

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****LETTERS PATENT APPEAL NO. 60 of 2013****In SPECIAL CIVIL APPLICATION NO. 12267 of 2011**

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STATE OF GUJARAT THROUGH SECRETARY & 1....Appellant(s)  
Versus

PARMAR MAHESHKUMAR PUNJABHAI & 47....Respondent(s)

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**Appearance:**

MR PRAKASH JANI, GP with MR RAKESH PATEL, AGP for the  
Appellant(s) No. 1 - 2

MR AJ YAGNIK, ADVOCATE for the Respondent(s) No. 1

MR DP JOSHI, ADVOCATE for the Respondent(s) No. 46 - 48

MR KB PUJARA, ADVOCATE for the Respondent(s) No. 9 - 42

MR UMANG A. VAGHELA, ADVOCATE for the Respondent(s) No.

43 - 45

MS VIDITA D JAYSWAL, ADVOCATE for the Respondent(s) No. 2

- 8 , 46 - 48

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**CORAM: HONOURABLE MR.JUSTICE JAYANT PATEL**

and

**HONOURABLE MR.JUSTICE MOHINDER PAL**

**Date : 18/04/2013**

**CAV ORDER**

**(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)**

1. The present appeal is directed against the order dated 31.08.2012 passed by the learned Single Judge of this Court in SCA No.12267/11 and allied matters, whereby the learned Single Judge having found that the State has wrongly given preferences of the centre/school in the respective district to the candidates who were otherwise counted in open merit though belonging to reserved category (hereinafter referred to as

"MRC") the direction has been given by the learned Single Judge as mentioned in the judgement to undertake the exercise of reshuffling by treating MRCs in open merit also for preferences of the centre and consequently, it is directed that the candidates belonging to reserved category be accommodated on their respective post as per the respective quota of each district.

2. We have heard Mr. Prakash Jani, learned Govt. Pleader with Mr. Rakesh Patel, learned AGP for the appellants, Mr. A.J. Yagnik for respondent no.1, Ms. Vidita Jayswal for respondents no. 2 to 8 and 46 to 48, Mr. K.B. Pujara for respondents no. 9 to 42 and Mr. Umang Vaghela for respondents no.43 to 45.
3. The contention raised on behalf of the appellants is that the State in the method of recruitment, selection and appointment of Vidhya Sahayaks, has protected the rights of MRCs for their entitlement to get the preferences of the centre and consequently, the candidates belonging to the reserved category could be said as accommodated in proportion to the quota of reserved seat. In support of the contention, the learned Govt. Pleader had mainly relied upon the decision of the Apex Court in the case of Union of India vs. Ramesh Ram, reported at AIR 2010 SC 2691. It was submitted that the learned Single Judge has not

properly considered the said aspects and therefore, this Court may interfere in the appeal.

4. Whereas, on behalf of the respondents, it was submitted by the learned counsel appearing for the respective parties that had it been a case where by allowing the preferences to MRCs, the ultimate intact of the total available seats for reserved category is not affected, it might stand on a different footing. It was submitted that for the purpose of offering appointment, each district is separately considered by the State and the resultant effect is that MRCs are stated to have been accommodated in reserved category though they are required to be treated in the seats of general category. Further, since the whole selection for the purpose of appointment is not treated as that of one unit in the State, but is considered districtwise for the purpose of appointment and the candidates of the reserved category as per the quota are not offered appointment. Therefore, the learned Single Judge has rightly considered the said aspects. It was submitted that the decision upon which the reliance has been placed by the learned Govt. Pleader in the case of Ramesh Ram (supra) was a case where specific rule for civil services examination was available and therefore, the Apex Court observed accordingly. But in the present case, there is no specific rule available for

such purpose giving statutory right to any candidate for a particular centre or a place at the time of appointment. In the submission of the learned counsel for the respondents, the correct proposition applicable is as observed by the Apex Court in the case of Union of India v. Satya Prakash reported at (2006) 4 SCC 550 and therefore, it was submitted that the learned Single Judge has properly considered the said aspects and has rightly given appropriate direction.

5. In our view, the points which were required to be considered in the present appeal are –

- (a) Whether there is any vested or statutory right with MRC to get the preferences for center in a particular district after his/her name is included in the select list or not?
- (b) Whether it is open to the State to treat one unit for whole of the State for the purpose of selection but to treat it as separate unit for each of the district while offering the appointment and while considering the utilization of the available seats of general category and the reserved category, etc.? And
- (c) If allowing of the preferences of the centre to the MRCs results into ultimate

deprivation of the employment to the candidates belonging to reserved category, what would be the approach of the Court keeping in view the mandate of the Constitution for the upliftment of the candidates belonging to the reserved category as per the quota so provided?

