

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 4096 of 2020**

**With**  
**R/SPECIAL CIVIL APPLICATION NO. 4626 of 2020**

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PARULBEN NATWARLAL PATEL  
Versus  
STATE OF GUJARAT

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Appearance:

BANSI M KARIA(9320) for the Petitioner(s) No. 1  
RAJVI N PATEL(9620) for the Petitioner(s) No. 1  
MR. KURVEN DESAI, ASSISTANT GOVERNMENT PLEADER/PP for the  
Respondent(s) No. 1  
NOTICE SERVED BY DS for the Respondent(s) No. 1,2

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**CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV**

**Date : 16/02/2022**

**ORAL ORDER**

1 Heard Ms.Rajvi Patel, learned advocate for the petitioners and Mr.Kurven Desai, learned Assistant Government Pleader for the the respondent - State.

2 In both these petitions, since the issue involved is common, they are being dealt with by this common order. Facts of Special Civil Application No.4096 of 2020 are discussed.

3 The petitioners' aspire for being selected to the post of Live-Stock Inspector, Class-III. An advertisement was issued for

the posts in question on 26.07.2017. A condition in the advertisement stipulated that in order to be eligible to apply, the candidate should have a certificate of having passed standard 10<sup>th</sup> with English as one of the subject. The candidature of the petitioners was overlooked on the ground of she not having a certificate of passing 10<sup>th</sup> standard with English as one of the subject.

3.1 The case of the petitioners is that at the time when the documents were verified in October 2018, the petitioner had passed her Standard 10<sup>th</sup> examination.

3.2 Ms.Patel, learned counsel for the petitioner, would rely upon a certificate of the Gujarat Secondary & Higher Secondary Education Board, Gandhinagar, of March 2018 to suggest that prior to the verification of the documents, the petitioner was in possession of a marksheet of having passed standard 10<sup>th</sup> in March 2018.

3.3 Ms.Patel's alternative submission was that she had passed standard 12<sup>th</sup> Board in 2011 and the subject certificate of English was of March 2011 and that being a higher qualification, the petitioner should have been considered for being appointed to the post of Live-Stock Inspector.

3.4 In support of her submission, Ms.Rajvi Patel, learned advocate, would rely on the decision of the Hon'ble Supreme Court in the case of **Jyoti K.K and Others vs. Kerala Public Service Commission & ors.**, reported in **(2010) 15 SCC 596.**, particularly para 9 thereof.

4 Mr.Kurven Desai, learned Assistant Government Pleader for the State, would submit that the essential qualification required for being considered for appointment was possession of a certificate of having passed 10<sup>th</sup> standard with English as one of the subject. The cut off date for the purposes of such qualification, for being considered was 08.08.2017 as stipulated in the advertisement, particularly clause 6 thereof.

4.1 Mr.Desai, learned AGP, would further submit that merely because the petitioner subsequently could pass her 10<sup>th</sup> standard examination, that would not make the petitioner eligible at the relevant date of the advertisement being 08.08.2017.

4.2 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Bedanga Talukdar vs. Saifudaullah Khan & ors.**, reported in **(2011) 12 SCC 85.**

5 Considering the submissions made by the learned counsels for the respective parties, what is necessary to appreciate the controversy is that the requisite stipulation in the advertisement provided that the candidate in order to be eligible for appointment for consideration thereof should hold a certificate of having passed 10<sup>th</sup> standard with one of the subjects being English. Though the petitioner had passed standard 10 in March 2011, in the subject of English, she could only procure a certificate in March 2018.

5.1 Admittedly, though she had a higher qualification of having done her standard 12<sup>th</sup> and graduation and English was one of the subjects, the necessary stipulation in the advertisement was of having procured a certificate of 10<sup>th</sup> Standard with English as one of the subjects. Para 29 of the decision in the case of **Bedanga (supra)** needs to be referred to and reads as under:

*"29 We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such*

*a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”*

5.2 The Hon'ble Supreme Court, therefore, categorically observed that when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in terms and conditions of the advertisement unless such a power is reserved.

5.3 Admittedly, reading the advertisement it was apparent that no such relaxation was provided for. A Division Bench of this Court in Letters Patent Appeal No. 865 of 2021, considering the decision of Bedanga(supra), has held as under:

*“1. Heard learned advocate Ms.Rajvi Patel for Mr.Vikas Nair, learned advocate for the appellant and learned AGP Mr.Manan Mehta for the respondent-State.*

*2. This Letters Patent Appeal has been preferred by the appellants herein under Clause 15 of the Letters Patent against the impugned order dated 26.8.2018 passed by learned Single Judge in Special Civil Application No.11608 of 2021, whereby the petition filed by the present appellants has been dismissed.*

3. Learned advocate Ms.Rajvi Patel for the appellants has submitted that the appellants have applied for the post of Supervisor Instructor (Automobile Group), Class-III, and at the time of verification of documents, they were possessing LMV driving license. She has submitted that, of course, at the time of filling up the applications, they were not possessing LMV driving license. According to her submission, when they were called for verification of documents, they were possessing requisite LMV driving license and, therefore, they ought to have been appointed on the post. While assailing impugned order dated 26.8.2018 passed by learned Single Judge, she has submitted that the learned Single Judge ought to have granted prayer in favour of the original petitioners. She has prayed to allow present appeal.

4. The case of the present appellants is that they had appeared in the recruitment process initiated by respondent no.1 for filling up the aforesaid posts. Subsequently, they have obtained requisite LMV driving license. It is not in dispute that as per the advertisement issued by respondent no.1 calling for the application for the aforesaid posts, especially para 6 thereof prescribes educational qualification/ age/ any additional qualification etc. and date for consideration of such qualifications was 11.4.2019. It is also not in dispute that on the date of eligibility of all the educational qualifications, the appellants were not possessing valid LMV driving license. It also appears from the advertisement produced on record that there is no provision for relaxation provided therein with regard to educational qualification etc.

5. On perusal of the impugned order dated 26.8.2018 of learned Single Judge, it clearly transpires that learned Single Judge has relied upon the decision in the case of *Bedanga Talukdar v. Saifudaullah Khan*, reported in 2011 (12) SCC 85 and has also referred to the observations made therein by the Apex Court and, after considering these facts, ultimately came to the conclusion that no relaxation can be granted by issuing any direction of considering the case of the petitioners as they were not possessing requisite qualification of LMV driving license at the time of filling up the applications.

*6. We are in complete agreement with the observations and reasoning of the learned Single Judge. The present appeal is devoid of merits and the same is dismissed summarily."*

6 For the aforesaid reasons, I find no reason to interfere with the action of the respondents in non selection of the petitioners. Accordingly, the petitions are dismissed. Notices are discharged.

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**(BIREN VAISHNAV, J)**

