

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 9461 of 2022**

NIRMAL JAGMOHAN SHARMA

Versus

HIGH COURT OF GUJARAT &amp; 1 other(s)

Appearance:

MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1

MR NIKUNJ KANARA, AGP for the Respondent(s) No. 2

**CORAM:HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI****Date : 03/06/2022****ORAL ORDER**

**1.** By way of this petition under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs:-

9. The petitioner respectfully prays that, on the basis of the facts and circumstances as mentioned hereinabove and which may be urged at the time of hearing, the Honourable Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to the respondent authorities and may be pleased to:

(A) Direct the respondent No.1 to consider the case of the petitioner for appointment to the post of Civil Judge pursuant to advertisement at Annexure-A to this petition, and

(B) Declare and hold that the instruction contained at item No. 10(7) of the advertisement, at Annexure-A, so far as it excludes the candidature of the candidates, working in the Courts which are not subordinate to High Court of Gujarat, for recruitment to the post of Civil Judges is concerned the same is contrary to the provisions contained in the Recruitment Rules.

(C) Pending admission and final disposal of this petition, the Honourable Court may be pleased to direct the respondent No.1 to permit the petitioner to participate in all the stages of the recruitment process, pursuant to advertisement at Annexure-A to this petition, and

(D) Award the cost of this petition, and

- (E) Grant any other relief or pass any other order which the Honourable Court may consider as just and proper in the facts and circumstances of the case.

**2.** Background of facts on which present petition is filed is that petitioner is born and brought up in State of Gujarat and had completed her studies in Gujarat. Pursuant to the advertisement published by Rajasthan High Court for recruitment to the post of Civil Judges, petitioner had applied for being considered to the said post and after due process of selection, petitioner actually came to be appointed as Civil Judge, vide appointment order dated 20.9.2021.

**3.** It is further stated in the petition that post of Civil Judges in the State of Gujarat is under control of respondent No.1 and so far as recruitment of Gujarat State Judicial Service is concerned, same is governed by Gujarat State Judicial Service Rules, 2005. A reference is made to Rule 7(2)(b) of said Rules, an eligibility criteria for appointment for the post of Civil Judge is prescribed and as such, since petitioner is working in the Court in the same cadre of Civil Judge, may be at Rajasthan, is eligible for being considered to the post of Civil Judge. An advertisement came to be issued on 1.2.2022 for recruitment of Civil Judges and in all 219 posts of Civil Judges are sought to be filled in. According to petitioner, eligibility criteria prescribed in the advertisement are being fulfilled by petitioner. As a result of this, petitioner is entitled to participate in the recruitment process. However, on account of one of the stipulations contained in Clause 10(7)(i) in advertisement, petitioner has not been considered eligible since is not working in any Court subordinate to High Court of Gujarat. Since petitioner was desirous of being appointed pursuant to the advertisement, sought permission of Hon'ble Rajasthan High Court to allow her to apply pursuant to the advertisement. But till last date, permission was not received and filling up of online application

form was closing on 2.3.2022. But, at the time of filling up of online application form, in anticipation of permission which may be granted by High Court Rajasthan, it was noticed by petitioner that only those candidates/ employees working in the Courts under administrative control of respondent No.1 were eligible for filling up online application forms. Petitioner was not in a position to complete online application form process and as such, a detailed representation was made on 10.3.2022, requesting respondent authority to consider her for appointment to the post of Civil Judge and permit the application form to be filled even in physical mode and it is after that process, in the meantime, permission was received from the competent authority, but representation dated 10.3.2022 was till date not replied and by that time, preliminary examination was scheduled on 15.5.2022 and that has constrained the petitioner to approach this Court by way of present petition under Article 226 of the Constitution of India.

**4.** Present petition when taken up for hearing today, learned advocate Mr. Vaibhav Vyas appearing on behalf of the petitioner has submitted that preliminary examination which was originally scheduled on 15.5.2022 is now re-scheduled and is kept on 5.6.2022 and as such, has requested to hear the petition. .

**5.** Learned advocate Mr. Vaibhav Vyas has submitted that recruitment process to the post of Civil Judges are to be conducted in consonance with the relevant Rules prescribed for that which are known as Gujarat State Judicial Service Rules, 2005 and by referring to Rule 7(2)(b) of the said Rules, learned advocate has submitted that petitioner is eligible to participate in the recruitment process. It has been submitted that it is only on account of one of the stipulations which has been mentioned in advertisement, petitioner could not

participate. Said stipulation No.7 is impermissible to apply in view of the fact that same runs counter to Recruitment Rules and as such, Mr. Vyas has submitted that on account of such stipulation No.7 reflecting on page 26 of the petition compilation, petitioner cannot be deprived to participate in the recruitment process which is undergoing pursuant to the advertisement.

