

(2014) 06 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 9032 of 2000

Prajapati Rameshbhai Kalubhai

APPELLANT

Vs

District Primary Education Officer

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 GLR 2447

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : K.B. Pujara, Advocate for the Appellant; H.S. Munshaw, A.G.P,
Advocate for the Respondent

Judgement

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C.L. Soni, J.—In this petition filed under Art. 226 of the Constitution of India, the petitioners have made following prayers in Paragraphs 10(A) and (B) of the petition:

"10(A) to direct the respondent to operate the existing selection list of 1,113+223 = 1,336 candidates prepared pursuant to the advertisement dated 12-11-1999 as per Annexure-A until all the 1,113 vacancies notified in the said advertisement are actually and completely filled up from the said selection lists as per the law laid down by the Hon"ble Supreme Court in Virender S. Hooda and Others Vs. State of Haryana and Another, ;

(B) to quash and set aside the illegal action of the respondent in not exhausting the existing selection list, of 1,113+223 = 1,336 candidates prepared pursuant to the advertisement dated 12-11-1999 and interviews held on 23/24-12-1999 until all the 1,113 vacancies are completely and actually filled up from the said selection list."

The case of the petitioners is that they belong to the category of Baxi Panch. They are eligible and qualified to be appointed as Primary Teachers/Vidya

Sahayaks. The respondents issued advertisement dated 12-11-1999 inviting applications for 1,113 vacancies of Vidya Sahayak. The petitioners applied for the same. On or about 20-12-1999, respondents published merit list of all the candidates who were to be placed in the select list of 1,113+223 i.e. 1,336 candidates in all. Under the Recruitment Rules, select list is to be prepared to the extent of 20% more than the number of vacancies and such list is to remain operative for a period of one year. The petitioners were called for oral interview by Call letters dated 13-12-1999. Their certificates and mark-sheets were retained by the respondents with a view to give them appointments.

2. It is the further case of the petitioners that initially 924 appointment orders were issued on or about 23-1-2000. However, some of the candidates to whom appointment orders were issued did not join. The respondents are, therefore, duty bound to operate the select list until all the 1,113 vacancies were actually and completely filled in. The petitioners have averred that they learnt that as many as 208 vacancies remained unfilled out of 1,113 vacancies notified in the advertisement issued on or about 23-1-2000. However, some of the candidates to whom appointment orders were issued did not join. Thereafter, on or about 2-7-2000, 131 appointment orders were issued. Out of them also, some candidates did not join. Thus, in all, 1,055 appointment orders were issued as against 1,113 vacancies and even out of 1,055 candidates, several candidates did not join the duty. The respondents are, therefore, duty bound to operate the select list until all the 1,113 vacancies were actually and completely filled in. Instead of filling such vacancies, the respondent initiated fresh recruitment process by advertisement dated 9-8-2000 inviting applications for 892 vacancies including unfilled 208 vacancies from the earlier round of advertisement. The respondent has thus deprived the petitioners and other similarly situated candidates of their right to get employment who are in the select list of 1,113+223 candidates prepared pursuant to earlier advertisement dated 12-11-1999 though select list was to remain operative for one year and though clear vacancies were available.

3. The respondent has filed affidavit-in-reply, and two further affidavit-in-reply opposing the petition. The petitioners have also filed rejoinder affidavit as well as additional affidavit to point out that on account of non-joining of duties by the candidates, 208 vacancies remained unfilled and so long as all the vacancies from the select list were filled in, no further recruitment could have been initiated for such vacancies.

4. I have heard learned Advocates for the parties.

5. Learned Advocate Mr. Kaushik B. Pujara for the petitioners submitted that the petitioners have come out with specific case that on account of non-joining of duties by the candidates who were offered appointments, clear 208 vacancies remained unfilled against the posts advertised and such vacancies were required to be offered to the candidates waiting for their turn from the select list. Mr. Pujara submitted that the law is well settled as per the decision of Hon'ble the

Supreme Court in the case of Virender S. Hooda and Others Vs. State of Haryana and Another, that the select list prepared for the posts advertised is to operate till the vacancies occasioned on account of non-joining by the candidates who are offered appointments are completely and actually filled in. Mr. Pujara submitted that the select list prepared for 1,113+223 = 1,336 candidates was not fully exhausted and the respondent though required to operate the select list to fill unfilled vacancies, did not take any action to offer appointments to the candidates from the select list which resulted into depriving the petitioners of their legitimate right to get employment. Mr. Pujara submitted that instead of further operating the select list to fill in the above said 208 unfilled vacancies, respondent initiated fresh recruitment process for 892 vacancies including the said 208 vacancies which was not permissible. Mr. Pujara submitted that the respondent has not placed on record any material to show that all the posts advertised were filled in by exhausting the select list. Mr. Pujara submitted that the respondent issued only 924 appointment orders in the month of January, 2000, and thereafter, issued 131 appointment orders in the month of July, 2000 which would make total 1,055 appointment orders out of which several candidates did not join. Mr. Pujara submitted that those vacancies remained unfilled on account of non-joining of 208 candidates and against such unfilled vacancies, the petitioners had right to be employed by further operating the select list. Mr. Pujara relied upon the decision in the case of State of Jammu & Kashmir and Others Vs. Sat Pal, .

