

(2016) 06 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No. 7404 of 2016

Shilpaben Nitinkumar Soni

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2016) 3 GCD 2348 : (2016) 3 GLR 2372 : (2016) 4 KLT 6

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

Bench : Single Bench

Advocate : Mr. Vaibhav A. Vyas, Advocate, for the Appellant; D.S. Aff. Not Filed (N), Mr. Premal R. Joshi, Advocate, D.S, by Notice Served, for the Respondent

Final Decision : Allowed

Judgement

Mr. N.V. Anjaria, J. (Oral) - Heard learned advocate Mr. Vaibhav Vyas for the petitioner and learned advocate Mr. Premal Joshi for the second respondent-Gujarat Public Service Commission. Learned Assistant Government Pleader Mr. Robin Mogera appeared for the first respondent.

2. Two interwoven prayers are made by the petitioner in this petition. A declaration is prayed for to hold that petitioner is eligible to be considered for the post of Assistant Public Prosecutor, Class II, pursuant to Advertisement No.119/2013-14. The second prayer is to set aside communication dated 31st March, 2016 of the second respondent, whereby candidature of the petitioner is rejected for the purpose of recruitment to the post in question. In this regard, a further prayer is made seeking direction against the second respondent-Gujarat Public Service Commission to accept candidate of the petitioner for recruitment.

3. Inviting applications for the appointment of 554 number of posts of Assistant Public Prosecutor, Class II, the second respondent-the Gujarat Public Service Commission published an advertisement, upon which the petitioner applied and appeared in the written examination held on 03rd May, 2014 and 04th May,

2014. The petitioner was successful in the written examination. It is the case that after clearance of the written examination, candidates were required to produce certain documents before they could be called for interview. After clearance of the written examination, the second respondent-Commission published tentative list of 1517 candidates who had cleared the written examination for the purpose of oral interview. Below that list, it was inter alia provided that only those candidates fulfilling requirements of the recruitment rules would be called.

3.1. The grievance of the petitioner is that though she submitted the requisite certificates, on 31st March, 2016, her candidature came to be rejected by the respondent-Commission on the ground that petitioner did not possess the requisite experience of three years continuous and regular practise contemplated in the recruitment Rules. It was submitted that interviews have already commenced from 21st April, 2016 in which the petitioner was not called.

3.2. From the examination of facts and relevant record it is not in dispute that the petitioner successfully cleared written examination for the post of Assistant Public Prosecutor, Class II and her seat number was 1004521. In the list published on 31st March, 2016 of the candidates eligible for personal interview, petitioner's number was excluded and her candidature was not considered eligible for interview on the ground that she was not holding the requisite experience to be appointed as per the recruitment rules and the provisions in the advertisement. It is to be noted that the said requirement is contemplated for the purpose of appointment to the post under the Rules. The stage of appointment precedes written examination and oral interview.

4. Learned advocate for the petitioner submitted that the petitioner is a bright candidate who cleared her L.L.B. as well as L.L.M. examination securing first rank from Sardar Patel University. He further invited attention of the Court to the certificates produced on record to bring home his point that the petitioner has the requisite experience to be eligible to be considered for the post.

4.1. On behalf of the second respondent, affidavit-in-reply is filed by In-charge Joint Secretary stating that the State Government has framed General State Service Class II, Requirement Rules, 2008. It is further stated:-

"(2) ? ? ? As per the section 2 (c) "examination" means the Competitive examination for recruitment to the post of Assistant Public Prosecutor and includes of the written examination and Viva-voce and Personality Test. As per the sub-rule 2 of Rule 12, the Commission shall fix the qualifying marks to be obtained by a candidate in Part I of the examination in Appendix and shall call only those candidates who fulfil qualifying standard for Viva-Voce and Personality Test. Provided that candidates belonging to the Scheduled Castes, Scheduled Tribes or Socially and Educationally Backward Classes including Nomadic Tribes and Denotified Tribes, may be summoned for Viva-Voce and Personality Test by applying relaxed standard in Part I of the examination. If the Commission is of

the opinion that sufficient number of candidates from these communities are not likely to be called for Viva-Voce and Personality Test on the basis of qualifying standard for general category in order to fill up the vacancies reserved for such categories.

