
(1995) 12 GUJ CK 0002
In the Gujarat High Court

Patel Rajeshkumar Mathurbhai and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Gujarat High Court Rules, 1993 — Rule 132, 132(ii)

Citation : (1996) 2 GLR 147

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard the learned Counsel for the petitioners.

2. The Special Civil Application No. 8060 of 1994 has been decided by the Court on 26th September, 1995. The learned Counsel for the petitioners contended that he could not appear in the case when the same was called for hearing as he filed a leave note on 21-9-1995 for two days (25-9-1995 and 26-9-1995). The ground of absence which has been given by the learned Counsel for the petitioners is not sufficient. The petitioners have not produced any proof whatsoever to show that the Counsel has filed a leave note on 21-9-1995. Misc. Civil Application is not supported by any affidavit.

3. The Counsel for the petitioners has not filed his own affidavit or affidavit of any of the petitioners. Generally, this Court notifies the leave of the Advocates who file the leave notes. The learned Counsel for the petitioners did not file on record the notification of the Court where his leave note has been accepted for 25-9-1995 and 26-9-1995. I have gone through the contents of the Misc. Civil Application. In the application, it is not the case of the petitioners that on 26-9-1995 their Counsel has not come to the Court. The Counsel for the petitioners has not filed his affidavit to show that on 25-9-1995 and 26-9-1995 he has not come to the Court. From the averments which have been made in subparagraph (j) of paragraph (7) it can be seen that it is only stated that as leave note has been filed, the Advocate for the petitioners could not remain present. These averments do not give out that the Counsel for the petitioners has not

come to the Court on 26-9-1995.

4. The list of the leave notes are notified by the Court. As stated earlier, no list has been produced on the record by the petitioners in support of the averments made in the application. The list of the leave notes contains notes which read as under:

Leave granted to the following Advocates subject to the provisions of Rule 132(ii) of the Gujarat High Court Rules, 1993. As provided in the Rules, leave note does not apply to the following cases:

(i) Criminal Cases;

(ii) Special Civil Applications:

(iii) Matters specially fixed for hearing or expedited by the order of the Court; and

(iv) Matters on daily Board.

5. A bare perusal of the list of leave notes notified by this Court makes it clear that the same does not apply to the Criminal cases, Special Civil Applications, matters specially fixed for hearing or expedited by the order of the Court and matters on the daily Board. Even if, it is accepted that the learned Counsel for the petitioners has submitted leave note, then too, it is of no help to the petitioners because it does not apply to the Special Civil Applications. Secondly, the leave note also does not apply to the matters which are on daily Board. It is not in dispute that the case of petitioners which has been decided on 26-9-1995 is a Special Civil Application and this was listed on the daily Board on the said date. In view of the facts of this case and the provisions as contained in Rule 132 of the Gujarat High Court Rules, 1993, the grievance of the petitioners which has been made on the ground that his Counsel had filed leave note has no merit. The next ground which has been taken is that the respondents-authorities have not filed reply in this Special Civil Application and has not controverted any of the averments made by the petitioners. It is true that the respondents have not filed the reply to the Special Civil Application No. 8060 of 1994. In the cognate matter Special Civil Application No. 8172 of 1994 the respondents thereof have filed reply to the Special Civil Application. In paragraph (12) of the Special Civil Application No. 8172 of 1994 it has been stated that other similarly situated persons have filed Special Civil Application No. 8060 of 1994 before this Honourable Court and this Honourable Court has issued notice returnable on 6th July, 1994 and also granted ad interim relief. On 31st March, 1995 in Special Civil Application No. 8172 of 1994 this Court passed the order which reads as under:

Heard arguments in part. List the petition for completion of arguments on 19th April, 1995 alongwith Spl. C.A. Nos. 3427 of 1992 and 8060 of 1992.

6. On 23rd August, 1995 in the Special Civil Application No. 8172 of 1994, the Court has passed the following order:

Number of Spl. C.A. appears to be incorrect. The correct number of the writ

petition which has to be tagged with this writ petition is Spl. C.A. No. 8060 of 1994. Office is directed to place Spl. C.A. No. 8060 of 1994 together with this matter on the next date of hearing, i.e., 22-9-1995.

7. The Special Civil Application No. 8060 of 1994 has not been admitted. On 22-6-1994 the notice was issued to the respondents. When both the matters were ordered to be heard together and it was given out in one of the cases that these are cognate matters and in one reply has been filed, I fail to see how this ground is available to the petitioners to make any grievance when the writ petition is decided against them.

