

(2000) 09 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 491 of 1996 with Special Civil Application No"s. 492, 493 and 552 of 1996

Prakashkumar Prahladbhai Patel

APPELLANT

Vs

District Primary Education Officer

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970 — Rule 2, 4, 5, 6, 7
Gujarat Panchayats Act, 1961 — Section 323

Citation : (2000) 3 GLR 2467 : (2002) 1 UPLBEC 189

Hon'ble Judges : R.K. Abichandani, J;D.H. Waghela, J;Arunkumar Kantilal Trivedi, J

Bench : Full Bench

Advocate : K.B. Pujara and C.B. Dastur, for the Appellant; A.D. Oza, for the Respondent

Judgement

R.K. Abichandani, J.—By a very elaborate order of reference, the learned single Judge has referred the following question for consideration of a Larger Bench :

"In view of the provisions as contained in Rules 5 and 6 of the Rules 1970, the advertisement inviting applications for recruitment made in this case and the fact that no other date (sic., was ?) indicated in the advertisement with reference to the requisite qualifications for recruitment should be judged, which should be the relevant date, the last date of receipt of application or the date of selection in the present case with reference to which the requisite qualification for recruitment to the post of Primary Teacher should be judged."

2. The background of the reference may briefly be noted. The District Primary Education Officer of the District Panchayat, Ahmedabad Invited applications by an advertisement dated 19-9-1994 published in the newspapers dated 22-9-1994 and 26-9-1994 for making recruitment to the post of primary teachers. Recruitment to the said post is governed by the Rules known as "The

Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970 which have been framed in exercise of the powers conferred on the State Government by the provisions of Section 323 of the Gujarat Panchayats Act, 1961. The petitioners had applied for the post in response to the said advertisement and were called for interview. There were guidelines laid down under the Circular dated 7-8-1989 for the purpose of the selection process. As per those guidelines, merit list was to be prepared on the basis of the marks obtained at the S.S.C. and P.T.C. Examinations and, in addition, there was also a reference made to special qualifications in the subjects of music, drawing, physical education, hindi and tailoring in respect of which additional two marks for each of the subjects were to be given if the requisite certificate showing proficiency in the concerned subject was obtained. In the advertisement inviting applications, it was mentioned that the applications should be submitted by the candidates within 15 days of the advertisement along with the requisite documents showing qualifications including in respect of the above additional subjects. The applications were to be made in the prescribed form in which admittedly there was a reference to these additional subjects. According to the learned Counsel for these petitioners, as on the date of the interview, all the candidates had already acquired certificates in the additional subject of tailoring, and therefore, they were entitled to two marks each on that count.

3. The learned single Judge took note of the fact that in all these cases the requisite certificates showing proficiency in the additional subject were obtained after the last date of the receipt of their applications pursuant to the advertisement. Reliance was placed before the learned single Judge on an earlier decision of a single Judge of this Court in *Manishaben Shankarlal Patel v. District Primary Education Officer & Ors.* reported in 1995 (2) GCD 318 to point out that a view was already taken that even if the result of such additional subject was declared after the last date for the receipt of applications, the candidate was to be given the benefit of two additional marks. In *Manishaben's* case (*supra*), the learned single Judge had on 1st April, 1995 held that the petitioner was entitled to get the weightage of additional qualification which was acquired before the date of interview but after the last date of making the application for the post of primary teacher. In the referring order, the observations from *Manishaben's* case (*supra*) have been copiously quoted.

