

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 8868 of 1995****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE PARESH UPADHYAY**

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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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BHAGORA MANJIBHAI RAMJIBHAI....Petitioner

Versus

REGISTRAR,CO-OP. SOCIETIES & Anr.....Respondents

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Appearance:

MR SV PARMAR, ADVOCATE for the Petitioner

MR.

RONAK RAVAL AGP for the Respondents

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CORAM: **HONOURABLE MR.JUSTICE PARESH UPADHYAY****Date : 28/02/2013****CAV JUDGEMNT**

1. Heard Mr. S.V. Parmar learned advocate for the

petitioner and Mr. Ronak Raval learned Assistant Government Pleader, for the State authorities.

2. The challenge in this petition is to the order dated 28.8.1995, whereby the service of the petitioner is terminated for not passing the departmental examination, which was necessary for being retained in service, as per Rules.

3. The petitioner was appointed by the Registrar of Co-operative Societies, Gujarat State, vide order dated 16.2.1991, on the post of Auditor Grade-II in the pay scale of Rs. 1400-2600, then prevailing, on probation for a period of two years. One of the conditions prescribed in the appointment order was that the petitioner was to pass the examination of the Government Diploma in Co-operation and Accountancy (G.D.C. & A. for short), within a period of two years and in three trials. It was also stipulated in the appointment order itself that, in the event, the petitioner fails to pass the said examination accordingly, his services shall be terminated.

4. The petitioner appeared in that examination, but did not clear the same within three chances. During the period of probation of two years, all three chances were not exhausted and therefore, even the period of two years of probation was

extended to enable the petitioner to pass the said examination. The petitioner failed to pass the said examination within three chances, which was even beyond the said period of two years. The service of the petitioner, therefore could be put to an end to, however since the petitioner belongs to Scheduled Tribe, as per the policy of the Government, he was entitled to get an additional chance to pass that examination. Under these circumstances, instead of terminating the service of the petitioner, the Registrar of Co-operative Societies, vide communication dated 22.9.1994, put it to the notice of the petitioner that the petitioner has failed to pass G.D.C. & A. examination within three chances, but he being Scheduled Tribe Candidate, is entitled to avail one more chance, which is being given to him, and it was specifically mentioned therein that, in the event, the petitioner not passing the said examination at the fourth chance, his services shall be terminated.

5. The petitioner appeared in the said examination at fourth trial as well. He did not pass it, and therefore the order dated 28.8.1995 was passed, terminating the service of the petitioner. It is this action of the authorities, which is challenged in this petition.

6.1 Learned advocate for the petitioner Mr. S.V. Parmar contended that the petitioner being a Scheduled Tribe Candidate, ought to have been given still additional chances. In this regard, he has relied on the policy of the Government as contained in Government Resolution dated 30.3.1989, and has made specific reference to stipulation - 4 of the said Resolution, to contend that giving of fourth chance is a policy of the Government even in case of other backward class candidates, and therefore, giving fourth chance to the petitioner cannot be treated to be a concession which is given to a Scheduled Tribe candidate. It is claimed that in his reading, Scheduled Caste & Scheduled Tribe candidate is entitled to additional chances than the fourth chance.

6.2 Learned advocate for the petitioner also relied on the policy of the Government contained in Government Resolution dated 22.4.1983. The said Resolution was not on record, however during the course of final hearing of this petition, it was indicated by the learned advocate for the petitioner that the said Government Resolution would support the case of the petitioner and therefore, the petitioner was permitted to place the same on record. The petitioner moved an application being Civil Application No.

1488/2013, which was allowed on 11.2.2013, and that is how, the said Government Resolution dated 22.4.1983 has come on record. Learned advocate for the petitioner referred to stipulation No.19 of the said Resolution and contended that giving fourth chance to a Scheduled Tribe candidate is not sufficient, and in his reading, the petitioner ought to have been given more chances.

6.3 It is further contended that the scheme of the Constitution of India has given additional protection to the candidates like the petitioner and for this purpose, he has also relied on Articles 15(4) and 16(4) of the Constitution of India.

6.4 The learned advocate for the petitioner further contended that even prior to his appointment vide order dated 16.02.1991, he was already working with the respondent and therefore he ought to have been continued on the said post.

6.5 It is also contended that since the additional chances could have been given by the Secretary of the Department, the Registrar of Co-operative Societies should have referred the case of the petitioner to the Secretary of the concerned department. Having not done so, the respondent has committed illegality and therefore

the order may be set aside.

6.6 In the petition, comparison is also made with the case of one Dr.B.N.Yagnik to contend the point of discrimination but learned advocate for the petitioner stated that he is not pressing the said point and therefore that point is not gone into.

6.7 Learned counsel for the petitioner has relied on the judgments of Hon'ble the Supreme Court in case of ; (i) MP versus Nivedita Jain - (1981) 4 SCC 296 (ii) Home Secretary (4T) versus Darbarasing - (1993) 4 SCC 25 and (iii) Francis John versus Director of Education - 1989 Supp (2) SCC 598, in support of the petition.

7.1 On the other hand, learned Assistant Government Pleader Mr. Raval relied on the affidavit in reply and has contended that the action of the respondent authorities is as per terms of appointment and there is no illegality in the impugned action.

7.2 Learned Assistant Government Pleader has also contended that along with the petitioner, one Mr. Damor Dineshkumar Nanjibhai was also terminated on the same date i.e. on 28.08.1995, by the same respondent authority, which was challenged by way

of a petition being Special Civil Application No.6672 of 1995. The said petition came to be dismissed by this Court on 30.04.2010. It is contended that the case of the present petitioner is also identical to the said petitioner and this petition may also be dismissed.

