

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 2011 of 2007**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE B.J.SHETHNA**

**AND**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
  - 2 To be referred to the Reporter or not?
  - 3 Whether Their Lordships wish to see the fair copy of the judgment?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?
  - 5 Whether it is to be circulated to the Civil Judge?
- =====

**MEENABEN T.NANAVATI - Petitioner**

**Versus**

**STATE OF GUJARAT THROUGH SECRETARY  
AND ANOTHER - Respondents**

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**Appearance :**

MR JA ADESHRA for the Petitioner.

MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent : 1.

MR JB PARDIWALA for Respondent : 2.

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**CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**

**and**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

**Date : 31/01/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)**

1. This is a very unusual petition, which is to be dismissed by this Court, though the petitioner was able to make out a very good case in her favour.

2. The petitioner - Smt. Meenaben T. Nanavati, who was aged 45 years in 2006, applied for the post of Fast Track Judge in response to the notice dated 28-11-2003 issued by respondent No. 2 - Gujarat High Court. By letter dated 09-02-2004 addressed by the Registrar of the High Court, she was straight-away asked to appear for oral interview before the Selection Committee on 20-02-2004. In all, 600 persons were called for oral interview out of 1250 applications received by High Court, and only 25 persons were selected out of those 600 applicants, as

averred in the petition. She was one of them and placed at Sr. No. 1 in the Selection List. Later on, by letter dated 10-06-2004, the State Government informed to the petitioner that she was selected as Fast Track Court Judge by the High Court and she was asked to undergo Medical Examination before the Medical Board at Civil Hospital, Ahmedabad on 16-06-2004. Accordingly, she appeared for the Medical Examination before the Board on 16-06-2004. However, by letter dated 28-06-2004, she was asked to get herself examined by the Head of Gynaec Department within 10 days from the receipt of the said letter. She appeared before the Head of Gynaec Department of Civil Hospital, Ahmedabad, but unfortunately, she was declared medically unfit. Therefore, by letter dated 07-01-2005, the State Government informed the petitioner that she was declared medically unfit by the Medical Board, therefore, she cannot be given appointment to the post of Fast Track Court Judge (ANNEXURE-E). Thereupon, she had addressed a detailed letter dated 19-01-2005 to the Secretary, Legal Department, stating that she was perfectly fit and the decision of the Medical Board to declare her

medically unfit was wrong and, therefore, liable to be quashed and set aside. In her letter, she had requested that she may be sent for Medical Re-examination before the Appellate Medical Board (ANNEXURE-F). Reminder dated 27-05-2005 was sent to the State Government (ANNEXURE-G). Thereafter, the Legal Department of the State Government addressed a letter dated 02-07-2005 to the Secretary, Health and Family Welfare Department, regarding Medical Re-examination of the petitioner (ANNEXURE-H). On 30-11-2005, the State Government informed to the petitioner to undergo her Medical Re-examination before the Medical Board at Jamnagar (ANNEXURE-I). However, by letter dated 02-01-2006, the President, Standing Medical Board, Jamnagar, informed to the petitioner to appear before the Standing Medical Board at Guru Govindsingh Hospital at Jamnagar on 06-01-2006. Accordingly, she remained present before the Standing Medical Board at Jamnagar and was re-examined by the Standing Medical Board and she was declared medically fit. In spite of it, the petitioner did not get any appointment order, therefore, she applied on 19-07-2006 to the

Secretary, Legal Department of State Government. Finally, the Legal Department addressed a letter dated 21-09-2006 to the petitioner, stating that, as per the judgment of the Hon'ble Supreme Court delivered on 21-11-2005, only required number of Fast Track Courts were to be continued, therefore, she could not be given appointment. This decision seems to have been taken as per the decision taken by the Standing Committee of the respondent No. 2 - Gujarat High Court on 08-08-2006, a copy of which is produced on record by learned Counsel Shri J B Pardiwala appearing for respondent No. 2 - Gujarat High Court. Aggrieved of this, the petitioner has filed this petition under Article 226 of the Constitution of India before this Court and prayed that the impugned communication dated 21-09-2006 (ANNEXURE-L) be quashed and set aside, and both the respondents be directed to forthwith appoint the petitioner on the post of Fast Track Court Judge.

3. Learned Counsel Shri J A Adeshra for the petitioner vehemently submitted that for no fault of the petitioner, she was denied appointment by the

respondent - State Government only because she was declared medically unfit by the Medical Board, Civil Hospital at Ahmedabad. He submitted that, later on, when she was re-examined by another Board at Jamnagar, she was declared fit. Under the circumstances, the respondent - State Government ought to have issued the appointment order. He submitted that the petitioner was never informed about the decision of the Standing Committee of the High Court dated 08-08-2006. He submitted that by taking such decision, the respondent - High Court has also committed similar error. However, learned Counsel Shri Pardiwala for respondent No. 2 - High Court submitted that, though the High Court was very much considerate, it had to take the decision in view of the directions issued by the Hon'ble Apex Court on 21-11-2005, whereby only required number of Fast Track Courts were to be continued. He submitted that in recent past, the High Court has discontinued about 13 Fast Track Court Judges, but it had never undertaken to make recruitment on the said posts, as they were not required to be filled up. He submitted that, now, as per the directions issued by the

Hon'ble Supreme Court, the State Government had to divert funds of the Fast Track Courts for creating and appointing Fast Track Court Judges at Magisterial level, therefore, though respondent - High Court had all sympathy towards the petitioner, it could not give any appointment to the petitioner. Learned Assistant Government Pleader Shri Gori for respondent No. 1 - State Government has also adopted the arguments of learned Counsel Shri Pardiwala, and submitted that, in view of the directions issued by the Hon'ble Supreme Court, and in turn, by the Union of India, it was not possible to issue any appointment order in favour of the petitioner on the post of Fast Track Court Judge, as prayed for in this petition.

4. We find lot of substance in the submissions made by both, learned Counsel Shri Pardiwala as well as learned Assistant Government Pleader Shri Gori for the respondents. This is really unfortunate that though the petitioner was deserving to get appointment on the post of Fast Track Court Judge, she was denied appointment only because at the

initial stage, she was declared medically unfit by the Medical Board, Civil Hospital at Ahmedabad. But, because of the subsequent development, we are also unable to issue any writ or directions, as prayed for in this petition, in favour of the petitioner. Any directions issued contrary to the directions of Hon'ble Supreme Court would be null and void. Therefore, except expressing our deep sympathy towards the petitioner, nothing more can be done in the matter, and accordingly, the petition is dismissed. Notice discharged. No order as to costs.

**[B. J. SHETHNA, J.]**

**[H. B. ANTANI, J.]**

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