

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8765 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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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 concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?
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GOSWAMI NIRUBEN PUNJAPURI

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 8765 of 1999
MR KB PUJARA for Petitioner No. 1
MR DHARMENDRU PANDYA with MR MAYANK VORA
for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 30/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. K.B.Pujara for petitioner and learned advocate Mr. Dharmendru Pandya with learned advocate Mr. Mayank Vora appearing on behalf of respondent.

2. The grievance of the petitioner is that she is widow belonging to SEBC (Bakshi Panch) category. According to the petitioner, she is therefore qualified and eligible to be appointed as vidya sahayak primary teacher. According to the petitioner the criteria for such examination being 100% objective the petitioner's merit marks come to 71.38% and being a widow she is entitled 5% more merit marks as per Government Resolution dated 22.5.1997. According to the petitioner this aspect has not been taken into account by the respondent and the respondent had erroneously considered her merit marks to be 70.33% and has placed the petitioner at SNo. 112 in the select list of 125 candidates of SEBC category and has issued appointment orders up to SNo.104. According to the petitioner if the respondent had considered 5% more merit mark of the petitioner as a widow then she would have been definitely given appointment. One Bharatsinh Ramsinh Thakore of SEBC category having only 72% merit marks is already appointed by the respondent. Therefore, according to the petitioner the respondent has wrongfully denied the appointment to the petitioner.

3. Learned advocate Mr. K.B.Pujara appearing on behalf of the petitioner has relied upon the Government Resolution dated 22.5.1997 wherein, at Item No.2 at page 11, it is made clear in sub-item No.3 that in case of any examination or oral interview, if eligibility criteria is decided on the basis of existing merits then in such cases widow is entitled 5% more marks for considering the merits of such candidate. This is the principle which has been decided by the State Government which is binding to the respondent. Mr. Pujara submitted that the said Government Resolution has not been followed in case of the petitioner and that ultimately resulted in denying the appointment to the petitioner. He also submitted that considering the merit marks of the petitioner 71.38% if 5% more marks are added it would become 76.38%, then, naturally the petitioner will get the appointment. One Bharatsinh Ramsinh Thakore of SEBC category having only 72% marks has got appointment therefore, according to him it amounts to denial of legitimate and legal right to the petitioner of getting the appointment as 5% mark is required to be added in existing merit marks of the petitioner being a widow as per Government Resolution

dated 22.5.1997. Learned advocate Mr. Pujara has also submitted that earlier the present petitioner has filed Special Civil Application No. 2930 of 1999 whereby this Court, by order dated 30.4.1999, has directed the petitioner to make a representation to the respondent and in pursuance to that, representation dated 5.5.1999 was made by the petitioner to the respondent. He also submitted that this Court has kept open that in case if the representation is decided against the petitioner, petitioner can approach this Court by way of note to revive the main petition. In response to the representation dated 5.5.1999 of the petitioner the respondent has rejected the said representation on 4.6.1999 but learned advocate Mr. Pujara has submitted that Government Resolution dated 22.5.1997 has not been taken into account while rejecting the representation of the petitioner by the respondent. Therefore, learned advocate Mr. Pujara has submitted that petitioner is entitled the benefit of 5% more marks in actual receiving the merits and if that 5% marks are added, naturally the petitioner is entitled the appointment in comparison to Bharatsinh Ramsinh Thakore who has obtained only 72% marks and got the appointment.

4. Learned advocate Mr. Dharmendru Pandya appearing on behalf of the respondent has relied upon the affidavit-in-reply filed by the respondent. He submitted that earlier petition being Special Civil Application No. 2930 of 1999 was disposed of. He also submitted that at the time of recruitment of vidya sahayak the State Government had not issued any direction to include 5% more marks to the widow and no such benefit has been given by the respondent to any candidate and therefore, this petition cannot be entertained. He also submitted that the petitioner was not eligible for the post of vidya sahayak because the petitioner has obtained 70.33% marks and petitioner was placed in merit list at SNo. 112 and petitioner was not eligible to get the appointment for the post of vidya sahayak and therefore earlier also the case of the petitioner was not considered. Except that no other contention is raised by the respondent.

5. I have considered the submissions made by both the learned advocates. The case of the petitioner is based upon Government Resolution dated 22.5.1997 at page 10 of the petition. The circular has been accepted by the respondent but with a rider that no such instruction has been given by the State Government to the respondent to give 5% more marks to the widow and no such benefit was given to any other widow. Except that no other

contention has been raised by the respondent. It is also not in dispute and no contention has been raised by the respondent in respect to the averments of giving appointment to one Bharatsinh Ramsinh Thakore of SEBC category having only 72% merit marks. Therefore, considering these two contentions raised by the respondent and considering the provisions made in Government Resolution dated 22.5.1997 which is applicable and binding to the respondent, there is no need to have a separate instruction required by the respondent for implementing the Government Resolution because the said Government Resolution applies to all Agencies who are recruiting women directly and they have to strictly comply the said Government Resolution. Therefore, the contention which has been raised by the respondent that no such written instruction has been given by the State Government, according to my opinion, is not necessary. Once the Government Resolution is passed and declared it shall have the binding effect on all such Agency and same is required to be implemented by the respondent. Considering Item No.8 at page 11 whereby a widow is required first selection, for that, certain principles are required to be considered while giving priority in selection to the widow. Item No.3 is relevant whereby it is provided that in case when a candidate is required to appear in examination or in oral interview and qualification is required to be determined on the basis of having the merits in SSC examination then widow is entitled 5% more marks while considering the merits of such widow. If the said condition No.3 is implemented in favour of the petitioner then the petitioner would get 76.30% merit marks at the relevant time when she was placed at SNo. 112 and the petitioner must have got the appointment in the post of vidya sahayak. This aspect has not been taken into consideration by the respondent while determining the select list and Government Resolution dated 22.5.1997 has not been complied in favour of the petitioner while determining the select list and the petitioner has not been appointed because she was placed at SNo.112 and the appointments were given up to 104. Therefore, according to my opinion petitioner is entitled 5% more merit marks as per Government Resolution dated 22.5.1997 and petitioner is also entitled the consequential benefit of appointment in light of the fact that one one Bharatsinh Ramsinh of SEBC category has been given appointment on the basis of obtaining 72% merit marks.

6. In result present petition is allowed with a direction to the respondent to consider the merit marks of the petitioner as 76.38% on the basis of the

Government Resolution dated 22.5.1997 and to place the petitioner at proper SNo. in the select list which was prepared by the respondent at the relevant time and if any candidate subsequent to such number has been given appointment by the respondent then to give the appointment to the petitioner with all consequential benefits in the post of vidya sahayak accordingly within a period of one month from the date of receiving the copy of this order. Rule is made absolute accordingly. No order as to costs.

Direct service is permitted.

(H.K.Rathod,J)

Jayanti*