

Gujarat Water Resources Development Corporation Ltd

Vs

Pravin Kumar and N. Makwana and Another

Civil Appeal No. 4219 of 1992

(L. M. Sharma, S. Mohan, S. P. Bharucha JJ)

15.10.1992

JUDGEMENT

BHARUCHA, J.:-

1. Leave to appeal granted.

1A. The first respondent to this appeal filed a writ petition before the Gujarat High Court praying for a writ of mandamus directing the appellant to implement a select list prepared on the basis of certain orders and to appoint the candidates upon the said select list to the existing reserved posts of Additional Assistant Engineers. It was the case of the first respondent that his name appeared upon the said select list. In the writ petition the first respondent sought interim relief and it was granted to him by a learned single Judge in these terms: the appellant was enjoined from filling up the posts of Additional Assistant Engineers then lying vacant and any subsequent vacancies that might arise. The learned Judge made it clear that, notwithstanding the action of the appellant of cancelling the said select list, the said select list should be treated as alive, operating and continuing

2. Against the said interim order the appellant preferred a Letters Patent appeal. The Division Bench hearing it took the view that the grievance in It as well as in the writ petition itself could be effectively redressed by passing the following order :

"The impugned waiting list at page 50 of the petition shall be operated by the appellant Corporation for giving appointments from the waiting list to 10 S.C., S.T. candidates according to their standing in the waiting list. Once such appointments are offered to them and if they accept such offer, they shall be permitted to join in the Corporation's service. If any of them is not inclined to accept the said offer, then the vacancy can be filled up by the Corporation in accordance with its Rules and Regulations, after following appropriate procedure and such vacancies along with any other available vacancies can be processed by the Corporation according to its own Rules and Regulations and it is, therefore, made clear that the waiting list will operate only to the limited extent of offering employment to 15 S.C., S.T. candidates in the waiting list and beyond that it will not operate and will stand cancelled as already decided upon by the Corporation on 25-7-90. The Corporation is further directed to offer employment to these 15 S.C., S.T. waiting list candidates at the earliest. Such intimation shall be sent to the concerned candidates by Registered Post A . D. and after that exercise is completed, the waiting list would stand exhausted, as

aforesaid.

In view of this direction issued by us after hearing the advocates for the contesting parties, nothing further requires to be done in this appeal. Appeal is accordingly disposed of. In this view of the matter, main petition itself would not survive. Learned Counsel for respondent No. 1 had, therefore, agreed before us that he will move the learned single Judge for withdrawal of the Special Civil Application."

3. The appellant impugns the correctness of the order just quoted and contends, inter alia, that it should have been afforded an opportunity of meeting the first respondent's case upon a hearing of his writ petition. On the other hand, it is contended on behalf of first respondent that the order of the Division Bench is only an interim order and that, therefore, no interference therewith is called for .

4. It is patent from a perusal of the order of the Division Bench that it is not intended to operate only until the hearing and final disposal of the first respondent's writ petition. The Division Bench itself noted that in view of its directions the writ petition "would not survive" and that counsel for the first respondent had, therefore, agreed that he would I move the learned single Judge for withdrawal of the writ petition. The Division Bench's order has, therefore, the effect of disposing of the writ petition at the stage of an appeal against an interim order therein. This, in our view, ought not to be done unless it be with the express consent of all parties; and, clearly, the appellant had not consented to the disposal of the writ petition in the manner in which the Division Bench sought to do it.

5. The Division Bench does not, in the it circumstances, appear to have applied mind to the aspect of a just and proper order to operate pending the hearing and final disposal of the writ petition.

6. In the premises, we are of the view that the order of the Division Bench must be quashed and the Letters Patent Appeal remanded to be considered afresh by a Division Bench of the High Court so that it may decide what, if any, is the appropriate interim relief that should be given pending the hearing and final disposal of the writ petition.

7. The appeal, is accordingly, allowed. The order under appeal (dated 11th March, 1992 in Letters Patent Appeal No. 107 of 1992) is quashed and set aside. The said Letters Patent Appeal is remanded to the Gujarat High Court for fresh hearing and disposal. This should be done expeditiously. Until its disposal the directions issued by the learned single Judge shall not be acted upon.

8. No order as to costs.            Appeal allowed.

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