
(2015) 03 GUJ CK 0019

In the Gujarat High Court

Case No : Special Civil Application No. 8759 of 2014

Patel Jinal Hasmukhbhai and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 03 GUJ CK 0019

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : P.A. Jadeja, for the Appellant; Vishrut R. Jani, Assistant Government Pleader, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Vishrut R. Jani, learned Assistant Government Pleader, waives service of notice of Rule for the respondent. On the facts and in the circumstances of the case and with the consent of the learned counsel for the respective parties, the petition is being heard and decided finally.

2. By preferring this petition under Article 226 of the Constitution of India, the petitioners have prayed for the issuance of a Writ of Mandamus or direction restraining the respondent from terminating the services of the petitioners upon completion of eleven months' period as ad hoc Demonstrators (Class-III) in the Government Nursing Colleges.

3. Briefly stated, the relevant facts are that the petitioners were initially appointed as ad hoc Demonstrators (Class-III) on 09.09.2010, pursuant to an advertisement issued by the additional Director (Medical Section), State of Gujarat. The petitioners were to serve in Government Nursing Colleges in the pay-scale of Rs. 9300-34800 (Grade Pay Rs. 4200). The appointments were for a period of eleven months or till such time as regularly selected candidates through the Gujarat Subordinate Service Selection Board ("GSSSB" for short) were made

available, whichever was earlier. After the expiry of the period of eleven months, the services of the petitioners were continued without any break till 09.09.2011. On that date, the petitioners were served with an order terminating their services. Thereafter, fresh letters of appointment dated 09.09.2011, itself, reiterating the same terms and conditions as their initial appointments, were issued to the petitioners on the same conditions. On 14.08.2012, the services of the petitioners were again terminated, by giving them artificial breaks of five days. On 20.08.2012, the petitioners were issued appointment letters containing the same terms and conditions. Again, on 16.07.2013, termination letters were served upon the petitioners and thereafter, they were given fresh letters of appointment on 05.08.2013, containing the same terms and conditions.

4. It is the case of the petitioners that they possess the requisite qualification of B.Sc. (Nursing) and the necessary work experience of three years, which is a sine qua non for appointment as ad hoc Demonstrator, Class-III, in Government Nursing Colleges. They have been serving on the said post since the year 2010. The petitioners, being apprehensive that their services would be terminated yet again upon expiry of the period of eleven months from the date of last appointment, have approached this Court by filing this petition.

5. By an order dated 07.07.2014, this Court granted ad-interim relief in favour of the petitioners, restraining the respondents from terminating their services upon completion of the eleven months' period, till regularly selected candidates by GSSSB are available.

6. Mr. P.A. Jadeja, learned advocate for the petitioners, has submitted that the petitioners are eligible and qualified to hold the post of Demonstrator, Class-III, and have gained sufficient experience with effect from 2010. That, the State Government issues appointment orders to the petitioners for a short period of eleven months only, or till regularly selected candidates are available, whichever is earlier. This situation has continued till date and is likely to continue, as the process of appointment of regularly selected candidates is likely to take some time.

7. It is further submitted that it is a settled position of law that ad hoc appointees cannot be replaced by another set of ad hoc appointees. The petitioners do not claim any right to the post after the selection of regularly selected candidates. However, till such time as the regularly selected candidates are available, the services of the petitioners may be continued.

8. In support of the above submissions, reliance has been placed upon a judgment of this Court in *Pradeep Navinbhai Patel Vs. State of Gujarat*, .

9. Mr. Vishrut R. Jani, learned Assistant Government Pleader, has drawn the attention of the Court to the affidavit-in-reply filed on behalf of respondent No. 1, wherein it is stated in Paragraph-11, that the process for appointment of regular candidates through direct selection by the GSSSB, is going on.

10. This Court has heard learned counsel for the respective parties, perused the averments made in the petition, the contents of the affidavit-in-reply and other documents on record.

11. It is stated in the affidavit-in-reply that the process of regular appointment is going on. However, no details regarding this aspect are given. It is not known to what stage the process has reached or whether any advertisement has been issued, at all. Undoubtedly, the process of regular appointment would take a considerable amount of time.

12. This Court, in *Pradeep Navinbhai Patel and Ors. v. State of Gujarat and Ors.* (supra), has taken the following view:

"35. Accordingly, as a cumulative effect of the above discussion and for reasons stated hereinabove, and in view of the judgment of the Division Bench dated 07.09.2011 passed in Letters Patent Appeal No. 2986/2010 and connected matters, the petitions are partly-allowed to the extent that the services of the petitioners as Assistant Professors/Lecturers on temporary/contractual basis in Government Engineering Colleges and Government Polytechnics shall not be terminated, till regularly selected candidates by the GPSC are available.

36. It is clarified that this judgment shall not confer any right upon the petitioners to the posts on which they are working, after the regularly selected candidates through the GPSC are available."

13. This judgment was challenged by the State Government by filing Letters Patent Appeal No. 1046 of 2014 in Special Civil Application No. 682 of 2014 and allied appeals, which were dismissed by the Division Bench by an order dated 18.02.2015. The case of the present petitioners rests upon the same footing, both on facts and law. They, therefore, would be entitled to the benefit of the said judgment.

14. Accordingly, the following order is passed:--

"The petition is partly-allowed to the extent that the services of the petitioners as Demonstrators (Class-III), in Government Nursing Colleges, on contractual basis, shall not be terminated till regularly selected candidates by GSSSB are available." 15. It is clarified that the terms and conditions of the service of the petitioners shall remain the same and this judgment shall not confer any right upon the petitioners to the post on which they are working after the regularly selected candidates are available.

16. Rule is made absolute, to the above extent. There shall be no orders as to costs.