
(2016) 11 GUJ CK 0038

In the Gujarat High Court

Case No : Special Civil Application No. 13175 of 2016

Roshniben Abherajbhai Chaudhari

APPELLANT

Vs

Gujarat Public Service Commission

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GujLH 787

Hon'ble Judges : Mr. N.V. Anjaria, J.

Bench : Single Bench

Advocate : Mr. P.A. Jadeja and Shrijit G. Pillai, Advocates, for the Petitioner No. 1; Government Pleader, for the Respondent No. 2; Mr. Premal R. Joshi, Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

Mr. N.V. Anjaria, J. (Cav) - What the petitioner has prayed by filing the present petition is to set aside decision reflected in communication dated 26th July, 2016. It is further prayed to set aside Notification dated 26th July, 2016 issued by the respondent No.1-Gujarat Public Service Commission cancelling the candidature of the petitioner herein for the post of Assistant Professor-Electronics and Communication Engineering, Class II pursuant to advertisement No. GPSC/201314/43. It is next prayed to direct the respondent-Commission to consider the candidature of the petitioner in view of Resolution of the State Government dated 14th June, 2016 and to provide an opportunity for personal interview for the post.

1.1 It is the case of the petitioner in relation to the aforesaid prayer that she is required to be treated on the same lines and in similar way as per decision of this Court in order dated 22nd June, 2016 in Vivek Kantibhai Patel v. Gujarat Public Service Commission being Special Civil Application No.12204 of 2015 and connected petitions.

2. Precisely stated, grievance of the petitioner is that degree which the petitioner holds is not treated as equivalent, thereby not accepting her candidature for the post, even though by virtue of Resolution dated 14th June, 2016, equivalence to the degree of the petitioner has been accepted, and further that the petitioners of the aforementioned decision have been granted relief applying to them the benefit of Resolution dated 14th June, 2016 on the ground that they had approached the Court prior to the issuance of impugned Notification.

3. Adverting to the relevant facts weeding out the unnecessary, pursuant to advertisement No. GPSC/201314/43 issued by the respondent No.1, petitioner applied for the post of Assistant Professor-Electronics and Communication Engineering, Class II. The written test was held on 08th February, 2015 in which the petitioner appeared under Role No.101001515 and cleared the said examination, result of which was declared on 22nd August, 2015. Documents as required were submitted by the petitioner to the Commission. A circular was issued by the Gujarat Public Service Commission on 12th May, 2016 in respect of the eligible candidates for personal interview. The petitioner was apparently not included and by cancellation order dated 26th July, 2016, the petitioner was informed that her candidature was not liable to be considered.

4. Affidavit-in-reply was filed by the first respondent-Commission to contend inter alia that petitioner was not eligible to the post as per Government Resolution dated 28th October, 2013 in which it was provided that basic degree of candidate must be in the discipline of Electronics and Communication, whereas petitioner was holding Bachelor Degree of Electronics and not in the subject of Electronics and Communication. As per the stand of the first respondent, Resolution dated 14th June, 2016 which was intervened to declare the degree in question to be equivalent as required, was applied only from the date of its issue. It was further contended that by Circular dated 17th June, 2016 it was made clear that the said Resolution dated 14th June, 2016 would apply to Advertisement Nos.48 to 56 and Advertisement No.58 published on 23rd September, 2015 and 24th November, 2015. It was therefore contended that it would not apply to the petitioner's case who had applied pursuant to Advertisement No.43.

4.1 Relevant it is to mention about the order of this Court passed in group of aforesaid Special Civil Application No.12204 of 2015 and allied petitions which were by similarly situated candidates claiming similar benefit except that their candidature was pursuant to different advertisements. No further process has commenced pursuant to any of the advertisement pursuant to which the said petitioners applied for the post, as also pursuant to the advertisement upon which the petitioner herein had applied.

4.2 In the aforesaid group of petitions the Court held as under.

"... .. the Government Resolution dated 14th June, 2016 issued by the State Government should be made applicable in the cases of the writ applicants and if

they are covered by the Government Resolution so far as the equivalency of various graduate and postgraduate degree courses is concerned, then they may be considered for being appointed on the posts in question. Of course, it goes without saying that they should also fulfil the other requisite requirements in accordance with the advertisement."

