

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6671 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6672 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6673 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6674 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6675 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6676 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6677 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6680 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6681 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6682 of 2020**=====

BHAVIKKUMAR BHARATBHAI VASAVA**Versus****STATE OF GUJARAT**

=====**Appearance:****MR.DEVENDRA H PANDYA(6462) for the Petitioner(s) No. 1****for the Respondent(s) No. 2****MS MANISHA L SHAH, GOVERNMENT PLEADER(99) WITH MS****DIVYANGANA JHALA, AGP for the Respondent(s) No. 1**

=====**CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV****Date : 30/06/2020****COMMON ORAL ORDER**

1. Heard learned advocates appearing for the respective parties through video conferencing. **Rule** returnable forthwith. Ms. Divyangana Jhala, learned Assistant Government Pleader waives service of notice of rule on behalf of respondent State. With the consent of the learned advocates for the respective parties, as the issue involved in these petitions has already

been decided by this court, the present petitions are being taken up for final hearing today.

2. In these petitions, under Article 226 of the Constitution of India, the short question is whether the petitioners could have been sidelined for being appointed to the post of armed/unarmed police constable/Lokrakshak as per their merit with all consequential benefits. As the issue involved in the present group of matters has already been discussed in earlier petitions, without delving into the facts in detail, the main grievance of the petitioners is required to be looked into as to whether they could be sidelined for such appointments on the ground of their medical incapacity of colour blindness.

3. Mr. Devendra Pandya, learned advocate for the petitioners invited my attention to a common oral order dated 26.07.2018 passed in a group of petitions being Special Civil Application No. 15431 of 2017 and allied matters where similar cases were considered. He submitted that the aforesaid order of the learned Single Judge was carried in appeal before the Division Bench of this Court vide Letters Patent Appeal No. 1136 of 2018 and the appeal was allowed vide judgement and order dated 02.11.2018.

3.1 Mr. Pandya has further drawn the attention of this court to the decision of the co-ordinate bench of this court rendered in Special Civil Application No. 3739 of 2018 on 08.04.2019 whereby this court after discussing various decisions of the Apex Court allowed the petitions and gave certain directions. He has also relied on a decision of this court rendered in Special Civil Application No. 3231 of 2020 with Special Civil Application No. 3236 of 2020 on 10.02.2020.

4. This court in petitions being Special Civil Application No. 3231 with 3236 of 2020 followed the decision rendered by this court in Special Civil Application No. 3739 of 2018 as well as Special Civil Application No. 15431 of 2017 and passed the following order:

“5. This Court in Special Civil Application No. 15431 of 2017 and allied matters considering the law laid down by this Court and the relevant provisions of Gujarat Civil Services (General Condition of Services) Rules, 2002 held in paragraphs no. 5.3 to 6.1 as under:

“5.3 It was unequivocally held that the colour blindness would not lead to disqualification from being appointed to the post of Unarmed Police Constable as under,

“9. A conspectus of the aforesaid rules and the requirement of the Appendix, would clarify that the same do not refer to colour blindness, which is treated as a predicament for the appointment of the petitioners to the post of Lok Rakshak. In the aforesaid rules, the colour blindness is not provided as a disqualification to the post to any ClassIII posts, indisputably the post of Lok Rakshak, for which the petitioners seek appointment falls under Class-III post. In Group ‘A’, which refers to “Armed and unarmed Police etc.”, the requirement is “very high degree of visual acuity with unaided eye. It is not the case of the respondents that the petitioners are having any myopic vision for which they require the aid of glasses. Their case will not fall under Group ‘B’ which refer to “a very high degree of vision of acuity with glasses and moderate degree without glasses”. The posts under Group ‘D’ which refer to desk work also does not refer to colour blindness as a disqualification. Hence, it is ostensible that the respondents have acted contrary to the rules which govern their medical fitness.”

5.4 The Court proceeded to rely on an Apex Court decision,

“10. The Supreme Court in the case of **Union of India and ors Vs. Satyaprakash Vashishth [1994 (Suppl) 2 SCC 52]** while examining a similar issue and rules

prescribed for the post of Sub-Inspector (Executive) has held that colour blindness was not a disqualification, as the same was not incorporated in the rules. In the judgment rendered in the case of **Khant Harischandra Amarsinh Vs. Superintendent of Police [2003 (4) GHJ 300]**, this Court while examining the case of Unarmed Constable, who was having colour blindness, has set aside the termination and it is observed that “It cannot be ipso facto judged that the colour blindness, is itself a disqualification for any post in question.” It is also observed that there are no specific provisions which treats colour blindness as a disqualification or unfitness for the post of Unarmed Police Constable. In the present case, the petitioners have applied for the post of Lok Rakshak, which is Class-III post and stands at equal pedestal to the post of Unarmed Police Constable. The advertisement dated 11.02.2009 referred by the learned Assistant Government Pleader does not reflect any clause which denies appointment to the post of Lok Rakshak to such candidates who suffer from colour blindness. The Resolutions dated 28.12.2006 & Circular dated 11.02.2009 are neither annexed with the affidavit in reply nor they are shown to this Court. Hence, the less the law enunciated in the aforementioned judgments will prevail.”

