
(1997) 10 GUJ CK 0034
In the Gujarat High Court

Paresh J. Mehta

APPELLANT

Vs

G.M. Malvat, Additional Registrar and Another

RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 229, 229(1), 229(2), 233

Citation : (1998) 2 GLR 967

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Judgement

N.N. Mathur, J.—The petitioner-Paresh J. Mehta, who is an Advocate of This Court, on his own submitted his bio-data for appointment to Class-I administrative post in the High Court of Gujarat, has approached This Court by way of this Special Civil Application under Article 226 of the Constitution seeking directions to quash and set aside the promotion of respondent No. 1 - G.M. Malvat on the post of Additional Registrar. He also seeks direction for fresh interviews for the post of Additional Registrar and prays that the case be considered. It is also prayed that an appropriate departmental enquiry be initiated against respondent No. 3-Mr. J.K. Patel, the Registrar of the High Court for false and improper submissions before the Hon'ble Chief Justice for such a Class I post and for not furnishing the requirements of the post of Addl. Registrar.

2. The say of the petitioner is that respondent No. 1 is simply S.S.C. and he is not eligible for appointment on the post of Addl. Registrar. His appointment is contrary to provisions of Rule 6 of the High Court of Gujarat (Recruitments & Conditions of Service of Staff) Rules, 1992 (for short, "Rules of 1992") and that it is also contrary to provisions of Article 233(2) of the Constitution of India. So far as the qualification part is concerned, it is not being disputed by the High Court that respondent No. 1 is not qualified as provided under Sub-rule (2) of Rule 6 of the Rules of 1992.

3. The case of the High Court is that the eligibility criteria has been relaxed by the Hon'ble Chief Justice in exercise of powers vested under Rule 48 of Rules of

1992. The respondent has also raised certain preliminary objection with respect to the maintainability of the present petition. The petition could be disposed of on the short ground of locus and laches but as the question involved is with respect to functioning of the Court on the administrative side, I consider it appropriate to examine the matter on merit to make the record straight.

4. Article 229 of the Constitution provides the manner in which the officers and servants of the High Court should be appointed. It provides that appointment of officers and servants of the High Court shall be made by the Chief Justice of the High Court or such other Judge or officer of the Court as he may direct. Clause (2) provides that condition of the servants of the officers and servants of the High Court shall be such as may be prescribed by the Rules made by the Chief Justice or by some other Judge or such officers of the Court authorised by the Chief Justice. Hon"ble Chief Justice of the Gujarat High Court in exercise of powers under Article 229 of the Constitution of India and all other enabling powers has framed the High Court of Gujarat (Recruitments and Conditions of Service of Staff) Rules, 1992 which has come into effect from 1st Day of September, 1992. Rule 5 provides that all appointments to the posts in the office of the High Court shall be made by the Chief Justice in his absolute discretion. Rule 5 reads as follows:

5.(i) All appointments to the posts in the office of the High Court shall be made by the Chief Justice in his absolute discretion : Provided that the Chief Justice in exercise of the powers conferred upon him under Article 229 of the Constitution of India may by general or special order, direct any other person specified in the said Article to make appointments to any post or class of posts in the Court.

(ii) The Chief Justice in exercise of his powers under Article 229 of the Constitution of India is pleased to direct the Registrar to make appointments in the class of posts specified below subject to such conditions and limitations as may be prescribed in these Rules.

(a) All Class III Servants in the High Court.

(b) All Class IV Servants in the High Court:

Provided that all such appointments shall be made by the Registrar with the previous approval of the Chief Justice.

5. Rule 6 provides various sources for appointment to the post of Registrar General or Registrar or Joint Registrar or Additional Registrar, i.e., by way of promotion from the establishment of the High Court, or by transfer of a Judicial Officer not below the rank of a District Judge, or by nomination or by reemployment. Sub-clause (2) provides that to be eligible for appointment by promotion or nomination to the post of Registrar General or Registrar or Joint Registrar or Additional Registrar, a candidate must have the qualification for eligibility for appointment as a District Judge as prescribed in Article 233 of the Constitution of India. Rule 6 reads as under:

Rule 6

6. (i) Appointment to the post of Registrar General or Registrar or Joint Registrar or Additional Registrar shall be made either,

(a) by promotion from the establishment of the High Court, or

(b) by transfer of a Judicial Officer not below the rank of a District Judge, or

(c) by nomination, or

(d) by re-employment of a pensioner who had held the office of Registrar General, Registrar, Joint Registrar or Additional Registrar as the case may be.

(2) To be eligible for appointment by promotion or nomination to the post of Registrar General or Registrar or Joint Registrar or Additional Registrar, a candidate must have the qualification for eligibility for appointment as a District Judge as prescribed in Article 233 of the Constitution of India.

(3) Appointment to the post of Special Officer (Vigilance) and Officer on Special Duty shall be made by selection on transfer of a Judicial Officer of the cadre of District Judge, on deputation.

