

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SECOND APPEAL NO. 117 of 2003**

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DISTRICT PRIMARY EDUCATION OFFICER & ANR.  
Versus  
SABIHABEN AYUBHBHAI VORA

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## Appearance:

MR HS MUNSHAW(495) for the Appellant(s) No. 1,2  
KRISHNA R BHATT(8988) for the Respondent(s) No. 1  
MR DG SHUKLA(1998) for the Respondent(s) No. 1  
MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 25/02/2026

**JUDGMENT**

1. This Second Appeal is admitted on following substantial question of law :-

*“(i) Whether on the facts and circumstances of the case, the Civil Court had the jurisdiction to direct the appellant - authority to appoint the respondent in a particular cadre without appreciating that the person (third party) who was likely to be affected was not even impleaded and hence not heard ?*

*(ii) Whether on the facts and circumstances of the case, the orders of the trial Court and the appellate Court are justified in law, without appreciating the aspect of period of operation of a particular select list and incidentally, the operation of period of limitation as a consequence of the same ?*

*(iii) Whether on the facts and circumstances of the case, the circulars at Exs.108 and 109 were applicable to the facts of*

*the case so as to entitle the respondent plaintiff to additional marks ? and if yes, whether the respondent plaintiff was entitled to additional marks or additional percentage ?”*

2. The appellants are original defendants and respondent herein is original plaintiff. For sake of brevity and convenience, they are referred as per their status before the learned Trial Court.

3. Judgment and decree dated 12.04.2001 passed by learned Trial Court in Regular Civil suit No.442 of 1994, passed in favour of the plaintiff, has been upheld by the learned Extra Assistant Judge, Amreli vide judgment and decree dated 22.10.2003 in Regular Civil Appeal No.32 of 2001.

4. Being aggrieved by said judgments, the original defendant has preferred present Second Appeal, which is admitted on 23.02.2004 by the Co-ordinate Bench framing aforesaid substantial question of law.

5. Factual matrix of the case is that, plaintiff – Sabihaben Ayubhbhai Vora filed Civil Suit for declaration and permanent injunction against District Primary Education Officer and District Education Committee, Amreli on the averments that the plaintiff possessed the requisite educational qualification and certification required for appointment to the post of Primary Teacher pursuant to the recruitment process initiated by the defendants. Vide letter No.Shiksha/1/Samalaya/Vashi-1329

dated 12.12.1991, the plaintiff was called for interview. The plaintiff appeared for the interview on 23.12.1991 and produced all original testimonials and documents as required by the defendants. Later on, the plaintiff came to know that the defendants, in breach of the applicable recruitment rules and procedure, appointed a candidate who was less meritorious than the plaintiff. Being aggrieved by such illegal and arbitrary action, the plaintiff filed the Regular Civil Suit seeking declaration and permanent injunction claiming following reliefs in para 8 of the plaint (it is in Gujarati, for better understanding, it is translated in English) :-

*“1. It may be declared that the Plaintiff possesses sufficient and requisite qualifications for the post of Primary Teacher.*

*2. An order may be passed declaring that the Defendants shall appoint the Plaintiff to the post of Primary Teacher.*

*3. The act of the Defendants in selecting the plaintiff and thereafter not appointing the Plaintiff may be declared as illegal.*

*4. The appointments of candidates subsequent to the Plaintiff may be declared as void.*

*5. An interim injunction may be granted restraining the Defendant No. 1 from proceeding further with the selection / recruitment process of Primary Teachers, as also from initiating any further process for conducting interview for recruitment of the Primary Teachers in Amreli District, either by themselves or through their clerks, employees, or agents, till the final disposal of this suit.*

*6. An order may kindly be passed directing the Defendants to pay the entire cost of this suit to the Plaintiff.*

7. *The Hon'ble Court may be pleased to grant any other relief as may deem appropriate and reasonable to the Honorable Court."*

