

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 690 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
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? : NO

1 to 5 No

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KAUSHIKKUMAR KANTILAL PUROHIT

Versus

CENTRAL BANK OF INDIA  
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Appearance:

MR KV SHELAT for Petitioner

MR ARUN H MEHTA for Respondent No. 1  
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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 30/06/2000

ORAL JUDGEMENT

Being aggrieved by the dismissal of Civil Suit  
No. 622/78 by the City Civil Court, Ahmedabad, by  
judgment dated 29.2.1980, the appellant-original

plaintiff has filed the present first appeal.

2. The facts, in a nutshell, as per the pleadings, are as under:-

2.1 The father of the plaintiff was serving as an employee of defendant No. 1 bank of which defendant No. 2 was an Assistant General Manager. As per policy of defendant No. 1-bank in the process of recruitment of employees in the cadre of clerk, the children of the employees of the bank were given priority and 25% of the vacancies arising in the said cadre were reserved for them. To be qualified for being considered for appointment in the cadre of clerk, the parent of the concerned candidate serving in the bank should have put in 15 years of uninterrupted service and the candidate should be in the age group of 18-25 years. The minimum qualification for the candidate for the reserved category was Matriculation with English and Arithmetic as their subjects. Only one son or daughter of an employee was to become eligible for applying for the said post.

2.2 The case of the plaintiff in the plaint was that his age was 22 years and had passed his Matriculation examination in 1972 with English and Arithmetic. He knew English and Gujarati typewriting. Defendant No.1-bank had called all the candidates for written test for appointment and the plaintiff had also appeared at the written test. The plaintiff had secured 31 marks at the said examination against 30 marks which was the minimum standard. Thereafter the plaintiff was called for an interview. Ultimately, the plaintiff was appointed as a temporary typist on 8.8.75 for a period of 2 months in Khokhra-Mehmedabad Branch of defendant-No. 1 bank. Thereafter, he was appointed for a period of one month in Gheekanta branch of defendant No. 1-bank. Again he was given temporary appointment as clerk in June 1977. Thus, the plaintiff was appointed as a typist or clerk on temporary basis in defendant No. 1 bank from time to time.

2.3 The plaintiff could not be given regular appointment in the reserved cadre of clerk by defendant No. 1. Being aggrieved by the fact that the plaintiff was not given regular appointment, he was constrained to file the suit referred to hereinabove.

2.4 The defendants filed their written statement being Exh. 13 and resisted the plaintiff's claim on the ground that there was no rule or regulation at the relevant time with regard to recruitment of children of

employees of defendant No.1-bank as it was suggested in the plaint. The defendant bank also denied that there was any resolution laying down a policy that 25% of the vacancies in the clerical cadre would be filled up by eligible children of the employees of the bank. It was the case of the defendant-bank that the Govt. of India had given a direction to the defendant-bank under Circular dated 10.4.76 that sons and daughters of the employees should not be given any preferential treatment in the matter of appointment in the cadre of clerk. It was, therefore, submitted in the written reply by the defendant bank that the plaintiff had no right to be appointed as a clerk simply because his father was an employee of the defendant bank.

2.5 Upon perusal of the pleadings, the trial court had raised the following issues:-

1. Does the plaintiff prove that Defendant  
No. 1 Bank is bound to employ him in its  
service by reason of the fact that his  
father was an employee of defendant No.1?
2. (a) Does the plaintiff prove that he has  
passed the written test and the oral  
interview taken by defendant No. 1?
- (b) If yes, does the plaintiff further  
prove that on that account, defendant No.  
1 is bound to employ him in its service?
3. Does the plaintiff prove that he belongs  
to specially reserved category as averred  
in the plaint?
4. Is the plaintiff entitled to the relief  
prayed for?
5. What order and decree?

Issues Nos. 1 and 4 were decided in the negative whereas 2 and 3 were decided in the affirmative.

The trial court ultimately dismissed the suit for the reason that the policy whereby reservation was given to the children of the employees was challenged in the High Court of Andhra Pradesh in Writ Petitions Nos. 1894/77 and 1827/78. The said petitions were decided on 07.3.78 and as per the judgment delivered by the High Court of Andhra Pradesh, the rule and the policy whereby

special category of children of the employees of the defendant bank was created was held to be illegal and the said rules and policy was held to be ultra vires Art. 14 of the Constitution of India.

3. The learned Judge has reproduced the relevant portion of the judgment delivered by the Andhra Pradesh High Court and on the basis of the said judgment, the trial court came to the conclusion that the plaintiff had no right to be appointed in the cadre of clerk in pursuance of the policy of defendant No. 1 bank.

4. Learned Advocate Shri K.V. Shelat appearing for the appellant has submitted that though father of the plaintiff had sincerely served defendant No. 1 bank for more than 15 years and though the plaintiff was otherwise eligible for appointment to the post of clerk, the plaintiff was not given regular appointment as clerk. It has been submitted by him that certain other persons who were children of the employees of defendant No. 1 bank had been given appointments in the past and in the circumstances, the defendant bank ought to have offered regular appointment in the cadre of clerk to the plaintiff. It has been submitted by him that such an act of good gesture would ultimately benefit the institution because in that event the employees of the defendant bank would be more sincere in performance of their duties and looking to the fact that there was a policy in the past with regard to giving employment to one of the sons or daughters of an employee, the plaintiff's case ought to have been considered with due sympathy by the defendant bank.

5. On the other hand, learned advocate Shri A.H. Mehta appearing for the defendants has submitted that looking to the law laid down by the Hon'ble Supreme Court of India, it would not be open to the defendant bank to give any favourable treatment to the plaintiff only on the ground that his father was employed by the defendant bank. He has relied upon the judgment referred to by the trial court in its judgment and has also relied upon the judgment delivered in the case of Yogender Pal Sing and others v. Union of India and others, AIR 1987 SC 1015. As per the said decision, it would not be open to the defendant bank to give any preferential treatment to the plaintiff in the matter of giving appointment as a clerk. It has been submitted by him that a similar question had arisen before the Hon'ble Supreme Court in the above mentioned case where the Supreme Court had observed that as per the provisions of Art. 16 of the Constitution of India, in Government employment and in employment of

semi-Government bodies, all citizens should be given equal opportunities and nobody should be given any favourable treatment on the ground of religion, race, cast, sex, descent, etc. He has submitted that the claim of the appellant to get the job only on the basis of the fact that the appellant was the son of an employee of the Bank was also not sustainable in view of the judgment delivered by the Hon'ble Supreme Court and therefore the trial court had rightly dismissed the suit.

6. Looking to the above-referred legal position, in my opinion, no fault can be found with the conclusions arrived at by the trial court. The trial court has rightly considered the judgment delivered by the Andhra Pradesh High Court and dismissal of the suit is also justified in view of the law laid down by the Supreme Court in the case of Yogender Pal Singh and others (supra).

7. No other argument has been advanced by the learned advocates and looking to the facts of the case, I do not think that this is a case where this court, as an appellate court, should interfere with the findings arrived at by the trial court.

8. In the circumstances, the appeal is dismissed with no order as to costs.

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(A.R. Dave, J.)

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