

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 3054 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE C.L. SONI**

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- 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 ?
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CHARAN HARENDRASINH ABHESINH....Petitioner(s)

Versus

GUJARAT PUBLIC SERVICE COMMISSION & 1....Respondent(s)

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Appearance:

MR VAIBHAV A VYAS, ADVOCATE for the Petitioner(s) No. 1

Ms. Megha Chitaliya, AGP for the Respondent(s) No. 2

MR DG SHUKLA, ADVOCATE for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE C.L. SONI**

**Date : 13/05/2013**

**ORAL JUDGMENT**

1. This petition is filed under Article 226 of the Constitution of India seeking to quash and set aside the decision of respondent No.1 – Gujarat Public Service Commission rejecting his candidature for the post of Assistant Conservator of Forests/Range Forest Officer, Class-II and to declare him eligible to be considered for appointment on the said post pursuant to advertisement at Annexure-A.

2. It is the case of the petitioner that the petitioner had applied on-line to respondent No.1 Commission for the above said post and was permitted to appear in the preliminary examination. It is the case of the petitioner that the petitioner filled in the application form for the main examination along with the copy of degree certificate and final year mark sheet within the stipulated period of time. Such production of degree certificate and final year mark sheet was in proof support of passing of the degree examination by the petitioner as required by the advertisement. However, the petitioner received communication from respondent No.1 commission that the candidature of the petitioner was rejected on the

ground that the petitioner did not possess requisite qualification as per the advertisement. It is the case of the petitioner that the petitioner does possess requisite qualification and the respondent No.1 Commission has committed illegality in rejecting his candidature for the main examination.

3. The petition is opposed by respondent No.1 by filing reply affidavit stating therein that it is clearly provided in the advertisement that those candidates who appeared at the degree certificate examination upto 30<sup>th</sup> March, 2010 i.e. last date for submission of application but their results were not declared would be permitted to appear in the preliminary test. The petitioner had not submitted the mark sheet of the final year degree certificate along with his application. The petitioner was asked to submit such degree certificate to which the petitioner informed the respondent commission that the result was not declared and therefore, he was not able to submit required document of his degree qualification. Respondent No.1 commission permitted the petitioner to appear in the preliminary test held

on 30.5.2010. It is further stated that the petitioner then submitted copy of mark sheet of Third Year B.Sc. with the application for the main examination on 30.8.2010 wherefrom it was found that the degree examination wherein the petitioner had appeared was held in the month of April, 2010. Therefore, the petitioner had not appeared in the degree certificate examination before 30.3.2010 and under the circumstances, the candidature of the petitioner was rejected. In such action on the part of the respondent commission, no illegality is committed.

4. On behalf of the petitioner, additional affidavit came to be filed on 4<sup>th</sup> May, 2012 pointing out that the petitioner had already appeared in the practical examination between 15.3.2010 to 18.3.2010 and, therefore, degree examination of the petitioner could be said to have commenced from 15.3.2010 which was the date prior to 30.3.2010 and, therefore, the petitioner could be said to have appeared in the degree examination prior to 30.3.2010.

5. I have heard the learned advocates for the parties.

6. Learned advocate Mr. Vaibhav A. Vyas appearing for the petitioner submitted that the petitioner was already permitted to appear at the preliminary examination on the basis of his on-line application. At the time when the petitioner submitted application for the main examination, the petitioner was not having the mark sheet for the degree examination, therefore, the petitioner could not produce such mark sheet with the application for the main examination. Mr. Vyas submitted that the qualification required as per the examination was that the candidates who have completed the age of 21 years on the last date of submission of the application 30.3.2010 and appeared in the degree certification but the result whereof was not declared, such candidates were permitted to appear in the preliminary examination. Mr. Vyas submitted that after the petitioner got copy of degree certificate with the mark sheet, the petitioner submitted such document as proof in support of his qualification and there is no dispute

that the petitioner had cleared degree examination. Mr. Vyas submitted that since the petitioner has already cleared degree examination, the petitioner was very much eligible and entitled to appear in the main examination, still, however, respondent No.1 Commission declared the petitioner ineligible to appear in the main examination on the ground that the petitioner did not satisfy the requirement of qualification as per the advertisement as the petitioner had not appeared in the degree certificate examination by 30.3.2010 but appeared in the month of April 2010. Mr. Vyas submitted that the degree examination of the petitioner had already commenced from the date of practical examination which was held between 15.3.2010 to 18.3.2010 and, therefore, the petitioner could be said to have appeared in the degree certificate examination by 30.3.2010. He, thus, submitted that the respondent Commission is not justified in declaring the petitioner ineligible for the main examination.