6. Reverting to the facts of the present case, in case of each of the petitioners, though the competent authority issued letters of appointment to them, the actual appointment was not given on the ground that in the medical examination, the petitioners were noticed to be colour blind. Having regard to the position of law as laid down by this Court in **Shaikh Tahirhusain Mohmmmed Hanif (supra)** as well as in **Dineshbhai Govindbhai Kathechiya (supra)**, the action on the part of the respondents in not granting the appointment to the petitioners, is rendered arbitrary and illegal. The petitioners have to be treated as qualified and to be entitled to be appointed to the post in question.

6.1 As a result of above, the respondents are hereby directed to act upon the appointment orders already issued to the respective petitioners and consider to appoint them on the

post of Unarmed Police Constable, by not treating their colour blindness as ineligibility and ignoring the colour blindness, if nothing adverse is otherwise found against them.”

6. It is not in dispute that the case of the petitioners is now covered by the decision rendered by this Court in **Letters Patent Appeal No. 1136 of 2018** wherein this Court directed the respondents to consider the case of the appellants for appointment to the post of Lokrakshak ignoring their colour blindness and if nothing adverse against them is found. The petitioners therein were directed to be appointed on the said post forthwith. The Division Bench considering the issue on hand held as under in paragraph no. 12 to 15:

“12. In the light of the law laid down in the above decisions, it clearly emerges that in case any candidates are sought to be disqualified on the ground that they suffer from colour blindness, there has to be a specific provision in the rules providing for such disqualification. In the facts of the present case, a perusal of the relevant rules clearly indicates that no such disqualification has been provided for the post in question. Under the circumstances, it is not permissible for the respondents to adopt a stand that the appellants herein are not qualified for the post of Lok Rakshak. The learned Single Judge was, therefore, not justified in holding that every kind of deficiency or incapacity is not to be mentioned in the recruitment rules, and therefore, merely because it has not been specifically provided in the rules, it cannot be presumed that the petitioner therein should be treated as medically fit in spite of negative opinion after the examination.

13. This Court is of the opinion that the view adopted by the learned Single Judge in **Dineshbhai Govindbhai Kathechiya (supra)**, is in consonance with the settled legal position and the relevant rules and does not find it possible to agree with the view adopted by the learned Single Judge in the present case.

14. The appeals stand allowed accordingly. The impugned judgment and order dated 11.07.2018 passed by the learned Single Judge in Special Civil Application No.7595 of 2013 is hereby quashed and set aside. The writ petition being Special Civil Application No.7595 of 2013 is hereby

allowed to the following extent.

15. The respondents are directed to consider the case of the appellants for appointment to the post of Lok Rakshak ignoring their colour blindness, and if nothing adverse is found against them, they shall be appointed on the said post forthwith. Since considerable time has elapsed since the recruitment was made, it is left to the discretion of the respondent authorities to appoint the appellants to any other Class-III post having equal pay if the post of Lok Rakshak is not available. It is also directed that in case the appellants are not assigned active duty of Lok Rakshak, they may be assigned table work as an alternative.”

7. In view of the above, petitioners herein being similarly situated as the petitioners in the abovereferred cases, deserve to be granted the same benefit. Accordingly, the impugned orders are hereby quashed and set aside. The respondents are directed to consider the case of the appellants for appointment to the post of Lok Rakshak ignoring their medical incapacity, and if nothing adverse is found against them, they shall be appointed on the said post forthwith. Since considerable time has elapsed since the recruitment was made, it is left to the discretion of the respondent authorities to appoint the appellants to any other Class-III post having equal pay if the post of Lok Rakshak is not available. It is also directed that in case the appellants are not assigned active duty of Lok Rakshak, they may be assigned table work as an alternative.

8. This Court is further of the view that though the appellants are entitled to the benefit of service from the date when they should have ordinarily been appointed on being selected yet it would not be appropriate to treat the earlier period prior to the date of their appointment as a period to be reckoned as actual service if a period of actual service is prescribed as a necessary qualification or promotion. It is also made clear that the promotion already made of persons junior to the appellants in the merit list on account of the late appointment of the appellants shall not be disturbed as a result of the relief granted to the appellants. Subject to these limitations, the entire period commencing from the date when the appellants should have ordinarily been appointed would be treated as a part of their continuous service for all other purposes including the retiral benefits and fixation of their seniority.”

5. Therefore, considering the fact that the petitioners herein claim that they are similarly situated to the petitioners of the aforesaid petitions, the respondents are directed to consider the case of the petitioners for appointment to the posts in question ignoring their medical incapacity, and if nothing adverse is found against them, they shall be appointed on the said posts forthwith. The case of the petitioners shall be considered in line with the decisions of this court as referred to hereinabove within a period of eight weeks from the date of receipt of the copy of the order of this court. Needless to say that whatever benefits that are granted to the petitioners of the petitions referred to hereinabove shall be extended to the present petitioners also.

6. The petitions are allowed to the aforesaid extent. Rule is made absolute accordingly. Registry to communicate the present order to the respondents by way of email/fax.

(BIREN VAISHNAV, J)

Divya