



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7951 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Approved for Reporting	Yes	No
	✓	

DIPIKABEN KARSANBHAI BHURIYA

Versus

BHAVNAGAR MUNICIPAL CORPORATION

Appearance:

MR BHUVNESH GAHLOT for MR NK MAJMUDAR(430) for the
 Petitioner(s) No. 1

MR HS MUNSHAW(495) for the Respondent(s) No. 1

CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 11/08/2026

ORAL JUDGMENT

1. Heard Mr. Bhuvnesh Gahlot, learned advocate for Mr. N.K. Majmudar, learned advocate appearing for the petitioner and Mr. H.S. Munshaw, learned advocate appearing for the respondent – Bhavnagar Municipal Corporation.

2. By way of present petition under Article 226 of the Constitution of India, the petitioner herein has prayed for the following reliefs:

“9. The petitioner, therefore, prays that this Hon’ble Court be pleased to -

A) admit this petition;

B) issue appropriate writ, order or direction and be pleased to quash



and set aside the illegal, illogical, discriminatory, arbitrary action of the respondent authorities of not including the name of the petitioner in the Final Merit list published by the respondent authorities for giving appointment on the post of Female Health Worker and the said action of the respondent authorities may kindly be declared as illegal, illogical, discriminatory, arbitrary violative of Articles-14 and 16 of the Constitution of India;

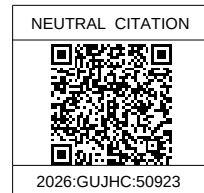
C) issue further appropriate writ, order or direction directing the respondent authorities to pass appropriate order for giving appointment to the petitioner on the post of Female Health Worker on the basis of inclusion of name of the petitioner in provisional list in connection with the advertisement published by the respondent authorities;

D) grant interim relief, and by way of interim order be pleased to direct the respondent authorities to keep one post of Female Health Worker – Schedule Tribe category candidate, vacant in connection with the recruitment process undertaken in connection with the advertisement No.BMV/201819/7, pending admission and final disposal of this petition;

E) pass such orders as thought fit in the interest of justice.”

3. Briefly stated, pursuant to an advertisement published by the Bhavnagar Municipal Corporation being No.BMC/201819/7 inviting applications for filling up total 43 posts of Female Health Workers, the petitioner herein applied for the said post having fulfilled the eligibility criteria, the petitioner having completed the course of General Nursing and Midwifery under Director of Medical Education and Chairman of Karnataka State Diploma in Nursing Examination Board. The Secretary, Karnataka State Diploma in Nursing Examination Board has issued the certificate.

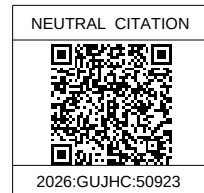
3.1 It is the case of the petitioner that the petitioner herein belongs to the Schedule Tribe. There were total 6 posts in Schedule Tribe category wherein, the petitioner stood at serial No.4 in the merit list. The name of the petitioner did not appear in the final merit list, which is duly produced at Annexure – F to the petition. Pursuant thereto, the petitioner made representations dated 28.02.2019 and 02.03.2019



however, the said representations remained unanswered. The aforesaid has given rise to the filing of the present petition for the reliefs, as referred to herein above.

4. Mr. Bhuvnesh Gahlot, learned advocate appearing for the petitioner submits that the petitioner herein is in receipt of valid certificate of Karnataka State Diploma in Nursing Examination Board. It is submitted that the petitioner herein applied for the registration with the Gujarat Nursing Council on 14.06.2018. It is submitted that when the petitioner herein was called for document verification, the petitioner was not in receipt of the registration certificate issued by the Gujarat Nursing Council, however, relied on the communication issued by the Gujarat Nursing Council dated 01.03.2019 wherein, the petitioner was issued provisional registration No.A-II/H-II-13589. It is submitted that the petitioner herein had produced receipt issued by the Gujarat Nursing Council before the authority. In view of the aforesaid, it is submitted that the petitioner's candidature having complied with all the requisite qualifications, is erroneously rejected.