4. The learned single Judge then referred to the decisions of the Supreme Court in *Rekha Chaturvedi v. University of Rajasthan* reported in 1993 I CLR 410 S.C. and *U.P. Public Service Commission Allahabad v. Alpana* reported in 1994 I CLR 397 S.C. In *Rekha Chaturvedi's* case the Apex Court had observed that unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, it would not be possible for the candidates who did not possess the requisite qualifications in presenti even to make applications for the posts. Uncertainty of the date may lead to contrary consequence, namely, even those who did not have the qualifications in presenti and were likely to acquire them in future may also apply for the posts thus swelling the number of

applications. The Supreme Court observed that a worse consequence may follow in such a case which may leave open a scope for malpractices. Therefore, in the absence of a fixed date indicating in the advertisement inviting applications with reference to the requisite qualifications, the only certain date for the scrutiny of the qualifications will be the last date for making such application. In U.P. Public Service Commission's case (supra), where the candidate did not possess the requisite degree on the last date fixed for receipt of the applications but had appeared at the examination and was awaiting results when directed by the High Court to be interviewed, the Apex Court held that many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date of the receipt of the applications. It was held that the approach of the High Court cannot be supported on any rule of prevalent practice nor can it be supported on equitable considerations and if such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities, but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties.

5. The learned single Judge in his referring order after quoting from these two decisions of the Supreme Court observed as under :

"In view of the law as settled by the Apex Court in the above two cases, with due deference to my learned brother Justice M. R. Calla for whom I have the highest regard, I regret my inability to concur with the view expressed by him in the case of Manishaben Shankarlal Patel (supra). In view of this deference, it has become necessary for me to refer this matter to larger Bench."

6. The question that has been referred to us has been framed by the learned single Judge in the context of Rules 5 and 6 of the said Rules, advertisement inviting applications and the requisite qualifications for recruitment.

7. The qualifications of candidates for appointment to the said post are specified in Rule 4 and in clause (b) there is a reference to the requirement of passing in one or more of the qualifying examinations specified in Schedule-I annexed to the Rules. Rules 4, 5 and 6 which are relevant read as under :

"4. Qualification of candidates. - To be eligible for appointment, a candidate must -

(a)(i) be not less than 18 years and not more than 25 years of age,

(ii) in the case of candidates belonging to a Scheduled Caste or a Scheduled Tribe, be not less than 18 years and not more than 30 years of age, and

(b) have passed any one or more of the qualifying examinations specified in Schedule-I annexed to these rules.

5. Period to be allowed for submission of applications :- Applicants shall be allowed

a period of not less than fifteen days from the date of advertisement within which they may submit their applications.

6. Maintenance of register of qualified candidates. - The Administrative Officer shall maintain a register of qualified candidates in the form specified in Schedule-11 in respect of all persons who may apply in response to the advertisement for employment as primary teachers."

8. The expression "qualifying examination" is defined in Rule 2(iv) so as to mean an examination specified in Schedule-I. The qualifying examinations for candidature for appointment as Primary Teacher specified in the Schedule are as under :

"Qualifying examinations for candidature for appointment as Primary Teacher :

1. Secondary School Certificate Examination of the Gujarat Secondary School Certificate Board together with a certificate of Primary Teacher's Certificate Examination :

2. Primary School Certificate Examination together with a certificate of Primary Teacher's Certificate Examination.

3. Lok Shala Certificate Examination together with a certificate of Primary Teacher's Certificate Examination."

9. Undisputedly, all these candidates had passed the qualifying examinations. The real problem arises because of the provision of giving two marks in respect of each of the additional subjects which were not part of the qualifying examinations specified in the Schedule, but which found place in the guidelines laid down by the State Government for the purpose of the selection process. We are not addressing ourselves to the question whether it was open to the State Government to issue any such guidelines prescribing marks for such additional subjects for the purpose of computing the percentage of marks in the context of the provisions of Rules 8 and 9 which require percentage of marks obtained at the qualifying examinations to be taken into account, because, no such question has been referred to us. The relevant provisions of Rules 8 and 9 of the Rules read as under :

"8. Lists how to be prepared and what to contain :- The names in the list shall be arranged in order of the percentage of marks obtained by the candidates at the qualifying examination ...

9. Administrative officer to arrange for interview of candidates after consulting Committee. - The Administrative Officer shall place before the Committee the list of candidates with the applications, and after ascertaining from the members of the Committee, suitable and convenient dates and places arrange for the interview of the candidates in the list except those candidates whom the Committee may consider as not fit for being so called, having regard to the low percentage of marks obtained by a candidate when considered along with the

number of vacancies to be filled."

