IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13182 of 2021

With
R/SPECIAL CIVIL APPLICATION NO. 1290 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 1659 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 16404 of 2024

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ASHWINKUMAR VISHNUBHAI JADAV
Versus
DIRECTOR GENERAL AND INSPECTOR GENERAL OF POLICE, GUJARAT STATE & ORS.

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Appearance:
MR KASHYAP B TRIPATHI FOR MS SHUBHA B TRIPATHI(5597) for the Petitioner(s) No. 1
MR ADITYA PATHAK AGP for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

Date : 07/07/2025

COMMON ORAL ORDER

1. Heard learned Advocate Mr. Sudhanshu A. Jha and learned Advocate Ms. Mamta R. Vyas for the petitioners and learned AGP Mr. Aditya Pathak for the respondents.

2. By way of these petitions, the petitioners have challenged the decision of the respondents in declaring the petitioners as unfit for appointment, more particularly on the ground that the petitioners were suffering from the disability of colour blindness.

3. At the outset, it requires to be noted that the selection in which the petitioners had participated was between the year 2009 to 2018 in all the matters and whereas the learned Advocates would submit that since this Court having decided group of petitions where the recruitment was of the year 2009, vide decision dated 01.04.2024 in Special Civil Application No.

10195 of 2021 and allied matters, the said decision is produced on record.

4. Having perused the said decision and having heard the learned Advocates for the respective parties, it would clearly appear that in similar set of facts, more particularly in case of a recruitment of the year 2009, this Court had allowed the writ petitions. Considering the identical nature of the facts and the prayers, the observations in the said decision, more particularly at Paragraph Nos. 3 to 7 is reproduced hereinbelow :

> "3. Considering the submissions made by the learned advocates for the parties, it would appear that insofar as principal issue is concerned i.e. whether the disability of colour blindness could be a disability for employment, this Court, seeks to rely upon the decision of Division Bench of this Court in Letters Patent Appeal no.1136 of 2018 in Special Civil Application no.7595 of 2013 dated 2nd November, 2018. It requires to be observed here that the Hon'ble Division Bench, had *inter alia* observed that since there was no specific provision in the rules, which provided for disqualification on the ground that the candidate suffers from colour blindness, the orders, whereby the candidature / appointments of the petitioners had been rejected/ cancelled, were all *set aside* and the petitioners therein were directed to be appointed from the date on which they would have been ordinarily appointed as per the select list. It also requires to be mentioned here that the said law has been reiterated in number of decisions of this Court both of learned Co-ordinate Benches, as well as, Division Benches and whereas since the issue is no more *res integra*, this Court deems it appropriate to follow the law laid down by the Division Bench and whereas observation at para-12 are being reproduced hereinbelow for benefit.
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> > *"12. In the light of the law laid down in the above decisions, it clearly emerges that in case any candidates are sought to be disqualified on the ground that they suffer from colour blindness, there has to be a specific provision in the rules providing for such disqualification. In the facts of the present case, a perusal of the relevant rules*

clearly indicates that no such disqualification has been provided for the post in question. Under the circumstances, it is not permissible for the respondents to adopt a stand that the appellants herein are not qualified for the post of Lok Rakshak. The learned Single Judge was, therefore, not justified in holding that every kind of deficiency or incapacity is not to be mentioned in the recruitment rules, and therefore, merely because it has not been specifically provided in the rules, it cannot be presumed that the petitioner therein should be treated as medically fit in spite of negative opinion after the examination."

4. As far as the principal issue is concerned, while the same is a settled position, the bone of contention in the present group of petitions is with regard to the petitioners having been approached this Court after a considerable delay. While it is the case of the petitioners that the petitioners should be treated similarly to the other candidates, who had approached this Court questioning their non-appointment and whereas reliance is placed by the learned advocates for the petitioners upon observations of the Hon'ble Division Bench of this Court in Letters Patent Appeal no.538 of 2020 dated 2nd February, 2021, more particularly whereby the Hon'ble Division Bench has *inter alia* observed that since the candidate therein belonged to the Scheduled Tribe and was residing in a remote area, therefore, he should not be deprived of employment if he is otherwise found to be qualified, simply on the issue that the candidate was suffering from colour blindness.