Rule 47

Sub-rule (3) and Sub-rule (5) of Rule 47 provides eligibility for promotion on the post of Assistant Registrar, Deputy Registrar and Additional Registrar. Sub-rule (3) says that promotion on the said post shall be strictly on the basis of efficiency and proved merit. Sub-rule (5) prohibits promotion from the lower posts to higher posts unless he has experience of 5 years in the post from which he is to be promoted. Proviso appended to Sub-rule (5) empowers the competent authority to relax the requisite experience in the public interest for the reasons to be recorded in writing. Sub-rule (5) reads as follows:

(5) No person shall be promoted from the lower post to higher post unless he has experience of five years in the post from which he is to be promoted:

Provided that where a person having experience as specified herein is not available for promotion and it is in public interest to fill up the post by promotion of a person having experience for a lesser period for the reasons to be recorded in writing the competent authority may promote such persons.

Rule 48

Rule 48 is the saving clause which empowers the Chief Justice to promote in exceptional cases any Court servants to any post irrespective of the fact that the incumbent fulfils the qualifications provided under the Rules. Rule 48 reads as under:

48. Nothing in the preceding Rule shall be deemed to curtail the power of the Chief Justice to promote in exceptional cases, any Court servant to any post as

he may deem fit.

Rule 48 is a saving clause. It means as defined by the Law of Lexicon (1987, reprint edition), a special thing out of general things mentioned in a statute. Saving clause is used to preserve from destruction, certain rights, remedy or privilege already existing. It saves all the rights a party previously had. (Horack: Cases and Materials on Legislation, page 572). Thus, irrespective of the qualification provided under Rules 6(1) and (2) and Rules 47(4) & (5) for appointments on the post of Additional Registrar, the Chief Justice has power to promote a person in exceptional cases even if the incumbent does not fulfil qualifications provided under the Rules of 1992. Such a power has been vested with the Chief Justice because of the unique position he occupies in the High Court administration. The provisions is in consonance with the spirit of Article 229 of the Constitution of India.

6. Considering the powers of the Chief Justice under Article 229 of the Constitution of India, Division Bench of the Delhi High Court in the case of S.C. Malik v. P.P. Sharma reported in AIR 1982 Delhi 83, found that Article 229 does not give any guidelines as to how a person has to be selected. It leaves open the question as to how the Chief Justice has to make the selection. It is the Chief Justice who knows what are the problems in the Court, he knows what he wants to achieve and, therefore, his choice can be made according to the particular circumstances in which he finds himself. The Court observed that the Chief Justice is after all the Captain of the ship who seeks a steward on some dangerous voyage. The Court observed thus:

We fancy, that in this respect the Chief Justice may be likened to a Captain of a ship who seeks a steward on some dangerous voyage. It is the Captain who knows his requirements, it is, therefore, he who has to make the selection to carry his ship to safe harbour. If you have an expert, it is expected that he will know what sort of assistance he requires for a particular type of enterprises.

7. A Division Bench of Rajasthan High Court, in the case of Parmatma Sharan and Another Vs. Hon"ble the Chief Justice Rajasthan High Court and Others, , dealing with the powers of Chief Justice under Article 229(1) of the Constitution of India, held that the powers given to the Chief Justice in the matter of appointment is unfettered except to the extent it is restricted by the proviso. The Court further held that in making appointments the Chief Justice exercises an administrative power and the discretion exercised by him is not justiciable. The Court observed thus:

Now, it should not be forgotten that the Constitution makers in their wisdom conferred the power of making appointment in the High Court on the Chief Justice. This power has been entrusted to the safe custody of the Chief Justice in order to ensure the independence of the Judiciary which is one of the vital organs of a Government. In the long history of the High Court of India this power has always vested in the hands of the Chief Justice. Clause 10 of the Charter of the

Supreme Court of Calcutta issued in 1774 authorised and empowered from time to time to appoint as many as such clerks and other ministerial officers as was found necessary for the administration of justice.

8. Thus, the power of the Chief Justice in the matter of appointment of the officers and servants of the High Court under Article 229(1) of the Constitution is unfettered. Under the Rules of 1992, the Chief Justice while providing the qualifications for appointment of officers and servants of the High Court has reserved the power under Saving Clause 48. It is the sole power of the Chief Justice to appoint a person on any post in the High Court, as per the requirement of which he is the best Judge. The Chief Justice of Gujarat High Court in exercise of powers under Article 229(2) has framed the Rules for appointments of officers and servants in the High Court providing the qualifications and the manner of appointment while reserving his right under Rule 48, to relax the same in exceptional cases. The exercise of discretion by the Chief Justice under Rule 48 is not justiciable except on the ground of mala fides. It is also settled proposition of law and rules of the Court that while exercising its powers under Article 226 of the Constitution of India in a case where the administrative authority exercises its discretion in good faith and not in violation of any law, such exercise of discretion cannot be interfered with by the High Court except where there are strong and convincing ground to show that the power has been abused.

Now, in the aforesaid backdrop, I may examine the merit of the impugned appointment of respondent No. 1.

