

Gujarat High Court

Anuradha Vikramsinh Rajput vs Gujarat Subordinate Services ... on 19 May, 2023

Bench: J. C. Doshi

C/SCA/11819/2022

ORDER DATED: 19/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11819 of 2022

With

CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2023

In R/SPECIAL CIVIL APPLICATION NO. 11819 of 2022

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ANURADHA VIKRAMSINH RAJPUT

Versus

GUJARAT SUBORDINATE SERVICES SELECTION BOARD (GAUN SEVA  
PASANDGI MANDAL)

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Appearance:

MR MJ MEHTA(5797) for the Petitioner(s) No. 1

MR NANDISH SHAH FOR MR SAURABH J MEHTA(2170) for the  
Petitioner(s) No. 1

for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 19/05/2023

ORAL ORDER

1. With the consent of the learned advocates for both the sides, this petition is taken up for final hearing.

2. In this petition filed under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs :

"(A) Your Lordships may be pleased to issue a writ of mandamus or any other writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent herein to permit/allow the present petitioner to apply for the post of Gujarati Stenographer in pursuant to the Advertisement dated 16.06.2022 and further be pleased to direct the Respondents, their servants, agents, subordinates to accept the application of the present C/SCA/11819/2022 ORDER DATED: 19/05/2023 petitioner and permit/allow the present petitioner to participate in the examination pursuant to the Advertisement dated 16.06.2022 and in the event the

petitioner herein successfully clears the examination, her case may be considered for appointment to the post of Gujarati Stenographer;

(B) Pending hearing and till final disposal of the Petition, Your Lordships may be pleased to allow/permit the present petitioner to apply for the post of Gujarati Stenographer in pursuant to the Advertisement dated 16.06.2022 and further be pleased to direct the respondents to accept the application of the petitioner and allow/permit the present petitioner to appear in the examination in pursuant to the Advertisement dated 16.06.2022;

(C) Any other and further relief/s as the facts and circumstances of the case may require, also be granted."

3. On 29.06.2022, this Court passed the following order :

"NOTICE returnable on 29.07.2022.

The petitioner shall be permitted only to lodge her application for the post in question and not be permitted to appear in any examination that may be ensued subject to further orders.

Hard copy of the application if tendered by the petitioner shall be accepted.

Direct service today is permitted."

4. Subsequently, in Civil Application No.1 of 2022, this Court passed the following IA order on 27.12.2022 :

"Heard learned Advocate Mr Shubhang Shah for the applicant and learned AGP Mr. Raj Tanna for the respondent State.

C/SCA/11819/2022 ORDER DATED: 19/05/2023 1.1 Affidavit-in-Reply filed on behalf of respondent no.1 is taken on record.

2. By way of this application, the application has sought for directions interalia to permit the applicant to appear in an examination for the post of Gujarati Stenographer which is scheduled from 3.1.2023 to 7.1.2023.

3. Considering the submissions made by learned advocate Mr. Shah and learned AGP Mr. Tanna, while it prima facie appears that the present applicant has not stated about Government Resolution dated 14.10.2021 in her petition, more particularly the Resolution relaxing the age criteria by one year for advertisements which were published between the period 1.9.2021 to 31.8.2022, yet considering the terms of the Resolution, it prima facie appears that the said Resolution, does not grant any relaxation, to such category of candidates as mentioned at para 4 (2) of the

Advertisement, more particularly where certain categories of candidates have been granted relaxation of age, upto 45 years. It, thus, appears that while candidates who do not fall in such categories as found in para no. 4(2) of the advertisement would be entitled to relaxation of one year whereas candidates who otherwise have got relaxation as per Rule 8 (2) of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, would not be entitled to any further relaxation. It further appears that the Resolution of the State Government, on the basis of which the relaxation of one year is granted, i.e Resolution dated 14.10.2021, relaxes the age for one year for advertisements published between 1.9.2021 to 31.8.2022 on account of the Covid 19 pandemic, more particularly without any reference to the fact that the pandemic, had affected the country from the last week of March 2020 and not from 1.9.2021, which is sought to be taken as the starting point of the relaxation as found in Resolution dated 14.10.2021.

4. Having regard to such prima facie observations, since this Court has already thought it appropriate to entertain the present application, at this stage, this Court considers it expedient to pass the following order :

"(1) The present petitioner is permitted to appear in the examination for the post of Gujarati Stenographer pursuant to advertisement No. 201/2022-23 published by the Gujarat Subordinate Services Selection Board, Gandhinagar on 16.6.2022 subject to the condition that such appearing in the examination shall not create any equity in favour of the present applicant. (2) It is further clarified that the respondent GSSSD shall not declare/ publish the result of the present applicant and whereas the result of the present applicant shall be tendered in a sealed cover."