Importantly, the petitioners would rely upon a decision of the respondent authorities dated 14th September, 2022, whereby a candidate i.e. one Chaudhary Sanjaykumar Ambalal had been appointed, more particularly, the candidate having been disqualified in a recruitment process of the year 2009. Learned advocates would point-out that the said candidate had initially approached this Court by preferring Special Civil Application no.15651 of 2021 and whereas, vide an order dated 18th October, 2021, this Court had *inter alia* accepted the request of the petitioner to approach the respondents by preferring representation for agitating his grievances. It is submitted by learned advocates that the order dated 14th September, 2022 referred to hereinabove by the respondents,

was an order passed upon the representation by the very petitioner, which was directed to be decided by this Court. Learned advocates for the petitioners would point-out that the petitioner therein, having not succeeded in getting an appointment in the year 2009, more particularly his candidature having been cancelled on the ground of being afflicted with colour blindness, yet, the respondent authorities themselves had deem it appropriate to appoint the said petitioner in the year 2022. Learned advocates for the petitioners would further submit that the respondent authorities having taken a stand to appoint a candidate, who had been disqualified the selection of the year 2009, it would not be open for the respondents to take a different view in the present group of petitions.

5. Per contra, the present group of petitions are vehemently opposed by Mr. Sahil Trivedi, learned AGP on behalf of the respondent – State. Learned AGP would submit that while this Court has been taking a view time and again in various petitions, that the affliction of colour blindness would not be a disqualification for appointment as a Lok Rakshak, Police Constable and whereas, one of the earliest decisions being decision of the Division Bench, which is referred to hereinabove, yet, what requires to be noted is that the decision of Division Bench was also of the year 2018 whereas, the petitioners have approached this Court six years thereafter. Mr. Trivedi, learned AGP, would further submit that in Special Civil Application no.10838 of 2021 vide a decision dated 5th August, 2021, learned Co-ordinate Bench, had rejected the case of an applicant, whose candidatature had been rejected on the ground that the candidate had been afflicted with colour blindness, more particularly, the recruitment process being of the year 2009. Learned AGP would submit that the Co-ordinate Bench had rejected the petition on the ground of inordinate delay. Learned AGP would further rely upon decision of Division Bench of this Court in Letters Patent Appeal no.397 of 2020, whereby a decision dated 16th October, 2009 in Special Civil Application no.12147 of 2019 by the Co-ordinate Bench, more particularly rejecting the petition of similar nature on the ground of inordinate delay had been confirmed by the Division Bench. Relying upon the said decisions, learned AGP would request this Court not to entertain the present petitions.

6. Heard learned advocates for the respective parties and perused the documents on record. As noted hereinabove, insofar as the decision on merits is concerned, the same is no more *res integra* inasmuch as, the law on the issue having been settled by decision of the Division Bench referred to hereinabove i.e. in Letters Patent Appeal no.1136 of 2018 in Special Civil Application no.7595 of 2013 dated 2nd November, 2018, in the considered opinion of this Court, the same is required to be followed.

7. As noted hereinabove, the only issue which arises for consideration of this Court that, would this Court entertain a writ petition, more particularly after such a considerable delay at the end of petitioner himself.

8. At the outset, in this regard, it is to be noted that the issue that the petitioners are not required to be appointed since they have come to this Court belatedly, may not be open for the respondent themselves to contend, the reason being that in writ petition i.e. Special Civil Application no.15651 of 2021, as referred to hereinabove vide decision dated 18th October, 2021, this Court had acceded to the request of learned advocate for the petitioner for permitting the petitioner to approach the respondents by preferring a representation and whereas the respondents were directed to decide the representation in accordance with law within a specific period of time. It would appear as noted hereinabove that vide order dated 14th September, 2022 the respondents, had appointed the said petitioner in spite of noting that the petitioner had not cleared the selection process of the year 2021. In the considered opinion of this Court, the respondents having deemed it appropriate to appoint a candidate whose candidature had been rejected in spite of selection, more particularly, the process having started in the year 2009, and whereas it also appears pursuant to the order dated 14th September, 2022 that the order does not notice any special circumstance for taking a view in question, therefore, now it would not be open for the respondents to take a stand that even if the petitioners having approached this Court belatedly, more particularly, the selection pertaining to the year 2009, therefore, their cases ought not to be entertained by this Court. The State having

taken a particular view in case of a particular employee, the same stand is required to be reiterated by this Court in case of the present petitioners, who are otherwise similarly situated to the employee/ beneficiary of order dated 14th September, 2022.

