

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.3600-3601 OF 2012

STATE OF GUJARAT & ORS.

APPELLANTS

VERSUS

THAKORE BHALABHAI UMABHAI ETC.

RESPONDENTS

ORDER

1. The appellant-State of Gujarat is aggrieved by the order dated 09th May, 2011, passed by the High Court of Gujarat at Ahmedabad whereunder the intra court appeals¹ were allowed and the order dated 14th May, 2008, passed by the learned Single Judge in Special Civil Applications² was set aside. Resultantly, the appellant-State was directed to consider the caste certificate of the respondents in SEBC³ category and on accepting the same, follow the procedure of selection, as adopted in the case of other similarly placed candidates.

2. As per the records, the brief facts of the case reveal that both the respondents who are sight less, had in response to an advertisement dated 19th April, 2007 issued by the appellant-State for recruitment to the post of *Vidya Sahayak* (Music), submitted their applications wherein they had stated that they belonged to the SEBC category. However, the said application forms were not accompanied by any caste certificate.

1 Letters Patent Appeal Nos.612 and 613 of 2008

2 Special Civil Applications No.7388-7389 of 2008

3 Socially and Economically Backward Class

In view of the absence of the certificates submitted by the respondents, the appellants-State treated both the respondents as candidates in the open general category. Resultantly, they could not succeed in being selected for the subject post.

3. The respondents sought parity with other candidates who had applied for the same post and had not submitted their SEBC certificates along with their applications and claimed that despite that the appellants had accepted their certificate at the stage of conducting the interviews on 02nd May, 2008. A specific example was given of a candidate by the name of Bakul Dharangi belonging to the 'Scheduled Tribe' category who had also not submitted his caste certificate but was permitted to produce the same at the time of interview. This fact was admitted by the appellants in the affidavit filed before the High Court. Claiming that the respondents had been discriminated against by the appellants-State Government by denying them an opportunity to produce their caste certificate at a later stage, though the respondents approached the High Court *vide* judgement of the learned Single Judge dated 14th May, 2008, the petitions filed by the respondents were dismissed with an observation that the respondents had failed to annex their relevant certificates along with their applications and, therefore, could not later on raise a grievance that they were treated in the open general category instead of the SEBC category. Aggrieved by the said order, the respondents filed intra court appeals which have been allowed by the impugned judgement.

4. Learned counsel for the appellants-State Government submits that the impugned judgment is not sustainable as the Division Bench of the High Court has

wrongly endorsed the policy of submitting caste certificates after the last date of submitting the forms in response to the advertisement and that strict compliance of the instructions issued in the advertisement ought to have been made by the respondents. Having failed to comply with the terms and conditions of attachment of a caste certificate at the correct stage, the respondents cannot be permitted to submit the said documents subsequently and claim that they be accommodated in the SEBC category, for which 12 posts had been reserved.

5. On a pointed query addressed by this Court to learned counsel for the appellants-State Government as to whether some candidates who had applied in response to the advertisement in question had submitted their caste certificates at the stage of participating in the interview, learned counsel concedes the said position. She submits that if the Court is inclined to grant any relief to the respondents, then it be clarified that they would only be entitled to a consolidated salary, as specified in the terms and conditions indicated in the advertisement which refers to a lump sum emolument payable to candidates selected to the post of *Vidya Sahayak*.

6. On his part, learned counsel for the respondents relies upon the resolution dated 11th June, 1998, issued by the Education Department of the Government of Gujarat which states in clause (8) as follows :

“(8) If their services are found satisfactory after 2 years then in the Administration of District Primary Education Municipal Corporation/ Municipal Vidya Sahayak will be observed in regular Pay Scale in place of retirement of teachers in that year, according to Serial Number in Primary Teachers. On expiry of 5 years all the remaining Vidya Sahayaks will be absorbed in regular pay scale of teacher.”

7. Learned counsel for the respondents submits that in terms of the aforesaid resolution, the respondents would be entitled to be absorbed as a permanent teacher in a regular pay scale in due course. Further, learned counsel for the respondents also clarifies that the respondents have filed an affidavit clearly stating *inter alia* that both of them are not over age as on date and are entitled for appointment to the subject post.

8. In view of the fact that the appellants had patently discriminated against the respondents by permitting some candidates who had not submitted their caste certificates to do so at the stage of interview, whereas, the applications of the respondents were rejected on the ground that they had not submitted the SEBC certificates along with their applications, we are inclined to uphold the impugned judgement. It is noteworthy that both the respondents having received the highest marks in the selection list, were on the top of the list, even in the SEBC category, despite their handicap of being sight less. Despite this, they have been made to run from pillar to post for the past decade and a half, seeking their rightful dues.

9. In that view of the matter, while dismissing the present appeals as meritless and upholding the impugned judgment, the appellants-State Government is directed to take immediate steps to comply with the directions passed in the impugned judgment within four weeks from today, under due intimation to the respondents. It is made clear that the respondents shall be extended the same benefits as have been extended to other candidates selected in response to the advertisement dated 19th April, 2007, for the subject post.

10. The present appeals are dismissed with costs of ₹25,000/- (Rupees twenty five thousand only) imposed on the appellants-State Government to be paid to each of the respondents within the same time line.

.....J.
(HIMA KOHLI)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI
11th OCTOBER, 2023

ITEM NO.103

COURT NO.12

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NOS. 3600-3601/2012

STATE OF GUJARAT & ORS.

Appellant(s)

VERSUS

THAKORE BHALABHAI UMABHAI ETC.

Respondent(s)

Date : 11-10-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s) Ms. Swati Ghildiyal, AOR
Ms. Deepanwita Priyanka, Adv.
Ms. Devyani Bhatt, Adv.

For Respondent(s) Mr. Nachiketa Joshi, AOR
Ms. Himadri Haksar, Adv.
Mr. Abhishek Kansal, Adv.
Mr. Narayan Dev Prashar, Adv.
Mr. Yash Singh, Adv.
Ms. Varsha Tomar, Adv.
Mr. Pradeep Kumar Shukla, Adv.

UPON hearing the counsel the court made the following
O R D E R

The appeals are dismissed with costs of ₹25,000/- (Rupees twenty five thousand only) imposed on the appellants-State Government to be paid to each of the respondents in terms of the signed order.

Pending application(s), if any, are disposed of.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Nand Kishor)
Court Master (NSH)

(Signed Order is placed on the file)