of six months from the date of the receipt of the writ of this order.

3. So, the interest of justice will be served in case these special civil applications are disposed of in terms that the interim relief, which has been granted by this court in these matters shall continue till the G.P.S.C. finalize the selection of the candidates and on the recommendations thereof. the appointments are made. However, it is made clear that in case any of the petitioner had not applied or where the petitioner, who applied and failed in the selection, they may not have any right to continue on the post from the date on which the G.P.S.C. publishes the selected list. They have themselves to quit the post. Otherwise in all the eventuality on the availability of the selected candidates the petitioner has no right to continue on the post and immediately on joining of the selected candidate the respective petitioner should have to relinquish the post. Neither relieving order or termination order is necessary for the same. The G.P.S.C. is directed to complete this selection for the post of lecturers in different subjects in Government colleges in State of Gujarat within a period of six months from the date of the receipt of the writ of this order.

4. The next question does fall for consideration that in future the State of Gujarat, its functionaries and officers are to be permitted to make the ad-hoc appointment or not. Ad-hoc and temporary appointments give rise to manifold litigation as well as it gives out a sense of instability in service, which results in frustration and dissatisfaction amongst the appointees and as a result of which it will certainly effect the teaching programme. Stability in the service is most important thing and it results in a proper discipline, confidence, sense of duty as well as enthusiasm and above all interest in the services. These are the matters of the appointments of the teachers and not ordinary services. Unless the services of the teachers are secured they will not be able to deliver goods i.e. proper teaching programme to the students. Apart from this, it results in manifold litigation before this court, which unnecessarily increases the court's work. These are all avoidable litigations. But for the ad-hoc appointments there would have been a reason or occasion for these petitioners to come up before this court by filing these writ petitions. The time has come where the court has to take appropriate steps and measures to see that the State of Gujarat, its functionaries and officers work within the frame work of Constitution as well as to see that because of their inaction or omission unnecessary and avoidable

litigations may not come before this court. The court's precious and valuable time is utilized for doing real cases and not for the cases, which are nothing but created by the State of Gujarat, its functionaries and officers as a result of acting contrary to the provisions of the Constitution of India in making ad-hoc and temporary appointments. Otherwise also the time comes where not to permit the respondents to make and continue the ad-hoc appointments for years together and then protect those appointments till the regular appointments are made. At the very inception, there must be check of this court or monitoring on the ad-hoc appointments which are to be made by the respondents. The State of Gujarat through the Secretary of the Education Department is restrained from making appointment either on ad-hoc or temporary basis or for a fixed term without first taking prior permission of this court. All the appointments are to be made on the post of lecturers only by selection through G.P.S.C. However, where there is urgent need for the appointments on the post of lecturers then the State of Gujarat has to take the permission from this court and only thereafter it can make such appointments and subject to condition as laid down by this court.

5. In the result, all these special civil applications and the rule therein stands disposed of in the aforesaid terms with no order as to costs.