

Janakkumar Manubhai Shukla Vs. A. Myanger, District Development Officer, Bulsar and ors.

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Court : Gujarat

Decided On : Jul-15-1985

Reported in : (1986)1GLR121; (1986)ILLJ531Guj

Judge : A.G. Qureshi, J.

Appeal No. : Special Civil Application 1341/79

Appellant : Janakkumar Manubhai Shukla

Respondent : A. Myanger, District Development Officer, Bulsar and ors.

Judgement :

1. The petitioner herein joined service as Junior Clerk on 7th October, 1971 in the service of the respondent Panchayat. He worked as Steno-typist from 23rd July, 1972 to 31st March, 1973. On 1st April, 1973, he was appointed as Stenographer Grade-II for six months, which period was subsequently extended upon the time a permanent incumbent could be appointed. The Panchayat Service Selection Committee called for a report about the performance of the petitioner which was submitted on 10th October, 1975. According to the petitioner, his performance was quite satisfactory and that he was eligible to continue on the said post. By the circular dated 23rd February, 1978, the Government imposed the requirement of continuation in Panchayat service, whereby the employees had to pass the

departmental examination in the specified number of attempts. The petitioner was granted permission to appear in the examination to be held on 16th June, 1978. He could not appear in the said examination on the ground of sickness. It is the petitioner's case that he was suffering from duodenal ulcer and hence he was unable to appear in the examination. He however appeared in the examination on 30th December 1978 and failed. The petitioner again obtained permission to appear in the examination to be held on 29th April, 1979. But according to him, he fell sick on 24th April, 1979 i.e. five days prior to the examination. The petitioner sent the medical certificate issued by the Additional District Health Officer, District Panchayat, Bulsar, in support of his contention that he was sick and unfit to appear in the examination. A letter of the same date was also sent by the President, District Panchayat, stating that the petitioner's performance as Stenographer was quite satisfactory and that he may be granted one more chance to appear in the examination. In the meantime, the Panchayat authorities had decided to terminate the services of the petitioner on the ground that he had not passed the examination within the prescribed attempts. The petitioner came to this Court and obtained the interim injunction restraining the respondent panchayat from passing an order of termination of service of the petitioner.

2. Mrs. K. A. Mehta, the learned counsel for the petitioner has submitted that the petitioner has not exhausted all his three chances for passing the departmental examination, which would have enabled him to continue in the service. According to her, the petitioner appeared in the examination only once and failed. On two other occasions, i.e. 16th June, 1978 & 29th April, 1979, the petitioner could not appear for reasons beyond his control viz., his physical ailment. Mrs. Mehta has relied on a recent unreported decision of this Court, wherein it is held that if an employee is unable to appear in the examination on account of illness, it could not be regarded as an attempt and therefore such an employee is entitled to one more attempt in lieu of the one missed due to sickness. Mrs. Mehta has further urged that the respondent Panchayat is not justified in terminating the services of the petitioner on the sole ground of the petitioner not having passed the departmental examination within the prescribed attempts. She has pointed out that the petitioner's sickness is certified by the Medical Officer of the respondent Panchayat itself and that the President, District Panchayat has expressed his

satisfaction at the performance of the petitioner. Therefore, according to her, the petitioner is entitled to atleast one more chance to appear in the departmental examination to enable him to continue in the Panchayat service.

3. Mr. M. C. Patel, the learned A.G.P. has pointed out from the affidavit of Secretary, Panchayat Service Selection Board, Ahmedabad, that the petitioner had taken leave for three days and that the fact that the petitioner had come to Ahmedabad from Bulsar only one day after the examination was held, shows that the petitioner was not genuinely sick on the day of examination. He therefore submits that the contention of the petitioner that he could not appear at the departmental examination on account of illness, is not tenable and deserves to be rejected. According to him, the petitioner, out of fear of failure, must have deliberately decided to skip the examination and put up sickness as a mere pretext. There is nothing on record to warrant such a presumption. The mere fact that the petitioner had come to Ahmedabad only a day after the examination was held, does not necessary prove that the petitioner could not have been sick on the day of the examination. The fact of sickness or physical inability on the day of examination must be accepted on the basis of medical certificate in absence of any proof to the contrary. The fact that a person was in a position to travel on the next day cannot lead to irresistible conclusion that he was not sick on the previous day. The very fact that the petitioner's sickness is certified by the Additional District Health Officer, District Panchayat, Bulsar, is sufficient to show that what the petitioner say is correct. There is nothing on record to show that the said certificate is false, fabricated or otherwise unreliable. In these circumstances, the petitioner's contention that he was sick on the day of the examination must be accepted. In that view of the matter, the petitioner cannot be said to have availed of his opportunity to appear in the departmental examination on 29th April, 1979. Hence, it must be held that one or more chance is available to the petitioner to pass the departmental examination. The respondent Panchayat would not be justified in terminating the services of the petitioner on the sole ground that he had not passed the departmental examination within the prescribed attempts.

4. Mr. P. M. Raval, the learned counsel for Respondent No. 3 states that the Respondent No. 3 was selected by the Selection Committee and was to be

appointed as permanent incumbent on the post occupied by the petitioner. But his appointment could not be made because of the interim relief granted by this Court, in the present petition. Hence, according to Mr. Raval, the Respondent No. 3 would be adversely affected if the present petition is allowed. That result cannot be avoided if the petitioner is entitled to one more chance as per the decision of this Court. As far as the Respondent No. 3 is concerned, he may be considered for the appointment to any other post than the one which the petitioner at present occupies and which the petitioner may be in a position to retain if he passes the examination in the next attempt.

5. In the result, the petition succeeds. It is held that the petitioner is entitled to one more chance to pass the departmental examination. The respondent Panchayat is directed not to terminate the services of the petitioner on the ground that he has not passed the said examination in the prescribed chances. Rule is made absolute. There shall be no order as to costs.