
(2003) 10 GUJ CK 0033

In the Gujarat High Court

Case No : Special Civil Application No's. 12401, 12564, 12861, 13471, 13492, 13493 of 2003

Patel Jayeshkumar Kanubhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-10-2003

Acts Referred:

Citation : (2003) 10 GUJ CK 0033

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : B.P. Gupta in Special Civil application Nos.12401, 12564 and 12861 of 2003 and Sneha A Joshi, for Petitioner No. 1-8 and Divyesh A Joshi, for Petitioner No. 1-8 in Special Civil application Nos.13471, 13492 and 13493 of 2003, for the Appellant; I.M. Pandya, AGP for Respondent No. 1-3, H.S. Munshaw, for Respondent No. 4, 14, Sejal K Mandavia, for Respondent No. 6, Premal R Joshi and Mukesh R Shah, for Respondent No. 11 in Special Civil Application Nos.12401, 12564 and 12861 of 2003 and K.P. Raval, AGP for Respondent No. 1-3 in Special Civil Application Nos.13471, 13492 and 13493 of 2003, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—Rule. Mr.I.M.Pandya, learned AGP, waives service of Rule on behalf of respondents No.1 to 3 in Special Civil Application Nos.12401/2003, 12564/2003 and 12861/2003. Mr.K.P.Raval, learned AGP waives service of Rule on behalf of respondents No.1 to 3 in Special Civil Application Nos.13471/2003, 13492/2003 and 13493/2003. With the consent of the parties, these matters are taken up for final hearing today. Since common point is involved in all these petitions, they are disposed of by this common judgement. Amendment placed on record by Mr.Oza in Special Civil Application No.12401/2003 is granted.

2. The petitioners, in all these petitions, are holding the qualification of A.T.D. (Art Teachers" Diploma) or Sangeet Visharad, as the case may be. All of them have passed H.S.C. examination also. Since they are eligible for appointment to

the posts of Vidya Sahayak, (which is at primary level in the school), by filing these petitions, it is prayed that the claim of the petitioners should be considered for appointment as primary teachers upto the prescribed percentage to this category of teachers, i.e. Art teachers and Sangeet teachers, as they are holding the qualification of A.T.D. or Sangeet Visharad.

3. It seems that, at present, large number of posts of primary teachers/Vidya Sahayaks are lying vacant in the State of Gujarat. So far as primary teachers are concerned, they are now required to be appointed firstly as Vidya Sahayaks, as per the scheme framed by the Government. So, now a primary teacher is required to be appointed as a Vidya Sahayak, on a fixed salary and that appointment is to be made as per the procedure prescribed under the Scheme. So far as primary schools are concerned, PTC trained teachers are required to be appointed for teaching students at primary level but now under this scheme, the post of primary teacher is classified as "Vidya Sahayak". Since at a primary level, various subjects including various specialised subjects are also required to be taught, such as physical training, drawing as well as music, the State Government, in its wisdom, has reserved certain percentage of posts for specialised category like Physical Education teacher, known as "C.P.Ed", Drawing Teacher known as "A.T.D." and Sangeet Teacher, a candidate who has passed Sangeet Visharad examination is entitled to be appointed as a Sangeet teacher. On behalf of the State Government, it was decided to fill up all vacant posts of primary teachers (Vidya Sahayaks), for which advertisements have been issued by various districts, wherein qualifications prescribed are P.T.C. and C..P.Ed. Such advertisements are annexed to Special Civil Application No.12564/2003 at pages 102 to 109.

4. The grievance of the present petitioners is that even though, certain percentage of posts are required to be kept aside for this specialised subjects of A.T.D and Sangeet Visharads, the advertisements do not prescribe any such percentage of posts for the aforesaid category and as per the advertisement, all these vacant posts can be filled in only from P.T.C. or C.P.Ed. and no post is reserved for A.T.D. or Sangeet Visharad. In this behalf, reference is made to the scheme of Vidya Sahayak framed by the Government, which is annexed at page 40 in the compilation of Special Civil Application No.12564/2003. As per the same, and more particularly as per Clause 5 of the said scheme, wherein there is a reference for filling up of posts of Vidya Sahayaks from the category of A.T.D. and Sangeet Visharads/Music teacher, as per established need, upto 7% of vacant posts, recruitment is to be made from the aforesaid category. Since no post is reserved for the aforesaid category in the advertisement, by filing these petitions, it is prayed by the petitioners that when there are so many vacancies in existence today, there is no reason not to reserve even a single post for aforesaid specialised category of A.T.D. and Sangeet Visharads. It is submitted that the State Government has now amended the earlier scheme of Vidya Sahayak and as per the same any candidate, who has passed 12th standard examination, is also held eligible to be appointed as Vidya Sahayak. It is

submitted on behalf of the petitioners that so far as the present petitioners are concerned, they have not only passed 12th standard examination but they have also got specialised qualification of A.T.D.or Sangeet Visharads.

