

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 1254 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 9461 of 2022****With****CIVIL APPLICATION (DIRECTION) NO. 1 of 2023****In R/LETTERS PATENT APPEAL NO. 1254 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 5579 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA****sd/-****and****HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****sd/-**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | YES |
| 2 | To be referred to the Reporter or not ? | YES |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |

NIRMAL JAGMOHAN SHARMA**Versus****HIGH COURT OF GUJARAT****Appearance:****MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1****LAW OFFICER BRANCH(420) for the Respondent(s) No. 1****MS TRUSHA K PATEL(2434) for the Respondent(s) No. 1****NOTICE SERVED BY DS for the Respondent(s) No. 2****CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA****and****HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****Date : 18/04/2023****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. By the order dated 15.03.2023, the Coordinate Bench of this Court had admitted the Letters Patent Appeal and directed to list the matter for final hearing on 10.04.2023. By the order dated 13.04.2023, the captioned writ petition was ordered to be heard with the letters patent appeal.

2. Learned advocate Mr.Vaibhav Vyas, appearing for the appellant does not press the civil application since this Court has taken up the main matter today. Hence, the Civil application for direction stands disposed of as not pressed.

3. Since an urgency is pleaded in the matter, we have heard the learned advocate Mr.Vaibhav Vyas, appearing for the appellant as well as learned advocate Mrs.Krishna G. Rawal, appearing the petitioner in Special Civil Application No.5579 of 2023 and learned Senior Advocate Mr.G.M. Joshi, with learned advocate Ms.Trusha Patel, appearing for the respondent No.1 and the matter is finally decided by this judgment and order. The appellant is serving as a Civil Judge in Rajasthan, whereas the writ petitioner of Special Civil Application No.5579 of 2023 is serving as Civil Judge in Bihar.

4. Since the issue is common, the facts are incorporated from Special Civil Application No.9461 of 2022, which has been dismissed by the order dated 03.06.2022 by the learned Single Judge. Being aggrieved and dissatisfied, the appellant, under Clause 15 of the Letters Patent, 1865 has filed the captioned appeal.

5. The facts, which are recorded in the writ petition as well as recorded by the learned Single Judge are as under : -

5.1 Pursuant to the advertisement issued by the respondent No.1 on 01.02.2022 for recruitment of 219 posts of the Civil Judge. The appellant, who is serving as a Civil Judge at Rajasthan applied for the same on 04.02.2022, however it is the case of the appellant that such application was not accepted through online. She also sought permission from the Rajasthan High Court to allow her to apply to the advertisement for the post of Civil Judge issued by the respondent No.1 i.e. High Court of Gujarat and subsequently, it was also granted.

5.2 Since her online application was not accepted, she immediately made a detailed representation to the respondent No.1 on 07.03.2022 requesting the respondent No.1 - authority to consider her case for appointment to the post of Civil Judge and permit her to fill the application form by physical mode. In the meantime, the appellant received permission from the competent authority i.e. from Rajasthan High Court.

5.3 The preliminary examination was scheduled on 15.05.2022, as per the clause of the advertisement.

5.4 Being aggrieved by the action of the respondent No.1, the appellant filed the captioned writ petition with a prayer to consider her case for the appointment to the post of Civil Judge and to declare and hold the instruction contain at Item No.10(7) (at Annexure-A), so far as it excludes the candidature

of the candidates working in the Courts, which are not subordinate to the High Court of Gujarat for recruitment to the post of Civil Judges.

5.5 The learned Single Judge by the order dated 03.06.2022 did not entertain the writ petition and dismissed the same which has given rise to the present appeal.

6. Learned advocate Mr.Vaibhav Vyas, appearing for the appellant has submitted that the entire action of the respondent No.1 is *de horse* the recruitment Rules and the paragraph No.10(7) of the advertisement, which is clarificatory in nature, is issued pursuant to the recruitment Rules being Gujarat State Judicial Service Rules, 2005 (the Rules), is illegal and against such rules.

6.1 Learned advocate Mr.Vyas, has placed reliance on the provisions of Rule 7(2)(b) of the Rules and has emphasized on the expression “must have worked in the Courts” in support of his submissions. He has submitted that since the appellant, who is working as a Civil Judge in Rajasthan, will fall in the category of the expression “must have worked in the Courts”.

6.2 It is submitted that the said Rule 7(2)(b) was further amended by the Notification dated 05.06.2017 and the expression “must have worked in the Courts” is altered and replaced by the expression “must be working in the Courts.” It is submitted that even the period of 5 years, which was incorporated in Clause (b) of Sub-rule (2) to Rule 7 was also deleted. Thus, it is submitted that even considering both the

expression i.e. “must have worked in the Courts” and “must be working in the Courts”, the case of the appellant would fall under such expression, as she is working as a Civil Judge in Rajasthan, and hence, application seeking appointment on the post of Civil Judge is required to be accepted.

