

ITEM NO.16

COURT NO.4

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).267/2017

(Arising out of impugned final judgment and order dated 15-09-2016 in LPA No. 691/2016 in SCA No. 13943/2009 passed by the High Court of Gujarat at Ahmedabad)

RAMBHAI RUDABHAI CHAVDA

Petitioner(s)

VERSUS

STATE OF GUJARAT AND ORS.

Respondent(s)

Date : 14-11-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Mr. Rajiv Kumar, Adv.
Mr. Kusum Chaudhary, AOR

For Respondent(s) Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Puja Singh, Adv.
Ms. Shodhika Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsel for the parties and have gone through the judgment and order passed by the Division Bench of the Gujarat High Court in Letters Patent Appeal No.691 of 2016.

The petitioner was selected pursuant to an advertisement issued in 1994 to the post of unarmed constable. The petitioner belongs to a Scheduled Tribe. There was some doubt about his status and so he was not given any appointment.

On 15th July, 1999, the Tribal Commissioner held that the petitioner did not belong to a Scheduled Tribe as claimed by him. Therefore, his caste certificate dated 1st September, 1990 was cancelled. This was challenged by the petitioner by filing a writ petition in the Gujarat High Court and that writ petition came to be dismissed by the learned Single Judge by a judgment and order dated 3rd December, 2009.

Feeling aggrieved by the decision rendered by the learned Single Judge, the petitioner preferred a Letters Patent Appeal in the Gujarat High Court being LPA No.1682 of 2010. That Letters Patent Appeal was allowed by the Division Bench of the Gujarat High Court by a judgment and order dated 23rd November, 2010.

In the meanwhile, since the case of the petitioner had been referred to the Caste Scrutiny Committee, a decision was rendered in his favour on 29th December, 2008. This was not considered by the learned Single Judge.

The Division Bench of the Gujarat High Court took this into consideration while disposing of the Letters Patent Appeal and observed that the decision of the Caste Scrutiny Committee and the certificate subsequently issued on 29th December, 2008 have not been cancelled by any superior authority. Consequently, the order passed by the learned Single Judge would not stand in the way of

the petitioner claiming Scheduled Tribe status on the basis of the certificate dated 29th December, 2008. The decision of the Division Bench has since become final and has not been challenged by the State.

Since the petitioner was not given employment by the State, he preferred another writ petition in the Gujarat High Court, being Special Civil Application No.13943 of 2009. Effectively, the petitioner prayed for appointment to the post of unarmed constable. This petition was heard by a learned Single Judge and by a judgment and order dated 13th June, 2016, it was held that even though the petitioner was selected, he lost his job only because there was a doubt with regard to his being a member of the Scheduled Tribe. It was observed that 22 years have gone by, but in view of this delay, it would not be proper to direct the appointment of the petitioner to the post of unarmed constable. On this basis, the learned Single Judge dismissed the writ petition filed by the petitioner.

Feeling aggrieved, the petitioner preferred a Letters Patent Appeal being LPA No.691 of 2016. The Division Bench of the High Court passed a judgment and order dated 15th September, 2016 in the Letters Patent appeal, effectively upholding the view of the learned Single Judge and declining to interfere with his order.

It is against the decision of the Division Bench dated 15th September, 2016 that the present petition has

been filed.

During the course of hearing of this petition, on 13th January, 2017, we were informed that the petitioner has since become over-aged and in terms of the advertisement and the recruitment policy, the petitioner should have been below 38 years of age for the purpose of recruitment. He is now said to be about 42 years of age. Keeping this in mind, we had issued notice limited to the award of compensation.

Today, learned counsel appearing on behalf of the State states that there is no policy for awarding compensation. However, there is no objection if the petitioner is given age relaxation so that he may be considered for appointment.

We appreciate the stand taken by the State of Gujarat and direct that the age requirement may be relaxed for the appointment of the petitioner to the post of unarmed constable. However, in our opinion, there is no need to the petitioner to once again undergo the selection process since he was already selected for the post. Consequently, the petitioner should be appointed to the post for which he was selected pursuant to the advertisement issued in 1994. The appointment letter should be issued within a period of four weeks.

While granting the age relaxation, we have taken into consideration the fact that the Letters Patent Appeal filed by the petitioner in the first round of litigation

was allowed when he was within the eligibility range and within the age limit.

We are not inclined to grant any back wages to the petitioner for the period he was not in the service.

We set aside the impugned judgment and order passed by the High Court. The petition is disposed of accordingly.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
COURT MASTER