8. The next question which calls for consideration is whether this Court could have heard the Special Civil Application No. 8060 of 1994 without written submissions on behalf of the respondents. The written submissions are not sine qua non on hearing of the matters. The oral arguments advanced on behalf of the respondents are as good as written submissions. Moreover, the Court cannot compel the respondents to file reply to the Special Civil Application. If the reply is not filed, then the consequences of non-filing of the reply will follow, but I fail to see any justification in the contention of the learned Counsel for the petitioners that without reply, the matter could not have been heard. In support of this contention, the learned Counsel for the petitioners has not brought to the notice of the Court either any provision from the Gujarat High Court Rules, 1993 or any authority of this Court or the Supreme Court. In case this proposition which has been canvassed by the learned Counsel for the petitioners is accepted, then, the matters in which the written submissions had not been filed by the other side can never be heard. The hearing of the matters will then be at the sweet will or choice of the respondents. If this contention of the learned Counsel for the petitioners is accepted, it will cause serious prejudice to the litigants and it will give veto power in the hands of the respondents to defer or to keep the matter pending once for all by the act of not filing reply to the petition. Moreover, the grievance made by the learned Counsel for the petitioners on this count is not available to him. This grievance could have been made by the respondents. The respondents or the Counsel appearing for them have not made any complaint that the case has been decided without any affidavit-in-reply from their side. This contention of the learned Counsel for the petitioners deserves no acceptance.

9. The third ground which has been taken by the petitioners in the application is that the order which is reproduced in ground (C) of paragraph 7 has been transcribed on Civil Application No. 13 of 1995 is of no substance. The petitions themselves have stated that this transcription of the order on Civil Application No. 13 of 1995 may be due to inadvertence. It is a case where it can be said to be only an error but this error does not affect in any manner the merits of the order. How does this fact have any relevance to or material bearing on the decision rendered in the case?

10. The next contention which has been made by the learned Counsel for the petitioners is that the three Civil Applications which have been filed in the

present case were not shown on the Board on the date on which the Special Civil Application has been decided. Two Civil Applications have been filed by the petitioners and one by the respondent. The petitioners have given the Stamp number of these two Civil Applications. The Civil Application Stamp No. 24141 of 1994 was registered as Civil Application No. 13 of 1995. This Civil Application has been filed by the petitioners for amendment of the writ petition. It may be true that this Civil Application may not have been shown on the Board but it is a fact that this Civil Application was there on the file when the Special Civil Application has been decided. The petitioners have themselves stated that the order dated 26-9-1995 has been transcribed on Civil Application No. 13 of 1995. It is not the case of the petitioners that this Civil Application has been allowed earlier. In view of these facts the ground that this Civil Application was not shown on the Board is of no substance as it does not vitiate the order which has been passed by the Court. The application was there before the Court. None was present on behalf of the petitioners and as such nobody was there to press the same.

11. The other Civil Application Stamp No. 24157 of 1994 was not on record on 26-9-1995 nor it was shown in the Board. It was for the petitioners also to get this Civil Application listed or to see that it is placed alongwith this file. The practice prevalent in this Court is that all Civil Applications are not being tagged to the main file. They are registered and kept separately. This practice of keeping the Civil Applications separately creates difficulties. The reference to the Civil Applications filed in the Special Civil Applications are even not available in the file of the Special Civil Applications. In these circumstances, it is not possible for the Court to know or to trace out from the record of Special Civil Applications how many Civil Applications have been filed which has been disposed of and which are lying pending. This practice in the Court of registering Civil Applications separately and keeping them separately is not proper. It is not understandable for what purpose and object the Civil Applications are being separately registered. The Civil Applications are the applications filed in the main case for interlocutory orders or the application for some further orders in the main case, i.e., a prayer or amendment of the writ petition or a prayer for filing of the document or a prayer for calling of the document/ record or some incidental prayers to the main prayers made in the Special Civil Application or some other prayer for furtherance and for the progress of the disposal of the Special Civil Application. These are basically the applications in the main Special Civil Applications and as such these need not be separately registered. The application has to be filed in the Registry and the Registry should place the same in the main file and place it for necessary orders of the Court alongwith the main papers. All the orders which are passed in the application known in this Court as Civil Application should be passed in the main file, i.e., Special Civil Application. The consolidated order sheet should be there in the main file so that, at once, the Court can know all the orders which have been passed from time to time in the main Special Civil Application as well as on the application (known as Civil Application in this Court). These applications should remain tagged with the main

file.