5. With the above interim direction, the present application stands C/SCA/11819/2022 ORDER DATED: 19/05/2023 disposed of as partly allowed whereas it is clarified that the above interim order would be subject to final outcome of the Special Civil Application 11819 of 2022.

6. Direct Service is permitted today."

5. Heard learned advocate Mr.Nandish Shah for learned advocate Mr.Saurabh J. Mehta appearing for the petitioner and learned Assistant Government Pleader Ms.Hetal Patel appearing for the GSSSB and the State.

6. Learned advocate Mr.Nandish Shah for the petitioner would submit that the birth date of the petitioner is 28.10.1975 which is reflected from the Birth Certificate (Annexure "A"). He would further submit that the respondent No.1 issued advertisement on 16.06.2022 on the website <https://ojas.gujarat.gov.in> and <https://gsssb.gijarat.gov.in> for the recruitment of the Gujarati Stenographer. He would further submit that in view of the condition no.4.1, the cut-off date for the age was declared as 30.06.2022. The minimum age criteria was 20 years whereas, the maximum age as on that date given to be 40 years. He would further submit that since the present petitioner was a female candidate, in view of the condition no.4.2 she would have been given relaxation of 5 years for the maximum age of 45 years. He would further submit that prior to the declaration for the recruitment of Gujarati Stenographer (Annexure "B") earlier recruitment process was conducted in

the year 2015 (Annexure "C"). In other words, he would submit that since from 2015 till the recruitment process begun as per the Annexure "B", no recruitment process was conducted for more than 7 years, meanwhile the petitioner crossed the eligibility criteria. He C/SCA/11819/2022 ORDER DATED: 19/05/2023 would further submit that in view of the relaxation given by the Government for 1 year due to deadly Covid-19, the petitioner could have applied till the age of 46 years but, unfortunately, the petitioner crossed the age of 46 years and she is older only 8 months as on date of the advertisement for the recruitment of the Gujarati Stenographer. He would further submit that since opponents have not conducted the recruitment process during last 7 years, the right of the petitioner to get the Government job enshrined by Article 16 has been seriously prejudiced. He, therefore, submitted that the petitioner must be allowed to participate in the examination.

6.1 Learned advocate Mr.Nandish Shah would submit that the relief prayed by the petitioner is eloquent and he seeks to allow the petitioner to participate only in the examination. The petitioner's eligibility would come into play only after she passes the examination and therefore, he would submit that the present petition be allowed.

6.2 In this petition, the petitioner has referred to the judgment of this Court rendered in Special Civil Application No.6289 of 2011 (Annexure "E") as well as the judgment of the Hon'ble Supreme Court rendered in case of High Court of Delhi Vs. Devina Sharma (Annexure "F") and the judgment of the Delhi High Court rendered in case of Sachin & Ors. Vs. Anurag Sharma & Ors., reported in 2023 JX (Del) 32 to contend that in given situation the age criteria can be relaxed and the petitioner can be permitted to appear in the examination. At the cost of repetition, he would further submit that since the respondents have not conducted recruitment process for more C/SCA/11819/2022 ORDER DATED: 19/05/2023 than last 7 years during which time period the petitioner age barred which has seriously prejudiced the fundamental right of the petitioner to get the Government job, hence, the petitioner may be permitted to appear in the examination by relaxing the age criteria.

6.3 Upon such submission, learned advocate Mr.Nandish Shah submitted to allow this petition.

7. Learned AGP Ms.Hetal Shah vehemently objected to grant of this petition inter alia on the argument that the recruitment of the Gujarati Stenographer is conducted as per the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 ("Rules" for short). She would further submit that in view of the Rule 8(2)(b), the relaxation clause permits that if prescribed age limit exceeds 40 years the age limit may be relaxed to the extent of maximum of 5 years so as to provide upper age limit for entry in services, but it should not exceed 45 years. She would further submit that the Government by notification dated 14.10.2021 considering the deadly Covid 19 time period, extended the age relaxation for one year for the recruitment advertisement are published between 1.9.2021 and 31.8.2022, which in the present case, already mentioned in the advertisement for the recruitment at Annexure "D". So, in any case, the petitioner can claim to appear in the examination only if she is under the age of 45 years, but beyond that, she cannot claim that she may be allowed to participate in the examination. She would further submit that admittedly, when the advertisement for the recruitment for the post of Gujarati Stenographer, the C/SCA/11819/2022 ORDER DATED: 19/05/2023 petitioner has crossed the age of 46 years and she was one year and eight months older

than the prescribed age limit. She would further submit that there is no other relaxation rule in the Rules and therefore, the present petitioner has no locus to claim that she may be permitted to appear in the examination.

