
(2008) 02 GUJ CK 0047

In the Gujarat High Court

Case No : Special Civil Application No. 4494 of 1990

Nagjibhai Ambalal Suthar

APPELLANT

Vs

President and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Citation : (2008) 02 GUJ CK 0047

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : S.V. Parmar, for the Appellant; M.I. Patel, for Respondents 1 - 3 and Jitendra M. Patel, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, an employee of Dabhoi Nagarpalika working as an Electrical Supervisor and off-Reliever, challenges the recruitment procedure adopted and selection made of respondent No. 4 to the post of Electrical Supervisor pursuant to an advertisement published by Dabhoi Nagarpalika on 10.11.1989 for appointment to the said post, along with several other posts.

2. The petitioner joined Dabhoi Nagarpalika as an Electrical Operator with effect from 1.8.1964. From 22.9.1967, he was given the work of supervision of Waterworks Operation of electrical motors and pumps and the working of machinery. Thereafter, on 29.4.1972, he passed the competency examination and he was given the responsibility of additional charge of operation and supervision of pumping station of Waterworks with effect from 27.4.1984 and was being paid additional allowance of Rs. 70/- per month.

2.1 An advertisement was published in the newspaper on 10.11.1989 inviting applications for the post of Electrical Supervisor and several other posts. The petitioner made an application for the said post of Electrical Supervisor and was interviewed on 27.1.1990. However, respondent No. 4 came to be selected for the post, which aggrieved the petitioner and hence this petition.

3. The grounds of challenge are three-fold; viz. (i) that the petitioner possessed the requisite qualifications and was also an employee of the Nagarpalika and ought to have been given a priority over other equally situated candidates; (ii) that son of the Chairman of the Selection Committee appeared for the post of Octroi Inspector and, therefore, the entire proceedings of selection stood vitiated, and (iii) the recruitment rules of the Nagarpalika for appointment to the post of Electrical Operator, which is a lower post, provide for a minimum educational qualification of pass in the S.S.C. Examination plus technical qualifications. The respondent No. 4 has not passed S.S.C. Examination and thus, he does not possess the educational qualifications even for the lower post and, therefore, he could not have been selected for the post of Electrical Supervisor.

4. This Court has heard learned advocate Mr. S.V. Parmar for the petitioner and learned advocate Mr. Chauhan appearing with learned Counsel Mr. J.M.Patel for respondent No. 4. No one appears for rest of the respondents.

5. Learned advocate Mr. Parmar submitted that the petitioner has by now retired from service, but, that would not render this petition infructuous for the reason that if it is held that the petitioner was entitled to be selected, he may claim consequential benefits.

5.1 Learned counsel Mr. Parmar submitted further that the fact that he was in service of the Nagarpalika for many years would go to show that he was called for interview in spite of the fact that he may not be meeting with the eligibility criteria.

5.2 Mr. Parmar submitted that the entire selection proceedings would stand vitiated for the reason that one Kiritbhai, son of Hasmukhbhai Patel, who was the Chairman of the Selection Committee, competed for the post of Octroi Inspector and was interviewed. This would vitiate the entire selection process as held by the Apex Court in the case of Ashok Kumar Yadav and Others Vs. State of Haryana and Others, . Mr. Parmar emphasised on the observations made by the Apex Court in Paragraph 18 of the said judgment.

5.3 Mr. Parmar submitted further that if the post of Electrical Operator requires minimum qualifications of pass in S.S.C. Examination, then the post of Electrical Supervisor would, obviously, call for at least that educational qualification; whereas respondent No. 4 does not possess that qualification, though he possesses technical experience. Mr. Parmar ultimately submitted that, thus, the selection of respondent No. 4 is bad and, therefore, the petition may be allowed and the reliefs sought by the petitioner may be granted.

6. Learned advocate Mr. Chauhan submitted that this petition has become infructuous, since the petitioner has already retired from service and he cannot be considered or appointed to the post in question now, even if the relief is granted.

6.1 Mr. Chauhan submitted that the post of Electrical Supervisor advertised for, was a selection post and not a promotional post. The petitioner's application was for being selected by way of promotion and it, therefore, could not have been considered. That apart, Mr. Chauhan submitted that this being a selection post, the petitioner would be required to compete with other candidates if he met with the requisite eligibility criteria. The age for the post prescribed was between 18 and 35 years and indisputably, the petitioner had crossed the age of 35 years even on the date of advertisement and, therefore, the petitioner did not meet with the eligibility criterion of age and could not have staked his claim to be selected or appointed to the said post.

