IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5192 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

==========

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 ?	

==========

BHALODIYA RAVIKUMAR JAYNATILAL
Versus
STATE OF GUJARAT

==========

Appearance:
MR KB PUJARA(680) for the Petitioner(s) No. 1
MR DG SHUKLA(1998) for the Respondent(s) No. 4
MR HS MUNSHAW(495) for the Respondent(s) No. 2
MR. KURVEN DESAI, AGP, for the Respondent(s) No. 1,3

==========

CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 16/06/2022
ORAL JUDGMENT

1 Rule returnable forthwith. Mr.Kurven Desai, learned AGP, waives service of rule on behalf of the respondent – State.

2 By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction to quash and set aside the

Seniority List of Multi Purpose Health Workers (male) as on 31.08.2018 published on 20.12.2018. The petitioner has been placed at serial No. 184 on the merit list which is germane for consideration for promotion to the post of Multi Purpose Health Supervisors. The placement of petitioner at serial No. 184 in list rather than his expected placement at serial no. 105-A is on the ground that the petitioner was appointed as Multi Purpose Health Worker and joined on 09.07.2013.

3 Facts in brief would indicate that the Gujarat Panchayat Services Selection Board, issued an advertisement for recruitment to the post of Multi Purpose Health Worker (male). The petitioner applied on-line. He was placed at serial no. 677, considering his written test marks at 55.80 plus additional marks for sports at 2.79 making a total merit secured as 58.59.

3.1 On 27.08.2012, the petitioner was called for verification of documents, on which date, he remained present with a certificate issued by the Principal of Shri Saraswati Vidya Mandir certifying the petitioner's proficiency in cricket. The Rajkot District Panchayat Services Selection Board informed the petitioner that he would not be entitled to the additional 2.79 marks for sports as the certificate was of the school and the merit would be considered only as 55.80. Candidates who were selected along with the petitioner were offered appointments on

01.10.2012 and they joined on 03.10.2012. On record is a letter dated 09.10.2012 addressed by the petitioner to the respondent No.3 indicating that even if his marks for the sports i.e. 2.79 marks are not considered, he would otherwise be on merit, and therefore, he would not insist for pressing for the additional marks as he would otherwise fall within the merit for preference for appointment.

3.2 The petitioner was not issued an order of appointment and it was only on 08.07.2013 that the petitioner was offered appointment which he accepted and joined on 09.07.2013. Based on this date of joining, the petitioner is placed at merit seniority No. 184 in the seniority list which is under challenge.

4 Mr.K.B.Pujara, learned advocate for the petitioner, would draw the Court's attention to the seniority list and submit that the candidates who were offered appointment along with the petitioner and who joined on 03.10.2012 were placed on the seniority list at serial no. 105 , merit order 985 and at 106 merit no. 1053. Admittedly, since the petitioner had merit higher than the candidate at 106, he was entitled to placement at 105-A. The candidates shown at 106 and 107 have subsequently been based on this placement promoted as Multi Purpose Health Supervisors by an order of 08.03.2019. He would therefore submit that there was no delay on the part of the petitioner which could go against him as it was a delay purely

attributable to the respondents who, despite the petitioner accepting the stand of the respondents of not insisting a certificate of cricket issued an appointment order only after nine months and eight days.

4.1 Reliance was placed on a Resolution of the State dated 22.01.2009. Sub-clause (ch) of para 11 of the resolution was relied upon with regard to the order of preference in the merit, when the delay is not on account of the candidate who has secured appointment. Reliance was also placed on a decision of the Hon'ble Supreme Court in the case of ***M.C.D vs. Veena & Ors.,*** reported in ***(2001) 6 SCC 571.***

5 Mr.H.S.Munshaw, learned counsel for the respondent No.2 have taken the Court through the affidavit-in-reply filed on behalf of the Chief District Health Officer, Rajkot District Panchayat. He would submit that since the petitioner could not produce the Sports Certificate in accordance with the rules, he was addressed a letter dated 03.10.2012 to submit the same within four days. He did not do so.