6.3 Learned advocate Mr.Vaibhav Vyas has further pointed out the instructions contained in paragraph No.10(7) of the advertisement. It is submitted that the expression “allied departments” as mentioned hereinabove in the aforesaid Rules, is further clarified and the employees working in the departments as mentioned therein in Instruction No.10(7) are considered to be eligible for applying to the post of Civil Judges, however, the present appellant, who is working as a Civil Judge is debarred and her application seeking appointment to the post of Civil Judge is not considered since such category is not included and hence, the clarificatory instructions issued in the advertisement would create a different class treating equals and unequals. Thus, it is submitted that the instructions in the nature of clarification or further explaining the expression employees of allied departments as mentioned in Instruction No. 10(7) is required to be quashed and set aside.

6.4 Learned advocate Mr.Vaibhav Vyas has further pointed out the averments made in paragraph No.5 of the affidavit-in-reply filed by the respondent No.1 and has submitted that in fact, it is the case of the respondent No.1 that since the appellant is a Trainee Civil Judge and Judicial Magistrate in the Rajasthan State, she cannot be termed as practising advocate

nor she can be treated as an employee of the allied departments and hence, as per the Instructions Nos.10(7) and 25(V) of the detailed advertisement, the application of the appellant was not entertained.

6.5 Learned advocate Mr.Vyas, has, in support of his submissions placed reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of Nathi Devi versus Radha Devi Gupta, (2005) 2 SCC 271, more particularly, paragraph No.13 and has submitted that the expression "working in the Courts" or "must have worked in the Courts" has to be interpreted suitably and reasonably to give the expression its true meaning irrespective of the consequences. It is submitted that by interpreting the aforesaid expression, the respondent No.1 has in fact created a new class and has barred the application of the appellant from being accepted of having been appointed to the post of Civil Judge. Thus, it is submitted that the impugned order passed by the learned Single Judge as well as the action taken by the respondent No.1 may be quashed and set aside and the application of the appellant may be directed to be accepted in physical form since the preliminary examination yet to be held on 07.05.2023.

7. In response to the aforesaid submissions, learned Senior Advocate Mr.G.M.Joshi appearing for the respondent No.1 has submitted that the appellant, who is working as a Civil Judge in Rajasthan High Court cannot equate herself to be having worked in Courts or cannot contend that in fact being a Civil Judge, she is "working" in the Courts and the expressions used

in the Rules 7(2)(b) will only apply to the employees working in the Courts. He has further invoked the principle of *noscitur a sociis* and has submitted that the expression used in the aforesaid rule has to be read with the other parts of the Rules 7(2)(b) and the same cannot be read in isolation.

7.1 Learned Senior Advocate Mr. Joshi, has further submitted that the respondent No.1 has all the authority to issue clarificatory instructions when the recruitment process is being undertaken and accordingly, the expression “employees of the allied departments” used in Rule 7 was further clarified and categories as mentioned in Rule 10(7) were further elaborated. It is submitted that the case of the appellant will not fall in any of the category, since the appellant cannot be termed to be an employee of High Court of Gujarat or any Court subordinate to it. It is also submitted that the appellant, who is serving as a Civil Judge in the State of Rajasthan is in fact seeking appointment as a Civil Judge in the State of Gujarat. It is submitted that the Gujarat State Judicial Service Rules would not and never would intend that a person, who is serving as a Civil Judge can file an application for being appointed as a Civil Judge. It is thus submitted that the Rules are absolutely silent in this regard and it is not permissible for a Civil Judge to seek appointment on the post of Civil Judge and the same having been not incorporated in the Rules is to be construed as having been excluded.

7.2 It is submitted that the appellant cannot say that she is working in the Courts or have worked in the Court and the expression is used in the context employees working in the

Courts and not to the Judicial Officers, who are appointed and are functioning as Civil Judges.

7.3 Thus, it is submitted by learned Senior Advocate that the order passed by the learned Single Judge rejecting the writ petition does not require any interference.

8. We have heard the learned advocates appearing for the respective parties, at length.

9. The only issue which falls for consideration is whether the appellant, who is serving as a Civil Judge in the State of Rajasthan can be allowed to participate in the process of recruitment for appointment of Civil Judges in the State of Gujarat, which has been initiated by the respondent No. 1 - High Court of Gujarat. It appears that pursuant to the advertisement dated 01.02.2022 issued by respondent No.1 for filling up the post of Civil Judge, the appellant made efforts to fill up online application but was not successful to do so since the category of the candidates to which she belongs, is not incorporated in the format of online application.