6. Defendant having been served came out with defense that the learned Civil Court has no jurisdiction to adjudicate upon the issues raised by the plaintiff, as the dispute pertains to recruitment and service matters falling outside the purview of the Civil Court. It is further contended that without serving statutory notice under section 270 of the Gujarat Panchayat Act, suit against the defendant is not maintainable. The defendants denied the allegations of irregularities in the procedure adopted for filling up the posts of Primary Teachers as alleged by the plaintiff. It was submitted that the last selected candidate in the merit list had secured higher marks than the plaintiff, whereas, the plaintiff had secured only 58.98%, and therefore, she was not entitled to selection to post of primary teacher. It is further contended that plaintiff has passed examination of intermediate but she has not passed the examination of elementary, which was a necessary qualification for appointment to the post in question and therefore, she is not entitled to get job. It is also contended that suit is hopelessly time barred; the final merit list was declared on 23.12.1991, whereas the suit was filed on 12.12.1994, beyond the prescribed period of limitation. It is contended that since plaintiff's name did not appear in merit list, she could be treated as person in waiting list; such waiting list, if any, would remain in operation for period of one year from the date of declaration of merit list. In all, it is contended that plaintiff's suit is not maintainable.

7. Learned Trial Court after framing issues and taking evidence, was pleased to decree suit in favour of the plaintiff. Learned Trial Court held that action of the defendants in not appointing the plaintiff on the post of primary teacher is illegal, prejudicial, arbitrary and against principles of *audi alteram partem*. Learned Trial Court also issued mandatory direction to defendant that since plaintiff holds requisite qualification and marks more than last appointed candidate on the post of primary teacher, the plaintiff be given appointment on the post of primary teacher. Unsuccessful attempt has been made to assail judgment and decree by the learned Civil Court by way of first appeal. Hence, present Second Appeal.

8. Heard learned advocate Mr.Munshaw for the appellant – original defendant and learned advocate Mr.D.G.Shukla for respondent – original plaintiff.

9. After hearing learned advocates for both the sides, the questions found seminal to decision in the matter are as under :-

(i) Whether learned Civil Court in exercise of its jurisdiction vested under section 9 of the CPC can direct defendant to appoint plaintiff to the post of primary teacher ?

(ii) Whether learned Civil Court can sit in appeal forum to examine the legality and validity of the recruitment process or the interview procedure, and record a finding that the Interview Committee erred in awarding less marks to the plaintiff? and

(iii) Whether without quashing and setting aside recruitment process initiated for recruitment of primary teacher, learned Civil Court could direct defendant to include name of plaintiff in merit list and consequently, direct the defendant to appoint her to the post of primary teacher.?

10. The obvious answer to aforesaid questions are against original plaintiff. Going through the judgment passed by learned Trial Court as well as learned Appellate Court, it appears that learned Trial Court went to decide that interview committee has committed serious error in granting 58.98% marks to the plaintiff. The learned Trial Court further held that the plaintiff was entitled to 60.98% marks and on such assessment, recorded a finding that she had secured more marks than the last candidate appointed to the post of Primary Teacher and therefore, the plaintiff is entitled to be appointed as primary teacher.

11. If we peruse paragraph Nos. 12 to 17 of the Trial Court's judgment, it reveals that the learned Trial Court assumed the role and character of the Interview Committee and decided that interview committee committed serious error in not granting two more marks to the plaintiff. It is surprising that, in absence of any specific pleadings challenging the interview process, learned Trial Court undertook such exercise and granted two additional marks to the plaintiff on the ground that she possessed knowledge of special subjects. In fact it seems that learned Civil

Court has assumed the character and *dramatis personae* of the interview committee. Unfortunately, said error which ought to have been rectified by the learned first appellate Court, failed to correct the same by allowing appeal, rather dismissed the Regular Civil Appeal and confirmed the judgment of learned Trial Court.

12. It is very essential to note that for appointment to the post of primary teacher, name of candidate must appear in merit list. A candidate whose name does not appear in the merit list cannot claim appointment as a matter of right. The right to appointment is not an indefeasible right of the plaintiff. In the present case, the last selected candidate had secured more marks than plaintiff. The plaintiff to avail appointment filed civil suit. Though there was no pleadings to challenge interview process or to give more marks, learned Trial Court went on to decide as if learned Trial Court itself was interview committee and decided to grant two more marks, so that plaintiff can stand ahead of last appointed candidate.

13. It is to be noted that the final merit list was declared on 23.12.1991, whereas the Trial Court delivered its judgment on 12.04.2001, nearly eleven years thereafter, learned Trial Court dare to disturb recruitment and selection process as well as merit list. It is sheer and palpable error on the part of learned Trial Court. This Court is at a loss to understand under which provision of law the learned Trial Court assumed jurisdiction to re-assess the interview process, grant additional marks to the

plaintiff, and direct the appellant – District Panchayat – to appoint plaintiff to the post of Primary Teacher that too after 11 years. It is complete colorable exercise of power and abuse of process of law.