3) ? ? ? all the candidates including this petitioner applied for the said post were called to appear in the written examination subject to condition that they satisfy the criteria laid down in the Rules and in the Advertisement. As per the provisions under Rule 12 of the aforesaid rule, the Commission has fixed the qualifying standard in the written examination to be called for Viva-Voce and Personality Test."

4.2. Learned advocate for the second respondent referred to the rules to highlight that experience requirement was three years" continuous and regular practise on criminal side and that the petitioner was not holding the experience qualification. According to learned advocate for the Commission, what was required to become eligible was "continuous practise" and that petitioner's practise cannot be said to be continuous as she shifted from one place to another and there was a gap of seven days in between. He submitted that rules were framed under Article 309 of the Constitution and were required to be construed strictly and no leniency could be shown in interpreting and applying the experience requirement. He also relied on the dictionary meaning of word "continuous".

5. Adverting to the controversy now, Rule 3 of the Rules which is relevant in this case, reads as under.

"3. To be eligible for appointment by direct selection on the result of the competitive examination held for the purpose by the Gujarat Public Service Commission to the post mentioned in rule 2, a candidate shall --

(a) not be less than 25 years of age and not be more than 35 years of age;(b) possess -

(i) a degree in law of the University incorporated by an Act of the Central or State Legislature in India or other educational institution established by an Act of Parliament or deemed to be a University under Section 3 of the University Grants Commission Act, 1956, or possess an equivalent qualification recognised as such by the Government;

(ii) three years continuous and regular practise and experience on the criminal side of the Bar

(iii) adequate knowledge of Gujarati language and be thoroughly conversant with and be able to read and write in Gujarati;

(iv)

(v)"

5.1. In other words, Rule 3(ii) contemplates as experience requirement that the candidate must have three years" continuous and regular practise and experience on the criminal side of the Bar. The petitioner of this case has produced Certificate dated 10th June, 2015 of the Principal District Judge, Vadodara who has certified that the petitioner was practicing from 08th August, 2009 to June, 2011 on civil and criminal side in the Court of Vadodara District. The said certificate is issued on the strength of Sanad dated 08th August, 2009 issued by the Bar Council of Gujarat and Certificate dated 09th June, 2015 issued by In-charge President, Baroda Bar Association. As per another certificate dated 11th June, 2015 of Chief Judicial Magistrate, Anand, it is certified that the petitioner practised continuously and regularly since 08th July, 2011 in Anand Court on criminal side. It is the case of the petitioner that initially she started practise at Vadodara, however subsequently, because of personal circumstances, shifted to Anand and started practise there.

5.2. The aforesaid two Certificates were issued to her by the respective Presiding Officer of the Courts. It is borne out from the Certificates that since 08th August, 2009 the petitioner has started practise, first at Vadodara and thereafter at Anand, has been practicing till date. The date of the last date for receipt of application as per the advertisement is 28th February, 2014. It is up to this date that three years" experience requirement would have to be reckoned. Reckoned from August, 2009 to 28th February, 2014, the petitioner completes total three years practise at Vadodara and thereafter at Anand. The reason for not treating the petitioner eligible is however that there was a gap of seven days in-between the period during which she practised at Vadodara and thereafter started at Anand.

6. The bone of contention is whether the petitioner satisfies the requirement of "continuous practise" for three years and what is the concept of continuous practise. Learned advocate for the second respondent wants the Court to construe the connotation "continuous practise" as uninterrupted period without break. As per the certificates referred to above, the petitioner practised on the criminal side at Vadodara and thereafter at Anand which period counted from its starting point makes up total of three years, except that seven days intervened when the petitioner shifted her practise from Vadodara to Anand.