12. The practice in the Court of registering and keeping the Civil Applications separately results into filing of applications for recall of the orders made, in the cases which have finally been disposed of. In the present case also one of the grounds on which the prayer for recalling of the order has been made is that three Civil Applications were not notified on the Board. Be that as it may, I have gone through the prayer which has been made by the petitioners in the Civil Application Stamp No. 24157 of 1994 to the effect that the respondents-authorities be directed to produce before this Court the select list of 1992 and the order of the Government cancelling the said wait list. The learned Counsel for the petitioners has failed to make out any case how non-consideration of this application vitiates the order. Apart from this, it is for the Court to give such directions as prayed for in this Civil Application by the petitioners. No such directions can be claimed as of right. The Court may call for or may not call for any record from the respondents.

13. Lastly, even when this Misc. Civil Application has come up before this Court for consideration this Civil Application was not notified nor the learned Counsel for the petitioners has got the same listed. During the course of the arguments, he has given the copy of this application to the Court though thereafter the Court called for the original application from the Registry. After going through the contents of the application, I am satisfied that it has no material effect on the decision which has been rendered in the Special Civil Application. The third application was filed by the respondents for vacation of the interim orders in this case. The application for vacation of the stay order has no relevance on the merits of the case. Otherwise also for non-listing of the said application, the petitioners cannot make any grievance. Though there is no merit in the Civil Application on the aforesaid grounds, I have afforded full opportunity to the learned Counsel for the petitioners to make his submissions on the merits of the case. Two-fold contentions have been made by the learned Counsel for the petitioners. Firstly, learned Counsel for the petitioners contended that doctrine of promissory estoppel stands attracted in the present case and that the petitioners have acquired right of appointment as per the promise made to them by the respondents. The learned Counsel for the petitioners has contended that the petitioners had been given understanding by the authorities that they are selected by keeping their original certificates with them. The original certificates have been returned to the petitioners by the respondents only after filing of this writ petition. Carrying further the argument, the learned Counsel for the petitioners has contended that after the petitioners were interviewed in 1992 wherein their original certificates were collected by the authorities and were kept with them with the assurance that in the passage of time they would be given appointment, the petitioners could not appear in the interviews which were held subsequent to 1992.

14. It has been further contended that the petitioners No. 9 in the Special Civil

Application had received various interview calls on different dates from the departments after 1992, but he could not participate in any of the interviews as he was not in possession of his original certificates. Concluding his arguments, the learned Counsel for the petitioners contended that in these facts the authorities are estoppel by principle of promissory estoppel in as much as the authorities made the petitioners to wait for all this time on the ground that their names are included in the select/wait list and they are going to get the appointment in due course. These points had been raised by the petitioners in the amendment application. Reading the averments made in the amendment application and particularly the contents in paragraphs 6(B) and 6(D), it is clear that the petitioners have been intimidated by the authorities that the select list has been cancelled. In view of these facts the prayer which has been made in the Civil Application Stamp No. 24157 of 1994 to issue directions to the respondents to produce the order of the Government cancelling the said wait list is not necessary. Both the amendment application as well as the application for calling of the documents have been filed by the petitioners on the same day.

15. The learned Counsel for the petitioners has failed to make out how the doctrine of promissory estoppel can be put in service in favour of the petitioners. The petitioners themselves are not very clear whether their names have been placed in the main list or in the waiting list. They have filed the writ petition with the averments that their names have been placed in the wait list and unless the wait list exhausts the authorities cannot make fresh appointments. Whatever may be the case - select list or wait list, the petitioners merely by empanelment in the select list or writ list do not acquire an indefeasible right of appointment to the post. The doctrine of promissory estoppel does not come into play merely because the names of the petitioners have been placed in the select list or wait list. In the case of *State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others*, , the Supreme Court in paragraph (10) of the judgment held:

It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary. In this paragraph the Supreme Court has made a reference to its own two earlier decisions in the case of *Shankarsan Dash Vs. Union of India*, and *S. Venkitachalam Iyer Vs. S. Rama Iyer*, . It is not the case of the petitioners that the relevant service rules provide for the appointment on empanelment in the select list. In the case of *State of Bihar* (supra) the Supreme Court has quashed the directions given by the High Court recommending the names of those empanelled candidates in accordance with their position in the wait list for appointment as also the directions for filling up of the vacancies upto 1994.

