

(2020) 01 GUJ CK 0149

In the Gujarat High Court

Case No : R/Special Civil Application No. 22737 Of 2006

Patel Manishaben Keshavlal

APPELLANT

Vs

Dist. Education Officer & 4 Other(s)

RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Gujarat Secondary Education Act, 1972 — Section 35, 35(1)

Citation : (2020) 01 GUJ CK 0149

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Vaibhav A Vyas, Mp Prajapati, Pranav S Dave, Shivang M Shah, Sahil Trivedi

Final Decision : Disposed Of

Judgement

A.S. Supehia, J

[1.0] Rule. Learned Assistant Government Pleader Mr. Sahil Trivedi waives service of notice of rule on behalf of the respondent-State.

[2.0] In the present petition, the petitioner has prayed for the following reliefs:

"(A) YOUR LORDSHIPS be pleased to issue a writ of mandamus or any other writ order or direction of this Hon'ble Court and be pleased to quash and set aside the proceedings of second interview for the post of Shikshan Sahayak held on 27.10.2006 nd also the consequent selection of respondent No. 4 for the said post in disregard of the better and prior claim of the petitioner who was already selected in the first interviews held on 06.08.2006.

(B) YOUR LORDSHIPS be pleased to issue the writ of mandamus or any other writ, order or direction of this Hon'ble Court and be pleased to direct the respondents to appoint the petitioner to the post of Shikshan Sahayak on the basis of the selection and placement of the petitioner at Sr. No. 1 of the merit list in the first interview held on 06.08.2006.

[2.0] The entire issue hinges on the appointment of the respondent No. 4 Kaminiben Patel on the post of Shikshan Sahayak. Both the petitioner as well as the respondent no. 4 had undergone the recruitment process meant for the appointment for the post of Shikshan Sahayak. It appears that the in the first interview, in which, both the petitioner as well as the respondent no. 4 had appeared, was canceled since the forum was not properly constituted as per the provisions of Section 35(1) of the Gujarat Secondary Education Act, 1972 (for short the "Act"). Thereafter, the second interview was held and the Selection Committee was also there and selected the respondent no. 4 for the aforesaid post. The petitioner had raised an objection to the aforesaid selection of the respondent no. 4, and accordingly, it appears that pursuant to the objection raised by the petitioner, the respondent no. 4 was not selected. The respondent no. 4 challenged the aforesaid non-approval of the appointment in the writ petition being Special Civil Application No. 1133 of 2008. By the order dated 29.01.2008, this Court dismissed the petition of the respondent no. 4. Thus, the action of the non-approval of the appointment of the respondent no. 4 by the District Education Officer, had become final since her petition was dismissed. Thus, the only candidate, who would remain, would be the present petitioner, who is required to be considered, whether she is eligible for selection.

[3.0] This Court, after hearing learned advocates for the respective parties, is of the considered opinion that no illegality or infirmity can be found in the decision of canceling the first interview, since the same was in violation of Section 35(1) of the Act and the Committee, which was comprising of 5 members, one of the members was not present as he was seriously hospitalized for taking emergency treatment and ultimately he passed away. Thus, non-availability of the forum as required under Section 35 of the Act, the entire proceedings are cancelled and thereafter, the school management requested the District Education Officer to give a new date and the District Education Officer gave a new date on 27.10.2006 for fresh interview. The fresh interview call letters were, accordingly, issued and the petitioner as well as the respondent No. 4 appeared in the selection process. The respondent No. 4 was selected on the aforesaid post. It has come on record that the respondent No. 4 was allotted two additional marks for sports certificate at the relevant time by the concerned committee, however upon verification, he was not entitled to the aforesaid marks. The Selection Committee, on 27.10.2006, granted two marks of the sports certificate and the total marks of the respondent No.4 are considered as 26.01, whereas the petitioner has been given 25.60 marks. She has not been granted any additional marks either of the special skills or experience. The District Education Officer, pursuant to the orders passed by this Court, and who was also present before this Court, has asserted that the stand taken by the Education Inspector in the affidavit dated 28.11.2006 that the respondent No. 4 is not entitled to the additional marks as her sports certificate, which she has produced at the relevant time before the Selection Committee, does not pertain to any competition held as National level or State level. The District Education Officer has submitted that

these two marks, which are granted to the respondent no. 4 on such sports certificates are required to be deducted. In these circumstances, the marks of the respondent no. 4 would be reduced from 26.01 to 24.01. Thus, in such circumstances, the petitioner's marks would come to 25.60 i.e. more than the respondent no. 4.

[3.0] As noted hereinabove, the writ petition challenging the non- approval of the appointment of the respondent no. 4 was dismissed by oral order dated 29.01.2008 passed in Special Civil Application No. 1133 of 2008, wherein this Court has observed thus:-

" No case is made out to issue any direction to the District Education Officer since the appointment of the petitioner as a teacher was not approved by the DEO and the expenditure towards the salary is not grantable. Hence this petition is rejected".

[4.0] Thus, the only candidate, who would be left, would be the present petitioner having the next higher merit i.e. 25.60 marks. However, from the prayer clause of the writ petition, it reveals that the petitioner is claiming the appointment on the basis of the first interview, which was held on 06.08.2006 and has prayed for quashing and setting aside the proceedings of the second interview for the post of Shikshan Sahayak held on 27.10.2006. Thus, the petitioner cannot approbate and reprobate in view of the aforesaid prayers. However, since this Court is of the considered opinion that the second the interview cannot be held in any manner to be illegal since the first interview, which was held on 06.08.2006 was cancelled as one of the members of the Committee has passed away.

[5.0] Under the circumstance, since the petitioner may not suffer, due to the prayers and pleadings made in the present petition, as subsequently from the record, it is established that the petitioner would be the next candidate, who would be securing the higher marks i.e. 25.60 when two marks of the respondent No. 4 are deducted from 26.01 totaling to 24.01 marks, this Court is of the considered opinion that in order to give a fair chance to the petitioner, the respondent authorities are hereby directed to re-examine the case of the petitioner in light of the aforesaid observations and pass necessary orders within a period of two (02) months from the date of receipt of the writ of this Court.

[6.0] The writ petition is disposed of in the aforesaid terms. Rule is discharged Direct service is permitted.