

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17876 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE SONIA GOKANI**

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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 or any order made thereunder ?	

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MANISHABEN LALSINGBHAI KATARA

Versus

STATE OF GUJARAT & 4 other(s)

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Appearance:

MR. SAHIL M SHAH for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO MR RONAK RAVAL, ASST.GOVERNMENT PLEADER/PP(99) for the Respondent(s) No. 1

MR JAPAN V DAVE(5947) for the Respondent(s) No. 5

NOTICE SERVED BY DS for the Respondent(s) No. 1

NOTICE SERVED BY DS(5) for the Respondent(s) No. 2,3,4

NOTICE SERVED(4) for the Respondent(s) No. 2,3,4

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI**Date : 31/01/2017**

ORAL JUDGEMENT

- 1 This present petition is preferred, seeking to challenge the order dated 25th March 2015 passed by deputy collector and Prant officer, Dahod. It also challenges the order dated 28th July 2015 passed by the collector, Dahod whereby appointment of petitioner to the post of manager/Administrator cum Cook was cancelled on the ground the orders passed being arbitrary, contrary to the settled principles of law.

- 2 The brief facts leading to the present petition are as follows.
 - 2.1 An advertisement was published for the post of manager cum Cook at Chandavana primary school in pursuance of the midday meal scheme. The scheme required the candidate to be a divorcee, a destitute and also to provide a certificate of the competent authority to that

effect. For being eligible to be employed, her spouse or son should not be in the government employment. It was also required to produce original copies of educational qualification and other relevant certificates at the time of interview.

2.2 On 5th September, 2014 the petitioner preferred to apply for the post and filed an application with all supporting documents the Respondent no. 5 Priyanka Dinesh submitted her application along with certain documents, but she did not produce any certificate that she was a divorcee along with her application or at the time of interview. She was already employed elsewhere and she had shown her willingness to resign from that post. It is also the say of the petitioner that the interview was held for the post on 3d January 2015 where the required documents had not been produced by the Respondent No.5. It is also the say of the petitioner that character certificate of the

competent authority as produced by the respondent No.5 reflected that she belonged to Borkheda village and not to Chandana village.

2.3 The petitioner also preferred an application with supporting documents before the Mamlatdar on 5 /9/ 2014 and it is averred by the Petitioner that she had fulfilled all the requirements. The interviews of the candidates for the seat post of manager cum Cook was held on 3/1 /2015. The merit list with respect to the said post was published. According to the petitioner, she was required to produce before the Mamlatdar the fact that the husband of the respondent no.5 was working as a teacher, making her non eligible to be posted on the post advertised.

2.4 Petitioner was given an appointment vide communication dated 3d January 2015. This had upset seriously the respondent No.5 who filed an appeal before the deputy collector, challenging the

appointment of the petitioner. The deputy collector allowed the appeal of the respondent no. 5 and had set aside the appointment of the petitioner on 25 March 2015 . According to the petitioner, the respondent no.5 produced certain documents like the FIR that she filed against her husband 2) the chargesheet filed in the proceedings initiated pursuant to the said FIR and 3) agreement of divorce entered into between her and her husband, directly before the collector during the appellate proceedings. She insisted that she was a divorcee and was entitled to the post with her status as a divorcee. However, what has been alleged is that the Respondent No.5 had deliberately suppressed the fact that the said dispute between her and her husband was settled by way of settlement agreement and the FIR also had been withdrawn pursuant to the said settlement and she also had a child of one year, born out of the said wedlock in the year 2014. The

copy of the ration card reflecting that she was a married lady and not a divorcee, was also produced along with the birth certificate of her son.

2.5 The petitioner decided to challenge the said order of the deputy collector dt.25/03/2015 before the Collector and raised her serious grievances. To her disappointment, the order challenged of the deputy collector was confirmed by the collector on 28/07/2015, setting aside the order of appointment of the Petitioner. She has urged before this court that both the deputy collector and collector chose to ignore the fact that the Respondent no. 5 had not obtained any order of divorce from the competent court. She continued to remain married to one Shri Pankaj Kumar Baradwal whom she married on 10th May 2009. The copies of FIR, chargesheet and the divorce agreement produced in support of her version,

according to the Petitioner were incorrect and had lacked sustainable value. The petitioner insisted that orders of both authorities suffer from non-application of mind and deserve to be set aside. The petitioner secured 73.92% in her B.Ed. and possessed the Bachelor of Art degree whereas the respondent no.5 had secured 69.20% in PTC and thus, the petitioner was much more meritorious and was also therefore, eligible to be appointed on the post of manager-cum-Cook.