10. For appreciating the controversy and issue raised in the present Appeal, it would be apposite to incorporate the provisions of Rule 7 of the Gujarat State Judicial Services Rules, 2005. The aforesaid rules are framed under the proviso to Article 309 read with Article 234 of the Constitution of India.

11. As per the definitions incorporated in 2(1), service means the State Judicial Service. The provisions of Rule 7 of the Gujarat State Judicial Service Rules, 2005 reads as under : -

"7. Civil Judges : -

(1) Recruitment to the cadre of Civil Judge shall be made on the basis of aggregate marks obtained in a competitive examination conducted by the High Court.

(2) In order to be eligible for selection by direct recruitment to the cadre of Civil Judges, the candidate -

(a) must possess a degree in law from the University established by law in India,

(b) must be practicing as an Advocate in courts of Civil and/ or Criminal jurisdiction on the last date fixed for receipt of application; must have worked in Courts or other allied departments for at least five years; and

(c) must not have attained the age of thirty five years and must not have completed as on the last date fixed for receipt of applications thirty eight years of age in the case of candidates belonging to Scheduled Caste or Scheduled Tribes.

Provided that if the High Court has made any order under Article 16(4) or 16(4-A) of the Constitution providing reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes shall be subject to such order"

12. Thereafter by the Notification dated 05.06.2017, the provisions of clause (b) of sub-rule (2) of Rule 7 is further amended and the same is incorporated as under : -

"3. In the said rules in rule 7, in sub-rule(2), for clause (b), the following shall be substituted namely : -

"(b) must be practicing as an advocate in Courts of Civil and/or Criminal Jurisdiction on the last date fixed for receipt of application; or must be

working in the Courts or other allied Departments on the last date fixed for receipt of application"

13. The appellant, who is functioning as a Civil Judge is seeking shelter under the expression "must be working in the Courts" and it is her case that as a Civil Judge, she can be said to be "working" in the Court and hence, her application was required to be accepted. At this stage, it would be apposite to refer to the provisions of Article 236 of the Constitution of India, the same are incorporated as under : -

"Article 236, Interpretation - In this Chapter—

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

14. Article 236 provides the interpretation for expression District Judge and judicial service. Article 236(b) says the expression judicial services means a service consisting exclusively of the persons intended to fill the post of District Judge and other Civil judicial post inferior to the post of District Judge. We may with profit also refer to the provisions of the Gujarat Civil Courts Act, 2005. Section 2 of the Gujarat Civil Courts Act prescribes the definition and the definition 2(b) is as under : -

" 2. (b) "Civil Court" means a Court of a District Judge, a Court of the Senior Civil Judge or a Court of Civil Judge;"

15. The aforesaid definition 2(b) defines “Civil Court” means a Court of a District Judge, a Court of Senior Civil Judge or a Court of Civil Judge. Section 3 of the Gujarat Civil Courts Act, 2005, reads as under : -

*“3. Classes of civil courts. - In addition to the Courts established under any other law for the time being in force, there shall be following classes of Civil Courts in the State, namely: -
(a) Court of a District Judge;
(b) Court of a Senior Civil Judge;
(c) Court of a Civil Judge.”*

16. Section 6 pertains to the establishment of Courts of Civil Judges, the same is incorporated as under : -

“6. Establishment of courts of Civil Judges. - (1) There shall be established by the State Government, by notification, in each district such number of Courts of Civil Judges as may be fixed by the State Government in consultation with the High Court and specify the Local limits of jurisdiction of each such Court.

(2) Each Court of a Civil Judge shall be presided over by a Judge to be called as Principal Civil Judge.

(3) (i) When the business pending before a Court of a Civil Judge so requires, the State Government may, in consultation with the High Court, appoint to that Court one or more Judges to be called as Additional Civil Judges for such period as it deems necessary.

(ii) An Additional Civil Judge so appointed shall, subject to the general or special orders of the Principal District Judge, discharge all the functions of a Civil Judge under this Act or any other law for the time being in force which the Principal Civil Judge may assign to him and in the discharge of those functions he shall exercise all the powers of a Civil Judge.”

17. The relevant provision is sub-section (2) to Section 6 of the Gujarat Civil Courts Act, 2005, which prescribes that each

court of Civil Judge shall be “presided” over by a Judge to be called as Principal Civil Judge. Thus, the intention of subsection (3) of the Gujarat Civil Courts Act, 2005, refers to that the Principal Civil Judge may assign to him i.e. the Civil Judge and in discharge of those “functions”, he shall exercise all the powers of Civil Judge.

