

(2011) 10 GUJ CK 0007
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1113 of 2004 in Special Civil Application No. 12490 of 2000

Natwarlal S. Thakker

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 04-10-2011

Acts Referred:

Citation : (2011) 10 GUJ CK 0007

Hon'ble Judges : V.M. Sahai, J;K. S. Jhaveri, J

Bench : Division Bench

Advocate : Shalin N. Mehta, for the Appellant; N.J. Shah, AGP, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of this Intra-Court Letters Patent Appeal, the Appellant - original Petitioner has challenged the judgment and order dated 22.01.2002 passed by the Learned Single Judge in Special Civil Application No. 12490 of 2002 whereby the Learned Single Judge dismissed the writ petition filed by the Appellant.

2. Heard Learned Counsel Mr. Shalin Mehta appearing for the Appellant and Mr. N.J. Shah, learned Assistant Government Pleader appearing for the Respondents.

3. The facts of the case are that the Appellant was initially appointed as Assistant Lecturer on 02.01.1961. Thereafter he was confirmed vide order 22.01.1973 w.e.f. 08.01.1971. The GPSC gave advertisement on 15.06.1986 for filling up the post and accordingly, waiting list was prepared. However, some of the promotees filed writ petition being Special Civil Application No. 5921 of 1987 in this Court for quashing the waiting list. In view of interim order, the said waiting list could not be operated by the State Government. Thereafter, the said writ petition came to be dismissed on 28.02.1996. The Appellant retired on 31.08.1992. Hence, the Petitioner filed writ petition before this Court seeking a writ of mandamus that

the Appellant is entitled to hold the post of Professor - Class I from the date he was eligible i.e. 12.11.1987 and he may be given all consequential benefits and arrears of wages.

4. While dismissing the writ petition of the Appellant, the Learned Single Judge has given specific finding in the impugned judgment and order. Relevant part of the judgment is extracted below:

Mr. Rana, however, submitted that even though there was an order of interim relief granted by this Court, the Department had made some appointments, ignoring the interim order of this Court and that, Respondent No. 5 was appointed somewhere in the year 1992. It is pointed out by the learned AGP that the interim relief granted by this Court was subsequently vacated on 18.9.1990. However, since the life of the select list was only for a particular period, the list could not have been operated further, because the said list came to an end on expiry of the stipulated period. In my view, since at the relevant time, the Department was prevented by the interim relief granted by this Court, it cannot be said that the Department acted in an arbitrary manner in not giving appointment to the Petitioner on the basis of the select list. Subsequently, even the life of the select list came to an end. Mr. Rana has also fairly submitted that so far as Respondent No. 5 is concerned, even otherwise, he was senior to the Petitioner in the select list.

Considering the aforesaid facts and circumstances of the case and considering the fact that the Petitioner has already reached the age of superannuation in 1992, no relief can be granted to the Petitioner asking the Department to give him appointment to the post in question on the basis of his selection. In that view of the matter, I do not find any merit in this petition. The petition is, therefore, rejected. Notice is discharged with no order as to costs.

5. We are in agreement with the view taken by the Learned Single Judge. The Letters Patent Appeal is devoid of any merits and is accordingly dismissed.