5. Mr. H.S. Munshaw, learned advocate appearing for the respondent – Corporation relied on the affidavit-in-reply duly produced at page 50 to the petition. It is submitted that it is not in dispute that pursuant to an advertisement published in the newspaper dated 16.07.2018 for recruitment in different cadres under the program of UPHC and UCHC for 43 posts of the cadre of Female Health Workers, the petitioner herein applied under the Schedule Tribe category wherein, there are 6 posts. The petitioner herein also appeared in the written test



conducted on 30.12.2018. Thereafter, a meeting of the selection committee was held under the Chairmanship of the Deputy Municipal Commissioner on 15.02.2019 and it was decided that against 43 advertised posts, in all 89 candidates be called for documents verification. The petitioner herein as a Schedule Tribe candidate was on the provisional merit list and therefore, she was also called for document verification and remained present on 20.02.2019 wherein, the petitioner was found not in receipt of the registration certificate issued by the Gujarat Nursing Council and had produced a receipt indicating her application for registration. The petitioner immediately on the same day, i.e. on 20.02.2019, made an application that such certificate issued by the Gujarat Nursing Council would be submitted upon receipt thereof and had completed her Nursing from Nursing College at Vijaynagar, Karnataka.

5.1 It is submitted that the selection committee in its meeting dated 25.02.2019 decided that the application of the petitioner be cancelled as she was not in receipt of the registration certificate from the Gujarat Nursing Council. It is submitted that the select list of eligible candidates was also finalized and in all, six candidates belonging to the Schedule Tribe category were mentioned in the said merit list. The final select list was also published on 25.02.2019. The appointment orders were issued in favour of the selected candidates and all the six candidates belonging to Schedule Tribe, have joined the service on 05.03.2019/06.03.2019. It is submitted that the life of the merit list was also of two years and the said period is also over. It is submitted that the present petition is filed after



the final merit list came to be published on 25.02.2019. It is submitted that the petitioner herein having failed to produce a valid registration certificate from the Gujarat Nursing Council, the petitioner was not selected though she was in the provisional merit list. Placing reliance on the aforesaid submissions, it is submitted that the present petition is devoid of merits and the same be dismissed.

6. The affidavit-in-reply filed by the respondent herein is not disputed by the petitioner herein; having not filed rejoinder to the same. Having heard the learned advocates appearing for the respective parties and considering the documents produced on record, the following emerge:

6.1 The petitioner herein applied to the post of Female Health Worker in Schedule Tribe category pursuant to an advertisement dated 16.07.2018 published by the Bhavnagar Municipal Corporation being No.BMC/201819/7 inviting applications for filling up total 43 posts of Female Health Workers.

6.2 That, though the petitioner herein is in receipt of certificate of Karnataka State Diploma in Nursing Examination Board, the petitioner was also required to be registered with the Gujarat Nursing Council. The petitioner applied for registration certificate from the Gujarat Nursing Council on 14.06.2018. After clearing the written examination, the petitioner was called for oral interview wherein, the petitioner was not in receipt of the registration certificate by the Gujarat Nursing Council. A meeting of Selection Committee was held



under the Chairmanship of Deputy Municipal Commissioner on 15.02.2019 wherein, it was decided that as against 43 advertised posts, in all 89 candidates be called for document verification.

6.3 The petitioner as a Schedule Tribe candidate was on the provisional merit list and she was to attend the office for verification of the documents. The petitioner remained present on 20.02.2019 for document verification wherein, it was found that the petitioner was not in receipt of the registration certificate issued by the Gujarat Nursing Council and had produced the receipt indicating her application for registration. The petitioner, immediately on the same day, i.e. 20.02.2019, gave an application that such certificate would be submitted on receipt thereof and that, she had completed the course from Nursing College at Vijaynagar, Karnataka.