5.1 The affidavit-in-reply further indicates that though the petitioner was not holding a requisite Sports Certificate for availing the benefit of additional marks, he has misrepresented his case while submitting his application by providing incorrect information for availing employment. The delay was solely on account of the petitioner for which the authorities cannot be held responsible and the application was only

reconsidered when the petitioner requested that he be considered on the basis of he having secured 55.80 marks.

5.2 In para 5 of the reply, Mr.Munshaw, learned advocate, would submit that a revised merit list was published by the Board on 21.06.2013, pursuant to which the appointment order dated 08.07.2013 was issued.

6 Considering the arguments of the learned counsels for the respective parties, it is undisputed that the first offer of appointment to the petitioner as well as to the candidates who figure in the seniority list of 31.08.2018 at serial nos. 105 and 106 were offered appointments together with the petitioner on 01.10.2012. Their merit was at 985 and 1053 respectively. Pursuant to the letter of 03.10.2012, the petitioner immediately on 09.10.2012 had offered himself for appointment minus the Certificate of Cricket categorically pointing out to the authorities that his name otherwise also fall within the merit. It took nine months and eight days for the respondents to react and respond and ultimately offered an appointment to the petitioner only on 08.07.2013 and the petitioner joined on 09.07.2013. The delay, therefore, cannot be attributed to the petitioner who had immediately within four days offered himself without insisting for the Certificate of Cricket and on consideration of the merit at 55.80 minus the score of 2.79 percent of cricket. Placement therefore at

seniority no. 184 in spite of he having a merit, holding the petitioner responsible for the delay in joining is misconceived.

6.1 It will be fruitful to note the observations of the Hon'ble Supreme Court in the case of ***M.C.D vs. Veena (supra).*** Paras 8,9 and 10 need to be considered and are referred to as hereunder:

> *"8 However, one aspect has to be borne in mind and that is the respondent candidates had made applications as if they belong to OBCs on the basis of the certificates issued by the State from which they migrated to the national Capital Territory of Delhi, but if the certificates issued in their original States of which they are permanent or ordinary residents were not good, the applications should have been treated as if they had been made in the general category and cases of the respondent candidates ought to have been considered in the general category. Therefore, to the extent, the applicants have attained necessary merit in the general list, they deserve to be appointed.*
>
> *9 The learned counsel for the appellants, however, pleaded that the respondent candidates having applied for the posts as if they belong to OBC groups, their applications could not be treated as falling under the general category. We fail to appreciate this contention. The particulars furnished by the respondent candidates clearly give in detail their general qualifications and eligibility. The only additional aspect stated by them in their respective applications or in the certificates supported thereto is that they belong to OBC categories. Hence, their cases ought to have been considered in the general category as if they do not belong to OBC categories in the circumstances arising in this case.*
>
> *10 We, therefore, in allowing these appeals direct that the cases of the respondent candidates shall be treated as if they do not belong to OBC groups but fall under the general category and their cases shall be examined and they shall be appointed in appropriate posts of primary and nursery teachers if they have attained the necessary merit in the select list. This exercise shall be done within a period of three months from today. It is brought to our notice that there are several vacancies still available with the appellants in this category of posts and no difficulty would arise in the matter of appointing the respondent candidates to those posts.*

However, if any difficulty arises, it shall be the duty of the appellants to create appropriate posts and appoint the respondent candidates to such vacancies falling under the general category."

6.2 In para 9, the Hon'ble Supreme Court on facts when found that even the OBC certificate was not produced, the respondent therein have been considered in the general category, would apply to the facts of the present case. Immediately, after offering appointment to the petitioner, the petitioner stepped back accepting the stand of the respondents in not insisting for his Sports Certificate being considered. The respondents reacted and responded in appointing the petitioner only on 08.07.2013 which was a delay purely attributable to the respondents. Pending the petition, the candidates at serial numbers 106 and 107 have been appointed as Multi Purpose Health Supervisors.

7 The petition is allowed, accordingly. The consequential effect of quashing the placement at 184 of the petitioner would entitle the petitioner for being promoted to the post of Multi Purpose Health Supervisor with effect from 08.03.2019 with all consequential benefits including arrears of pay. Necessary compliance of the order be made within a period of six weeks from the date of receipt of copy of this order. Rule is made absolute to the above extent. Direct service is permitted.

(BIREN VAISHNAV, J)

BIMAL