3 In this premise the petitioner prayed thus,

“(A) your lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate rate, order or direction quashing and setting aside the orders dated 28/7/2015 and 25/03/2015 passed by the collector and learned deputy collector (annexure A)

B) Your lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate rate, order or direction, directing concerned respondent to appoint the petitioner to the post of manager cum Cook in Chandana primary school.

- (C) *pending admission, hearing and final disposal of this petition, your Lordships may be pleased to stay the orders dated 28/07/2015 and 25/03/2015 passed by the Learned Collector and Learned Deputy Collector;*
- (D) *An ex-parte ad interim relief in terms of paras(c) above may kindly be granted.*
- (E) *Pass such other and further reliefs as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted;—”*

4 This court issued a notice on 27th October 2015 making the same returnable on 26/11/2015. Notice was also issued for the interim relief sought for. The period of service was extended at the request of the petitioner till 08/01/2016. Thereafter, the Respondent no.5 filed its affidavit in reply on 14/10/2016 and the court directed time and again to the Respondent State to file its reply, however, to no avail. On 27 January 2017, learned Assistant government pleader appearing for the respondent of.1 had made a request for seeking instructions in respect of the post held by the respondent no.5 so also with regard to the Pay and the pay scale of the post in question.

5 In the reply of the main contestant, Respondent no.5, it is contended interalia that the contest on the part of the petitioner is meritless and both the authorities have justly and properly addressed the issues and therefore, no interference is desirable. This court also does not have jurisdiction to exercise the powers under Article 227 of the Constitution of India. It is further contended that the priority is to be accorded to the female divorcee and both the respondents have rightly given an appointment to the Respondent no.5. There is no reason nor any compelling circumstances requiring any indulgence in the writ jurisdiction.

6 It is further contended that the respondent no. 5 has taken the divorce from her husband and is residing separately as a divorcee. According to her, the petitioner has attempted to mislead the court by giving incorrect facts. it is also the say of

the respondent that there are two authorities who have concurrently held against the petitioner and therefore also, on factual matrix, no indulgence would be necessitated.

7 Despite having availed sufficient opportunities, when the Respondents no.1 to 4 chose not to file the Affidavit-in-reply, the court decided to hear learned Advocates on both the sides and decide this matter finally at the admission stage at the request of learned Advocates on both the sides.

7.1 Learned Advocate Mr. Sahil Shah appearing for the Petitioner has vehemently urged as to how this is a case of *res ipsa loquitor* where the documents themselves speak in volumes. He argued along the line of the memo of Petition. He has also argued that for the incorrect details furnished by the Respondent no.5, the Deputy collector and the Collector could not have been unmindful to deny the job to the Petitioner. He

further urged that by all standards, the petitioner herein is the right candidate who could not have been deprived of her rightful place.

7.2 He urged further that the scrutiny of documents would reveal clearly how the opponent maneuvered everything to get the job and that could have been noticed by the authorities.

7.3 Learned AGP for and on behalf of the Respondents no.1 to 4 strenuously contended that this petition is not the one where any indulgence is warranted as both the authorities concurrently have held against the Petitioner and that too, by giving cogent reasons where no flaw can be noticed and what all these authorities have done is to follow the directions issued by the State Government and since the Respondent no.5 fitted into the parameters, she has been selected. It is urged to dismiss the petition, therefore.

7.4 Mr.Dave,learned Advocates also along the very line has strenuously submitted not to intervene as accordingly to him, all requisite criterion have been duly fulfilled by this Respondent and that has made her the candidate of choice. It is argued further that substantiating documents had been produced by the Respondent and they were scrutinized by both the authorities to arrive at their respective conclusions.

8 Having this heard both the sides and also having closely perused the material on the record, it becomes abundantly clear that the advertisement, for the post of manager cum Cook, dated 21st August 2014 was for Chandavana primary school. It also is apparent from the requirements set out in the advertisement that a candidate if claims to be a divorcee and a destitute, a certificate to that effect of competent authority was a must. It also further required that the spouse or the son of the

person who applies for such a post should not be a government employee as that would make such applicant candidate ineligible for the same. Original certificates were needed to be the part of the presentation of testimonials at the time of interview.