7.1 Learned AGP Ms. Patel submits that identical issues were addressed by this court in LPA No.865 of 2021 and LPA Nos.429 of 2022, wherein it is categorically held that no relaxation can be granted by issuing any direction when the petitioner has not possessed requisite qualification or age criteria.

7.2 Upon such submission, learned AGP submits to dismiss this petition.

8. No other and further submissions are canvassed by the learned advocates for both the sides.

9. Heard learned advocates appearing for the respective parties.

10. At the outset, it is to be noted that the petitioner has prayed to permit her to apply for the post of Gujarati Stenographer pursuant to the advertisement dated 16.06.2022 and further prayed to permit her to accept the application of the petitioner and further to permit the petitioner to appear in the examination. It is an undisputed fact that on 16.06.2022, the petitioner who was born on 28.10.1975 (Annexure "A") has C/SCA/11819/2022 ORDER DATED: 19/05/2023 crossed the age limit of 46 years. In view of the advertisement (Annexure "B") condition no.4.1, the minimum age limit for the candidate to appear in the examination for Gujarati Stenographer prescribed was 20 years and the maximum was 40 years. In view of the Circular of the Government of Gujarat 1 year relaxation was given and it was considered to be 41 years. Some relaxation to different category of the candidate was given in condition no.4.2. the present petitioner is a female candidate in the general category. According to condition no.4.2, the relaxation to the female candidate in general category is given 5 years with the cap of maximum 45 years of age. Admittedly, the petitioner was beyond 45 years on the date of the advertisement.

10.1 It is trite to say that the recruitment of Gujarati Stenographer is governed by the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. The condition of the prescribed qualification so far as prescribed age is concerned, it is given in Rule 8(2)(b), which reads as under :

8. Condition as to Prescribed qualifications :-

(1) xxxxxxxxxxxxxxxx (2) Where the prescribed qualification include a qualification as to age limit the appointing authority may relax the age limit in favour of candidates belonging to the [Scheduled Castes, Scheduled Tribes]+1 , [Socially and Educationally Backward Classes] [and Economically Weaker Sections] [and in favour of candidate who are women] to the following extent, that is to C/SCA/11819/2022 ORDER DATED: 19/05/2023 say:-

(a) xxxxxxxxxxxxxxxx

(b) in the case of service or post in the State Service in respect of which the prescribed age limit exceeds forty years, the age limit may be relaxed to the extent of maximum five years, so as to

provide that upper age limit for entry in the service does not exceed forty five years.

10.2 Thus, it is noticed that in view of the above Rule, the maximum relaxation which is prescribed is of 5 years which is already given in the advertisement for recruitment (Annexure "B"). There is no further relaxation clause. Even circular of the Government dated 14.10.2021 is also taken care by the respondent No.1 while advertising the recruitment.

10.3 Thus, the legal proposition emerge from the above rule that for right to participate in the selection process is subject to the prescribed eligibility condition. The right is guaranteed only if the candidate fulfills the requisite eligibility criteria stated in the above Rules on the stipulated date. It is also an admitted position that the proposition of the eligibility of any candidate is to be reckoned from the date of the advertisement for the post or as per the permission of the Rules and not by any other condition. Lacking of eligibility cannot permit the petitioner to expect that she may be permitted to enter into the selection process and further may be permitted to sit in the examination or apply for the examination.

10.4 Since in the present case, the petitioner failed to

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establish that she is possessing the prescribed age limit on the date of the advertisement or is there any relaxation rule which permit her to participate in the selection process and further to participate in the examination, the petitioner cannot enforce such kind of relief by way of this petition.

10.5 The Division Bench of this Court in the aforesaid judgment which has been referred to by the learned AGP Ms.Patel eloquently establishes that if the petitioner has failed to possess prescribed eligibility condition she cannot claim that she may be permitted to participate in the selection process. In view of the judgment of the Hon'ble Supreme Court in the case of Bedanga Talukdar Vs. Saifudaullah Khan, reported in 2011 (12) SCC 85, it has been held that no relaxation can be granted by issuing any direction. The judgments relied upon by the petitioner are on different facts and therefore, they are not rendering any assistance to the petitioner.

11. Upshot to the above and for the foregoing reasons, this petition is short of merits and accordingly it is dismissed. Notice is discharged. Interim relief, if any, stands vacated. The connected civil application also stands dismissed.

(J. C. DOSHI,J) Dolly