

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 13013 of 2021

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 ?	

PRITESHKUMAR BIPINBHAI DAVE
 Versus
 STATE OF GUJARAT

Appearance:

MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1
 MS SURBHI BHATI, AGP for the Respondent(s) No. 1
 LAW OFFICER BRANCH(420) for the Respondent(s) No. 2
 MS TRUSHA K PATEL(2434) for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 19/04/2022

CAV JUDGMENT

- Rule**, returnable forthwith. Ms. Surbhi Bhati, learned Assistant Government Pleader waives service of notice of Rule for the respondent – State as well as Ms. Trusha Patel, learned

advocate waives service of notice of Rule for the respondent No.2.

2. With the consent of the learned advocates appearing for the respective parties, the petition was taken up for its final disposal.
3. In this petition, under Article 226 of the Constitution of India, the petitioner has prayed that the respondent authorities be directed to revise the posting order dated 10.9.2020 by including the name of the petitioner therein and direct the respondents to appoint the petitioner to the post of Peon (Class, IV) reserved for Physically Handicapped Category.
4. The facts in brief would indicate that the respondent No.2 i.e. the High Court of Gujarat on its administrative side, issued an advertisement dated 29.10.2018 inviting online applications for appointment to the post of Peon Class IV including Chowkidar, Liftman etc. The advertisement was for 1149 posts of which 33 were reserved for Physically Handicapped Category. The petitioner applied on 20.11.2018. As the petitioner was Physically Handicapped with 40% loco-motor disability, he

applied in the reserved category for Physically Handicapped. A call letter was issued on 8.2.2019 and the petitioner appeared for the written examinations which he successfully cleared. A select list and a waiting list were prepared on 20.9.2019. The name of the petitioner was at Sr. No.67 in the waiting list with 72.23%. The waiting list consisted of 114 candidates. One Physically Handicapped candidate at Sr. No.66 namely; Kanaksinh Solanki had secured 73.04% marks.

5. Mr. Vyas, learned counsel for the petitioner would submit that after the respondent had published a select list, many candidates who were offered appointment either did not join or resigned. Two posts of Physically Handicapped category fell vacant on account of resignation of two Physically Handicapped candidates. Such Physically Handicapped candidates had tendered their resignation in March, 2020. Naming the two candidates as Pankaj Vilasbhai Andait and Girish Hirabhai Singal, Mr. Vyas would submit that on resigning of the selected candidates, and when 105 candidates of the 114 candidates on the wait list were already appointed, only 9 candidates were not offered appointment from the wait list of which petitioner was

one of them.

6. Mr. Vyas would submit that despite making representations from time to time, when two PH candidates had vacated their seats, the petitioner was entitled to be appointed when the wait listed candidates were available for appointment and the posts were vacant.
7. Ms. Trusha Patel, learned counsel appearing for the administrative side of the High Court would rely on the affidavit and submit that 105 candidates of the wait list were given appointments, however, due to non-availability of vacancies in the relevant reserved categories, 9 candidates of the wait list could not be given posting. She would further submit that while operating the wait list, the Recruitment Cell had been provided information by the concerned administrative department of the High Court vide endorsement dated 17.8.2020 for one vacant post at Patan, under SC-PH category that one Mr. Girishbhai Hirabhai Singhal had left after joining on 27.5.2020. However, due to non availability of SC-PH category, the post of Patan could not be filled up. She would rely on the affidavit and submit

that at the relevant point of time, the Recruitment Cell was not having any information about availability of other vacant posts at Surat including two vacant posts of one in general category and one in general PH category and, therefore, the names of candidates at Sr. No.66 and that of the petitioner at Sr. No.67 were not included in the posting list dated 10.9.2020. The Recruitment Cell received an endorsement on 22.4.2021, which was as stated in the affidavit that since the select list and waiting list had expired on 19.9.2020, the petitioner could not be appointed. The relevant paragraph of the affidavit-in-reply reads as under:

“5. At the said relevant point of time, Recruitment Cell was not having any information of availability of any other vacant post at Surat including two vacant posts i.e one in General Category (Mr. Krushnakant Dhirubhai Parmar) and one in General-PH category (Mr. Pankajkumar Vilasbhai Andait). Therefore, the name of any of the remaining PH (General) category candidates enlisted in the Centralized Wait List at Sr. Nos. 66 and 67, were not included in the posting list dated 10.9.2020. However, the said information of aforesaid two vacant post at Surat had been received by Recruitment Cell vide endorsement dated 22.4.2021 from concerned Administrative Department of this High Court, forwarding therewith Letter Dated 30.3.2021 of Principal District Judge, Surat. However, as stipulated at Clause 7(6) of the Detailed Advertisement dated 29.10.2018, the validity of Select List and / or Centralized Wait List has expired on 19.9.2020.”

8. Two glaring facts emerge from the submissions made by the learned advocate for the petitioner and the affidavit-in-reply filed by the administrative side of the High Court. The petitioner was at Sr. No.67 on the wait list under the PH category. His assertion that two PH candidates namely Pankaj Vilasbhai Andait and Girish Hirabhai Singal who were appointed on the select list did not join is admitted by the respondent in the affidavit-in-reply. Para 4 of the reply clearly indicates that the Recruitment Cell had received the information from the administrative department on 17.8.2020 that one post of SC-PH category of Girish Hirabhai Singal who had left was vacant.

8.1. The second information which is more disturbing and which was received by the High Court on the administrative side was that though on 13.8.2020 the High Court on the administrative side had requested all the Courts to furnish latest information in respect of operation of select list dated 20.9.2019 and also observed that utmost care be taken in furnishing the information, it was only on 30.3.2021 after the letter of the High Court on 16.3.2021 did the District Judge at

Surat informed that on verification it was found that names of two Peons namely; Pankaj Vilasbhai Andait and Krishnakant Parmar had left the job in March, 2020 were not shown as left in Column 6 which was received by the Recruitment Cell from the administrative department of the High Court on 22.4.2021 after the Select List / Wait List expired on 19.9.2020.

9. What is therefore evident from the reply is that though the respondent admit of the vacancies having fallen by resignation and refusal of the two incumbents, Pankaj Vilasbhai Andait and Krushnakant Dhirubhai Parmar who were appointed in the PH category, since the information by the Recruitment Cell was received beyond 19.9.2020, the petitioner could not be appointed. Therefore, before the Wait List expired, two vacancies in the General PH category had fallen vacant and the PH category candidate at Sr. No.66 and the petitioner at Sr. No.67 ought to have been appointed.

10. Admittedly, the day the post fell vacant in the PH category, the right of the petitioner to be appointed accrued and so did that of the one above the petitioner at Sr. No.66. Merely because the

Recruitment Cell was informed by the administrative department of the High Court beyond the relevant date of 19.9.2020, the case of the petitioner cannot suffer.

11. Accordingly, the petition is *allowed*. The respondents are directed to consider the case of the petitioner for appointment to the post of Peon (Class IV) reserved for the PH category on the basis of the two clear vacancies that had occurred and appoint the petitioner to the post of Peon, Class-IV in the reserved category of PH. Such exercise shall be carried out within *twelve weeks* from the date of receipt of copy of this judgment.

12. *Rule* is made absolute to the aforesaid extent. *Direct Service* is permitted. No order as to costs.

[BIREN VAISHNAV, J.]

VATSAL S. KOTECHA

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