5. By filing these petitions, it is prayed that the State Government may be directed to fill up 7% of the vacant posts of Vidya Sahayaks from A.T.D. and Sangeet Visharads. It is also the say of the petitioners that so far as the subjects of drawing and music are concerned, the same are required to be taught in all schools upto 7th standard and it is a part of the curriculum prescribed upto 7th standard.

6. On behalf of the State Government an affidavit-in-reply has been filed in Special Civil Application No.12564/2003, wherein it is stated that there is no special provision as regards Art Teacher (A.T.D.) for the purpose of giving them preference in the matter of recruitment to the post of Vidya Sahayak. It is also stated in the affidavit-in-reply that the qualification of A.T.D. is not a qualification for appointing a candidate as a Vidya Sahayak at the primary level. According to the submission of learned AGP Vidya Sahayaks are required to teach all subjects to the students at primary level and a person, who is having only the qualification of A.T.D. or Sangeet Visharad, naturally, cannot teach other subjects except drawing or music as the case may be. Under these circumstances, it is submitted that it is not mandatory that the State is required to provide reservation for the candidates of aforesaid categories for the purpose of recruitment to the post of Vidya Sahayak. It is, however, conceded that so far as drawing and music subjects are concerned, they are part and parcel of the curriculum prescribed for primary schools and said subjects are required to be taught compulsorily upto 7th standard.

7. Mr.Pujara, on the other hand, has relied upon the Government Resolution dated 19th July, 1989, wherein it is stated that A.T.D. and Sangeet Visharads are qualifications for the purpose of getting appointment to the post of primary teacher and accordingly, the candidate having said qualification is eligible to be appointed as a primary teacher. It is also required to be noted that so far as drawing or music subjects are concerned, a specialised person is needed to teach said subjects. It cannot be said that these are not specialised subjects and considering the aforesaid aspect, the Government has already prescribed reservation upto 7% as per the need established. Considering the aforesaid aspect of the matter, in my view, if qualified persons are available, who can teach said subjects and when so many posts are lying vacant, there is no reason why appointment cannot be made within the percentage prescribed for this category from the candidates, who have not only passed standard 12th examination but have also got specialised qualifications for teaching the said subjects. It is a fact that the person, who is having specialised knowledge in the subject can teach the said subject in a better manner. Considering this aspect, there is a provision for reservation upto 7% for A.T.D. and Sangeet Visharads in the scheme, for the purpose of appointment.

8. In para 8 of the reply, it is pointed out that about 20,000 posts of teachers are lying vacant and the said posts are required to be filled in expeditiously. In order to fill up all these posts, the Government has passed resolution dated 1-8-2003 by which even an untrained candidate, who has passed 12th standard examination is now held eligible for appointment as Vidya Sahayak. The said resolution dated 1-8-2003 is also placed on record. The grievance of the petitioners is that when Sangeet Visharads and A.T.D.s are available, there is no reason to appoint a person, who has passed 12th standard examination only and who is not a trained teacher. It is submitted that the petitioners having got the qualifications of A.T.D. and Sangeet Visharads, they are trained teachers in view of their qualifications. It is also submitted that when the petitioners have also passed 12th standard examination, as stated earlier, and also having qualifications which is required for a trained teacher, there is no reason why at least on 7% of the vacant posts should not be filled in from A.T.D. and Sangeet Visharads. It is submitted that the petitioners have also passed 12th standard examination so they can also teach other subject at the primary level. It is also submitted that at least 7% of the vacant posts can be filled in from this category so that the problem of the Government can be solved to some extent.

9. Considering the aforesaid aspect of the matter, in my view, the petitioners, who have already got specialised diploma and have got certificate from the recognised institutions are even otherwise eligible for being appointed as Vidya Sahayaks, in view of the Government Resolution dated 1-8-2003. Therefore, at least 7% of the vacant posts are required to be filled in from the aforesaid category, to which the present petitioners belong. It is pointed out that even in the past, such A.T.D. and Sangeet Visharads were given appointment within the prescribed percentage. In my view, there is absolutely no justification for not giving preference to A.T.D. and Sangeet Visharads upto the prescribed limit of 7% in the matter of appointment.

