IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 552 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 3715 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In
R/LETTERS PATENT APPEAL NO. 552 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE GITA GOPI Sd/-

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Approved for Reporting	Yes	No
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KAIZAD MEHERNOSH DASTOOR
Versus
CHAIRMAN, GUJARAT PUBLIC SERVICE COMMISSION & ANR.

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Appearance:
MR G.M. JOSHI, SENIOR ADVOCATE with
MR BOMI H SETHNA(5864) for the Appellant(s) No. 1
MR MANAN MAHETA(6037) for the Respondent(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE GITA GOPI

Date : 21/04/2025
ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. **ADMIT**. Learned advocates appearing on behalf of the respondents waive service of notice of admission on behalf of their respective respondents.

2. The present Letters Patent Appeal filed under Clause 15 of the Letters Patent, 1865, is directed against the judgment and order dated 27.03.2025 passed by the learned Single Judge rejecting the captioned writ petition filed by the appellant-original petitioner, challenging the action of the respondent No.1 of disqualifying him from further participating in the process of recruitment to the post of Chief Fire Officer, Class-I, Gandhinagar Municipal Corporation (GMC) i.e. the respondent No.2.

BRIEF FACTS : -

3. Pursuant to the advertisement no.10/2024-25 issued in the month of July, 2024, the appellant applied for the post of Chief Fire Officer in Respondent no.2-Gandhinagar Municipal Corporation. After necessary scrutiny of the applications filed by the candidates, the Respondent no.2 published a notice dated 06.03.2025 on its website, wherein the appellant has been shown as ineligible for want of requisite experience. After his representation was rejected by the respondent no.2 on 26.03.2025, the appellant filed the captioned writ petition assailing the decision of his rejection of candidature. The learned Single Judge has rejected the writ petition, which has given rise to the present appeal.

4. The appellant is disqualified for further participation in the recruitment process only for want of experience, as required under Rule 3(c) read with Rules 3(b)(i) of the Chief Fire Officer, Class-I, in the Gandhinagar Municipal Corporation Recruitment Rules, 2024 (for short, “the

Chief Fire Officer Rules, 2024").

5. The learned Single Judge has held that the appellant does not fulfill the criteria of experience of 7 years, as required in the aforementioned Chief Fire Officer Rules, 2024 and thus, has rejected the writ petition.

SUBMISSIONS ON BEHALF OF THE APPELLANT : -

6. Learned Senior Advocate Mr. G. M. Joshi, appearing with learned advocate Mr.Bomi H. Sethna, for the appellant – original petitioner, at the outset, has referred to the experience gained by the present appellant in various establishments and has submitted that the appellant is fulfilling the criteria the seven years' experience, and in fact, he is having more than seven years of experience.

7. He has further referred to the experience, as recorded by the learned Single Judge in the impugned judgement. However, he has candidly admitted that so far as the experience gained by the appellant, as recorded by the learned Single Judge in the paragraph No.4.4 of the judgment of Fire Officer is incorrect and the same would be 9 months instead of 2 years, 10 months and 15 days, since the appellant has procured the Sub-Officer Certificate on 11.05.2015 and from 11.05.2015 to 15.02.2016, the period comes to 9 months. It is submitted that the total period of experience would come to 8 years and 6 months, which is beyond the experience of 7 years.

8. While referring to the provisions of Clause (c) of Rule 3 of the Chief Fire Officer Rules, 2024, it is submitted by the learned Senior Advocate Mr.Joshi that seven years' experience is bifurcated in two parts; i.e., three years' experience on the post, which is equivalent to the post, not below rank of Station Officer or Assistant Divisional Officer and the remaining four years in Fire Brigade. It is submitted that the appellant's experience, after the field of the completion of Divisional Fire Officer course, i.e. 6 years 9 months and 10 days, has to be added to the prior experience of one year nine months in view of the language of the Rules. It is submitted that the deficit period can be borrowed from the experience rendered prior to the acquiring of the qualification. It is contended that reliance placed by the learned Single Judge on the judgments cited by the other side was misplaced since the judgments do not deal with the similar provision to that of Rule 3(c), which refers to the experience of two different categories. Thus, it is urged that the judgment and order passed by the learned Single Judge may be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :-