4.3 The only question was whether the benefit of equivalent prescription of the degree in question could be made available to the candidates-the petitioners of those petitions. Those who had already appeared in the interview and whose cases were in the sealed cover were to be treated favourably for giving benefit of equivalence as per the Resolution dated 14th June, 2016. The Court in this regard observed thus,

"... .. whether the writ applicants should get the benefit of the Government Resolution or not. Indisputably, they all had applied pursuant to the advertisements of the years 2013 and 2014. According to the learned counsel appearing for the respondents, the recruitment process has attained finality except those cases where the petitioners were interviewed and the results have been kept in the sealed covers. So far as those cases where the petitioners were interviewed and the results have been kept in the sealed covers, there should not be any problem and the Government Resolution should be made applicable in those cases. This will be looked into by the G.P.S.C and appropriate orders shall be passed in that regard."

4.4 In the impugned communication, the reason supplied for denying the benefit of Resolution dated 14th June, 2016 to the present petitioner is that the aforesaid decision of this Court in Vivek Kantibhai Patel (supra) was de-limited by the Court to those petitioners only. This can be gathered from the following observations.

".. ... learned AGP, at this stage, expressed a very serious apprehension that since the issue of retrospective effect of the Government Resolution has been considered by this Court, it may open a pandoras box and may create a lot of problems for the State Government as well as for the G.P.S.C. Let me clarify that there is no question of opening any pandoras box. This relief is granted to the writ applicants as a special case and more particularly when they were here before the High Court much before the Government Resolution came to be passed by the State Government. therefore, as a special case, considering the peculiar circumstances, I have taken the view that the Government Resolution needs to be given retrospective effect so far as the applicants are concerned. I am sure that the State Government as well as the G.P.S.C would accept this order in true spirit, keeping in mind the interest of the career of the applicants."

5. Now, the aforesaid order and decision in Vivek Kantibhai Patel (supra) should not detain this Court in granting the relief to the present petitioner who is otherwise identically situated, the only point of distinction being was that those petitioners had approached the Court before passing of the Resolution by the

State Government. All other facts and circumstances and the aspects of the case were parallel and similar.

5.1 The reason that petitioners in Vivek Kantibhai Patel (*supra*) had approached the Court prior to issuance of Notification, could become a good ground for the Court concerned to confer benefit of the Resolution providing for equivalence, the same by itself may not be a reason or a ground tenable in law to refuse or to deprive those petitioners like the petitioner herein who had not approached the Court along with those petitioners, such as the petitioner herein.

5.2 Nor a differential statement is permissible in law only on the ground that the other group of petitioners had approached to the court and upon court's order they were given the benefit. If an order is passed by the Constitutional Court extending some benefit to the particular class of persons, the similarly situated class of persons, though may not have approached the Court has to be held entitled for the benefit conferred. In *Inderpal Yadav v. Union of India* [(1985) 2 SCC 648], the Supreme Court emphasized in clear terms that discrimination in extension of benefit on the ground of certain employees not approached the court was not permissible. In that case, the question was whether the termination of services of casual labourers employed on railway project continuously on the ground of winding-up of the project, was justified or not. During the pendency of the petition of the labourers, the railway administration framed a scheme for their absorption which was made applicable to those employees in service on a particular date.

5.2.1 In *Inderpal Yadav* (*supra*), the Apex Court stated the principle in the following observations,

"... .. those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court."

5.3 On the above aspect, learned advocate for the petitioner could successfully rely on decision of this Court in (*Smt.*) *Dhanlakshmibehn Liladhar Suchak v. Director of Ayurved* [1992 (2) GLH 478] reiterating the principle that benefits flowing from a judgment should be given to other similarly situated persons-employees and that government should be a model employer. It was held that employees should not be driven to the court for addressing their grievance when they are entitled to the benefit of a judgment in similar case. Learned advocate for the respondent-Commission on the other hand wanted to press into service Apex Court's decision in *State of Uttar Pradesh v. Arvind Kumar Srivastava* [(2015) 1 SCC 347] in which, while emphasising the very principle that entitlement to benefit of judgment given to all the similarly situated persons irrespective of whether they had approached or not, the Apex Court stated exception that delay, laches or acquiescence on part of such person may be a ground not to apply the judgment. Learned advocate for the respondent thereby

wanted to contend that the conduct of the petitioner was one of acquiescence and his claim was tainted by laches.

