

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6060 of 1996

With

Civil Application No.10070 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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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?
1 to 5 No

PANDYA BHASKAER RAMESHCHANDRA

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner
Mr. V. B.Gharania, learned Asst.G.P.
for Respondent No. 1
Mr. P.R.Joshi for
MR VIJAY H PATEL for Respondent No. 2
Ms. Khyati P. Hathi for
MR PV HATHI for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 31/01/97

ORAL JUDGMENT :

1. The petitioner has been working as a Primary Teacher with the District Primary Education Officer, District Panchayat, Jamnagar. He applied for appointment as a Primary Teacher under Panchmahal District. While so applying for appointment in the Panchmahal District he could not produce the original documents at the time of interview for the post of Primary Teacher under Panchmahal District because the original documents were with the District Primary Education Officer, Jamnagar. On that ground his candidature was not considered. The petitioner then preferred Special Civil Application No.6060 of 1996 before this Court and in that petition a direction was issued by this Court to the District Primary Education Officer of Jamnagar District Panchayat to send the original Certificates of SSC and P.T.C. of the petitioner retained by it to District Education Committee of Panchmahal District either by special messenger or through registered Post A.D. within a period of 10 days from 23.9.96. It is submitted by Ms. Hathi appearing on behalf of respondent No.3 i.e. District Primary Education Committee, Jamnagar that these documents relating to the petitioner had been accordingly sent to the respondent No.2 i.e. District Education Committee of Panchmahal District. Mr. Joshi, learned counsel for respondent No.2, has submitted that the documents had been received from the District Primary Education Officer, Jamnagar but before the documents could be received, the select list had already been prepared and appointments had already been given by order dated 31.7.96. It is, therefore, clear that the petitioner was helpless with regard to the production of the original documents at the time of interview for his appointment in the Panchmahal District as Primary Teacher. Had these documents been earlier released by the District Education Officer of Jamnagar, the petitioner's candidature would have been certainly considered. No party can be allowed to take advantage of the helplessness of the other party. The production of the documents at the time of interview was beyond the control and comprehension of the petitioner. A similar situation was considered by this Court while deciding Special Civil Application No.4661 of 1996 on 18.12.96 and the Rule was made absolute in that case.

2. In this view of the matter, it will be just and proper to direct the respondent No.2 i.e. District Education Committee, Panchmahal District to consider the petitioner's candidature for appointment as Primary Teacher on his merits after taking into consideration the documents, which have now been made available, as if

these documents were available with the petitioner at the time of the interview and after considering petitioner's candidature accordingly, in case he is found to be suitable, his name may be interposed in the select list for appointment as Primary Teacher in the Panchmahal District Panchayat and the appointment shall not be denied to him only because he had failed to produce the documents at the time of interview.

3. This Special Civil Application is accordingly allowed with the directions as above to be carried out within a period of two weeks from the date the certified copy of this order is made available to the District Panchayat of Panchmahal. Rule is made absolute accordingly with no order as to costs.

4. In view of the order passed in the main Special Civil Application, no orders are required to be passed in this Civil Application. Civil Application is disposed of accordingly.

Direct service is permitted.