

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 419 of 1996

IN

SPECIAL CIVIL APPLICATION No 2070 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA Sd/-

AND

Hon'ble MR.JUSTICE S.D.PANDIT Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- Nos. 1 to 5 No.

GPSC

Versus

JITENDRASINH J SOLANKI

Appearance:

MR RJ OZA for Petitioner

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

Date of decision: 30/04/97

ORAL JUDGEMENT

(Per Pandit, J)

1. Original Respondent No.2 Gujarat Public Service Commission in Special Civil Application No.2070 of 1992 has filed the present Letters Patent Appeal against the order of the learned Single Judge passed on February 7,9,1994.

2. We have heard Mr.R.J.Oza, learned Advocate for the Appellant at length at the admission stage of the Appeal. The learned Single Judge has passed the judgment on February 7,9,1994 and by his Common Judgment disposed of Special Civil Applications No. 2070, 2137 and 2692 of 1992. The present respondents No. 1 to 5 had filed Special Civil Application No. 2070 of 1992 to obtain writ of mandamus to absorb the petitioners and the persons listed at Annexure 'B' of the said petition in the regular vacancies of Assistant Engineers from the date of the initial appointment and to confer upon the petitioners, benefits of service including that of pay, seniority, future promotions etc. and to get writ of prohibition to restrain respondents No. 1 and 2 from proceeding with the advertisement at Annexure 'A' annexed to the said petition without first absorbing the petitioners and persons listed in Annexure 'B' and to declare the said advertisement as illegal, null and void.

3. The petitioners in the said group of petitions initially came to be recruited as Assistant Engineers (Civil) since 1981-84. Thereafter, the advertisement was published for filling in the post of Assistant Engineers (Civil) and the petitioners were selected by Gujarat Public Service Commission and were placed in the wait list. All the petitioners who had appeared in the said examination held by Gujarat Public Service Commission had passed in the said examination and had continued to serve as Assistant Engineer till today. It must be mentioned that the petitioners were appointed by the State Government in 1981-84 and they had continuously worked till today and the number of the vacancies did exist and the services of the petitioner are also required and therefore, it is their claim that the services of the petitioners are required to be regularised and other benefits flowing from such regularisation are required to be made available to them. Before this the Association of such Assistant Engineers (Civil) moved Special Civil Application No. 5993 of 1986 and there were other petitions bearing Special Civil Applications No.6017 of 1986 and 6530 of 1986 which were individually filed by some other Assistant Engineers. All these petitioners were heard by the Division Bench of this Court on 20.4.1988. Before that, it appears that on 30.6.1986 the Gujarat Public Service Commission had issued

advertisement inviting applications from qualified persons for filling up 1000 post of Assistant Engineers (Civil). The present petitioners and the petitioners of Special Civil Application No. 5993 of 1986 had applied for the said post and they have undergone the process of selection and their names also were included in the wait list. Eventhough their names had appeared in the wait list prepared by Gujarat Public Service Commission they were not regularised by absorbing in the post of Assistant Engineers.

4. While deciding Special Civil Application No. 5996 of 1986 and others, the Division Bench of this Court comprising of(A.M.Ahmadi, J [who lateron became the Chief Justice of India] and D.H.Shukla, JJ) had noticed that pursuant to the advertisement dated 30.6.1986 for filling up 1000 posts of Assistant Engineers (Civil) the Gujarat Public Service Commission had selected 1237 candidates and offered appointment to 625 candidates comprising of 541 belonging to general category and 84 belonging to reserved category. Out of 625 candidates who were offered appaointment in general category 444 had joined duty while 81 did not report for duty.

5. The Gujarat Public Service Commission has waiting list of 612 candidates inclusive of 130 appointees out of which 30 have by that time resigned. However, at that time appaointments could not be made as the policy decision was taken by the State Government by way of economy drive not to fill in the posts. At the same time, those persons who were selected and placed in the wait list also were not offered any appointments as many persons above them were yet to be regularly absorbed and appointed. The Division Bench has also found that out of 547 ad-hoc appointees there were 425 appointees who were actually working and 122 have already resigned and out of the said 425 appointees 200 were already on waiting list prepared by the Gujarat Public Service Commission and therefore, the Division Bench declared that they were entitled to continue. However, it was noticed that out of 420 appointees 17 did not appear before Gujarat Public Service Commission while rest appeared and out of them 200 were declared unsuccessful whereas 200 were found in the wait list. Having so noted the position of the candidates who were selected by the Gujarat Public Service Commission and whose names were included in the wait list the Division Bench in para 9 observed that the endeavour of the Court should be to protect such employees in preference to those who have not been successful or failed to appear at the Gujarat Public Service Commission test/interview. The Division Bench

also observed that this can be done by showing the names of such unsuccessful candidates whose names were included in the wait list against regular candidates belonging to reserved category till regular candidates belonging to reserved category become available. The Division Bench has also directed that in the meantime if their turn for absorption in the general category arises they can be given regular appointment. Then it was further found that even after such directions were issued that would still leave a balance of 175 vacancies in the reserved category. The Court found that in such vacancies some of the other ad-hoc appointees be absorbed as per their seniority unless there is reduction of posts in the said category also because of economic drive. However, the Division Bench clarified that such ad-hoc appointees will have no right, whatever and liable to be reverted at any time when the regular appointees are available. For such ad-hoc employees who were not successful in the test held by the Gujarat Public Service Commission the Division Bench recommended that if in future new posts are created by Sardar Sarovar Narmada Development Authority or any other authority such employees may be considered on priority basis vis-a-vis, fresh entrants and in the opinion of the Division Bench that was the maximum protection that could be given to such ad-hoc appointees and ultimately it gave direction as under :

"In view of the above discussion, we discharge the rule and stated in paragraph 9 hereinabove. We may further point out that the life of the waiting list shall have to be extended for otherwise it may lapse necessitating fresh recruitment by the G.P.S.C. We would leave it to the concerned authorities to decide on the duration of the extension required. Parties will bear their own costs in all the four petitions."