6.2 It is also submitted by learned Counsel Mr. Chauhan that the petitioner has stated in his petition that his service career is blotless, but, in fact, there was a lapse on his part in past and for that lapse, a warning was given to him. Mr. Chauhan, therefore, submitted that the petition may be dismissed.

7. It is not in dispute that when the advertisement was published on 10.11.1989, the petitioner was already in service of the Nagarpalika since 1964 and he was aged about 51 years at that time, as can be seen from the affidavit filed on behalf of the Nagarpalika. With this background, if the facts of the case are seen, it is clear from the advertisement that the eligibility criterion for the post of Electrical Supervisor was that the age of the candidate must be between 18 and 35 years. The petitioner, therefore, did not meet with the eligibility criterion of age for the post in question. Merely because the petitioner was called for interview by the Nagarpalika, the same would not abrogate the requirement of minimum qualifying requirement, nor would it invest the petitioner with a right to be considered with other competing candidates, who met with the eligibility criterion of age. If that is the position, there is no question of granting to the petitioner the relief of considering his claim for appointment to the post of Electrical Supervisor, as prayed for in Paragraph VI(B) of the petition.

7.1 In light of the above situation, the petitioner would lose the locus-standi in this petition and the petition would merit rejection.

8. The petitioner has raised a point that Kiritbhai, son of Hasmukhbhai Patel, competed for the post of Octroi Inspector. He is son of the Chairman of the Selection Committee and, therefore, the entire selection process would be vitiated. Learned counsel for the petitioner relies on the decision in the case of Ashok Kumar Yadav and Ors. (Supra).

8.1 There is no material on record to support this say of the petitioner. Further, there is no material on record to infer that the Selection Committee for the post of Octroi Inspector and for the post of Electrical Supervisor was the same. There is no material before the Court to infer that anybody, related to any member of the Selection Committee, competed in the selection process for the post of Electrical Supervisor. Assuming that what is asserted by the petitioner that son of the Chairman of the Selection Committee competed for the post of Octroi

Inspector is correct, then also that would, at the most, vitiate the proceedings for selection to the post of Octroi Inspector. The proceedings for different posts are independent of each other and, therefore, proceedings for selection to the post of Electrical Supervisor would not be vitiated in absence of any material to show that any relative of any of the members of the Selection Committee competed for the said post and, therefore, the said decision in the case of Ashok Kumar Yadav and Ors. (supra) will not help the petitioner.

9. When the petitioner is found to be not having locus-standi, there is no question of his challenging the selection and posting of respondent No. 4. However, even if the contention is examined that respondent No. 4 does not possess the minimum educational qualification, it is found that there is no merit in the said contention. The advertisement for the post of Electrical Supervisor prescribes following qualifications: (i) Pass in First Class Electrical Supervisor Examination, and (ii) Five years" experience of working in the Waterworks Branch. No other qualification is prescribed in the advertisement. There is no material to infer that a qualification of pass in S.S.C. Examination is required for the said post. It may be true that the post of Electrical Operator may require a minimum education of pass in S.S.C. Examination, but, that would not abrogate the specific provision as emerging in the advertisement and it is not the case of the petitioner that the advertisement does not reflect the correct requirement of qualification. Under the circumstances, the petition cannot be entertained on this count also.

10. The last but not least, admittedly, the petitioner has retired on attaining the age of superannuation. There is no question of his being considered for the post in question. He is found to be not meeting with the eligibility criterion of age and, therefore, there is no question of his being considered for the post. Even if the contention of the petitioner is examined on hypothesis that if the petitioner succeeds in the petition, he would be entitled to consequential benefits, even then, it may be noted that the petitioner does not pray for his entitlement, selection and posting as Electrical Supervisor. All that he has prayed for is a direction for considering his claim for appointment to the post of Electrical Supervisor. That would only mean that the Court may hold that he is entitled to be considered for the post in question. He cannot claim any exemption or relaxation in the age criteria. Relief even if granted, would thus result in futile exercise. There is no question, therefore, of the petitioner achieving the next stage of consequential benefits and as such, the petition can be said to have become infructuous, as the petitioner has retired on attaining the age of superannuation.

For the foregoing reasons, this Court finds no merits in the petition. Petition must fail. Stands dismissed. Rule is discharged. No costs.