6.4 On 25.02.2019, the selection committee decided that the application of the petitioner be cancelled as she was not in receipt of the registration certificate from the Gujarat Nursing Council.

7. Upon perusal of the documents produced on record, it appears that the Gujarat Nursing Council had issued a provisional registration No.A-II/H-II-13589, however, the petitioner herein did not produce the same before the committee to consider such document. Mr. Bhuvnesh Gahlot, learned advocate is not in a position to dispute the fact that such provisional registration certificate was never brought to the notice of the committee. In view thereof, the committee



only had the receipt of the application at the time of document verification. Admittedly, the registration certificate was issued by the Gujarat Nursing Council after the selection procedure was over and the final select list were published on 25.02.2019. The selected candidates also joined the services on 05.03.2019/06.03.2019.

8. At this stage, it is apposite to refer to the ratio laid down in the case of **State of Andhra Pradesh Vs. P.V.Hanumantha Rao (D) Lrs.**, reported in **AIR 2004 SC 627**. Relevant paragraphs of the said decision read thus:

"29. True it is that remedy of writ petition available in the High Court is not against the 'decision' of the subordinate court, tribunal or authority but it is against the 'decision making process'. In the 'decision making process', if the court tribunal or authority deciding the case, has ignored , vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction", the constitutional power of the High Court under Articles 26 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining.

30. In the case of Surya Devi (supra) while examining the nature and ambit of power of the High Court to issue writs under Articles 226 or 227 of the Constitution, the above stated legal position has been recognised by observing thus :

"Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait- jacket formula or rigid rules. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge."

31. This Court has recognised the right of the High Court to interfere in orders of sub-ordinate courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law and (2) a grave injustice or gross failure of justice has occasioned thereby.

32. No doubt, it was held that neither in exercise of power of writ under Article 226 nor in supervisory jurisdiction under Article 227, the High Court will convert itself into a court of appeal and indulge in the re- appreciation or evaluation of evidence. The power of the High Court in writ jurisdiction to interfere where important evidence has been overlooked and the legal

provisions involved are misinterpreted or misapplied has been recognised even in the case of Swarn Singh & Anr. (supra) on which strong reliance was placed on behalf of the State. The relevant observations are :- In regard to a finding of fact recorded by an inferior tribunal, a writ of Certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law."

8.1 It is also apposite to refer to the ratio laid down in the case of **Gohil Vishvaraj Hanubhai & Ors. Vs. State of Gujarat & Ors.**, reported in **(2017) 13 SCC 621**. Relevant paragraph of the said decision reads thus:

"18. Normally while exercising the power of judicial review, Courts would only examine the decision making process of the administrative authorities but not the decision itself. The said principle has been repeatedly stated by this Court on number of occasions."

9. Considering the aforesaid decisions, it is well settled principle of law that the power of judicial review under Article 226 of the Constitution of India is not directed against the decision but is confined to the decision making process. Judicial review is not an appeal from a decision but a review of the manner in which, the decision is arrived at. The Court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself.

9.1. In the facts of the present case, the petitioner herein having failed to produce provisional registration certificate issued by the Gujarat Nursing Council and admittedly, the petitioner herein was not in receipt of the valid registration certificate issued by the Gujarat Nursing Council, no error can be said to have been committed by the respondent authorities in cancelling the petitioner's application. It is pertinent to note that though the petitioner herein has preferred the present



petition after the final merit list was issued, the meritorious candidates are also not impleaded in the present petition. The life of the merit list was only of two years and the same is also not disputed by Mr. Bhuvnesh Gahlot, learned advocate appearing for the petitioner. Further, the petitioner herein has not challenged the merit list.

10. For the foregoing reasons, this Court under Article 226 of the Constitution of India, is not inclined to entertain the present petition. The present petition is ***dismissed***, accordingly. Rule is discharged.

(VAIBHAVI D. NANAVATI,J)

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