8.1 Having heard learned counsel for the respective parties and having gone through the material on record, including the affidavit in reply and affidavit in rejoinder, and specifically taking into consideration the Government Resolutions dated 30.03.1989 and 22.04.1983, I find that there is no dispute about the fact that in the appointment order of the petitioner dated 16.02.1991, (Annexure-B to this petition), condition no.2 required the petitioner to pass G.D.C.& A. examination within two years and three chances. It is also not in dispute that the petitioner did not pass the said examination within three chances. The petitioner being a Scheduled Tribe candidate, was entitled for an additional chance, as per policy of the Government which is reflected in different Government Resolutions, two of which are on record dated 30.03.1989 and 22.04.1983. It is also not in dispute that the said additional chance i.e. the fourth chance was also given to the petitioner and even in that additional

chance, he did not pass the said examination. Before giving that fourth chance, for abandoned caution, the respondent authorities had also issued notice to the petitioner on 22.09.1994, Annexure - C to this petition, that the petitioner being Scheduled Tribe candidate is being given an additional chance on the basis of Government Resolution dated 30.03.1989 and in the event of his not passing the said examination, his services shall stand terminated. As per terms of appointment and by the said notice, the petitioner was aware of this consequence, with which he was never aggrieved. Since he did not pass the examination even in the fourth chance, the impugned order dated 28.08.1995 came to be passed. I see no illegality in it, in above fact situation.

8.2 So far the contention with regard to getting additional chances, even beyond fourth trial is concerned, I find that it is even the case of the petitioner that Secretary of the concerned department was the competent authority. In the event representation was made to the said competent authority, that aspect could have been considered at the relevant time. From record, I do not find any such request or representation having been made to the said authority. The contention that the request of the petitioner in

that regard made to the Registrar, Co-operative Societies, ought to have been sent to the Secretary, can not be accepted, since no such request was made by the petitioner to the Secretary. Further, the said additional chance i.e. an additional to the additional chance, also is not granted as a matter of course but the same is done in special and exceptional circumstances. The contention that the petitioner belonged to Scheduled Tribe and that itself was an exceptional case, can not be accepted since for that reason, an additional chance being the fourth chance is already given to the petitioner. So far reliance on two Government Resolutions for this purpose is concerned, I find that both the Government Resolutions, dated 12.04.1983 and 22.04.1983 are by the General Administration Department. The Government Resolution dated 22.04.1983 is compilation of instructions of the Government regarding reservation policy of the Government pertaining to Scheduled Caste, Scheduled Tribe and other Backward Classes candidates, which also elaborates, what type of relaxations are being given to such candidates. Government Resolution dated 30.03.1989 is consolidated instructions regarding departmental examination. In both these Resolutions, there is reference that in case of Scheduled Caste and Scheduled Tribe candidates, they are entitled to

additional fourth chance to pass the departmental examination. This, in my view, would not mean that under both the resolutions, the petitioner is entitled to one additional chance each, i.e. fourth chance as per Government Resolution 22.04.1983 and fifth chance as per Government Resolution 30.03.1989. The contention of learned counsel for the petitioner in this regard stands rejected. Reliance on constitutional provisions as referred above, will also not take the case of the petitioner any further, since on that basis, the relaxation as mentioned above, is already provided for in the policy of the Government and which is extended also to the petitioner.

8.3 Much grievance is made by the petitioner with regard to the stand taken by the authorities in the affidavit in reply that the Government Resolution dated 30.03.1989 is not applicable in the facts of this case. I find that said stand of the authorities is contrary to record and therefore it is rejected. However that would not take the case of the petitioner any further, since by negating that argument of the Government, the Government Resolution dated 30.3.1989 would be applicable in the facts of this case which the petitioner wants and as held above, as per the provisions of Government Resolution dated 30.3.1989, the petitioner was

entitled to get the fourth chance which is given to him and even thereafter he has not passed the departmental examination, which was necessary for being retained in service and on non passing of this examination, when the authorities decided, not to continue the petitioner in service, no illegality can be read into it.

8.4 So far the contention that the petitioner ought to have been continued on his earlier post, I find that the petitioner was selected for the post from which he is terminated. Since those posts were not available at the relevant time, with the clear understanding and undertaking, the petitioner and similarly situated persons were appointed on the lower post vide order dated 21.05.1990 reference to which is made in the appointment order dated 16.02.1991. The petitioner had applied for the post from which he is terminated, he was selected for the said post and was appointed on the said post. Under these circumstances, the authorities cannot be directed to appointed the petitioner on the post, for which he had neither applied, nor was he selected. Thus even that contention stands rejected.

8.5 Reliance is placed by learned counsel for the petitioner on the judgments of Hon'ble the

Supreme Court in case of ; (i) MP versus Nivedita Jain - (1981) 4 SCC 296 (ii) Home Secretary (4T) versus Darbarasing - (1993) 4 SCC 25 (iii) Francis John versus Director of Education - 1989 Supp (2) SCC 598. There cannot be any dispute with regard to the proposition of law annunciated in the said judgments. However, the case in hand revolves around termination of service of the petitioner on the ground non passing of retention examination within stipulated chances. In this factual background, said judgments would not take the case of the petitioner any further.

9. Considering the totality of the facts as recorded above, I see no force in this petition and the petitioner is not entitled to any relief. Petition stands dismissed. Rule discharged. No order as to costs.

(PARESH UPADHYAY, J.)

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