

(2011) 03 GUJ CK 0166
In the Gujarat High Court

Case No : Special Civil Application No. 1962 of 2011

Mulabhai Harchandji Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 GLR 1527

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; Maulik G. Nanavati, A.G.P. for Respondent No. 1 D.G. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Maulik G. Nanavati, learned Assistant Government Pleader waives service of notice of Rule for Respondent No. 1. Mr. D.G. Shukla, learned Counsel waives service of notice of Rule on behalf of Respondent No. 2. On the facts and in the circumstances of the case and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided today.

2. This petition under Article 226 of the Constitution of India has been filed with a prayer to issue a writ of mandamus or an appropriate writ or direction, quashing and setting aside the impugned order dated 27-10-2010 (Annexure-D) issued by Respondent No. 2, whereby the Petitioner has been debarred from participating in the interview for the post of Deputy Director (Class-I), Tribal Development Department, Government of Gujarat, on the ground that he does not hold the requisite experience, as prescribed by the Rules. There is a further prayer to direct Respondent No. 2 to issue a call letter to the Petitioner for participation in the interview for the said post.

3. Briefly stated, the relevant facts of the case are that, advertisement No. 164

of 2006-2007 dated 15-8-2006, was issued by Respondent No. 2 - Gujarat Public Service Commission ("G.P.S.C.", for short), inviting applications for the post of Deputy Director (Class-I), Tribal Development Department from amongst the candidates possessing the requisite eligibility criteria as stipulated. Two posts were advertised, out of which one post was reserved for a candidate belonging to the Schedule Caste Category and the other post was meant for a candidate belonging to the Unreserved (General) Category. The Petitioner belongs to the Socially and Educationally Backward Class (S.E.B.C.) Category. He submitted his application, along with copies of certificates regarding his educational qualifications and other credentials, and was permitted to appear in the Preliminary Test conducted by Respondent No. 2, on 29-11-2008. The Petitioner cleared the said Preliminary Test with the requisite qualifying norms, but as according to the G.P.S.C., he did not possess the required experience for the post, he was not called for the personal interview which was to be held on 15-3-2011. The said decision was conveyed to the Petitioner by the impugned communication dated 27-10-2010. Aggrieved thereby, the Petitioner has approached this Court by filing this petition.

4. Mr. H.S. Munshaw, learned Counsel for the Petitioner has submitted:

(A) That the Petitioner is highly qualified and is holding a degree in Bachelor of Rural Studies, with First Class. The Petitioner has also obtained the qualification of Masters of Social Work (M.S.W.) with First Class. Thereafter, the Petitioner was selected and appointed by Aga Khan Rural Support Programme (India), as a Community Organizer, with effect from 31-5-1996. The Petitioner was later promoted to the post of Member Secretary in the said organisation, which post he is presently holding.

(B) That apart from the above qualifications, the Petitioner has vast experience in Rural Development Programmes and Activities, since 1996. The requisite experience as per the advertisement is three years of Social Work, as against which the Petitioner is holding the experience of more than ten years.

(C) That the impugned decision of Respondent No. 2 in holding that the Petitioner is not qualified as he does not possess the necessary experience in Social Work is baseless, unjust and arbitrary, apart from being contrary to the evidence on record. No cogent reason has been assigned by Respondent No. 2 for holding that the Petitioner lacks the requisite experience, therefore, the impugned decision may be quashed and set aside and the petition allowed.

5. The petition has been contested by Mr. D.G. Shukla, learned Counsel for Respondent No. 2 by filing an affidavit-in-reply, and submitting that though the Petitioner possesses the requisite educational qualifications, he does not possess the necessary experience as prescribed for the post in question as per the Deputy Director, Project Officer, Assistant Commissioner of Tribal Development, Vigilance Officer, District Backward Class Welfare Officer, Class-I Recruitment Rules, 2002 ("the Recruitment Rules", for short). It is further submitted that as