6. As against the above arguments, learned Advocate Mr. H.S. Munshaw for the respondent submitted that from amongst 1,113 vacancies advertised, 1,024 vacancies were for P.T.C. Teachers. The petitioners had applied against such vacancies in S.E.B.C. quota. Mr. Munshaw submitted that the petitioners were on the wait list. Mr. Munshaw submitted that the entire select list was exhausted and the wait list was also operated. Mr. Munshaw submitted that so far as the S.E.B.C. candidates are concerned, all 264 posts reserved for them were filled in by exhausting the select list. However, since the number of candidates did not turn for posting orders, wait list was operated and the last candidate appointed was one Vanand Haresh Shankarlal who had secured 59.05 marks which were higher than the marks of the petitioners. Mr. Munshaw submitted that the respondent has filed further two affidavits giving some more details about operating wait list on account of non-joining of duties by the candidates offered appointments and also placed on record copy of wait list operated. Mr. Munshaw submitted that the life of the select list and wait list was of one year and the petitioners cannot, as a matter of right, claim appointment against the unfilled vacancies. Mr. Munshaw submitted that it is not correct to say that 208 unfilled vacancies were carried in subsequent recruitment process because as stated in the affidavit-in-reply, additional 208 posts in fresh recruitment were available on account of non-joining of teachers in the district of Kachchh in inter district transfer. Mr. Munshaw thus urged to dismiss the petition.

7. Having heard the learned Advocates for the parties, it appears that the

petitioners, aspiring for appointment as P.T.C. Teacher against 1,024 vacancies advertised, did not get their place in the select list. They were, therefore, kept in the wait list as stated in the affidavit-in-reply filed by one Shri N.K. Makwana, District Primary Education Officer, Kachchh District at Page 46. It is stated in the affidavit that the select list was exhausted and the wait list was operated and the last candidate appointed from the general category was one Patel Ashok Babulal who had secured 65.55 marks. It is further stated that for 264 posts for S.E.B.C. category, select list was fully exhausted. However, number of candidates did not turn up for posting orders, therefore, wait list was operated and the last candidate appointed was Mr. Vanand Harish Shankarlal who had secured 59.05. As further stated in the affidavit, the petitioners secured 58.98, 58.68 and 58.01 marks respectively. However, it is the case of the petitioners that total unfilled vacancies on account of non-joining of candidates who were offered appointments were 208 from 1,113 vacancies. It is required to be noted that the petitioners could not have claimed appointment against any other vacancies except the vacancies for P.T.C. Teachers. However, the petitioners have counted such 208 vacancies by taking total vacancies of 1,113. Be that as it may, however, as stated in reply affidavit, out of 264 posts of S.E.B.C. Category from 1,024 posts of P.T.C. Teachers, 185 posts were to be filled by male candidates while 79 posts were to be filled in by female candidates. As stated in the first affidavit-in-reply and further affidavit at page 63, not a single post out of 264 posts remained vacant. It is also stated in the affidavit-in-reply at page 63 that in all 131 candidates did not report for duty, and therefore, wait list was operated and all 131 candidates belonging to different categories were appointed. With the affidavit-in-reply, copy of wait list operated is also placed on record. It is required to be noted that the last candidate from S.E.B.C. Category appointed namely Shri Vanand Haresh Shankarlal had higher marks than the marks secured by the petitioners. Therefore, even when the wait list was operated, the petitioners did not get their turn for appointment. There is no reason not to accept the say of the respondent that the wait list was operated to fill in unfilled vacancies especially when copy of wait list is placed on record where from it is found that the petitioners' turn did not arrive for appointments as they were having less marks than the last candidate in S.E.B.C. Category. In such view of the matter, the petitioners could not have claimed appointment as a matter of right.

