

(2011) 05 GUJ CK 0119

In the Gujarat High Court

Case No : Special Civil Application No. 2467 of 2011

Vaghela Ushaben Dahyabhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 05 GUJ CK 0119

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Harnish V. Darji, for the Appellant; Maulik G. Nanavati, Asstt. Government Pleader for Respondent 1 and Deepak P. Sanchela, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Maulik G. Nanavati, learned Assistant Government Pleader, and Mr. Deepak P. Sanchela, learned advocate waive service of notice of Rule on behalf of Respondents Nos. 1 and 2 respectively. On the facts, and in the circumstances of the case, and with the consent of the learned advocates for the respective parties, the petition is being heard and finally decided, today.

2. This petition, under Article 226 of the Constitution of India, has been filed with the following prayers:

(A) Admit and allow this Special Civil Application.

(B) Allow this Special Civil Application and be pleased to hold action of Respondent authority in not regularizing services of Petitioners as bad, illegal and arbitrary and further be pleased to direct Respondent authority to consider case of Petitioner for selection on regular post and regularize service of Petitioner and direct them to give all consequential benefits to Petitioner.

(C) Pending admission, hearing and till final disposal of this petition be pleased to grant interim relief in terms of para 10(B).

(D) Pending admission, hearing and till final disposal of this petition be pleased to direct Respondent No. 2 not change service condition of Petitioner.

(E) Be pleased to award the cost of this petition.

(F) Grant such other and further relief as deemed fit and just in the interest of justice.

3. Briefly stated, the case of the Petitioner is that she was appointed on 01.03.1990, as Safai Kamdar on daily wages in Mansa Municipality. She has been working as Safai Kamdar ever since her date of appointment and is still engaged as such. The grievance of the Petitioner is that though work is available, Respondent No. 2 has not taken any steps to regularize her services. According to the Petitioner, the Respondent - Municipality has a sanctioned set up and had initiated the procedure for appointment on several posts, by issuing an Advertisement dated 13.01.2008. Pursuant thereto, the Petitioner had applied for appointment to the post of Safai Kamdar, and was called for the interview on 16.06.2008. However, as the Petitioner did not possess the requisite educational qualification, she was not given appointment. Being aggrieved thereby, the Petitioner has approached this Court by filing the present petition.

4. Mr. Harnish V. Darji, learned advocate for the Petitioner, has submitted that in petitions filed by similarly situated persons, the Court had directed the Respondents to consider the cases of daily wagers for regularization. The case of the Petitioner has not been considered in proper perspective by the Respondent-Municipality, though there is a regular sanctioned setup and posts are available. It is further submitted that the work that the Petitioner is performing does not require any educational qualifications. Though, admittedly, the Petitioner does not possess the necessary qualifications as mentioned in the advertisement, considering the fact that she has worked for about 21 years, the Respondent-Municipality ought to have regularized her services, in view of the judgment in Secretary, State of Karnataka and Others Vs. Umadevi and Others,

5. The affidavit-in-reply has been filed by the Chief Officer of the Respondent-Municipality, wherein it is stated that if any appointment on regular post is to be made, the procedure prescribed in the sanctioned setup has to be followed and any appointment made should be in accordance with the Recruitment Rules.

6. Referring to the said affidavit-in-reply, Mr. Dipak P. Sanchela, learned advocate for Respondent No. 2, who is the main contesting Respondent, has submitted that the Petitioner had applied pursuant to the advertisement and could not be selected as she does not have the requisite educational qualifications as stipulated therein. The Municipality is bound to follow the criteria set by Respondent No. 1, Director of Municipalities, and the sanctioned posts have to be filled up in accordance with the said criteria. It is contended that in the present

case, the minimum educational requirement for the post of Safai Kamdar as per advertisement dated 13.01.2008 is that the candidate should have passed the 4th Standard which, admittedly, the Petitioner does not possess. Therefore, the Petitioner could not be given appointment on regular basis.

7. I have heard the learned advocates for the respective parties and perused the averments made in the petition and other documents on record.

8. It is an admitted position that the Petitioner does not fulfil the requisite educational qualification of having passed the 4th Standard, which is necessary for being appointed as Safai Kamdar on regular basis, as per advertisement dated 13.01.2008. When the eligibility criteria has been prescribed by the Respondent-Municipality as per the sanctioned setup, any candidate appointed to such post should necessarily fulfil the said criteria. Merely because the Petitioner has worked for 21 years as daily waged Safai Kamdar in the Respondent-Municipality, and is still working as such, does not mean that the prescribed educational qualifications and criteria should be given a go-bye, and the services of the Petitioner should be regularized de hors the Recruitment Rules and stipulations made in the advertisement, only on the ground of length of service. In any case, the Petitioner has not challenged the said advertisement. On the contrary, she has applied in pursuance thereto, and even appeared in the interview, unsuccessfully. Having participated in the recruitment process, it does not lie in the mouth of the Petitioner to say that her services should be regularized de hors the eligibility criteria prescribed for such post. The learned advocate for the Petitioner has placed reliance upon the decision of Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors. wherein it has been held that:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore and Another Vs. S.V. Narayanappa, R.N. Nanjundappa Vs. T. Thimmiah and Another, and B.N. Nagarajan and Others Vs. State of Karnataka and Others, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not

subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

9. The above observations will not be applicable to the facts and circumstances of the present case, as the Petitioner has been appointed on daily wage basis on 01.03.1990 and it is not her case, or even that of the Respondents, that her appointment as a daily wager is either irregular, or illegal. In addition thereto, during the subsistence of her appointment on daily wages, the Petitioner has applied pursuant to the advertisement and has appeared for the interview for the post of Safai Kamdar on regular basis. The post has been advertised as a part of the regular recruitment process and the Petitioner admittedly does not possess the requisite educational qualifications for the post. In this view of the matter, to grant the prayer for regularization made by the Petitioner would amount to appointment of a person who is not qualified or eligible, through the back-door, which would neither be permissible, nor legally sustainable.

10. The ground advanced by the learned advocate for the Petitioner that the nature of the work performed by the Petitioner does not require any educational qualifications, cannot be accepted, as the eligibility criteria are not to be decided by the Petitioner but by the employer. In a fact-situation such as the present one where the Petitioner admittedly does not fulfil the educational requirements for the post in question, she cannot be considered to be entitled to the post in question. The action of the Respondents in not offering the Petitioner regular appointment on the ground that she lacks the requisite educational qualification, cannot be said to be illegal or unreasonable.

11. For the afore stated reasons, the petition has no merit and deserves to be dismissed. It is, accordingly, dismissed. Rule is discharged. There shall be no orders as to costs.