

(2011) 03 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 14642 of 2010

Ravindra Vithalbhai Jiyani

APPELLANT

Vs

Gujarat Public Service Commission and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 GUJ CK 0061

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Paresh Upadhyay, for the Appellant; D.G. Shukla and Maulik G. Nanavati, Asst.Government Pleader for Respondents Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. D.G. Shukla, learned advocate waives service of notice of Rule for Respondent No. 1. Mr. Maulik G. Nanavati, learned Assistant Government Pleader waives service of notice of Rule for Respondents Nos. 2 to 4. On the facts, and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

2. By filing this petition under Article 226 of the Constitution of India, the Petitioner has prayed, inter alia, that a writ of mandamus or any other appropriate writ or order be issued, declaring the action of the Gujarat Public Service Commission, in not recommending his name to the State Government for appointment on the post of Lecturer (Chemistry), pursuant to a requisition having been made, as illegal, arbitrary and discriminatory. Further, it is prayed that the decision of the Respondent-authority of not giving appointment to the Petitioner on the post of Lecturer (Chemistry) pursuant to his selection vide advertisement No. 60 of 2006-2007, be quashed and set aside.

3. Briefly stated, the relevant facts are that the Petitioner was initially appointed as Lecturer (Chemistry) on Ad-hoc basis on 28-2-2001. He is, at present, working as such in the Government Polytechnic. On 15-5-2006, Respondent No. 1 -Gujarat Public Service Commission ("GPSC" for short) published advertisement No. 60 of 2006-07, inviting applications for the post of Lecturer (Chemistry) (among others) in the Gujarat Education Service, Class-II in Government Polytechnic Colleges. Out of 9 posts of Lecturer (Chemistry) that were advertised, one post was reserved for the SC category candidate, one for an ST category candidate, 2 for SEBC category candidates and 2 for lady candidates in the General category. The Petitioner applied for the post of Lecturer (Chemistry) in the unreserved (General) category. After due procedure, the Petitioner was selected for the post of Lecturer (Chemistry), and his name appeared at Sr. No. 3 in the waiting list. He was intimated in this regard by the GPSC vide communication dated 16-9-2009. Thereafter, candidates whose names figured in the select list were given appointment by the State Government. Out of these candidates, the ones at Sr. Nos. 4 and 5, named, Keyur kumar Balvantray Desai and Kamlesh Kumar Ramkishan Gurjar did not join service, therefore, their appointment orders were cancelled by the State Government vide order dated 19-7-2010, resulting in two posts falling vacant. Vide communication of the same date, that is, 19-7-2010, the State Government asked the GPSC to send names from the waiting list of candidates for appointment to the post of Lecturer (Chemistry). The GPSC recommended the names of two candidates in the waiting list, whose names figured above that of the Petitioner, at Sr. Nos. 1 and 2. As per the recommendation made by the GPSC, the State Government issued appointment orders in favour of those persons, namely, Hemendra Hasmukhrai Bhatt and Lakhdhirsinh Bhavansinh Rathod, on 25-8-2010. Since Lakhdhirsinh Bhavansinh Rathod showed his unwillingness to join service, the State Government cancelled his appointment vide order dated 13-9-2010. In view of the above, one post fell vacant, therefore, vide communication dated 13-9-2010, the State Government once again sent a requisition to the GPSC to recommend the name of the next meritorious candidate from the waiting list. This requisition was received in the office of the GPSC on 15-9-2010. The Petitioner was the next meritorious candidate on the waiting list, whose name could have been recommended by the GPSC. However, the GPSC took the impugned decision that the name of the Petitioner could not be recommended, since the results of the subsequent advertisement No. 199 of 2009-10, dated 16-2-2010, had been published on 23-9-2010 and the waiting list pursuant to the previous advertisement was exhausted. The Petitioner made a representation to the GPSC on 5-10-2010, which came to be rejected. Aggrieved thereby, the Petitioner has approached this Court by filing the present petition.

4. Mr. Paresh Upadhyaya, learned advocate for the Petitioner has submitted that the omission of the GPSC of not recommending the name of the Petitioner as per his standing in the waiting list which has resulted in his being deprived of