9. Per contra, learned advocate Mr.Manan Mehta, appearing for the respondent No.1 – Gujarat Public Service Commission (the GPSC) has submitted that as per the provisions of sub-clause (i) of Rule 3(b) of the Chief Fire Officer Rules, 2024, the experience rendered after completion of the Divisional Officer Course can only be considered as per the Clause (c) of Rule 3 of the Chief

Fire Officer Rules, 2024. It is submitted that if such experience is considered, then the appellant is not satisfying the same. He has referred to the appellant's representation dated 07.03.2025 and has submitted that the appellant himself has admitted that he is only having 6 years 9 months and 10 days, and hence the experience gained prior to that cannot be counted for the purpose of satisfying the requirement of the Clause (c) of Rule 3 of the Chief Fire Officer Rules, 2024. He has also pointed out the General Instructions No.6(2)(a) of the Advertisement, which clarifies that the experience, which is gained after obtaining the requisite qualification can only be considered.

10. Learned advocate Mr.Mehta, has also referred to the communication dated 26.03.2025 written by the Joint Secretary of the respondent No.1 informing the appellant that as per the provisions of Rule 8(8)(a) of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, (in short, the "Rules, 1967"), the experience of a candidate, which he has gained after the acquisition of the requisite educational qualification can only be considered, and not prior to obtaining the education qualification. He has further referred to the observations recorded by the learned Single Judge and has submitted that the learned Single Judge, while placing reliance on the judgment of the Division Bench of this Court in the case of K.V. Garasiya Vs. Babubhai N. Gavit, 1991 (1) GLR 229 and the decision of the Supreme Court in the case of Indian Airlines Ltd. and Ors. Vs. S. Gopalakrishnan,

(2001) 2 SCC 362, has precisely rejected the writ petition. He has submitted that on an analogous issue, the Division Bench in the case of ***K.V. Garasiya (supra),*** while examining the provisions of Rules 3, 8(8)(a) of the Rules, 1967, has held that the experience, which is gained after obtaining the requisite qualification can only be considered for the purpose of satisfying the requirement of recruitment rules and not prior thereto. It is thus submitted that whatever the experience, which the appellant has been gained, prior to completion of the Divisional Officer Course, cannot be considered for counting the total 7 years experience.

11. Learned Advocate Mr.Nikunt K. Raval, appearing for the respondent No.2 has adopted the arguments as advanced by the learned advocate Mr.Manan Mehta, appearing for the respondent No.1 and has supported the judgment and order passed by the learned Single Judge.

OPINION AND CONCLUSION : -

12. We have heard the learned advocates appearing for the respective parties. We have also perused the judgment and order passed by the learned Single Judge.

13. So far as the experience gained by the appellant is concerned, the same is not in dispute and is incorporated as under : -

EXPERIENCE -

Sr. No	*Name of Institution*	*Post*	*Period*	*Type*	*Experience*
1.	*Vinod Fabrics Pvt. Ltd.*	*Fire Officer*	*11.05.2015 To 15.02.2016*	*Private Fire Brigade*	*9 months*
2.	*Arvind Limited*	*Fire Officer*	*20.02.2016 To 19.02.2017*	*Private Fire Brigade*	*1 Year*
3.	*Junagadh Municipal Corporation*	*Fire Officer*	*07.10.2017 To 09.06.2019*	*Govt. Fire Brigade*	*1 Year, 8 Months, 2 Days*
4.	*Ahmedabad Municipal Corporation*	*Sahayak Station Fire Officer*	*10.06.2019 To 18.01.2021*	*Govt. Fire Brigade*	*1 Year, 7 Months, 8 Days*
5.	*Ahmedabad Municipal Corporation*	*Divisional Fire Officer*	*19.01.2021 To 18.07.2024*	*Govt. Fire Brigade*	*3 Years, 6 Months, 25 Days*
Total Experience					*8 Years, 7 Months 11 days*

14. The case of the respective parties entirely hinges on below mentioned provisions of law.

a) General Instructions No.6(2)(a) of the Advertisement, the same read as under:

> *6: <u>Experience:</u>*
> *(1) The requisite experience will be counted from the last date of receipt of the application;*
> *(2) Unless otherwise provided in the advertisement, the experience shall be counted from the date, of acquiring the requisite educational qualification.*

b) Rule 3(b)(i) and Clause (c) of the Chief Fire Officer Rules, 2024, read as under : -

> *"3. To be eligible for appointment by direct selection to the post mentioned in; rule-2, a candidate shall-*
>
> *(a) not be more than 45 years of age,*

Provided that the upper age limit may be relaxed in favour of a candidate belonging to Scheduled Castes or Scheduled Tribes or Socially and Educationally Backward Classes or Economically Weaker Sections or Women in accordance with the provisions of the sub rule (2) of mile & of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967.

