

(2008) 05 GUJ CK 0038

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1911 of 2007 in Special Civil Application No. 13502 of 2007 and Civil Application No. 12461 of 2007 in Letters Patent Appeal No. 1911 of 2007

State of Gujarat and Others

APPELLANT

Vs

Patel Bhavinkumar Chandulal

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Gujarat Agricultural Universities Act, 2004 — Section 4(4)
Recruitment Rules, 1973 — Rule 2, 3
University Grants Commission Act, 1956 — Section 3

Citation : (2008) 05 GUJ CK 0038

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : M.L. Shah, AGPs 1-3, for the Appellant; P.C. Kavina and S.K. Patel for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, J.—This Appeal under Clause 15 of the Letters Patent has been preferred by the State Government, Director of Animal Husbandry and the Gujarat Sub-ordinate Services Selection Board (hereinafter referred to as, "the Board") against the order dated 7th June, 2007 made by the learned Single Judge in above Special Civil Application No. 13502/2007.

2. Both the learned advocates have advanced extensive arguments. With the consent of the learned advocates, the Appeal is heard and finally decided by this order.

3. Pursuant to the advertisement published by the Board on 6th August, 2006, the respondent had applied for appointment as Assistant Livestock Inspector under the Director of Animal Husbandry. The candidature of the respondent was not accepted by the Board. According to the Board, the appellant does not

possess the requisite qualification prescribed under the recruitment rules. Feeling aggrieved, the respondent has preferred above Special Civil Application No. 13502/2007 under Article 226 of the Constitution of India for direction that the qualification of certificate in Livestock Inspector obtained by the respondent from Vinayaka Missions University, Salem, Tamil Nadu, Faculty of Distance Education be considered a valid qualification. The respondent be allowed to participate in the selection process of Assistant Livestock Inspectors and that the respondent be not non-suited on the ground that his qualification of certificate in Livestock Inspector obtained from Vinayaka Missions University, Salem is not a valid qualification.

4. By impugned order dated 7th June, 2007, the learned Single Judge has admitted the petition to final hearing and has granted interim relief in terms of paragraphs 13(d) and 13(e) of the writ petition i.e. pending the petition the appellants are directed "to consider the petitioner's qualification of certificate in Livestock Inspector course obtained from Vinayaka Missions University, Salem, Tamil Nadu, Faculty of Distance Education as valid qualification for the recruitment of Assistant Livestock Inspectors xxx xxx xxx and to consider petitioner's candidature for the said post" and "to allow the petitioner to fully participate in the selection process for the post of Assistant Livestock Inspectors xxx xxx xxx and to give appointment to the petitioner on the basis of his merits."

5. Pending this Appeal, by order dated 24th January, 2008 made by us, the appellants were permitted to complete the process of selection and appointment to the post of Assistant Livestock Inspector keeping one post vacant.

6. We are informed by Mrs. Shah that the appointment of Assistant Livestock Inspector is made on consolidated pay. Such appointment leads to appointment as Livestock Inspector by sheer passage of time. The appointments are, therefore, governed by the recruitment rules framed for appointment of Livestock Inspectors. She has also informed that pending this proceeding the respondent and 62 other candidates who possessed a certificate issued by the Vinayaka Missions University, Salem, Tamil Nadu were permitted to appear at the interview. Out of the said 63 applicants, 11 candidates including the respondent have found their place in the select list.

7. The appointment to the posts of Livestock Inspector under the Director of Animal Husbandry is governed by the Livestock Inspectors' Recruitment Rules, 1973 (hereinafter referred to as, "the Rules") made by the State Government in exercise of power conferred by proviso to Article 309 of the Constitution of India. Rule 2 of the Rules provides for appointment to the post of Livestock Inspector either by promotion or by direct selection. Rule 3 of the Rules provides for eligibility for appointment by direct selection. The said Rule 3 of the Rules, in so far it is relevant, reads as under:

3. To be eligible for appointment by direct selection to the post mentioned in Rule 2, a candidate must:

(a) xxxx xxxx xxxx

(b) have passed the Secondary School Certificate Examination with English and has successfully undergone the pre-service Livestock Inspector course prescribed by the department or its equivalent course of the Veterinary or Animal Husbandry Department of any other State of India.

8. It is this qualification prescribed under the Rules which is subject matter of dispute.

9. The respondent, in support of his claim, has produced the mark sheets and other certificates issued to him by the Vinayaka Missions University in respect of the Livestock Inspector course. According to the respondent, the Vinayaka Missions University is a deemed university declared as such by the Government of India u/s 3 of the University Grants Commission Act, 1956. A degree or diploma or certificate granted by such universities are considered valid qualification for employment under the State Government. The respondent thus possesses a valid qualification and has a legitimate right to compete for appointment under the State of Gujarat.