16. This Court has considered a somewhat similar question in the case of

Commissioner of Police, Ahmedabad and Others Vs. Santosh Vasant Mali and Others, . That was also a case of selection of Police Constable. Referring to the Government Resolution dated 19th December, 1990 and the earlier circular of 5th June, 1982 it has been held that the select list prepared has a validity for a period of one year. In the aforesaid case, the learned single Judge has given the direction for appointment of the candidates from the select list which has been quashed by the Division Bench. The relevant discussion is in paragraphs (10) & (11) of the judgment which read as under:

10. The Supreme Court has now categorically held in a series of judgments that a person who has been placed on the select list has no inherent right of appointment. In *Shankarsan Dash Vs. Union of India*, and in *S. Venkitachalam Iyer Vs. S. Rama Iyer*, , it was held that a person who is selected does not, on account of being empanelled alone, acquire an indefeasible right of appointment. Empanelment was at the best a condition of eligibility for purpose of appointment and that by itself does not amount to selection or confer a vested right to be appointed unless the relevant service rule says to the contrary. The said decisions were followed by the Supreme Court in the case of *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, . In *Asha's* case (*supra*) though the select list was prepared, no vacancies in respect of which the list was prepared, appeared to have been filled. It was only with regard to this that the Supreme Court observed that the exercise of preparation of a select list could not be reduced to a farce. The Supreme Court, contrary to what is sought to be contended before us by the learned Counsel for the respondents, did not observe that the select list is to remain in operation even after the notified vacancies had been filled. Even recently, two decisions of the Supreme Court have taken the same view. In *State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others*, , it has been held that a candidate who has been selected and empanelled does not acquire an indefeasible right to be appointed. In this case the High Court had directed to appoint all the empanelled candidates according to their position in the merit list against the vacancies which has arisen after the date of advertisement and the preparation of the select list. The Supreme Court reversed the decision of the High Court and came to the conclusion that issuance of such direction was not proper and could not be sustained. In that case the advertisement had been issued in the year 1985. The High Court directed that even vacancies which had come into existence thereafter should be filled from the select list prepared pursuant to 1985 advertisement. The Supreme Court while disproving this direction observed that -- "Since no examination has been held since 1987, persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially affect them for no fault of theirs." In the present case also, the direction of the learned single Judge would have the effect of depriving those candidates who have become eligible for taking the examination after 31st December, 1992 and in respect of those vacancies which are in excess of 983 which have already been filled and

which appeared to have come into existence after 31st December, 1992.

11. The last decision on the point is that of State of Bihar and another Vs. Madan Mohan Singh and others, . While following the earlier decision, it was observed that, where a particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list of 129 candidates which had been prepared was to hold good only for the purpose of filling up those 32 vacancies and no further. It was further held that the list got exhausted on 32 vacancies being filled up despite the fact that the merit list contained the names of 129 candidates. In this connection, the Supreme Court observed that, if the select list was to be kept subsisting for the purpose of filling up other vacancies also, that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process.

17. The select list is only an offer of appointment to the candidates empanelled. When it is only an offer and further it is settled law that merely inclusion of the name in the select list does not confer any right of appointment to the candidates, the question of promissory estoppel does not arise. The petitioner have not produced some material whatsoever in support of the averments that they had been assured by the authorities that they will be given the appointment. Even, it has not been disclosed as to who was the officer who has given assurance to the petitioners. These are the vague pleadings made by the petitioners. Apart from this, even if some officer had given some assurance sitting in the office to the petitioners to give them the appointment, that will not give any right of appointment to the petitioners. It does not confer any indefeasible right of appointment to the petitioners. Such a plea can conveniently be raised. The select list has been prepared in the year 1992 and this writ petition has been filed by the petitioners on 21st May, 1994. In between, the petitioners have not made any representation to the respondents. The representation has been made only when fresh process to make the recruitment has been started. At this stage, the petitioners have come up with the case that they have been given assurance of appointment.

18. In the writ petition, the petitioners have stated that they were given to understand till today that they will be given appointment. In the application for amendment of the writ petition, they have come up with the case that in the passage of time they will be given the appointment. This sort of pleading are nothing but only an afterthought or manufactured one. More so, when the position of law is clear that merely on inclusion of the name of the petitioners on the select list, the petitioners do not acquire right of appointment. Any assurance or understanding given to them is of no legal consequence.