10. At the time of hearing of all these petitions, Mr.Nagori, Additional Secretary of the Education Department, is personally present in the Court and he has assisted the Court, with his specialised knowledge in the subject. He has pointed out to the Court that, so far as 7% of reservation for the said category is concerned, it is a matter of discretion and as per the need established vacancies can be filled in from this category upto 7%. He, however, admitted that, at present, vacancies are in existence and there are so many schools, which do not have Sangeet or drawing teachers, as on today. He submitted that the Government may consider the question of giving preference to these candidates, who have got A.T.D. or Sangeet Visharad Diploma within the prescribed percentage. He, however, submitted that 7% is the outer limit, and it can vary from 1% to 7%, as the case may be.

11. Considering the facts and circumstances of the case and considering the submissions made by the learned advocates for the petitioners as well as by the learned AGP, in my view, the appointment of a person, having special knowledge

of the subject, so far as it relates to the specialised subjects, like drawing and music, there is no reason why the Government should deviate from its policy to give preference to these candidates upto 7%, when the petitioners are even otherwise eligible as per Government Resolution dated 1-8-2003 for appointment. At least, they are required to be given preference within the prescribed limit upto 7% and they are also holding additional qualification, by which they are more suitable for teaching the specialised subjects. It may be true that, now, the Government has added music and drawing in PTC course, and therefore, now the PTC candidates can also teach all the subjects, including music and drawing, but when 7% posts are prescribed for specialised subjects and the same are yet not given a go-by and when persons having specialised knowledge are available, it is for the interest of the students that preference be given to such candidates, who are having special knowledge of the subjects, at least within the prescribed percentage.

12. It is required to be noted that even otherwise, it cannot be said that the subjects of drawing and music are kept in syllabus just for the sake of keeping them. In fact, the said subjects are also required to be taught to the students properly, and, therefore, one who is having specialised knowledge or qualification can naturally do better justice while teaching said subjects. Considering the aforesaid aspect of the matter, in my view, 7% of the posts from existing vacant posts are required to be filled in from the candidates holding qualification of A.T.D. or Sangeet Visharad. It is no doubt true that 7% of the posts, which is prescribed for the aforesaid category is only an outer limit. However, considering the say of the Additional Secretary, to the effect that there are about 4,000 to 5,000 schools, which do not have music or drawing teacher, it is high time that at least upto 7% of the vacant posts, which is a prescribed maximum limit, can be filled in from the candidates holding A.T.D. and Sangeet Visharads. It is clarified that it will not be obligatory on the part of the Government to keep this limit of 7% for future appointments for all time to come. As at present so many schools are without Sangeet or drawing teacher, so far as existing vacancies are concerned, the same are to be filled in by resorting to maximum limit of 7% from the aforesaid category. Even otherwise, as stated earlier, these petitioners are also eligible to be appointed as per the Government Resolution dated 1-8-2003, as they have also passed standard 12th examination. Ultimately, it is required to be seen that the students at primary level may not be deprived of the benefit of an expert teacher for a particular subject, especially in a specialised subject like drawing or music, as the case may be.

13. So far as physical training teachers are concerned, in earlier petitions, for the said category of candidates, it is already stated before the Court that 5% of the posts are reserved for them and it is agreed to fill in the said posts from the said category only, so that school may not remain without these teachers. Of course, in the Resolution, said percentage is prescribed specifically while so far as present candidates are concerned, said reservation is upto 7% and there is no fixed percentage of reservation. However, as stated above, considering the fact

that so many posts are available in this category, at least, so far as the vacant posts, as on today, are concerned, from the total vacancies, at least 7% of posts be filled in from this category. Since the department has already given advertisement for recruitment of Vidya Sahayaks, without simultaneously giving preference to the aforesaid category, as indicated above, the department may now give a fresh advertisement for the aforesaid two categories, i.e., A.T.D. and Sangeet Visharads, and in such advertisement, care may be taken to notify and fill up 7% of the total vacant posts of Vidya Sahayaks from A.T.D. and Sangeet Visharads. The department is directed to issue advertisement inviting applications from the candidates of aforesaid two categories, i.e., A.T.D. and Sangeet Visharads, within a prescribed percentage upto 7% of the total vacant posts of Vidya Sahayaks. Such process be expedited so that the appointment may not be delayed for a long time. The Additional Secretary, who is present in the Court, has assured the Court that in two months the process will be completed for filling up 7% of vacant posts from the aforesaid two categories, as indicated above. Necessary follow up action may accordingly be undertaken forthwith.

14. At this stage, learned advocates appearing for the petitioners submitted that they are not canvassing any other points and that they are not challenging the G.R. dated 1-8-2003 and reserving their right to challenge the same in case it is required to be challenged. It is accordingly clarified that this Court has not expressed any opinion in connection with G.R. dated 1-8-2003 and this order is confined only in connection with filling up 7% of total vacant posts from the category of A.T.D. and Sangeet Visharads.

15. These petitions are allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.