6.1. Any word or group of words figuring in a statute or occurring in Rule must receive reasonable and purposeful interpretation. The interpretation has to be such which advances object of the provisions or the Rules, as the case may be. The interpretation should be pragmatic, realistic, practical and therefore reasonable to be of such kind that a prudent man would interpret. In the process of legal interpretation of a statute or Rule or words therein, dictionary meaning cannot be followed blindly. The group of words "three years of continuous practise" are mentioned in the rule to see that candidates who are eligible for appointment and for the purpose to be called for interview must have experience spread over three years continuous practise on criminal side of the Bar,

extending over three years. What is expected from the candidate that they should have sufficiently practised for such years continuously to be in the zone of eligibility for appointment. The words "continuous practise" and the period "three years" need not be construed inflexibly or with mathematic precision in counting the three years. If that is done, then it would be artificial, in contextual, and never purposive interpretation.

6.2. The Certificates issued by learned Principal District Judge, Vadodara and learned Chief Judicial Magistrate, Anand give out that the petitioner has practised for three years continuously, no matter there was seven days gap when the petitioner shifted from Vadodara to Anand which is her native place. The reason is given therefore for personal and social reason, the petitioner who had started practise at Vadodara, later shifted to her native. In the circumstances, the phrase "three years continuous practise" has to receive a pragmatic meaning and interpretation and the petitioner has to be accredited with having requisite experience of three years" continuous practise.

7. In Banaras Hindu University, Varanasi v. Dr. Indra Pratap Singh [AIR 1992 SC 780], the question was of eligibility to promotion to the post of University Lecturer under UGC Merit Promotion Scheme, for which the requirement was eight years continuous service in the respective cadre. The respondent-Dr. Indra Pratap Singh in that case had to his credit total eight years of service but with certain breaks in the interregnum. The Supreme Court observed thus:

"The expression "eight years of continuous service" in para 2(a) of the Scheme should be understood in a reasonable manner having regard to the underlying aim and object. Para 2(a) itself expressly recognises that eight years" service may be in more than one institution, the only requirement being a minimum of four years" service in the institution where he is being considered for promotion under the scheme. In case of shift from one University to other ? or from one institution of the other ? it can reasonably be presumed that there is bound to be some interval. The interval may be of a day, a week or a month. What is relevant is not the length of the interval or break, as it may be called, but its nature. It cannot be said that length of such interval is totally irrelevant, however, what is meant is that one must take into consideration the reason for which break or, the circumstances in which such break has occurred. Another factor to be taken into consideration in understanding and constructing the said expression is the object underlying the said requirement. The object is to ensure eight years" teaching experience." (Para 9)

7.1. The law laid down in Banaras Hindu University (supra) is helpful and is suggestive as to how the word "continuous service" should be properly construed in the present case also. When the rule making authority has provided that candidate must have put in continuous practise of three years on the criminal side, the intention of the rule making authority was to ensure that the candidate aspiring for the post of Assistant Public Prosecutor, Class II should have with reasonable regularity and consistency, practised continuously for three years.

There is no gainsaying that the petitioner has to his credit such continuous practise for three years except seven days break. The seven days break occurred because she had to shift to Anand to start practise cannot be decisive to hold against her eligibility to appear in interview that she had not practised for three years continuously.

8. It was stated by learned advocate for the second respondent that interviews are already underway and are likely to last till 23rd June, 2016 or that even beyond that if it was necessary. Originally it was stated that interviews were to be concluded on 21st June, 2016. Be as it may. The petitioner cannot be denied right to be called for interview as she has to be treated eligible experience-wise. Therefore, the respondent-Commission shall be required to call the petitioner for interview treating her eligible for interview on the basis of experience she possesses.

9. In the circumstances, petitioner cannot be denied right to be called for the interview. Therefore, this petition is disposed of by giving relief to the petitioner to the extent that the second respondent-Commission is directed to call the petitioner for interview for the post of Assistant Public Prosecutor, Class II, treating her as having possessed the requisite experience of three years" continuous and regular practise on the criminal side and take her interview.

9.1. Since it was stated that interviews are still going-on and are to last till 23rd June, 2016, petitioner is allowed to serve copy of this order directly on the second respondent. The second respondent shall call the petitioner for interview on any day as may be intimated by the second respondent to the petitioner.

10. The matter is not required to be considered for any further orders and no further relief can be granted.

11. Petition stands disposed of accordingly.