19. From the reading of the writ petition and the application for amendment, if is apparent that the petitioners are asking this Court to draw inference of an understanding or assurance given to them for appointment on the basis of retention of their original certificates by the authorities. The authorities have

retained the original certificates of some of the petitioners but by this fact no such inference can be drawn. It might be a mistake or error on the part of the respondents but by this mistake or error, the petitioners cannot get any benefit of appointment. However, though the petitioners may not have acquired any right of appointment, this act of the respondents-authorities to retain the original certificates of the petitioners or some of the petitioners cannot be appreciated. The select list has been prepared in the year 1992 and merely on inclusion of the name of the petitioners in the select list, they do not become entitled for appointment. The original certificate should have been returned immediately so that the petitioners could have taken their chance for other service. Otherwise also, the petitioners can apply for other better service at all times even if they had been selected and the appointment is given. Withholding of the original certificates is certainly an act which deserves to be condemned. It causes a prejudice to the petitioners or some of the petitioners. I find sufficient substance in the contention that for want of the original testimonials some of the petitioners could not apply for better employment. This act of withholding the original testimonials of some of the petitioners cannot be held to be justified in any manner. But on this ground, the petitioners or any of the petitioners cannot be ordered to be given appointment. At the most for this inaction or omission or error or mistake of the respondents in case the petitioners or any of the petitioners could not apply for other employment, it may be a case where damages can be claimed but not of appointment. The learned Counsel for the petitioners has failed to make out any case for interference by this Court on this count. The select list has currency for one year. After one year it lapses and no appointment can be given to any candidate from the select list. This Court has decided the writ petition relying on the Govt. Resolution which provides the validity to the select list for one year only. The select list/wait list could not have been operated after 19th October, 1993. It is not the case of the learned Counsel for the petitioners that this select list or wait list has validity for all the time to come and no fresh appointment could have been made without exhausting the same. The second contention of the learned Counsel for the petitioners that the authorities had not operated the select list/wait list strictly in accordance with the serial order is also of no substance. In paragraph (7) of the writ petition, the averments have been made which read as follows:

The petitioners submit that the petitioners have come to know from the reliable sources that the authorities have not issued the orders for training strictly in accordance with the order of merit list and they have applied the pick-and-choose policy even in the matter of issuance of orders of training and on that account also the action of the respondent-authorities is vitiated and the reliefs as prayed for are required to be granted.

20. In the amendment application, nothing has been said on this count but in Misc. Civil Application in ground (I) the petitioners have stated that the authorities have not operated the select list/wait list strictly in accordance with serial order. The averments made in the Misc. Civil Application are not supported

by affidavit. There is apparent contradiction in the pleadings made in the Special Civil Application and then in Civil Misc. Application. The averments which have been made by the petitioners in Civil Application Stamp No. 24157 of 1994 in paragraph (1) thereof, the petitioners have stated that the respondents-authorities had not published the select list/wait list and as per the information of the petitioners they have not operated the said merit list strictly in accordance with the serial order and applied the pick-and-choose policy resulting into gross injustice to the petitioners. The petitioners have not disclosed the source, of aforesaid information. By making such a bald and vague statement, the petitioners cannot be allowed to make out a case which otherwise does not come out from the pleadings. By making such application, what the petitioners were really intended was that this Court should make a fishing inquiry. The petitioners have not given the name of a single candidate who had been given appointment from the select list or the wait list out of turn. By making such vague and indefinite averments, the petitioners cannot be allowed to enlarge the scope of the controversy. The petitioners have to stand on their own merits. In the absence of a definite statement that any candidate lower in merit to the petitioners have been given the appointment, it is difficult to believe these statement of the petitioners made in the Special Civil Application, Civil Misc. Application and Civil Application. It is also not the case of the petitioners that even after making the appointments of seventy-two candidates any further vacancies were available at the relevant time during the currency of the merit list. The vacancies which have accrued subsequent to the recruitment or after the expiry of the period of the validity of the wait list cannot be filled from the candidates who are there in the select list/wait list. The respondents have rightly proceeded with the fresh selection in respect of the vacancies which have accrued subsequently.

21. In the result, as the petitioners have failed to make out any case for recalling of the order passed by this Court on 26th September, 1995, this Civil Misc. Application fails and the same is dismissed. (A TP) Petition dismissed.