per the certificates submitted by the Petitioner, he had joined as Community Organizer with effect from 31-5-1996 with Aga Khan Rural Support Programme (India), and thereafter, he was promoted to the post of Member Secretary with effect from 1-10-2004. The experience of the Petitioner as Member Secretary was for the period from 1-10-2004 till 14-9-2006, that is, 1 year, 11 months and 14 days, whereas as per the Recruitment Rules and the stipulation in the advertisement, the candidate must possess the requisite experience of Social Work for a period of three years. As the Petitioner does not possess the requisite experience in the field of Social Work, his candidature has been rejected. It is further urged that even if the case of the Petitioner is considered in the pay-scale upto two stages below the Class-II post, he does not fulfil the necessary criteria of experience in the field of Social Work, therefore, the decision of the Respondent-G.P.S.C. is in conformity with the Rules and the stipulation in the advertisement, and may be held to be just, legal and proper. Lastly, it is contended that no legal or fundamental right of the Petitioner has been infringed, therefore, the prayer made by him for issuance of writ of mandamus may not be granted. In this regard, reliance has been placed on a decision of this Court in Jayantilal Dwarkadas Patel v. State of Gujarat, reported in 1986 (1) GLR 254. On the strength of the above submissions, it is prayed that the petition be dismissed.

6. Mr. Maulik G. Nanavati, learned Assistant Government Pleader has submitted that the decision whether the Petitioner fulfils the requisite qualifications regarding experience is to be taken by the G.P.S.C., who has prescribed the said qualification on the basis of the Recruitment Rules. The decision of not calling the Petitioner for the interview has been taken on the basis of certificates submitted by the Petitioner and as those certificates do not disclose, upon a bare reading, that the Petitioner possesses the necessary experience in the field of Social Work, for a period of three years. Therefore, no fault can be found in the decision of not calling him for the interview. It is further contended that in the absence of any allegation regarding mala fides or procedural irregularity, this Court would not exercise the power of judicial review, to interfere in a decision taken as per Rules.

7. I have heard the learned Counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

8. The issue involved in the petition lies in a narrow compass, and that is, whether the Petitioner, who admittedly possesses the requisite educational qualifications, has the necessary experience of three years in related field of Social Work as prescribed by the Rules, and stated in the advertisement. The Petitioner has submitted his certificates, documents and credentials in support of his educational qualifications and experience to the Respondent-G.P.S.C., on the basis of which the said Respondent has arrived at the decision that, though he possesses the necessary educational qualifications, he lacks the experience of three years in the field of Social Work. The relevant Recruitment Rules is Rule

4(b), which is reproduced hereinbelow:

4. To be eligible for appointment by direct selection to the post mentioned in Rule 3 a candidate shall

(a) xxx xxx xxx

Provided xxx xxx xxx

(b) possesses--

(i) Second Class Bachelor's Degree in Arts, Science, Commerce, Law or Agriculture obtained from a University established by law in India or from deemed University under University Grant Commission Act, 1956 and have a Diploma in Social Work, Social Welfare or Social Service Administration obtained from University or from an Institution, established by law in India, or;

(ii) Second Class post-graduate degree in Social Welfare obtained from a University established by Law in India or from a deemed University under University Grant Commission Act, 1956 or from an Institution established by law in India;

(iii) about three years experience in related field of Social Work after obtaining above referred educational qualification:

Provided that preference may be given to a candidate who possess higher educational qualification or administrative experience in a responsible position:

Provided further that the upper age-limit may be relaxed in favour of a candidate who possess exceptionally good qualification or experience or both;

(c) xxx xxx xxx

9. From the above Rules, it is clear that apart from the educational qualifications mentioned therein, one of the necessary criterion for eligibility for the post in question is that the candidate must possess three years experience in a related field of Social Work, after obtaining the above-referred educational qualifications. This requirement has been clearly stipulated in the advertisement. The Rule provides that the experience of three years in the field of Social Work is necessary, in addition to the educational qualifications of a candidate. From the documents annexed to the petition, it appears that the Petitioner had initially joined Aga Khan Rural Support Programme (India) as Community Organiser with effect from 31-5-1996, and thereafter, was promoted as Member Secretary, with effect from 1-10-2004. The Petitioner has the experience of being Member Secretary only for a period of 1 year, 11 months and 14 days. The duties performed by the Petitioner as Member Secretary are related to team management and leadership in the Rural Development field. According to the certificate dated 1-9-2006 given by the Aga Khan Rural Support Programme (India), annexed at running page No. 18 of the paper-book, the Petitioner is engaged in management, monitoring and evaluation of various rural

development related projects such as community management of natural resources with tribal community (Soil & Water Conservation, Water resource development renewable source of energy, Forestry & Agriculture extension), livelihood enhancement of poor tribal community (Community Institutions, Micro finance, Income generation `ivity, leadership development), management to multi-disciplinary team, liaison with different Government agencies and Non-Government agencies. Essentially, the duties performed by the Petitioner appear to be administrative in nature, as has been concluded by the G.P.S.C., from perusal of the certificates submitted by the Petitioner.