**6.** It has further been submitted that a specific permission was sought from Rajasthan High Court to allow petitioner to apply for the post of Civil Judge pursuant to the advertisement published by respondent No.1, but till date of filling up of online application form, said permission was not available with petitioner. But for that, petitioner may not be deprived of though she is quite eligible in respect of eligibility criteria. Hence, by passing appropriate order in the interest of justice, petitioner may be allowed to participate in all the stages of recruitment process pursuant to the advertisement at Annexure-A. No other submissions have been made.

**7.** Having heard learned advocate appearing for the petitioner and having gone through the material on record, it is not in dispute that petitioner is actually appointed as Civil Judge at State of Rajasthan and under the administrative control of Rajasthan High Court. It is also not in dispute that advertisement is specifically mentioning that which category of employees are entitled to be considered as employees of allied department and Rule 7 has specifically stipulated the same, which 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.

**8.** In view of the aforesaid clause contained in the advertisement itself, undisputedly, petitioner is not an employee of Allied Department. As a result of this, when advertisement is containing specific stipulation by virtue of which petitioner is not eligible to participate in recruitment process, this Court under Article 226 of the Constitution of India is not inclined either to interfere or to substitute any of the conditions stipulated in the advertisement.

**9.** Granting of any relief would tantamount to circumvent clause 7 which, in considered opinion of this Court, is impermissible. It is the exclusive domain of the authority to prescribe stipulations and it is not for the Court to modify, substitute or divert any of the conditions which are contained in the advertisement. Scope of judicial review upon this issue, is quite apparently clear by catena of decisions and as such, on the basis of this undisputed position prevailing on record, it is not a fit case in which discretion deserves to be exercised in favour of the petitioner.

**10.** Additionally, it has been noticed that even from the pleadings which are made in the petition and brief submission which has been made by learned advocate for the petitioner, no case is made out to hold that condition stipulated in the advertisement is outside the purview of Recruitment Rules. As a result of this, in absence of any case made out on that issue, the Court is not inclined to extend any equitable relief more particularly when same is just a day before and at a last juncture. Petitioner was quite conscious about the fact that advertisement has been issued long back in the month of February

2022, in which it has been explicitly made it clear from that day itself, still petitioner has chosen to wait for the reasons best known to her and brought the petition only a day or two before when actual examination is to start. Be that as it may, since on merit also, no case is made out by petitioner, and hence at this belated stage also, the Court is not inclined to entertain the petition. As a result of this, petition is devoid of merits.

**11.** Following proposition of law on the issue of judicial review in sphere of recruitment process since relevant, the Court deems it proper to reproduce hereunder:-

**(1)** In the case of **Commissioner of Police v. Raj Kumar** reported in **(2021) 8 SCC 347**, Hon'ble Supreme Court has held and observed in para 28 and 31 as under:-

28. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment. This was emphasized by this court, in M.V. Thimmaiah v. Union Public Service Commission<sup>7</sup> held as follows:

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31. Public service - like any other, presupposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal,

unfair, or lacking in bona fides.

**(2)** In the case of **Dr. Thingujam Achouba Singh and others Vs. Dr. H. Nabachandra Singh and others** reported in **(2020) 20 SCC 312**, Hon'ble Supreme Court has held and observed in para 16 as under:-

16. So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High Court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. **The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.**

**12.** The petitioner has not even made out any case nor canvassed as to how condition attached to advertisement is arbitrary or irrational or discriminatory. Hence, in absence of such, Court cannot go beyond submissions and intercept the process of recruitment. The domain of employer to prescribe eligibility cannot be interfered with routinely in absence of any malafides as well. So, no case is made out by the petitioner to call for any interference.

**13.** In view of the aforesaid circumstances which are prevailing on record, it is not a fit case in which at this stage of proceedings, any interception or any interference is called for. Hence, no case is made out by the petitioner and as such, petition deserves not to be entertained. Accordingly, same is **DISMISSED** with no order as to costs.

**Sd/-  
(ASHUTOSH J. SHASTRI, J)**

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