Provided further that the upper age limit may also be relaxed in favour of a candidate who is already in the service of the Gandhinagar Municipal Corporation in accordance with the provisions of the Gujarat Civil Services. Classification and Recruitment (General) Rules, 1967 as amended from time to time.

(b) possess

(i) a Bachelor's degree obtained from any of the Universities established or incorporated by or under the Central or State Act in India or any other educational institution recognized as such or declared to be deemed as a university under section 3 of the University Grants Commission Act, 1956, and Completed the Divisional officers Course or the Fire Prevention course recognized by the National Fire Service College, Nagpur, or

(ii) a degree of Bachelor of Engineering (Fire) Bachelor of Technology (Fire)/Bachelor of Engineering (Fire and safety) Bachelor of Technology (Fire and safety)/ Bachelor of Science (Fire) obtained from any of the Universities established or incorporated by or under the Central or State Act in India or any other educational institution recognized as such or declared to be deemed as a university under section 3 of the University Grants Commission Act, 1956;

(c) have at least seven years' service experience in a whole time in the Field of Fire Brigade out of which three years' experience on the post which can be considered equivalent to the post not below rank of Station Officer or Assistant Divisional officer in Government or Local body or Government Undertaking Board or Corporation of Limited Company established under the Companies Act, 2013"

15. In the advertisement issued in July, 2024 in paragraph No.3, similar requirement has been specified. It is the

case of the respondent No.1 that as mentioned in sub-clause (i) to clause (b) of Rule 3 of the Chief Fire Officer Rules, 2024, the experience gained by the candidate after completion of the Divisional Officer Course can only be considered for satisfying 7 years experience as prescribed in Clause (c) to Rule 3 of the Chief Fire Officer Rules, 2024, whereas the appellant is claiming that the experience gained by him prior to clearing the Course is also required to be added.

16. So far as this experience, after completion of the Divisional Officer Course is concerned, the parties are *ad idem*. The appellant in his representation dated 07.03.2025 has also admitted that he is having 6 years 9 months and 10 days experience after completion of the Divisional Fire Officer's Course.

17. The Clause (c) to Rule 3 of the Chief Fire Officer Rules, 2024, mentions about *"having atleast seven years' service experience in a whole time in the field of Fire Brigade out of which three years' experience on the post, which can be considered equivalent to the post not below rank of Station Officer...."*

18. The requirement of seven years' experience though is composite has exclusive feature of three years' experience in the Fire Brigade on the post, which can be considered equivalent to the post not below the rank of Station Officer. Thus, out of total seven years' experience in Fire Brigade, three years should be on the respective.

The appellant has attempted to bifurcate it into two parts of 4 years and 3 years, but the language of Rule 3(c) does not envisage this feature. It only commands of distinct experience of three years on a post in Fire Brigade. If the Rule making authority had the intention to include the experience gained before acquiring the educational qualification as required under Rule 3(b)(i), the same could have formed the part of Rule 3. There is no positive covenant permitting the inclusion of experience prior to attaining the qualification in the entire Rule 3, hence the contention of the appellant about bifurcation of experience in Rule 3 does not merit acceptance.

19. The appellant has cleared his Divisional Officers Course on 17.04.2017, and thereafter, he has rendered service for 6 years and 9 months and 10 days in Junagadh Municipal Corporation and Ahmedabad Municipal Corporation as per his own admission. The appellant is asserting that the below mentioned period is also required to be added in counting seven years: -

(i) 9 months experience as Fire Officer in Vinod Fabrics Pvt. Ltd.

(ii) 1 year experience as Fire Officer in Arvind Limited.

20. Unquestionably, the aforementioned period of one year and nine months is gained before he has acquired the qualification of Divisional Officers Course. At this stage, it would be apposite to refer to Clause 6(2)(a) of the

Advertisement, which mandates that unless otherwise provided in the advertisement, the experience gained from the date of acquiring the requisite qualifications will be considered. The provision of Rule 3(c) of the Chief Fire Officer Rules, 2024, has to be read in harmony with Clause 6(2)(a) of the Advertisement, and not in isolation. Seven years' experience has to be counted from the date of acquiring the requisite qualification.

