
(2010) 03 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 4719 of 1994

Patel Jyotsanaben N.

APPELLANT

Vs

District Primary Education Officer and Others

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Citation : (2010) 03 GUJ CK 0040

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : K.B. Pujara, for the Appellant; Manish J. Patel, for Respondent 1, for the Respondent

Judgement

Akil Kureshi, J.—The petitioner is aggrieved by order dated 17.03.1994, by which, her service as a primary teacher was sought to be terminated.

2. Briefly stated facts leading to the present petition are as follows:

2.1 The petitioner applied to the respondents for the post of primary school teacher in response to advertisement dated 09.12.1987. She was called for oral interview vide letter dated 14.06.1988. She was placed in select list and appointed to the post of primary school teacher vide appointment letter dated 06.04.1992. She was posted at Shyamalpur Primary School, where she joined in April, 1992.

2.2 Without any show cause notice or opportunity of hearing, her services were terminated by an order dated 18.01.1993. Said order was passed in case of large number of school teachers as well. All of them challenged their terminations by approaching High Court by filing Special Civil Application No. 1449/1993 and connected matters. All these petitions were disposed of by a common order dated 05.04.1993. Termination orders were set aside on the ground of non hearing. Said orders were, however, to be treated as show cause notice permitting the teachers to respond within a stipulated time.

2.3 The petitioner filed a detailed representation dated 23.04.1993. She was also granted opportunity of hearing. Authority, however, passed impugned order of termination on 17.03.1994. The petitioner has therefore approached the High Court.

3. Before advertng to the rival contentions, it may be noted that all throughout, the service of the petitioner continued under the protection of this Court. It would thus appear that right from 1992, the petitioner has been discharging her duties as a primary school teacher.

4. Impugned order is passed on the following grounds:

(1) Last appointment was given to the candidate with 54.55% merit marks whereas the petitioner has got 49.96% merit marks and

(2) At the time of interview in the year 1988, the petitioner was unable to produce the certificate of her qualification of stitching subject. However, subsequently in the year 1992, she produced the same which certificate upon verification was found to be bogus.

5. Learned Counsel for the petitioner pointed out that consideration of 49.96% mark is erroneous. Even ignoring the additional qualification of stitching, the petitioner had received 54.37% marks as per calculation produced at Annexure-H to the petition. He further submitted that in case of similarly situated employee, one Madhuben Prajapati, who also produced certificate of stitching course from the same institution, which was also found to be bogus, considering the fact that the main person allegedly involved in such scandal had passed away, the respondents had decided to consider the case of the said candidate ignoring the additional weightage of stitching course and if it was found that she was otherwise in the merit list, not to discharge her appointment. My attention in this regard is drawn to an order dated 04.02.1991 issued by the District Education Officer in case of Smt. Madhuben.

6. Learned Counsel for the respondents contended that the certificate of Stitching Course of the petitioner was found to be incorrect. She therefore cannot get any benefit of additional weightage. He however could not dispute the calculation of merit marks put-forth by the petitioner at Annexure-A and to which even ignoring the additional weightage of stitching certificate, the petitioner gets 54.37% merit marks.

7. On the basis of the available material on record, it would appear that ignoring the additional weightage of stitching course, the petitioner ought to have been awarded 54.37% of the merit marks. Granting 49% merit marks was probably by ignoring four extra marks for Hindi and Drawing course, which admittedly the petitioner had passed. If this be so, as per the respondent's own stand taken in case of Madhuben, case of the petitioner would have to be considered ignoring the extra weightage for stitching course. Thus seen, the petitioner would get 54.39%. As against this, admittedly last candidate to get appointment was at

54.55% marks. The petitioner thus was only a fraction of percentage short of the marks obtained by the last appointed candidates. She was appointed way back in the year 1992. Under different orders of this Court, she was continued for more than 18 years. Nothing is pointed out to suggest that her service is not satisfactory. Even after terminating her service, no other candidate can be appointed at this distant point of time for want of sufficient information and other related issues such as age bar and availability of any candidate in the select list.

8. Under the circumstances, to my mind, it would be inequitable and counter productive to terminate the services of the petitioner at this stage. On one hand, the petitioner would lose her service after 18 years of sincere duty and on the other hand, the administration would lose an experienced teacher without replacement.

9. Under the circumstances, the impugned order of termination dated 17.03.1994 is set aside. Rule is made absolute. No order as to costs.