18. Thus, from the combined reading of the aforesaid provisions, it is established that there are three classes of Civil Courts, Court of District Judge, Court of Senior Civil Judge and Court of a Civil Judge and each Court of Civil Judge is “presided over by a Judge”, and after a person is appointed as a Civil Judge, he/she discharges the function of a Judge. Thus, a person who is appointed as a Civil Judge presides over the Court and discharges his function as a Civil Judge of the concerned Court which is presides.

19. Thus, it would be absolutely illogical to contend that the expression “must be working in the Courts” as incorporated in Clause (b) of Rule 7 of sub-Rule (2) of the Gujarat Judicial Service Rules, 2005 would mean and include a person who is appointed as a Civil Judge, and who presides and discharges his function of the Court. The submissions of the appellant if is accepted, would defeat the very purport and intention of the Rules, for which, the appointment of Civil Judge is to be made under such Rules. Thus, the expression “must be working in the Courts” incorporated in Clause (b) of sub-rule (2) of Rule 7 of the Rules, cannot be in any manner envisages or encompasses a post of Civil Judge. A Civil Judge presides over the Court and discharges his functions and exercise his powers

of Civil Judge and he cannot equate himself to be “having worked or working in the Courts” as per the expression used in Rule 7 of sub-Rule (2) of Clause (b) and hence, such submission being devoid of merits, is liable to be rejected. By applying the doctrine of *noscitur a sociis*, the word “candidate” used in sub-rule(2) of Rule 7 has to be read in conjunction with the expression “working in the Courts”. Thus, the intention of the framers of the Rule was to invite candidates who are working in Courts and not the Civil Judges who preside in the Court or discharge judicial function.

20. Now coming to the challenge to the clarificatory instructions issued by the High Court of Gujarat more particularly No.10(7), the same reads as under : -

(7) Employees working in the following Departments are considered as ‘Employees of Allied Departments’:

- (i) High Court of Gujarat or any Court, subordinate to it.*
- (ii) Office of the Government Pleader, High Court of Gujarat.*
- (iii) Office of the Government Pleader, City Civil Court, Ahmedabad.*
- (iv) Office of Legal Section of the Legal Department, Sachivalaya, Government of Gujarat, Gandhinagar.*

21. The respondent No.1, being the recruiting authority, has all the powers to issue further instructions to iron out any ambiguity in the recruitment process. It is well settled proposition of law that such clarificatory instruction can be issued by the recruiting authority which aids the recruitment process and is not contrary to the Rules.

22. The expression “other allied department” used in Sub-clause(b) of sub-rule (2) of Rule 7 of the Rules has further been clarified by the High Court and the aforesaid four categories have been included to facilitate the recruitment process. Merely because, the respondent No.1 has issued instructions clarifying the categories of employees working in the “allied department” will not create class within class. The further clarificatory instructions are not in any manner infringing the statutory Rules, and cannot be set aside. The appellant, who is serving as a Civil Judge, unquestionably will not fall in any of the aforementioned categories, as she cannot call herself as an employee of a Court.

23. The Supreme Court in the judgment in the case of Radha Devi Gupta(supra), on which the reliance is placed by the appellant on the issue of interpretation of statute, has held thus:

“The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.”

12 *It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors.*

13 *It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.”*

Thus, the Apex Court has affirmed that when a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself, and the Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. It is also held that if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is also observed that it is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature, and the courts have to always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. Thus, by adopting the aforesaid observations and applying to the Recruitment Rules, the expression used in the Rules is to give effect to every part of the Rules, and such expression cannot be used in an isolated manner ignoring the true purpose of the Rules which is meant for appointing the Civil Judges from the categories of the candidates as envisaged under the Rules and

the Instructions. It is fundamental rule of interpretation that courts would not fill up the gaps in statute, their function being *jus discre non facere* i.e. to declare and decide law.

23. The learned Single Judge, while rejecting the writ petition, has incorporated the decision of the Supreme Court in the case of Commissioner of Police Vs. Raj Kumar, (2021) 8 SCC 347, as well as the decision of the Supreme Court in the case of Dr.Thingujam Achouba Singh and others Vs. Dr. H. Nabachandra Singh and others, (2020) 20 SCC 312. It is well settled proposition of the law that the fixation of the eligibility of criteria is well within the domain of the employer and no candidate can seek, as a matter or right, to provide relaxation. In the present case, the appellant is seeking an insertion of her candidature being a Civil Judge in the rules as mentioned above. The scheme of the Rules will imply that neither the Rule making authority or the recruiting Institute intend to fill up the post of Civil Judge by a candidate, who is already appointed as a Civil Judge.

24. Thus, the Letters Patent Appeal fails and the same stands dismissed. As a sequel the captioned writ petition is also dismissed.

25. The civil application is also disposed.

sd/-
(A. S. SUPEHIA, J)

sd/-
(DIVYESH A. JOSHI, J)

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