6. Even if the aspect of applicability of Vivek Kantibhai Patel (*supra*) is left aside, for which both the sides made their arguments contentious, the fact situation obtaining in this case would entitle the petitioner for the relief. Therefore revisiting the facts which fall in the background is that when the petitioner had applied for the post pursuant to the advertisement, she was holding the degree. The degree was at that point of time was not treated as equivalent and acceptable, however before the recruitment process qua the petitioner could be completed and even before the petitioner could be called for interview, the State Government issued Resolution dated 14th June, 2016 in which the degree of the petitioner was held to be equivalent and the petitioner's candidature acquired eligibility which was otherwise lacking on the said count alone. The applicability of the Resolution dated 14th June, 2016 ought to have been in rem inasmuch as it generally recognises the aspect of equivalence of degree. It was a selective approach, therefore discriminatory and arbitrary, on part of the respondent-State to provide by further Circular that the beneficial effect of Resolution dated 14th June, 2016 would be for the candidates who had applied for particular advertisements, while not extending the same to one of the advertisements also issued in the interregnum, pursuant to which the petitioner had applied being advertisement No.43.

6.1 Even as equivalence is recognised which has lifted the debility with which the petitioner was attached for the purpose of her candidature, the interviews are still not announced and are awaited. Even then the petitioner is denied the benefit by not applying Resolution dated 14th June, 2016.

6.2 A situation akin in principle arose before the Apex Court in *Punjab University v. Subhash Chander* [AIR 1984 SC 1415] wherein the student was pursuing studies of M.B.B.S. Course since 1965 and appeared in the final M.B.B.S. Examination in the year 1974. In the meantime, in the year 1970, a Regulation was amended whereby the percentage of grace marks was reduced for M.B.B.S. candidates. It was held that it was the amended Regulation which would apply in case of the petitioner as the same was in force at the time when occasion arose for the petitioner to be treated for the purpose of giving grace marks. The Supreme Court held that new Regulation as amended would apply. In the same way, there is no reason as to why equivalence prescription which is introduced in the interregnum before the petitioner is to be considered for the process of selection for interview, that she should not be denied the candidature.

6.3 This situation is peculiar in itself and cannot be equated with a case where eligibility gets changed or that a candidate acquires eligibility or requisite qualification after the last date of advertisement. It is by the act of the respondents themselves that the degree which was held by the petitioner was accepted as equivalent in the meantime. In the facts and circumstances of the case, it cannot be said that petitioner was not holding the degree. The degree

holding by the petitioner was in the same discipline, however its equivalence was not being accepted by the Public Service Commission when the petitioner filled up the application form. The equivalence was recognised after filling up the form and before the candidature of the petitioner is further processed and interviews are held. When the equivalence has now been accepted and the petitioner is to be the aspiring candidate on the basis of the recognised degree, she cannot be denied candidature. The petitioner could validly claim right to be considered and right to be called at the interview.

7. In view of above and for the reasons and discussion forgoing, the decision reflected in the impugned communication dated 26th July, 2016 of the Gujarat Public Service Commission cannot be sustained. As a result, cancellation of the candidature of the petitioner Roshniben Abherajbhai Chaudhari for the post of Assistant Professor-Electronics and Communication Engineering, Class II, pursuant to Advertisement No.GPSC/201314/43, is liable to be set aside and the same is hereby set aside. The first respondent-GPSC is directed to consider the candidature of the petitioner in view of Resolution dated 14th June, 2016 and to provide opportunity to the petitioner for personal interview by calling her in the interview as and when the interviews are held.

8. The petition stands disposed of as allowed in the aforesaid terms.

9. Direct service is permitted.