

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7925 of 2017**

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PARMAR JUVANSANG KANUBHA

Versus

STATE OF GUJARAT & 2 other(s)

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Appearance:

MR BIPIN I MEHTA(456) for the Petitioner(s) No. 1

MR VICKY B MEHTA(5422) for the Petitioner(s) No. 1

MR MANAN MEHTA, AGP (99) for the Respondent(s) No. 1

GOVERNMENT PLEADER(1) for the Respondent(s) No. 1,2,3

MS HARSHAL N PANDYA(3141) for the Respondent(s) No. 2

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

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 29/11/2019

ORAL ORDER

Heard learned advocate Mr.Bipin Mehta for the petitioner, learned Assistant Government Pleader Mr.Manan Mehta for respondent Nos.1 and 3 and learned advocate Ms.Harshal Pandya for respondent No.2.

2. The petitioner seeks a declaration that the petitioner is eligible and entitled for inclusion of his name in the final select list published by respondent No.2 - District Panchayat Service Selection Committee for the post of Junior Clerk and Talati-cum-Mantri. It is further prayed to direct the respondents to grant time to petitioner till 02nd May,2017 to produce the discharge certificate as ex-armyman.

2.1 The petitioner has approached this Court

through his wife. Notice was issued on 19th April, 2017 making it returnable on 03rd May, 2017.

3. Claiming a place in the category of ex-armymen, petitioner applied for the post of Junior Clerk in response to advertisement published by respondent No.2 for the post in Class-III in the Surendranagar District Panchayat. Petitioner further applied in respect of another advertisement simultaneously published for the post of Talati-cum-Mantri. It appears that 10% quota was fixed for ex-army men for filling up the posts.

3.1 The provisional merit list for Junior Clerk was published, in which petitioner's name was shown at Serial No.68. In the list of Talati-cum-Mantri, petitioner figured at Serial No.201. The petitioner who claimed his selection on the basis of ex-armymen, was to retire on 31st July, 2017. It is the case of the petitioner that in the army service, early retirement was permitted, therefore petitioner had applied for early discharge of his service from the army department.

3.2 It appears that the army authority issued release order dated 14th February, 2017 permitting early discharge of the petitioner from service. As per the above discharge letter dated 14th February, 2017, approval was granted to the petitioner to get discharge from service from 30th April, 2017. Resting on the above facts, the petitioner requested respondent No.2 by letter dated 23rd March, 2017 to grant the petitioner time till 02nd May, 2017 for

furnishing the discharge book.

3.3 It is the grievance of the petitioner that despite the above request by the petitioner to put the hands on hold since the petitioner was allowed discharge from service with effect from 30th April, 2017, respondent authorities did not pay heed to petitioner's application, and in the final select list for the post of Junior Clerk and Talati-cum-Mantri published on 07th April, 2017, name of the petitioner was not included.

4. In light of the above facts, learned advocate for the petitioner submitted that the petitioner was already allowed discharge with effect from 30th April, 2017 and without waiting for the said date and without allowing the petitioner the time to produce discharge book of service, the respondent authorities acted arbitrarily to exclude the candidature of the petitioner in the category of ex-armymen. Learned advocate for the petitioner termed such exclusion in violation of Articles 14 and 16 of the Constitution.

4.1 The petition was contested by respondent No.2 by filing affidavit-in-reply in which it was *inter alia* contended that though the name of the petitioner was included in provisional select list, since the petitioner failed to produce the discharge certificate, in the final list he was not included. It was stated that many other ex-servicemen had applied for both the posts, therefore the respondent authorities had addressed letter dated 01st April,

2017 to the District Sainik Welfare and Resettlement Office, Rajkot, for verification of discharge certificate issued by the concerned office in favour of as many as 18 candidates including the petitioner. It was undisputedly stated that the petitioner could not produce the discharge certificate. It was contended that the petitioner was not discharged and was still in army service, therefore could not be treated as ex-serviceman. It was submitted that in law the petitioner was not entitled to be considered for his candidature in the category of ex-armymen.

5. Having considered the facts and appreciated the rival case and the contentions, it could be seen that the advertisement clearly provided that a candidate applying in ex-service quota should be former Sainik and that they would have to show the details of their services rendered in past as service man. It was further stipulated that for the purpose of qualification etc. of the candidate, the position as on 07th December, 2016 would be reckoned. In Clause 1.9 it was mentioned that 10% quota was reserved for ex-servicemen.

5.1 It was shown that as many as 18 candidates were the contenders in the category of ex-servicemen. Their certifications were examined by the District Development Officer and communication dated 01st April, 2017 was sent to the District Sainik Welfare Officer for confirmation of details about the ex-service category candidatures. All of them except the petitioner were already discharged from army service

in past and had acquired the status of ex-serviceman. The petitioner had not been discharged as he was due to retire on 31st July, 2017. He had requested for early retirement which was approved to permit the petitioner to retire with effect from 30th April, 2017. On undisputed facts therefore on the date of application as well as when the certifications were examined and the details of candidates were sent, the petitioner was not ex-serviceman. He was in actual service awaiting the date on which he was to be allowed to retire.

5.2 Furthermore, the State Government has framed, in exercise of powers conferred under Section 323 read with Section 203(3) of the Gujarat Panchayats Act, 1961, Rules called Gujarat Panchayat Services (Reservation of Vacancies for Ex-servicemen) Rules, 1989, in which "ex-servicemen" is defined. The definition reads as under.

2(C) 'Ex-serviceman' means, a person who has served in any rank (whether as combatant or non-combatant), in the armed forces of the Union, including the armed forces of the former Indian States, but excluding the Assam Rifles, Defense Security Corps, General Reserve Engineering Force, Lok Sahayak Sena and Territorial Army, for continuous period of not less than six months after attestation, and...

- (i) has been released, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, or has been transferred to the reserve pending such release, or
- (ii) has to serve for not more than six months for completing the period of service requisite for becoming entitled to be released or transferred to the reserve as aforesaid, or
- (iii) has been released at his own request after

completing five years service in the armed forces of the Union.

6. As per the above definition, thus a person who had in past served in the armed forces and who is released from the service, could be treated as ex-serviceman. Only such person could participate to claim the ex-servicemen quota in the selection process.

6.1 When the petitioner was not released from army and was in service on the date of application and also on the date of examination of certifications, he was not ex-serviceman. His name was rightly not included in the final select list.

7. In view of the foregoing reasons and discussion, the petition lacks merit. No relief could be granted to the petitioner. Petition stands dismissed. Interim relief, if any, stands vacated.

Notice is discharged.

(N.V.ANJARIA, J)

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