

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2958 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

- =====
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?

VINABEN K DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2958 of 1999
MR RJ OZA for Petitioner No. 1
RULE SERVED for Respondent No. 1
MR L.B. DABHI, LD. AGP for Respondent No. 2
NANAVATI ASSOCIATES for Respondent No. 3
-

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. The petitioner was enrolled with the Employment
Exchange and pursuance to the said enrollment she was
called for interview and subsequent to the interview and

selection she was appointed as Assistant Teacher by order dated 15th June, 1981. At the time of her appointment she had crossed the prescribed age limit and, therefore, the school management sought approval of the competent authority of the State Government to approve her upper age limit & regularise her service as a special case.

2. The respondent no.2, Director of Social Defence by order of approval dated 30th April, 1982 regularised the appointment of the petitioner by approving the upper age limit. After regularisation of her appointment petitioner had undergone a training in diploma course in the Society for Care, Treatment and Training Centre at Bombay at her own cost, and after completion of the training she was given fresh selection for the post of Assistant Teacher and accordingly she was selected and given appointment vide order dated 15th July, 1983.

3. On appointment of the petitioner on 15th July, 1983, again the school management have applied for relaxation in upper age of the petitioner but the same was declined by the respondent no.2 herein. The said decision of the respondent no.2 was challenged by the petitioner by preferring Special Civil Application no. 3491 of 1985 before this Court, which came to be allowed by judgment & order dated 8th October, 1997. This Court by allowing the said petition has observed as follows :-

" In view of these two additional factors, coupled with another fact that the petitioner is now in service for all these twelve years may be under the Court's order, it is a fit case where the respondent - State should re-examine the matter of relaxation of age eligibility of the petitioner for giving approval to her appointment which has been given to her under the order dated 15th July, 1983. In the result, this Special Civil Application is allowed and the order of respondent no.1 and 2 dated 4-6-85 and 25-6-85 respectively are quashed and set aside. Similarly, the order of the school, if any, passed for termination of services of the petitioner is also quashed and set aside. The respondent State is directed to reconsider the matter for relaxation of petitioner's age eligibility for approval of appointment to the post of Assistant Teacher and while considering that matter, the respondent State shall keep in mind the observations made by this court in this judgment."

In that view of the matter, respondent - State Government had passed the order of 19th May 1998, which has been produced by the petitioner at Annexure-A/1 to the petition.

4. It seems that the Dy. Director has interpreted the said order and granted approval only from 23rd June 1986, which is the subject matter of challenge in this petition. This Court while admitting the matter on 21st December, 1999 the petitioner was in service and thereafter all through out the petitioner has worked as Assistant Teacher in the respondent school.

5. The respondent No.2 has filed reply justifying the order at Annexure-A/2, more specifically taken the contention that the petitioner's service should be regularised w.e.f. 23rd June 1986 and not from 15th July, 1983 i.e. the date of appointment made by the school management.

6.1 Learned advocate Mr. Oza for the petitioner has submitted that the appointment of the petitioner vide order dated 15th July, 1983 was made subject to the approval of the respondent no.2, which has been now granted after High Court order dated 19th May, 1988 and the petitioner has worked all through out since her appointment, and therefore, she should be given the continuity of service benefits from 15th July 1983, though, initially she was appointed on 15th June, 1981, but the petitioner did not work between the period from 30th April 1982 to 14th July 1983 as the petitioner at her own cost had gone for a training. Mr. Oza has therefore fairly conceded that the petitioner may not be given continuity of service from 15th June, 1981 but be given the said benefit of continuity of service 15th July, 1983.

6.2 The submission of Mr. Oza is required to be accepted in view of the fact that, earlier this Court vide order dated 8th October, 1997 passed in Special Civil Application No. 3491 of 1985 has considered all these facts and thereafter directed the State Government to approve relaxation in upper age since the petitioner was qualified and she worked continuously from 15th July, 1983, and accordingly the Government has approved relaxation in upper age in case of the petitioner. Further the petitioner has served with the respondent school for more than twenty two long years. In that view of the matter the contention raised by Mr. Oza is required to be accepted.

7. The second contention raised by Mr. Oza is regarding non payment of salary for the period from 1st July 1985 to 2nd January 1986 though the petitioner had worked but the Government had not sanctioned salary and therefore the respondent school had not paid salary to the petitioner. If the petitioner had worked during this period, in view of the protection granted by this Court in Special Civil Application No. 3491 of 1986, the respondent State Government shall not deprive the petitioner from her legitimate right of salary and the same shall be paid immediately by the respondent authority after verification whether the petitioner had worked during the aforesaid.

8. Mr. Oza has further submitted that during period from 4th January 1986 to 21st June, 1986 the petitioner was not allowed to work by the respondent school as the respondent no.2 has not relaxed the upper age limit of the petitioner. Therefore the petitioner was required to file Civil Application in Special Civil Application No. 3491 of 1986 and thereafter only the petitioner was allowed to work. It is submitted by Mr. Oza that this period may be treated as special leave and she should be given continuity of service. The petitioner's service was protected in earlier proceedings and under misconception on the part of respondent authority the petitioner was not allowed to work. Therefore, the petitioner should be treated on duty for the purpose of continuity of service. Mr. Oza has fairly conceded that since the petitioner has not worked during the aforesaid period, petitioner is not claiming salary for the said period.

9.1 In this view of the matter the order at Annexure-A/2 is quashed and set aside and it is directed that the petitioner be treated in service continuously as Assistant Teacher in respondent no.3 school from 15th July 1983, more particularly in view of the fact that the State Government itself has approved the same by order dated 19th May, 1988 at Annexure-A/1 to the petition.

9.2 In the result, the petition is allowed. The respondent No.2 is directed to treat the petitioner in service from 15th July 1983 continuously and to extend all consequential service benefits to the petitioner. The respondent no.2 authority is also directed to pay arrears in salary for the period from 1st July, 1985 to 2nd January 1986 to the petitioner during which period the petitioner has worked in the respondent school, and also to treat the petitioner on special leave during the period from 4th January 1986 to 21st June, 1986. Rule

made absolute to the aforesaid extent. No costs.

Dt: 30-6-2004

(K.S. Jhaveri, J)

/vgn