appointment, is illegal, arbitrary, discriminatory and against the settled position of law. The Petitioner is already working since the year 2001 on the post of Lecturer (Chemistry) on ad-hoc basis, subject to selection by the GPSC. The name of the Petitioner figured at Sr. No. 3 of the waiting list in order of merit. As the person whose name figured above that of the Petitioner has refused appointment, the GPSC ought to have recommended the name of the Petitioner in answer to the requisition sent by the State Government. The Petitioner has a legitimate right to be considered for appointment as per his merit and standing in the waiting list. However, due to the arbitrary and discriminatory action of the GPSC, the Petitioner is being deprived of appointment as Lecturer (Chemistry) on regular basis, for no fault of his own. That the services of Lecturers working on ad-hoc basis are being terminated on availability of regularly selected candidates, therefore, the impugned action of the GPSC has exposed the Petitioner to the possibility of termination at this late stage, after having worked since the year 2001, even though he ought to have been recommended for appointment. The GPSC has recommended the name of Dr. Geetaben Valjibhai Vaghora vide letter dated 6-10-2010, pursuant to direction given by this Court vide order dated 17-9-2010 passed in Special Civil Application No. 7528 of 2010, which in turn is based on the direction given by this Court vide order dated 14-5-2010 passed in Special Civil Application No. 3869 of 2010. The directions of this Court are based on the settled position of law as reflected in a judgment of this Court in the case of Vinod kumar Rajabhai Rathod v. State of Gujarat, 2005(2) GLR 1274 wherein it has been held that appointment to the Petitioner therein could not be denied as there was a clear vacancy available for the post for which he was placed in the waiting list. In view of the above, the name of the Petitioner ought to have been recommended.

5. Mr. Maulik G. Nanavati, learned Assistant Government Pleader for the Respondents Nos. 2 to 4 has submitted that the role of the State Government is limited to the extent that it has sent a requisition to the GPSC to recommend the name of the next meritorious candidate from the waiting list on 13-9-2010 and it was up to the GPSC to have done the needful. As the name of the Petitioner was not recommended, the State Government could not issue an appointment order in his favour.

6. On the other hand, Mr. D.G. Shukla, learned advocate appearing for Respondent No. 1-GPSC has admitted that the name of the Petitioner figured in the waiting list of selected candidates, for Lecturer (Chemistry) in the General category. It is submitted that the waiting list would remain operative for two years, or till the declaration of the results of the subsequent advertisement for the same post, whichever is earlier. The results for the post of Lecturer (Chemistry), Class II in Government Polytechnic Colleges pursuant to the subsequent advertisement, No. 199 of 2009-10, were declared on 23-9-2010, therefore, as per Circular dated 24-12-2008, the operation of the earlier waiting list came to an end on 22-9-2010.

7. The learned advocate for the GPSC has not denied that the State Government had sent a requisition for the post of Lecturer (Chemistry) pursuant to the previous advertisement No. 60 of 2006-2007 vide order dated 13-9-2010. The assertion of the Petitioner that the requisition was received in the office of the GPSC on 15-9-2010 is also not denied. The stand taken by the learned advocate for the GPSC, as asserted in the affidavit-in-reply filed by the said Respondent is that the waiting list expired on 22-9-2010 as the results of the subsequent advertisement were declared on 23-9-2010, therefore, the name of the Petitioner cannot be recommended for selection for the post in question.

8. I have heard learned Counsel for the respective parties, perused the averments made in the petition and contents of the documents annexed thereto. The undisputed facts emerging from the material on record are that the Petitioner was duly selected for the post of Lecturer (Chemistry) and his name figured at Sr. No. 3 in the waiting list. Pursuant to a requisition being sent, the candidates in the select list were given appointment. However, two candidates did not join, therefore, on a requisition dated 19-7-2010 sent by the State Government, the GPSC recommended the names of candidates at Sr. Nos. 1 and 2 of the waiting list. Out of these two candidates, one candidate, namely, Lakhdhirsinh Bhavansinh Rathod expressed his unwillingness to join service, therefore, the State Government cancelled his appointment vide order dated 13-9-2010. By order of the same date, that is, 13-9-2010 the State Government sent another requisition to the GPSC to send the name of the next meritorious candidate from the waiting list. The Petitioner being the next meritorious candidate on the waiting list, anticipated that his name would be recommended by the GPSC. However, when his name was not so recommended, the Petitioner represented to the GPSC on 5-10-2010 and was told that his representation has been rejected, and that his name could not be recommended for appointment to the post of Lecturer (Chemistry) as the results of the subsequent advertisement No. 199 of 2009-10, dated 16-2-2010, had been declared on 23-9-2010, and the waiting list stood exhausted.

9. From the above factual scenario it clearly emerges that the Petitioner had applied for the post of Lecturer (Chemistry) pursuant to advertisement No. 60 of 2006-07 dated 15-5-2006. The candidate whose name figured above that of the Petitioner did not join service, therefore, by requisition dated 13-9-2010, the State Government asked the GPSC to send the name of the next meritorious candidate. This requisition was received in the office of the GPSC on 15-9-2010. This fact is asserted in paragraph 3.6 of the petition and not denied in the affidavit-in-reply. Further, a perusal of a copy of the order dated 13-9-2010 reveals that it bears the Stamp and Inward Number of the office of GPSC dated 15-9-2010. This clearly shows that the requisition has been received in the office of the GPSC much before the declaration of the result of the subsequent advertisement on 23.9.2010, which resulted in the expiry of the waiting list prepared pursuant to the previous advertisement answered by the Petitioner. On 13-9-2010 when the requisition was sent by the State Government and on

15-9-2010 when it was received by the GPSC, the waiting list was valid and very much in operation. As such, there was absolutely no impediment for the GPSC in recommending the name of the Petitioner. Why it has not done so at the relevant point of time, is an aspect that has not been answered and been absolutely ignored in the affidavit-in-reply filed by the GPSC. On a query being put by the Court in this regard, no clear answer has emerged. It is vaguely submitted that administrative procedures take some time, and thereafter, the waiting list stood exhausted. This explanation, if it can even be termed so, is totally unsatisfactory and has no basis whatsoever, leave alone any legal basis.