7. As against the above arguments, learned advocate Mr. D.G. Shukla appearing for the respondent

Commission submitted that the advertisement clearly provided for considering the case of those candidates who appeared in degree certificate examination by 30.3.2010 and, therefore, those candidates who had not appeared in degree certificate examination by such date have not been considered eligible for the main examination. Mr. Shukla submitted that there are many such candidates whose candidature has been rejected on the similar ground and the petitioner does not deserve different treatment. Mr. Shukla submitted that respondent No.1 Commission has taken into consideration the degree certificate produced by the petitioner with his application from where it clearly appears that the petitioner had appeared in the degree certificate examination in the month of April, 2010 and, therefore, the petitioner cannot be said to have appeared in the degree certificate examination prior to 30.3.2010. Mr. Shukla submitted that the practical examination which was taken between 15.3.2010 to 18.3.2010 could not be said to be the examination in the context of the requirement of the advertisement. Mr. Shukla submitted that when the respondent commission has taken degree

certificate produced by the petitioner as final proof wherein it is clearly mentioned that the degree examination was held in the month of April, 2010 and when the decision taken is based on such degree certificate produced by the petitioner, it cannot be said that respondent No.1 has committed any illegality in declaring the petitioner as ineligible for the main examination with other such similarly situated candidates. He, thus, urged to dismiss this petition.

8. While adopting the arguments advanced by the learned advocate Mr. Shukla for the respondent Commission, learned A.G.P. Ms. Megha Chitaliya appearing for the State Authority has submitted that since the petitioner has not fulfilled the requirement of the advertisement, no illegality could be found in the decision of respondent No.1.

9. Having heard the learned advocates for the parties and having considered the documents on record, it appears that the candidate applying for the post in question pursuant to advertisement at



Annexure-A was required to satisfy eligibility criteria of qualification as required by the advertisement. It is provided in the advertisement that those candidates who have completed 21 years' age as on 30.3.2010 and appeared in the degree certificate examination before said date but whose results were not declared were permitted to appear in the preliminary examination. Such candidates were then required to produce certificate for passing of such degree examination as a proof.

10. There is no dispute about the fact that the petitioner was permitted to appear in the preliminary examination. However, from the copy of degree certificate examination produced by the petitioner, it was found that the said examination was held in the month of April, 2010.

11. Contention of the learned advocate Mr. Vyas is that since the practical examination was held from 15.3.2010 to 18.3.2010, date of commencement of the degree examination should be taken from the date of practical examination. Such contention cannot be

accepted. It is required to be noted that what is provided was the production of the degree certificate examination held prior to 30.3.2010. Therefore, respondent commission was required to consider details provided in the degree certificate examination produced by the petitioner and such other similarly situated candidates. In the certificate, it is clearly stated that the degree examination was held in the month of April, 2010. Therefore, the question is whether the respondent no.1 commission is justified in considering degree certificate produced by the petitioner for deciding as to whether the petitioner had appeared in the degree examination prior to 30.3.2010 or not. As pointed out on behalf of respondent no.1 commission, respondent no.1 commission has taken date of such examination from the degree certificate produced by the petitioner and such other similarly situated candidates for deciding whether the petitioner and such other candidates appeared in the degree examination prior to 30.3.2010 or not and those candidates who are found to have appeared in the examination taken in the month of April, 2010 as per the degree certificate, have been

declared as ineligible for the main examination.

12. Such decision taken by the respondent commission cannot be said to be unreasonable or arbitrary and cannot be substituted by this court while exercising the powers under Article 226 of the Constitution of India. In fact, respondent commission once having intended to treat only those candidates qualified who had appeared in degree certificate examination prior to 30.3.2010, respondent commission is the best authority to decide the eligibility of such candidates on the basis of degree certificate produced by the candidates. Respondent commission having taken the decision that the date and month mentioned in the degree certificate shall be considered as the date and month for degree examination, no illegality could be found in such decision, therefore, no relief could be granted to the petitioner. Hence the petition is required to be dismissed.

13. Accordingly, this petition is dismissed. Rule is discharged.

**(C.L.SONI, J.)**

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