10. We will confine ourselves to the question whether the relevant date of ascertaining the fact whether the candidate possessed the requisite qualifications was the date of last date of receipt of the application or whether it should be the subsequent date of selection. Even according to the learned single Judge, this question was squarely covered by the two decisions of the Apex Court in Rekha Chaturvedi (supra) and U.P. Public Service Commission (supra), which were not brought to the notice of the learned single Judge deciding Manishaben's case (supra).

11. Once a matter is settled by the Apex Court, there would hardly remain any scope for referring the same question for a decision by a larger bench. In fact, the reference on a point which is already decided by the Supreme Court would be a redundant reference. The decisions of the Supreme Court are binding precedents in view of Art. 141 of the Constitution of India and when the question is decided by the Supreme Court, there would remain no scope for its being decided by the High Court, and what remained to be done by the High Court was only to apply the law settled by the highest Court of the land to the facts before it. If the High Court had earlier decided a case in ignorance of the Supreme Court decision, that would be per incuriam decision.

12. However, since the reference is made on the point on which the learned single Judge could have as well followed the two decisions of the Supreme Court and decided the matter, we may, in all fairness to the learned single Judge who decided Manishaben's case (supra), note that the breeze of the ratio of the majority decision of the Supreme Court in Ashok Kumar Sharma & Anr. v. Chander Shekhar & Anr. reported in 1993 II CLR 688 S.C. decided on 18-12-1992 seems to have given direction to the view that was taken by his Lordship. It will be noted that Ashok Kumar's case (supra) was a decision of a three Judge Bench of the Supreme Court and it held water till 10th March 1997 when in a review application Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, the Supreme Court held as under :

"Where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it, is bound by such representation. It cannot act contrary to it. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is an impermissible justification. The minority opinion in the 1993 decision in Ashok Kumar Sharma case that the 33 respondents who were not qualified on the date of submission of the application but had acquired the requisite qualification before the date of interview could not

have been allowed to appear for interview was right.

13. In Ashok Kumar Sharma case (supra), the question involved was whether educational qualifications should be possessed on the date of submission of application form or on the date of interview and the majority took the view that by allowing the appellants to appear in interview and by their selection on the basis of their comparative merits, the recruitment authority was able to get the best talents available and it was in public interest that the interview was made as broad based as possible and on the basis of qualifications. It was further held that it was in public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. However, as noted above, the Supreme Court reviewed, on the question of law, its pronouncement and held that the minority view in the said decision that those who are not qualified on the date of submission of the application but had acquired the requisite qualification before the date of interview could not have been allowed to appear for interview, was right. The decision in Ashok Kumar's case (supra) was reviewed and clarified on the legal issue on 10-3-1997. Therefore, the ratio of the said decision held the field between 18-12-1992 and 10-3-1997 and even in U.P. Public Service Commission's case (supra), a two Judge Bench of the Supreme Court while referring to it had only explained and distinguished it. However, the legal position stands settled by the Supreme Court to the effect that when applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, and a person who acquires the prescribed qualifications subsequent to such prescribed date cannot be considered at all.

14. We accordingly answer the question referred to us as under :

15. In view of the above question referred to this Full Bench having already been decided by Hon'ble the Supreme Court in the two cases referred in the order of reference itself, namely, Rekha Chaturvedi v. University of Rajasthan, reported in 1993 I CLR 410 S.C.; U.P. Public Service Commission, Allahabad v. Alpana, reported in 1994 I CLR 397 S.C., and also in the review order in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, , the reference is redundant since the matter is fully covered by the above decisions of the Supreme Court holding to the effect that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates is required to be judged with reference to that date alone and that a person who acquires the prescribed qualifications subsequent to such prescribed date, cannot be considered at all. The reference stands answered accordingly. The matters shall now be posted before a single Judge for hearing.

16. Question answered.