10. It is not the case of the GPSC that the Petitioner is not meritorious or that his name could not have been recommended for any other reason. The only reason being advanced is that before the name of the Petitioner was recommended, the result of the subsequent advertisement was declared. There is no valid or cogent explanation why the name of the Petitioner was not declared after receipt of the requisition dated 13.9.2010 on 15.9.2010, which is much before 22.9.2010. There is a time gap of about 8 days between receipt of the requisition and declaration of the result. The name of the Petitioner could easily have been recommended during the relevant period of time. Admittedly, there is no question regarding the merit of the Petitioner and his legitimate right to be considered for appointment, owing to his standing in the waiting list. The claim of the Petitioner is based on the fact that it was his name alone, that could have been recommended by the GPSC in his category, in answer to the requisition. This is an admitted position. As such, the right of the Petitioner to claim appointment is a legitimate one. It is only due to the acts of omission and commission of the GPSC in not recommending his name that the Petitioner has not been given appointment. Such acts that have the effect of marring the legitimate chances of appointment of a candidate, (in this case the Petitioner) who has been selected after following due procedure, are nothing but a display of utmost arbitrariness and discrimination. There was no obstacle in the way of the GPSC in recommending the name of the Petitioner before the results of the next advertisement were declared. Eight days is sufficient time for making such a recommendation, especially when the GPSC, which is the examination conducting body, is well aware when the result of the next advertisement is to be declared. In the considered view of this Court such a technical attitude of casual callousness as displayed by the GPSC, cannot be sustained, as it carries with it the consequences of depriving the Petitioner of his legitimate claim to appointment, thereby having a detrimental effect on his entire future prospects. It cannot be lost sight of that the Petitioner is working as Lecturer (Chemistry) on ad-hoc basis since the year 2001 and his services can be terminated by appointment of a regularly selected candidate. It is highly unfair that when he has a legitimate right for appointment on his own merit, the GPSC has failed to answer the requisition promptly, exposing the Petitioner to the possibility of termination by a regularly selected candidate. The unfairness is further compounded by the fact that the Petitioner himself is a regularly selected

candidate.

11. In *Vinod Kumar Rajabhai Rathod v. State of Gujarat (Supra)*, on the facts of that case, the select list was not operated for more than two years on account of Government instructions and litigations. The Court directed the GPSC to forward the name of the candidate at Sr. No. 1 of the waiting list for the post of Lecturer (Physics) and give appointment to such candidate.

12. The case of the Petitioner before this Court stands upon a much better footing. Here, on 13-9-2010 when the State Government sent the requisition to the GPSC to recommend the name of the next meritorious candidate on the waiting list, which is the Petitioner, the said waiting list was very much in operation. Therefore, the requisition having been made within a period of two years and before the declaration of the result of the subsequent advertisement, is a valid requisition as per the provisions of Circular dated 24-12-2008 of the State Government relied upon by the GPSC and annexed as Annexure-I to its affidavit in reply. The said Circular further provides that if the requisition is received during office hours, the GPSC shall recommend the name of the candidates for appointment. The requisition dated 13-9-2010, having been received by the GPSC on 15-9-2010, it was incumbent upon the GPSC to have recommended the name of the Petitioner for appointment and a formal order of appointment would have been passed by the State Government in this regard. The GPSC has, either due to a casual and careless attitude, apathy, or deliberately, not answered the requisition, until the results of the next advertisement were declared, knowing fully well that such action would result in the expiry of the waiting list in which the name of the Petitioner figures. Having done so, the said Respondent then takes a technical stand that the name of the Petitioner cannot be recommended as the results of the subsequent advertisement have been declared, and the waiting list has expired. In the considered view of this Court, the GPSC cannot be permitted to take advantage of its own wrong. The said action of the GPSC is not only in violation of the provisions of the Government Circular dated 24-12-2008, but is also highly arbitrary and discriminatory, therefore, cannot be permitted to stand.

13. In view of the above discussion and for the foretasted reasons, the petition is allowed. The Respondent No. 1 - GPSC is directed to forward the name of the Petitioner for appointment pursuant to advertisement No. 60 of 2006-2007, within a period of 15 days from today. On receipt thereof, the State Government shall, after completing all the requisite formalities, offer appointment to the Petitioner as Lecturer (Chemistry) within a period of one month.

14. Rule is made absolute. Respondent No. 1-GPSC shall pay costs of Rs. 5000/- to the Petitioner within one week from today.