

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7400 of 2022

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 ?	

JAYDEV MULUBHAI JAJU
Versus
STATE OF GUJARAT

Appearance:

NIYATI V VAISHNAV(6168) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

MR.KURVEN DESAI, AGP for the Respondent(s) No. 1,2,3

CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 02/05/2022

ORAL JUDGMENT

1. **RULE** returnable forthwith. Mr.Kurven Desai learned AGP waives service of notice of Rule on behalf of the respondent State.

2. With the consent of learned advocates for the respective parties, the petition is taken up for final

hearing.

3. The prayer in the petition is to issue direction to issue an appointment order to the petitioner for the post of Sales Tax Inspector, Class-III.
4. The case of the petitioner is that pursuant to an advertisement for recruitment of Sales Tax Inspector, Class-III, the petitioner being a Scheduled Tribe candidate, applied for appointment.
5. Ms.Niyati Vaishnav learned counsel for the petitioner would submit that appointment was orally denied on the ground that the caste from which the petitioner belongs is under scrutiny of the State Government. Reliance is placed on an order dated 15.03.2020 passed in Special Civil Application No.1168 of 2022, which reads as under:

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

2 Heard Mr.Shalin Mehta, learned Senior Advocate with Mr.Hemang Shah, learned advocate for the petitioner and Mr.Kurven Desai, learned Assistant Government Pleader for the State respondents.

3 The petitioner belongs to the Rabari community, which is covered under the Scheduled Tribes category. The Gujarat Public Service Commission, issued an advertisement No.112/2018-19 on 17.07.2017 for filling up 60 vacant posts of Police Inspector (Unarmed), Class-2.

3.1 The petitioner submitted his application and appeared for the written examination. The petitioner was found eligible to be appointed to the post of Police Inspector (Unarmed), Class-II. His name figured at serial no.56 on the select list prepared on 22.02.2021.

3.2 No appointment orders have been issued in the case of the present petitioner, since February, 2021 because of the Caste Certificate controversy pending consideration before the Scrutiny Committee.

4 Mr. Shalin Mehta, learned Senior Advocate, would submit that the scrutiny for examining the petitioner's caste certificate is pending now for more than a year and though the petitioner has been selected for appointment to the post of Police Inspector (Unarmed), Class-II, but for the exercise at the hands of the Scrutiny Committee which is pending, no appointment orders are being issued. He would rely on an order passed by this Court in Special Civil Application No.1858 of 2021.

5 Mr. Kurven Desai, learned Assistant Government Pleader, would rely on an affidavit-in-reply filed in SCA No.1171 of 2022. Reading the affidavit-in-reply would indicate that due to certain protest and agitations, and by virtue of the pendency of the issue, caste certificates have not been given to the Rabari, Bharvad and Charan community living in the ness areas in the forest of Alech, Gir and Barda of Gujarat. Since the petitioner belong to this area and the issue pertains to the veracity of the caste of the petitioner who belong to this area, the Caste Certificate will not be issued for the time being till the Committee takes a decision.

6 Considering the order of a Co-ordinate Bench of this Court dated 26.07.2021, the respondent authorities are hereby directed to give provisional appointment to the petitioner to the post of Police Inspector (Unarmed), subject to the result of the Scrutiny Committee. Such order shall be issued within a period of 02 (two) months from the date of receipt of the writ of this order. It is clarified that the appointment of the petitioner would be provisional and in case, it is found by the Scrutiny Committee that the

certificate of the petitioner is not genuine, the petitioner will not be entitled to any benefit of the provisional service. It is also clarified that if the Caste Certificate of the petitioner is found to be genuine, it will be open for the petitioner to claim his actual appointment from the date of his juniors and also continuity of service and other benefits.

7 The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Direct service is permitted.”

6. Having heard Ms.Vaishnav learned advocate for the petitioner and Mr.Desai learned AGP for the State, and in view of the order referred to herein above, the petition is allowed. The respondent authorities are directed to give provisional appointment to the petitioner to the post of Sales Tax Inspector, Class-III, subject to result of the Scrutiny Committee. Such orders shall be issued within a period of four months from the date of receipt of writ of this Court.

7. It is clarified that the appointment of the petitioner would be provisional and in case, it is found by the Scrutiny Committee that the certificate of the petitioner is not genuine, the petitioner will not be entitled to the benefit of being in provisional service.

8. It is also clarified that if the caste certificate of the petitioner is found to be genuine, it will be open for the petitioner to claim his actual appointment from the date of his juniors and also continuity of service and other benefits.

9. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Direct service is permitted.

ANKIT SHAH

(BIREN VAISHNAV, J)