9. In the case of Virender S. Hooda (supra), Hon"ble the Supreme Court has held and observed in Paragraph Nos. 3 and 4 as under:

"3.....The fact that there were further vacancies available and when 9 vacancies were advertised to be filled up within a period of six months after announcement of the previous selection cannot be disputed at all. In terms of circulars issued by the Government on March 22, 1957 and May 26, 1972 when such vacancies arise within six months from the receipt of the recommendation of the Public Service Commission, they have to be filled up out of the waiting list maintained by the Commission. In respect of the vacancies which arise after the expiry of six months it is necessary to send the requisition to the Commission. It

is also made clear that if the Commission makes recommendations regarding a post to the department and additional vacancies occur in the department within a period of six months on the receipt of the recommendations, then the vacancies which occur later on can be filled in from amongst the additional candidates recommended by the Commission. It is urged on behalf of the appellants that letter dated January 7, 1992 indicated that the cadre strength in the Haryana Civil Service (Executive Branch) was 440 and the officers filling these posts were around 129 and there was shortfall of 311 and 23 posts had to be filled up by direct recruitment. Thus, 12 posts for direct recruitment were vacant when the advertisement for recruitment was made which was held in 1991. Therefore, the appellants' case ought to have been considered when some of the vacancies arose by reason of non-appointment of some of the candidates. Therefore, the Government ought to have considered the case of the appellants as per the rank obtained by them and the appellants had to be appointed if they came within the range of selection. Thus, when these vacancies arise within the period of six months from the date of previous selection the circulars are attracted and hence the view of the High Court that vacancies arose after selection process commenced has no relevance and is contrary to the declared policy of the Government in the matter to fill up such posts from the waiting list.

4. The view taken by the High Court that the administrative instructions cannot be enforced by the appellant and that vacancies became available after the initiation of the process of recruitment would be looking at the matter from a narrow and wrong angle. When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

9. In the case of Virender S. Hooda (supra) some of the selected candidates did not join and the petitioners in that case claimed for appointment against the vacancies so arising depending upon the ranking obtained by them. Hon"ble the Supreme Court held and observed that the case of the petitioners ought to have been considered when some of the vacancies arose of the reason of non appointment of such candidates recommended by the Commission.

10. In the case of Sat Pal (supra), Hon"ble the Supreme Court has held and observed in Paragraph Nos. 10 and 11 as under:

"10. It is not a matter of dispute, that the respondent Sat Pal participated in a process of selection for recruitment against the post of Junior Engineer (Civil), Grade-II. It is also not in dispute, that his name figured in the merit/select list of Scheduled Caste candidates. Trilok Nath, who had been offered appointment against the post of Junior Engineer (Civil), Grade-II on 22-4-2008, did not join, despite the said offer of appointment. The instant fact is fully substantiated from the order dated 5-5-2008 issued by the Chief Engineer, (R. & B.) Department, Jammu. Even though candidates who were higher in merit, were offered

appointment to the post of Junior Engineer (Civil), Grade-II, for which recruitment was held, some of such posts remained vacant on account of the fact that persons higher in merit to the respondent Sat Pal had declined to join, despite having been offered appointment. Atleast one such vacancy offered to Trilok Nath never came to be filled up. In such a situation, the claim of the respondent Sat Pal whose name figured in the merit/select list, ought to have been offered appointment against the said post. The claim of respondent Sat Pal could not have been repudiated, specially on account of his assertion, that his name in the merit/select list amongst Scheduled Caste candidates immediately below the name of Trilok Nam, was not disputed even in the pleadings before this Court. It is not the case of the appellants before this Court, that any other candidate higher than Sat Pal in the merit/select list is available out of Scheduled Caste candidates, and can be offered the post against which Trilok Nam had not joined.

11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil), Grade-II for which the recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for argument's sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nam who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil), on 22-4-2008. The aforesaid offer was made, consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22-4-2008, because the vacancy was offered to Trilok Nam on 22-4-2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23-8-2011 (extracted above), that the waiting list was valid till May, 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, in so far as the present controversy is concerned."

11. The above decisions will have no application to the facts of the present case. As stated above, after the select list was operated and some candidates did not come for posting orders, the wait list was also operated. However, even after operating the wait list, the petitioners did not get their turn being lower in merit than the last candidate offered appointment to fill up the vacant posts. As found from the wait list, last candidate offered appointment in general category was having 65.39 marks and the last candidate offered appointment in S.C. Category was having 61.27 marks and the last candidate offered appointment from S.E.B.C. Category was having 59.05 marks. It is required to be noted that as per the Rules for recruitment, select list was to remain in operation for one year. However, even after the wait list was operated after expiry of one year on account of vacancy arising for non-joining of candidates for appointment, since in the present case, no posts remained unfilled, there was no question of further operating the waiting list to offer appointment to the petitioners. Even otherwise, by now, more than 11 years have passed and it appears that fresh process of recruitment was not restrained. Considering such aspects of the matter also, no relief can be granted to the petitioners. For the reasons stated above, the petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated forthwith.