6. Thus the earlier Division Bench of this Court had protected those ad-hoc appointees whose names were included in the wait list and the present respondents no. 1 to 5 original petitioners in Special Civil Application No. 2070 of 1992 were in the said wait list.

7. Said decision given by the Division Bench was taken up before the Apex Court by the respondent State by filing Special Leave Petition bearing SLP (Civil) No. 9029 of 1988, and while rejecting the said SLP on 3.4.1989 the Apex Court passed the following order :

"We do not find any ground to interfere with the

order of the High Court, the petition is therefore disposed of. There are certain observations in paragraphs 9 & 14 of the order of the High Court with regard to the extension of the period of the panel in which the names of the petitioners are included. It is open to the Govt. of Gujarat to consider what further action should be taken in the light of the observation of the High Court".

8. In view of the above order of the Apex Court, it is clear that the direction given by the Division Bench of this Court is approved by the Apex Court. It is the case of the petitioner that thereafter the State Government had examined the matter of regularising the services of the Assistant Engineers and negotiations had taken place between the Assistant Engineers, Chief Secretary and other Secretaries of the concerned departments and it was decided and agreed that the services of 400 ad-hoc Assistant Engineers will be regularised in consultation with the Gujarat Public Service Commission. Out of those 400 ad-hoc Assistant Engineers 200 were of the category of those who had been successful in the examination conducted by the Gujarat Public Service Commission and whose names were appearing in the wait list prepared by the Gujarat Public Service Commission. But instead of accepting the said decision on the part of the Government the orders of absorbing who were successful in the examination held by the Gujarat Public Service Commission and whose names were appearing in the wait list, the Gujarat Public Service Commission has come before the Court by filing this Special Civil Application No. 2070 of 1992. The learned Single Judge has considered the claim of the petitioner in detail and has taken into consideration the decision of the earlier Division Bench of this Court in Special Civil Application No. 5993 of 1986 and other allied matters as well as the direction issued by the Apex Court while rejecting the Special Leave Petition in respect of the said decision of the Division Bench. He has also taken into consideration the decision of the Apex Court in the case of Dr.M.A.Haque & Others Vs. Union of India [1993(2)SCC 213]. and having considered the principle that no back door entry is to be permitted or entertained by the Court and he has allowed Special Civil Application No. 2070 of 1992 by passing the following order :

"It is also true that no back-door entry is to be entertained or permitted by the Courts. At the same time, when under administrative exigencies executive itself has resorted to a large scale

ad-hoc and temporary appointments of the employees which is continued for 7 to 10 years, in the opinion of this Court a strong case is made out for regularisation of services of such employees, subject of course, to such candidates being regularised in consultation with the Gujarat Public Service Commission as was done by the Supreme Court. All other factors being equal, in the opinion of this Court, this petitioner is also required to be allowed so as to direct the respondent State to regularise the services of this class of Asstt. Engineers (Civil) in consultation with Gujarat Public Service Commission on the evaluation of their work and conduct based on their conduct reports in respect of period of last 7 years. Such evaluation should be done by the Gujarat Public Service Commission within two months preferrably by May 31,1994. The Asstt.Engineers (Civil) so regularised in consultation with Gujarat Public Service Commission shall take bottom seniority, i.e. the seniority below the wait-listed candidates.

20. In the result, all the petitions succeed and rule in each petition is made absolute accordingly with no order as to costs".

9. The learned Advocate for the Appellant vehemently urged before us that the learned Single Judge was not justified in allowing the present petition because the petitioners were not originally recruited by proper process. As a matter of fact, there is no dispute of the fact that the respondent Nos. 1 to 5 original petitioners were not recruited through Public Service Commission. That position was never disputed by the petitioners. The learned Single Judge has also never ignored that position. The learned Single Judge has taken into consideration that respondent nos. 1 to 5 original petitioners had appeared for the recruitment examination held by the Gujarat Public Service Commission and had succeeded in the same and their names were also empanelled in the wait list prepared by the Gujarat Public Service Commission and the earlier Division Bench of this Court had issued the direction to continue the said wait list and to take into consideration their continuous service. The direction of the Division Bench of this Court was also upheld by the Apex Court. The State Government had also accepted that position and had agreed to regularise their service. Therefore, in the

circumstances, the order passed by the learned Single Judge is quite proper and legal. We do not find any reason to hold that the present Appeal deserves admission in view of facts and the circumstances of the matter as discussed above and the cogent reasons given by the learned Single Judge and we do not find any merit in this Appeal. We accordingly dismiss this Appeal summarily. No order as to costs.

Sd/- Sd/-

Dt.30.4.1997. (N.J.Pandya, J.) (S.D.Pandit, J.)

m.m.bhatt.