10. According to the appellants, the Livestock Inspector course undergone by the respondent is not a recognized course in the State of Gujarat. Besides, the respondent had attended a veterinary school in the name and style of Lord Krishna College at Bavla. Section 4(4) of the Gujarat Agriculture Universities Act, 2004 prohibits establishment of any such institution within the university area without the consent of the University and the sanction of the State Government. The said Section 4(4) reads as under:

4(4) No educational institution imparting education in agriculture and allied sciences or conducting and guiding research in agriculture or conducting and guiding programmes of extension education and situate within the University area shall, save with the consent of the University and the sanction of the State Government, be associated in any way with, or seek admission to any of the privileges of, any other University established by law.

11. Under the above referred Clause (b) of Rule 3 of the Rules, a candidate for appointment to the post of Assistant Livestock Inspector shall have undergone the Livestock Inspectors" course prescribed by the department or its equivalent post of the Veterinary or Animal Husbandry department of any other State in India. Thus, for being considered for appointment as Assistant Livestock Inspector, the candidate must have undergone course which is either prescribed by the State of Gujarat or an equivalent course prescribed by any other State in India.

12. We are informed that the State of Gujarat has not prescribed Livestock Inspectors" course. Nor, to the information of the State Government, any other State Government in India has prescribed such course. It is, however, submitted that the Livestock Inspectors" course conducted by the Agriculture Universities in

the State of Gujarat is approved by the State Government and the candidates who have undergone the said course alone are considered eligible for appointment as Livestock Inspector.

13. We fail to comprehend the contention raised on behalf of the State Government. The Rules have been framed by the State Government as far back as in the year 1973. The Rules specifically provided for a course prescribed by the State Government. Nevertheless, after 35 years we are informed that the State Government has not prescribed a Livestock Inspector course. The State Government is also not in a position to contend that the course conducted by the Agriculture Universities in the State of Gujarat is the one prescribed by the State Government. To "prescribe a course" and to "approve a course", two have different connotation, are different altogether and cannot be treated as synonymous to each other. If the above referred rule of eligibility is strictly applied, no candidate is eligible for appointment as Livestock Inspector.

14. In view of the above, pending the Appeal, by order dated 24th January, 2008, we had directed the Secretary to the Government of Gujarat, Agriculture and Cooperation Department, either himself or through any officer subordinate to him not lower in rank to the Deputy Secretary to the Government of Gujarat, to examine the equivalence of the course undergone by the respondent. The State Government, however, came forth in Misc. Civil Application No. 1122/2008 with an averment that the State Government was not in a position to examine such equivalence but the same could be done through the Academic Council of the Sardar Patel Agriculture University, Dantiwada. The said application was allowed by us. The appellants were permitted to examine the equivalence of the two courses by the Academic Council of the Sardar Patel Agriculture University. The report of the Academic Council placed on record suggests that it examined the subjects taught by the Vinayaka Missions University, Salem, Tamil Nadu, Faculty of Distance Education and opined that the course conducted by the Vinayaka Missions University, Salem, Tamil Nadu was identical to the course conducted by the Agriculture Universities in the State of Gujarat. What we had expected was not the comparison of the subjects taught i.e. their nomenclature, etc. but the level or intensity of the education. As we were not satisfied with the report of the Academic Council of the University, we permitted the parties to bring further materials. Several affidavits have been filed by both the parties. After examining the affidavits and the materials placed on the record, we are unable to say that the education imparted by the Vinayaka Missions University is identical or similar to the education imparted by the Agriculture Universities. In other words, the substantial materials placed on the record do not indicate the level or intensity of the education or the type of practical training given to the students.

15. As we have held that under the Rules none of the candidates is eligible for appointment as Assistant Livestock Inspector and that the materials on record does not prima facie establish that the education imparted by the Vinayaka Missions University, Salem, Tamil Nadu, Faculty of Distance Education is identical/

similar to the course conducted by the Agriculture Universities, unless it is opined by an expert body that both the courses are identical in every respect, the respondent cannot be appointed as Assistant Livestock Inspector by interim order pending the petition. The said relief would also amount to allowing petition at the interim stage.

16. For the aforesaid reasons, the Letters Patent Appeal is allowed. The impugned order dated 7th June, 2007 made by the learned Single Judge in so far as the appellants are directed to give appointment to the respondent is set-aside. Civil Application stands disposed of. The parties will bear their own cost.