- 9 This Court is conscious of the fact that the challenge in this Petition is to the order of Collector who has upheld the order of Deputy collector. Both the authorities on factual aspects have held against the present petitioner and in favour of the respondent no.5. The court is expected to exercise the extraordinary powers in circumstances which are not ordinary and restraint is also expected of it while exercising such powers. While warranting indulgence in the matter, it shall need to bear in mind those well laid down principles while exercising writ jurisdiction.

10 The main contest is between the present petitioner and respondent no.5 Ms.Priyanka, who presented herself as a divorcee. The documents she presented were the FIR she lodged against her husband and the in-laws and the papers of chargesheet as the said FIR after investigation culminated into the chargesheet. She also presented the papers of divorce which had been registered with the office of sub-registrar. According to her, she therefore was eligible for the post in every respect and belonging to Chandwana village itself and having also the PTC as a qualification with 69.20 percentage of marks, made such claim complete as per the Government policy.

10.1 This tall claim needs to be pitted against the qualifications of the petitioner who has her degree of Bachelor of Arts and of B.Ed. With 73.92% marks and her not having anyone in the family as

a government employee. She belongs to Chandawana village and she contested seriously that the details furnished by the Respondent no.5 are bereft of truth.

10.2 The record is indicative of the fact that the interview had been conducted for the said post on 3d January 2015 by the mamlatdar, Dahod and he also had declared the result selecting the present petitioner as the right candidate for the post of Center administrator cum Cook. This had aggrieved the respondent no.5, according to whom, she had topped the merit list and being a divorcee, Government Resolution (GR) dt.02/05/2008 of the Revenue department, would tilt in her favour.

10.3 Her Appeal preferred before the Deputy collector as per the GR no.18/05/2011 also was on these very grounds and noticing her status of a divorced wife from the copy of the registered divorce deed

dt.25/06/2014 and her merit, the Deputy collector held in favour of the Respondent no.5 and quashed and set aside the order of Mamlatdar of dt. 03/01/2015. She was directed to be given the appointment within 30 days.

10.4 This led to the further challenge before the collector by the petitioner herein as she was aggrieved by the outcome before the deputy collector and the same resulted into confirmation of the order by the Collector on 28/07/2015. The Collector on the ground that respondent no.5 has already taken a divorce and as per the notification, priority needed to be accorded to the person who is a divorcee, noticing the FIR and charge sheet because of her disputes with the husband and in-laws in the year 2011, he has not found any ill design in the action of the said respondent.

11 Much emphasis on the part of the petitioner at the

outset is on relaxation of conditions of advertisement instead of adhering to the selection procedure prescribed at the time of advertisement. According to the petitioner, the documents which were in original form to be produced at the time of interview, were missing and the subsequent production of the documents itself would warrant rejection of those documents from being considered as such powers of relaxation were not with the authority concerned and yet, exercise of such powers would also mean that equal opportunity to others had not been given.

11.1 Reliance is placed on the decision of the Apex Court in the case of *Bedanga Talukdar v. Saifudaullah Khan and others*, reported in (2011) 12 SCC 85 and it has been insisted that the recruitment process should adhere to the selection procedure and the conditions of advertisement. and there cannot be any relaxation

in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. And, even where the power of relaxation is not provided in relevant rules, it must be mentioned in the advertisement. Such power, if exercised should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition of advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution of India.

11.2 It is to be noted that in this decision, challenge was made to the order passed by the High Court of Gauhati, allowing the writ petitions filed by respondent No.1 whereby Assam Public Service Commission was directed to examine the entitlement of respondent No.1 by taking into

consideration the identity card produced by him. There was no reservation in the said advertisement in favour of the disabled candidates as required under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It was directed that those candidates with locomotor disability must produce supporting documents in the office of the Assam Public Service Commission or in the examination hall before the commencement of the examination. The respondent had not submitted any disability certificate, although, he was not required to make an application afresh and was required to produce necessary supporting documents in the office of the Assam Public Service Commission or in the examination hall before the commencement of the preliminary examination. The respondent did not submit the mandatory documents of locomotor disability till the last date of submission. He appeared in the

examination as a general category candidate. At the time of interview, he had produced the necessary document in support of his claim of locomotor disability and this claim came to be challenged and the Apex Court has held that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India and there must not be any arbitrariness resulting from any undue favour being shown to any candidate and, therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure.