21. Clause (c) to Rule 3 of the Chief Fire Officer Rules, 2024, which prescribes seven years' experience, cannot be applied in the manner, as suggested by the appellant. The Rule only emphasis of experience of three years on the post not below the rank of Station Officer or Assistant Divisional Officer in Government or a Local Body or Government Undertaking Board or Corporation or Limited Company established under the Companies Act, 2013. The specification of 3 years' experience on the post cannot be construed in a manner that the rest of 4 years' experience has to be counted *de hors* the requirement of qualifications. Neither the Rules nor the clauses of advertisement bifurcate 7 years' experience i.e prior to qualifications or thereafter. Thus, the entire seven years' experience has to be counted after a candidate acquires the requisite qualification of completion of the Divisional Fire Officers Course.

22. Thus, the experience gained by the appellant as an Fire Officer in Vinod Fabrics Pvt. Ltd., of 9 months from 11.05.2015 to 15.02.2016 and in Arvind Limited from

20.02.2016 to 19.02.2017, which comes to 1 years and 9 months cannot be satisfy the requirements of clause (c) to Rule 3 of the Chief Fire Officer Rules, 2024 read with General Instructions Clause No.6(2)(a) of the Advertisement.

23. The case of the appellants also fails on an additional ground. The Chief Fire Officer Rules, 2024 also refer to the Rules of 1967. The Rule 8(8)(a) of the Rules, 1967 is analogous to Clause 6(2)(a) of the advertisement. The same reads as under : -

> "*8. Condition As to Prescribed Qualifications:*
>
> *(8) Where the qualifications prescribed for any service or post include a qualification as to practical experience of a given period and applications are invited for such service or post "the period of practical experience shall be computed-*
>
> *(a) Unless otherwise provided in recruitment rule from the date on which requisite qualifications are obtained.*"

24. The aforesaid Rules of 1967 are the general rule of recruitment framed under Article 309 of the Constitution of India. It is settled legal precedent that even if there is no specific provision in the special rules framed for the recruitment to a post, the general rules shall prevail. In the present case, the special recruitment rules do not stipulate any provision for computation of period of 7 years of experience, hence, the provision of Rule 8(8)(a) will come into play. The respondent no.1, by incorporating an analogous condition no.6(2)(a), has clarified that only the experience which is gained after

obtaining the requisite qualification shall be considered. Hence, the experience of 6 years 9 months and 10 days gained by the appellant, after procuring the necessary qualification as envisaged under Rule 3(b)(i) of the Chief Fire Officer Rules, 2024, can be exclusively considered, and not the experience gained by him prior thereto.

25. The Supreme Court, in the case of ***S.Gopalkrishnan(supra)*** on an similar issue, has held thus:-

> ***"5.*** *When in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification. In the case of the respondent he obtained the ITI certificate in the year 1994 and, therefore, did not possess five years of experience as required under the relevant rule. If his qualification as a diploma holder in Mechanical Engineering is taken note of, he has not completed three years of experience as he got the same in April, 1996 and on relevant date he did not possess such qualification. Indeed in prescribing qualification and experience, it is also made clear in the general information instruction at Item No. 6 that "experience will be computed after the date of acquiring the necessary qualifications". Therefore, when this requirement was made very clear that he should have experience only after acquiring the qualification, the view taken by the High Court to the contrary either by the learned single Judge or the Division Bench does not stand to reason."*

26. The Apex Court, has thus, held that when in addition to qualification, experience is prescribed, it would **"only"** mean acquiring the necessary experience after obtaining the necessary qualification, and prior to acquiring the qualification.

27. Thus, on an overall analysis of the Rules 3(b(i) and 3(c) of the Chief Fire Officer Rules, 2024 read with General

Instructions Clause No.6(2)(a) of the Advertisement, we do not propose to differ from the view expressed by the learned Single Judge.

28. As a sequel, the Letters Patent Appeal fails. The same is dismissed. The connected civil application also stands disposed of accordingly.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(GITA GOPI,J)

MAHESH/01

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MAHESH OMPRAKASH BHATI(HC01086), PRIVATE SECRETARY, at High Court of Gujarat on 21/04/2025 14:39:42