

(2017) 01 GUJ CK 0190
In the Gujarat High Court
Case No : 13924 of 2009

PATEL SANDIP RAMESH & ORS.

APPELLANT

Vs

STATE OF GUJARAT & ORS

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Constitution of India, Article 226, Article 16(4)(B) - Power of High Courts to Issue certain writs - Dissolution of a District or a Regional Council

Citation : (2017) 01 GUJ CK 0190

Hon'ble Judges : J B Pardiwala

Bench : Single Bench

Advocate : Srushti A Thula, Goutam, Kaushal D Pandya

Final Decision : Allowed

Judgement

1. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs; "(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction direct the respondents to dereserve the backlog vacancies which were reserved for Scheduled caste, Scheduled Tribe and other backward caste candidates by way of conversion and further be pleased to direct the respondents to fill up the unfilled reserved vacancies for the post of Vidyasahayak (Science Stream) for Marathi Medium on the basis of open merit in pursuance to the advertisement dtd. 21.12.2009;

(B) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents, their agents, servants and subordinate officers to direct the respondents accept and consider the application of the petitioners of this petition for the post of Vidyasahayak (Science Stream) as Open Merit and General Category Candidates in pursuance to the advertisement dtd. 21.12.2009. Or in the alternative

(C) Pending admission, hearing and final disposal of this petition, Your Lordships

may be pleased to direct the respondents, their agents, servants and subordinate officers not to further proceed with the recruitment process that might be undertaken in pursuance to the advertisement dtd. 21.12.2009 and further be pleased stay the implementation, execution and any further proceedings in pursuance to the advertisement dtd. 21.12.2009.

(D) Your Lordships may be pleased to pass any other and further reliefs as may be deemed fit and proper in the interest of justice."

2. On 12th March, 2010, the following order was passed; "1. The petitioners herein are the students, who had applied for the post of Vidhyasahayak in the Marathi medium, in pursuance of the Advertisement dated 21.12.2009 published by respondent no.3. The petitioners in S.C.A. No.13924/2009 belong to the General Category, whereas, the petitioners in S.C.A. No.179/2010 & 180/2010 belong to the SEBC and SC categories respectively.

2.0 Mr. Yatin Oza, learned Sr. Advocate appearing with Ms. Srushti A. Thula for the petitioners in S.C.A. No.13924/2009, has submitted that all the petitioners belong to the General Category. However, in the Advertisement dated 21.12.2009, no seats have been reserved for the General Category candidates and that all the seats have been re-converted into seats for reserved category candidates and have been considered as backlog of those seats which were not filled up in the recent years.

2.1 Learned Sr. Advocate has further submitted that the vacancies for the post of Vidhyasahayak (Science Stream) is totally a new recruitment and that the seats are proposed to be filled up from amongst the backlog seats consisting of candidates belonging to the SC, ST & OBC categories only and not the General Category. Hence, appropriate directions deserve to be issued to respondent-authorities to fill in the seats from amongst the candidates belonging to the General Category candidates.

3. 0 Mr. K. B. Pujara, learned Advocate for the petitioners in S.C.A. No.179/2010 & 180/2010, has submitted that the petitioners in S.C.A. No.179/2010 belong to the SEBC category. He has submitted that in the Advertisement in question, only 3 vacancies have been earmarked for SEBC category for the PTC (General Stream) and that the remaining 3 vacancies of SEBC category (Marathi medium) have been earmarked for PTC (Science Stream), which is contrary to the data collected by the petitioners under the Right to Information Act, 2005. Therefore, appropriate directions deserve to be issued to fill up the 3 vacancies notified in the SEBC category in the Marathi medium (Science Stream) to be filled up by SEBC candidates of Marathi medium (General Stream). 3.1 Learned counsel has contended that the backlog seats falling under the SC category have not been carried forward though 7% reservation for the said category has been provided. He has submitted that out of the unfilled seats of ST category, some seats may be ordered to be transferred to the SC category and the petitioner in S.C.A. No.180/2010 may be treated accordingly.

4. Mr. Prashant G. Desai, learned Sr. Advocate appearing with Mr. Kaushal Pandya for respondent no.3, has submitted that they have filled up 25 seats from 53 vacancies and that 28 vacancies have been carried forward as a backlog in the year 2009. All the said 53 vacancies were not converted into General category seats. Respondent no.3 had re-reserved the vacant seats which were already de-reserved and converted from the seats reserved for ST / SC and SEBC category into seats for candidates belonging to the General category and has also maintained the reservation quota as directed in the Government Notification dated 30.09.1994.

5. From the reply filed by respondent no.3 and more particularly, Para-13, it transpires that out of the total number of 17 posts of Vidhyasahayaks (Marathi medium), 9 posts are to be filled in for PTC (General Stream) and the remaining 8 posts are to be filled in for PTC (Science Stream). Out of the said 9 posts for PTC (General Stream), 6 posts are reserved for the ST category and 3 for the SEBC category, whereas, out of the 8 posts for PTC (Science Stream), 5 posts are reserved for ST category and 3 for the SEBC category. The said bifurcation of seats is in consonance with the directives issued by the State Government vis-a-vis filling-up of the backlog seats of the year 2008. The respondent no.3 has maintained the ratio of 50 : 50 while bifurcating the total number of vacancies available. In view of the above scenario, there does not remain any backlog of seats for the year 2008.

6. By way of the Advertisement dated 21.12.2009, applications for PTC (Science Stream) have been invited for the very first time. However, out of the total 8 seats for PTC (Science Stream), no seats have been reserved either for the General or the SC category. It is true that there cannot be any backlog of seats for a post for which a selection process is to be undertaken for the very first time. However, even in such cases, this Court has a very limited scope for judicial review and the only aspect which this Court has to look into is as to whether the provisions of Article 16(4)(B) of the Constitution and the principle laid down by the Apex Court have been followed or not. So far as the bifurcation of the seats is concerned, I find the same to be in consonance with the provisions of Article 16(4)(B) of the Constitution.

7. Pursuant to the order dated 30.12.2009 passed by this Court in S.C.A. No.13924/2009, respondent no.3 was directed to accept the application forms that may be submitted by the petitioners in connection with the impugned Advertisement dated 21.12.2009 and accordingly, the petitioners submitted their application forms. Today, during the course of hearing, a statement was made at the bar by Mr. Desai, learned Sr. Advocate appearing on behalf of respondent no.3, that respondent no.3 would be able to conclude the selection process within a period of about one month from today.

8. In view of the above, Rule returnable on 03.05.2010. It is observed that if at the time of selection for PTC (General Stream), no candidates are available under the (reserved) seats, as provided in the Advertisement dated 21.12.2009, the

respondent no.3 shall consider the case of the petitioners for the said seats, by de-reserving the seats, which shall be subject to the final outcome in these petitions. Further, if no candidates are available for PTC (Science Stream), the selection shall be done from amongst the candidates belonging to the other categories and the same shall be subject to the further orders that may be passed by this Court at a later stage. Direct service permitted."

3. For the reasons recorded in the judgment and order passed today in the Special Civil Application No.179 of 2010 with Special Civil Application No.180 of 2010, this application is also allowed.

4. The prayer in terms of para-8(B) is granted and the respondents are directed to act accordingly. Rule is made absolute to the aforesaid extent. Direct service is permitted.