- 11.3 Advertisement of the government of this post, if is looked at dated 21 August 2014, it does speak of all original documents to be produced at the time of interview. The certificate of the person being a divorcee or even the certificate of the Talati cum Mantri of a person being a resident of the concerned village or any other certificates which

are being relied upon, shall need to be produced at the time of interview. It is true that some of these documents as shall be discussed hereinabove had not been produced at the time of interview and in fact, they were produced at the time of preferring the Appeal and that could not have been permitted by the authority concerned. Assuming that the production of the original documents were not to be treated as *Sine qua non* at the time of interview and therefore, would not debar a person from claiming the status of a divorcee, this surely would prejudice the rights of others who would be taken by surprise due to non adherence to the advertisement. And, here the contesting respondent produced the same much after the appointment was made of the petitioner and that also would seriously prejudice the right of the party concerned.

12 So far as other factual aspects are concerned, the

court is of the firm opinion that both authorities have committed serious errors which would deserve indulgence for the following reasons:

12.1 The respondent no.5 initiated criminal proceedings against her husband and in-laws by preferring the FIR on 30 December 2011 and thereafter, the said FIR had been enquired into and the matter was also proceeding as criminal case before the court of learned Chief judicial magistrate Dahod and eventually the criminal case no. 1176 of 2012 resulted into acquittal of husband of the respondent to 5 And of all her in laws as the parties settled the disputes amicably. It is not unlikely for the spouses to compromise and end their disputes by taking divorce either by way of decree of divorce by consent or through customary divorce. It appears that the parties declared the factum of compromise on 13 March 2030 and such compromise pursis had already

been produced on the record of criminal case No. 1176 of 12. On 13 March 2013, some of the evidences were recorded in the very matter and thereafter, on 18 March 2013, learned 3d Additional chief judicial magistrate has given acquittal to all the accused on account of such compromise.

- 12.2 None of these details may be necessary in wake of the last document of registration of divorce dt. 25/06/2014. However, two aspects are glaringly emerging if one looks at the documents produced on record that the Respondent no.5 was already in service at Center no.53 at the time of her application and even if that is not a debarring proposition, she has her daughter born out of the said wedlock on 09/04/2014. What is unpalatable is that before the court of learned Chief Judicial Magistrate on 13/03/2013 , the parties tendered the settlement pursis and the

deed of divorce is of 25/06/2014 where details are not in sync with the earlier documents of criminal proceedings. It mentions the disputes of past one year between them whereas the criminal complaint was of the year 2011. Again, their daughter was only 2 months when the said deed of divorce was entered into. A serious question arises of genuineness of the same. But, without going deeper into this at this juncture on the premise that the authority concerned was otherwise required to question the said document and even overlooking the fact that it was produced belatedly at the time of Appeal and not before, surely the authority concerned could have inquired into the same, before mechanically deciding on a single emphasis of divorce. Her marital disputes could not have been questioned on the ground of genuineness at the time when FIR was lodged as the very advertisement is of the year 2014 on 21st August. However, the

subsequent events surely would need a closer look. One also notices absence of any explanation in the affidavit in reply of the contesting Respondent No.5 on all these vital aspects, except bare denial. Non production of necessary and substantive documents timely could not have escaped the notice of the authorities.

- 12.3 Again, the Respondent no.5 being the resident of the very village is a must and certificate of being the resident of the village Chandavana subsequent to her divorce has also not been looked into by both the authorities. Moreover, qualifications of the petitioner are far better than those of the said Respondent and hence, overemphasis on the status of divorcee has obliterated rest of the aspects. All these aspects required a closer scrutiny and while interfering with the decisions of both the authorities and setting aside both the orders, it is being observed

that the matter could have been sent to the concerned authorities for applying its mind carefully and doing the needful in the matter. However, noticing the time period of appointment and the time that lapsed in litigation, the court has chosen not to so direct.

12.4 Resultantly, the Petition is allowed, quashing and setting aside the orders of the collector and of the Deputy Collector respectively dated 28/07/2015 and 25/03/2015.

12.5 Let the petitioner herein be given the appointment in eight weeks, on the post advertised for Chandana primary school, from the date of receipt of copy of this judgement.

12.6 Present Petition is disposed of in the above terms with no order as to cost.

(MS. SONIA GOKANI, J.)

SUDHIR