14. In the case of **State of Punjab v/s. Raghbir Chand Sharma [(2002) 1 SCC 113]**, Hon'ble Apex Court in para 4 held as under :-

*“4. We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant-State, the Notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The Circular Orders dated 22.3.1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the Circular Orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before Courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative*

*exigencies.”*

15. In the case of **Shankarsan Dash v/s. Union of India [(1991) 3 SCC 47]**, Hon’ble Apex Court has held as under :-

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 3 SCC 220; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCC 122.”*

16. Plaintiff who could not secure her name in merit list could at the most be treated in waiting list. Name of the candidate appearing in waiting list could operate for one year, in absence of any rule contrary to recruitment rules. In the case of **U.P. Public Service Commission v/s. Surendra Kumar [(2019) 2 SCC 195]**, Hon’ble Apex Court held as under :-

*“12. Having heard the learned counsels on both sides, we*

*have perused the order dated 18.05.2018 passed by the High Court and other material placed on record. For the purpose of operating wait-list, Government of Uttar Pradesh has issued instructions from time to time. It is clear from the various Government Orders that wait-list period is valid only for a period of one year. Though requisition is made for making selection for 178 number of posts, but appellant-Commission, after declaring results of the examination, has made initial recommendation for substantive number of posts, i.e., 156 posts vide letter dated 12.08.2010. It appears that the said list is prepared by including candidates who have submitted all the requisite documents within the period prescribed. Further recommendations were also made, but there is no reason for not computing the period of one year from 12.08.2010. When recommendations were made for substantive number of posts on 12.08.2010, we are of the view that period of one year for operating wait-list is to be computed from 12.08.2010 but not from the last recommendation made for one post, vide letter dated 28.08.2012. The reason for restricting 156 names in the initial recommendation vide letter dated 12.08.2010, is explained in paragraph 11 of the counter affidavit filed before the High Court.”*

17. In the present case, learned Civil Court interfered with power and jurisdiction of the appointing authority. The plaintiff remained silent for three years after declaration of merit list and expiry of waiting list, if any. The plaintiff who has secured less marks than last selected and appointed candidate in merit list, cannot come out with case after three years that selection procedure is faulty. This contention cannot be accepted. Learned Civil Court cannot assume jurisdiction either of interview committee or appointing authority to direct the defendant to add two more marks to plaintiff's score so as to place her in list of selected candidates. It is beyond jurisdiction of learned Civil Court. All these are suffice to say that Civil Court's approach to

interfere with selection process and further to appoint plaintiff is beyond jurisdiction vested under section 9 of CPC and being completely faulty, palpably erroneous and egregiously malfeasant. deserves to be set aside.

18. Ordinarily, this Court, while exercising jurisdiction in a Second Appeal, would refrain from interfering with concurrent findings recorded by the Courts below, however, in the present case, learned Civil Court had no jurisdiction to assume role of appointing authority or usurp jurisdiction of interview committee or appointing authority to add two marks to the score of plaintiff's marks, and then direct the defendant to appoint plaintiff as primary teacher, and since it is found to be in excess of inherent jurisdiction of learned Trial Court, I find that it is fit case where, this Court is required to interfere with impugned judgments.

19. It is also admitted fact that because of impugned judgments, candidate / person who was last selected and appointed in the merit list would be prejudicially effected. Without joining him and without giving him opportunity of hearing, the learned Civil Court cannot direct defendant to include name of the plaintiff in merit list, depriving him from getting appointment / job. The selected candidate was a necessary and proper party to the proceedings, and in his absence, no effective order could have been passed.

20. According to this Court, since there is complete illegality in the impugned judgments, the appeal deserves consideration.

Question of law framed herein above, thus, are answered in favour of the appellant and against original plaintiff.

21. The cause of action, if any, arose on the date of declaration of the final merit list. Limitation to file suit start therefrom. Thus, limitation is also operating against the original plaintiff as she has instituted the suit beyond the prescribed period of three years therefrom. Hence, the civil suit was time barred.

22. For the foregoing reasons, the appeal succeeded. Impugned judgments and order are hereby quashed and set aside and consequently, Regular Civil Suit No.442 of 1994 is dismissed. Record and Proceedings, if any, be send back to the learned Trial Court concerned.

SATISH

**(J. C. DOSHI,J)**