9. Hon''ble Justice Nayanar Sundararn, the then Chief Justice, in the year 1993, constituted a Sub-Committee of M/s. Hon''ble G.T. Nanavati and A.P. Ravani, JJ. (As Their Lordship then were) to consider the question regarding appointment of upgraded post of Additional Registrar. The Committee expressed the view that a person who has sufficient experience of the working of the High Court should be appointed on the upgraded post of Addl. Registrar and to that post, by transfer of a Judicial Officer or by nomination or of re-employment of pensioners would not be in the interest of efficient working of the establishment of the High Court. The Committee also examined the particulars of the Dy. Registrars namely: M/s. R.P. Vyas, G.M. Malvat, D.B. Patel, K.A. Master, and D.B. Dholakia. After scrutinising the relevant record, the Committee found that none of the five Dy. Registrar had the minimum 5 years experience. However, the Committee, keeping in view the recommendation made in the earlier part that it would be in the interest of efficient working of the establishment of the High Court, recommended in the public interest, to fill up the post by promotion and not by any other mode. On thorough consideration of service record of all the Dy. Registrars, including reports regarding integrity, capacity and efficiency, opined that performance of Mr. G.M. Malvat is outstanding even though Mr. R.P. Vyas is senior to Mr. Malvat. Thus, the Committee recommended in the interest of better administration of establishment of the High Court, Mr. G.M. Malvat be appointed on the upgraded post of Additional Registrar. The office again put up a note before the Hon''ble

Chief Justice B.N. Kripal (as His Lordship then was) that the post of Additional Registrar in the High Court is lying vacant since 17-3-1994. The Confidential Reports files and all the relevant material of the four Dy. Registrars - M/s. G.M. Malvat, D.B. Patel, K.A. Master and D.B. Dholakia were placed before the Hon''ble Chief Justice B.N. Kirpal. The Hon''ble Chief Justice discussed the matter with two seniormost Hon''ble Judges, namely: A.P. Ravani and M.B. Shah, JJ. (as Their Lordships then were) and after obtaining their opinion, observed as under:

Discussed with Brother Judges A.P. Ravani and M.B. Shah.

xxx xxx xxx Mr. G.M. Malvat is the seniormost Deputy Registrar, but he is not qualified as per Rules. However, as he is found to be a man of proved merit, efficiency and competence, it would be in the interest of administration to relax qualifications in his case, as a special case, exercising powers under Rule 48 of the High Court of Gujarat (Recruitments and Conditions of Service of Staff) Rules, 1992, and promote him as Additional Registrar.

After retirement of Mr. Section C. Shah, rigorous search has been made for suitable candidate to be brought either by transfer or by nomination but has not been found. The Additional Registrar being in-charge of Judicial Department but since last some time being vacant, working of the departments is adversely affected sans regular incumbent. Consequently, there is no way out to promote Mr. Malvat even though does not have experience of 5 years on the post from which he is to be promoted. In the result, Mr. G.M. Malvat is to be promoted as Additional Registrar accordingly.

It is thus evident that the exercise has been undertaken for appointment of Additional Registrar by two successive Hon''ble Chief Justices with the help of the seniormost Hon''ble Judges. The Committee (consisting of M/s. Justice G.T. Nanavati and A.P. Ravani) clearly expressed that in the interest of the establishment of the High Court, appointment may be made on the upgraded post of Additional Registrar only by promotion. The Hon''ble Judges, after scrutinising the service record of the five Dy. Registrars, expressed that in their opinion, performance of Mr. G.M. Malvat is outstanding. This exercise was again undertaken by Hon''ble Chief Justice B.N. Kirpal. The matter was again discussed with seniormost Judges A.P. Ravani and Justice M.B. Shah and the Hon''ble Chief Justice B.N. Kirpal found that respondent No. 1 is a man of proved merit, efficiency and competence. In view of this it was considered in the interest of the organisation to relax the requirement of qualification. Thus, the Hon''ble Chief Justice has taken a decision after having consulted the Judges of This Court and on a thorough scrutiny in the public interest.

10. The petitioner has failed to point out any convincing reason to show that the Chief Justice has in any way misused his powers. In view of this, there is no reason for me to interfere with the impugned decision of the Chief Justice in exercise of powers under Article 226 of the Constitution of India.

11. It is lastly submitted by the learned Advocate that a departmental enquiry be

initiated against respondent No. 3-Mr. J.K. Patel, the Registrar of This Court for false and improper submission before the Hon"ble Chief Justice. Mr. J.K. Patel in his affidavit stated that the Notification promoting respondent No. 1-Additional Registrar on 4-2-1995 after Mr. R.R. Jain, the then Registrar (now Judge of Madras High Court) was repatriated to City Civil Court and he was placed in-charge of the post of Registrar. He was appointed as Registrar w.e.f. 24-2-1995 and in view of this there was no occasion for him to submit any note before the Hon"ble Chief Justice. The allegations made are not only vague but false. In view of the aforesaid, the contention raised by the petitioner deserves to be rejected.

In view of the aforesaid, there is no merit in this Special Civil Application and the same is accordingly rejected. Rule discharged.