

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16618 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 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? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PATEL DUPTIBEN AMRUTLAL

Versus

DISTRICT PRIMARY EDUCATION OFFICER, SABARKANTHA DIST.

Appearance:

1. Special Civil Application No. 16618 of 2004
MR FB BRAHMBHATT for Petitioner No. 1-2
MR MANISH J PATEL for Respondent No. 1-2
MR SP HASURKAR, AGP for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 31/01/2005

ORAL JUDGEMENT

Rule. Learned advocate Shri Manish Patel waives service of notice of rule on behalf of respondent Nos.1 &

2 and learned AGP Mr.Hasurkar waives service of rule on behalf of respondent No.3.

2. At the joint request of the learned advocates appearing for the respective parties, the petition is taken for final disposal today.

3. Facts leading to the present petition are not much in dispute. For certain advertised posts of Vidya sahayak, selection process was carried out and select list of different categories including general and reserved categories was drawn. It is a common ground that 28 seats belonging to various reserved categories could not be filled on account of non-availability of qualified candidates. Some of the candidates who figured in the waiting list of the general category approached this Court by filing Special Civil Application No.3968 of 2004 and this Court while admitting the matter on 18.6.04 passed the following order :

"Heard the learned advocates.

Rule. Pending this petition, the respondents are directed to operate the merit list prepared pursuant to the advertisement published on 19th July 2002 (Annexure-B to the petition) and to fill-in all the vacant posts of Vidya Sahayak advertised by the said advertisement by appointment of candidates in order of merit.

The appointments made pursuant to this order shall be ad-hoc and shall be subject to the result of this petition. Every appointment order shall contain the above mentioned stipulation. The aforesaid exercise shall be completed within six weeks from today.

Registry shall send the writ forthwith."

4. From the above order, it can be seen that this Court by way of interim directions directed the respondents to fill in all the vacant posts of Vidya Sahayaks advertised through advertisement dated 19th July 2002. This was of course subject to the result of the petition.

5. It is contended on behalf of the petitioners that the respondents issued appointment orders to 28 candidates from the waiting list. Out of these 28 candidates, only 22 candidates accepted the appointments and 6 seats still remain vacant. It is the case of the

petitioners that the respondents should have operated the waiting list further to the extent of filling up 6 vacant posts which have remained unfilled on account of non joining of the appointed candidates. To this factual aspect of the matter, namely, that 28 appointment orders were issued and 22 out of the 28 candidates actually joined duty, there is no dispute by the respondents.

6. When this Court has by way of interim directions directed the respondents to fill in all the vacant posts of Vidya Sahayaks advertised vide advertisement dated 19.7.02 by making appointment of the candidates in order of merits, the respondents should have further operated the waiting list and filled up the vacancies. It is not in dispute that the names of the petitioners figure in the waiting list.

7. In the result, respondents are directed to act in furtherance of the interim order dated 18.6.04 passed by this Court in Special Civil Application No.3968 of 2004 and to ensure filling up of the remaining 6 vacancies also subject, of course, to the final outcome of Special Civil Application No.3968 of 2004. The petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)

(vjn)