9. Insofar as the decisions of learned Co-ordinate Bench in Special Civil Application no.10838 of 2021 and Letters Patent Appeal no.397 of 2020, it requires to be observed that while the Hon'ble Division Bench, as well as, learned Co-ordinate Bench had taken a view that the case of the petitioners/ employees therein ought not to be entertained on the ground of delay, yet, it would appear that in a later decision, Hon'ble Division Bench, more particularly vide decision dated 2nd February, 2021 in Letters Patent Appeal no.538 of 2020 had *inter alia* taken a view that merely on the ground of delay, a candidate should not be deprived of employment, more particularly since in similar petitions, where the petitioners have challenged their non-appointment on the ground that they detected with the affliction of colour blindness had been interfered by the learned Co-ordinate Benches and Division Benches of this Court, therefore, the later decision of the Hon'ble Division Bench in the considered opinion of this Court, is required to be followed, more particularly since it appears that the present petitioners are otherwise similarly situated to the petitioners, who had approached this Court and whereas the only difference being that the petitioners have approached this Court belatedly.

At this stage, it would also be worthwhile to note that the aspect of belated approaching this Court, may not otherwise prejudice the respondents at all except for the benefits of seniority, this Court in almost all the cases has not awarded any back-wages to the petitioners and whereas the only benefit apart from directing appointment, which has been granted to the employee is to be treated as being appointed at the relevant point of time, when persons similarly situated to the petitioners had appointed and whereas the period of service prior to the date of service, has been directed not to be treated as period in actual service. Thus, it would appear that this Court, more particularly starting from decision dated 2nd November, 2018 in Letters Patent Appeal no.1136 of 2018

> while directing appointment, had also balanced the equities by ensuring that the interest of the State is also protected, therefore, in the considered opinion of this Court, delay may not have any real bearing on the issue in question and whereas as noted hereinabove, since the State itself has deemed it appropriate to appoint the employee in the year 2022, whose candidature had been rejected pursuant to the selection of the year 2009, therefore, it may not be open for the State to agitate the issue of delay in the present group of petitions.
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> 7. Considering the above discussion, observations and conclusions, in the opinion of this Court, the petitions would ***succeed***. The petitioners are entitled for appointment from the date when they would have ordinarily appointed on being selected and whereas the period from the date of appointment till the date of actual joining, would not be treated as the period in actual service except for retiral benefits and fixation of seniority. Furthermore, it is clarified that the promotions given if any to persons junior to the petitioners in the merit list shall not be disturbed. The respondents to pass appropriate orders appointing the present petitioners subject to the above conditions more particularly if nothing adverse is found against the petitioners within the period of ***eight weeks*** from the date of receipt of this order. ***Rule made absolute to the aforesaid extent***."

5. Having regard to the observations of this Court in the above quoted order and considering the similarity of the facts, the present petitions would also succeed. It is directed that the petitioners are entitled for appointment from the date when they would have ordinarily appointed on being selected and whereas the period from the date of appointment till the date of actual joining, would not be treated as the period in actual service except for retiral benefits and fixation of seniority. To clarify while the date of appointments of the petitioners would be from the date they would have been ordinarily appointed upon being selected and the benefits from the date of appointment to the date of actual joining would be treated as notional.

Furthermore, it is clarified that the promotions given if any to persons junior to the petitioners in the merit list shall not be disturbed. The respondents to pass appropriate orders appointing the present petitioners subject to the above conditions more particularly if nothing adverse is found against the petitioners within the period of ***eight weeks*** from the date of receipt of this order.

6. With the above observations and directions, the present petitions stand disposed of as allowed.

(NIKHIL S. KARIEL,J)

Y.N. VYAS

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: YAGNESH NARENDRABHAI VYAS(HC00207), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 09/07/2025 10:58:47