10. There does not appear to be any certificate on record stating that the Petitioner has the requisite experience of three years in the field of Social Work. Though, the learned Counsel for the Petitioner has submitted that the activities carried on by the Petitioner are in the nature of Social Work, according to the G.P.S.C. this aspect is not evident from the documents supplied by the Petitioner.

11. In the considered view of this Court, the very purpose and requirement of submission of certificates, credentials and documents is to enable the recruiting body, in this case the G.P.S.C., to come to a conclusion regarding the eligibility of the candidate and to form an opinion on the basis of the same, whether the candidate possesses the eligibility criteria as prescribed by the Rules and as stipulated in the advertisement. What is not clearly stated in the documents and credentials of the Petitioner cannot be inferred by the G.P.S.C. For the purpose of evaluating whether the Petitioner possesses three years" experience in the field of Social Work, he was required to submit documents that makes this aspect clear on bare perusal of the same. To infer, by a long drawn out process of reasoning and speculation whether the duties performed by the Petitioner involve experience in the field of Social Work or not, would bring in an undesirable element of subjectivity, which is to be avoided in matters of public employment, through a process of direct selection. The G.P.S.C., which is the recruiting body, has to maintain objectivity and impartiality in order to satisfy itself regarding the aspect whether the candidate fulfils all the necessary eligibility criteria prescribed by Rules, for the post. This can only be done by scrutiny of certificates, credentials and documents and only if it is found that the candidate fulfils all the necessary eligibility criteria for the post in question, is he to be called for the interview. The documents should speak for themselves and in this case, looking to the material on record, it cannot be said that the decision of the G.P.S.C., debarring the Petitioner from appearing in the interview, suffers from any illegality, irregularity or arbitrariness, so as to warrant interference from this Court in exercise of its power of judicial review.

12. It may be true that the Petitioner possesses the necessary educational qualifications but in addition to the same the Rule mandates that he should also possess three years experience in the related field of Social Work. As the Petitioner has been found lacking in the criterion of experience in the field of Social Work, it cannot be said that any legal or vested right of the Petitioner has

been infringed by the impugned decision of the G.P.S.C.

13. The learned Counsel for Respondent No. 2 has placed reliance upon *Jayantilal Dwarkadas Patel v. State of Gujarat* (supra), wherein this Court has observed as under:

7. Secondly, relaxation which is also provided in the General Rules can only be granted by the State Government if the same is in public interest. But this is also discretionary power of the State Government, and for which this Court cannot issue a writ of mandamus. It is the settled law that for issuance of a writ of mandamus, (1) the applicant must show that he has legal right of the performance of a legal duty (not discretionary) by the party against whom mandamus is sought, and such right is subsisting, and (2) the duty enjoined by mandamus may be one imposed by Constitution, a statute, common law or by rules or orders having the force of law *K.N. Guruswamy Vs. The State of Mysore and Others*, No such right exists in favour of the Petitioner nor any corresponding duty to the authority. Since, the Petitioner was not eligible at the date when he made the application, one cannot find any fault on the part of the Commission when it has not called the Petitioner for viva voce test though he had several other merits.

14. This decision would squarely apply to the facts of the present case. As per the settled position of law, even a candidate whose name appears in the select list has no right to appointment. In the present case, the Petitioner having been found to be ineligible due to lack of the requisite experience, can claim no right to be called for the interview.

15. As a result of the aforesaid discussion, as no legal, fundamental or indefeasible right of the Petitioner has been violated, and as the impugned decision of the G.P.S.C. in debarring the Petitioner from appearing in the interview suffers from no legal infirmity, the petition fails. It is, therefore, rejected.

16. Rule is discharged. There shall be no orders as to costs.