

(1990) 07 GUJ CK 0020
In the Gujarat High Court

Narayanbhai Ajmalbhai Chavda

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-07-1990

Acts Referred:

Citation : (1990) 2 GLR 1185

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—Rule. Mr. R.J. Oza waives service of rule on behalf of respondents Nos. 1 and 2. Mr. D. D. Vyas waives service of rule on behalf of respondents Nos. 3 and 4.

2. The petitioner is serving as junior clerk. After his appointment he was required to pass pre-service training examination within the prescribed number of chances. The examination was to be held on June 23 and 24, 1989. The petitioner was to appear at the examination, but could not appear at the examination on account of the fact that he suddenly fell ill. Therefore, the petitioner requested that the examination held may be treated as a chance availed of by him. This request has been turned down by the respondents. Hence the petition.

3. Learned Counsel for the petitioner has drawn my attention to circular dated 16-5-1989 produced at Annexure "B" to the petition wherein it is stated that in case a candidate is not in a position to appear at the examination for the reasons beyond his control, he should give intimation three days before the commencement of the examination. In case he fails to intimate in advance, such intimation could be given within two days of completion of the examination. It is not disputed that the petitioner had as a matter of fact submitted medical certificate and application on June 21, 1989, requesting that on account of illness he would not be in a position to appear at the examination and he be exempted from appearing at the examination. He also requested that the examination be not treated as a chance availed of by him. Despite this position, the respondent-authorities have taken the stand that there is no specific provision in the rules

regarding pre-service training examination and therefore his request cannot be granted. The stand taken by the respondent-authorities cannot be sustained. All the candidates have been told in advance that if they fulfill the condition and if it is shown by them that the circumstances were beyond their control and on such ground they could not appear at the examination, the examination will not be considered as a chance availed of by them. Despite this position, the respondent-authorities cannot take a hypertechnical view and say that there is no such specific provision in the rule.

4. In absence of specific provision in the rule, the appropriate respondent-authority ought not to have issued such circular. Having led the candidates to believe that such a course is permissible, now, after the examination and after the petitioner has changed his position to his own detriment, the authorities cannot be permitted to shift their stand so as to cause prejudice to the petitioner.

5. In the result the petition is allowed. The order produced at Annexure "H" to the petition, dated November 3, 1989, and the order produced at Annexure "L", dated 24-4-1990 are quashed and set aside. The respondent authorities are directed not to consider the examination in question as a chance availed of by the petitioner. Rule made absolute accordingly with no order as to costs.