6. We do not find that on facts there is any dispute. The following positions are admitted –

- (1) As per the provisions of the Bombay Primary Education Act read with the relevant Rules, for each District, there are separate authorities and separate committees and each district is treated as separate for the purpose of vacancies for the purpose of offering appointment and also for the purpose of further accommodation of such Vidhya Sahayaks as primary teacher at the later stage.
- (2) The selection board had received requisitions of the particular number of posts for each district separately and as per the quota, for reserved category, for each District, there was separate counting of seats.
- (3) The selection board consolidated all seats of all the districts as if one unit for the process of recruitment. The advertisement

is produced at Annexure-A to the compilation of SCA.

- (4) The merit list was prepared by the selection board as if one unit of general category and reserved category with their internal composition.
- (5) While preparing the merit list, the reserved category candidates are included, if they are found meritorious to be included in the open category (MRC).
- (6) At the time of allotment of candidates as per the merit order, instead of treating MRCs in open category with availability of the preferences in open category, the preferences meant for reserved category candidates are allotted to MRCs to the extent available.
- (7) As a result thereof, MRCs have consumed the seats though otherwise reserved for reserved category candidates in each of the district. Consequently, in each of the district, the seats available for reserved category are not made available for offering employment to the reserved category candidates as per the merit order prepared by the selection board.

7. We may state that it is in this light of the

aforesaid factual background, the matter may be required to be considered. We may state that had it been a case that all seats were to be treated for all purposes as if one unit of the State, the matter might stand on different footing and different consideration. In the same manner, had it been a case that by treating the MRCs for the purpose of preferences as reserved category candidates, there was no deprivation to the ultimate available seats in each reserved category as per the quota, the matter might stand on different footing and different consideration. But such deprivation from the employment to reserved category has resulted in the present case on account of the fact that the State for the purpose of offering appointment or employment has treated the respective seats of each district including for reserved category separate. The State has by allowing MRC to consume or utilize the seats of reserved category for respective district has ultimately curtailed the available seats to the candidates belonging to the reserved category for the said district and the net effect is that the total seats reserved for reserved category is made unavailable and the candidates belonging to reserved category included in the merit list of the reserved category have been deprived of the employment.

8. We find that as against the availability of the preferences for a particular centre, availability

of the employment is to be given more weightage, more particularly in view of the fact that there is no specific right made available to any candidate by any statute or rule for his entitlement for a particular preference of centre. It appears to us that by entertaining the request of the MRCs for allotment of the seats reserved for reserved category in the respective district, a situation has been created resulting into total deprivation of the employment to the reserved category candidates though otherwise found meritorious and included in the select list of the reserved category and entitled to employment as per the quota in the respective districts. The reliance placed upon the decision of the Apex Court in the case of Ramesh Ram (supra) is ill-founded inasmuch as in the said case, there was express rule 16(2) provided for the service allocation. Whereas there are no such fact situation in the present case.

9. In the case of Satya Prakash (supra), the Apex Court at paragraphs 19 and 20, observed thus-

*"19. In other words, while a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the quota/percentage of reservation he/she will be deemed to have been allotted seat as an*



open category candidate (i.e. on merit) and not as a reserved category candidate recommended by the Commission by resorting to the relaxed standard.

20. If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class, who have been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference of the reserved category recommended by resorting to the relaxed standard will be pushed further down but shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference."

(Emphasis supplied)

10. The aforesaid shows that MRC candidates who have been allotted seats in open category are to be treated as in open category and not as reserved category. But if the preference has been given to such MRCs, the remaining post should be allocated to the reserved category candidates. In the present case, the remaining post as per the State Government and the selection board are made unavailable by treating each district as a separate unit for the purpose of offering employment. Under the circumstances, the only option available would be to treat all MRCs as entitled to preferences only in open merit and to the extent of seats as per the preferences available in open merit and allowing such candidates to consume the seats reserved for

reserved category by the State cannot be countenanced. If such an action is permitted, as observed earlier, the resultant effect would be absolute deprivation of the employment to the candidates belonging to the reserved category as per the quota in each of the respective district. In our view, the learned Single Judge has rightly found accordingly.

11. In view of the aforesaid discussions, our answer to the aforesaid questions are as under:

A) No, in absence of any statutory right by rule.

B) No, since such in the present case results into the absolute deprivation of employment to the reserved category as per available seats in accordance with quota.

C) The court would adopt a course which results into making seats available for employment to a reserved class as per quota.

12. Mr. Jani, learned Govt. Pleader appearing for the appellants submitted that this Court may lay down the principles for proper implementation of the reserved policy in the State for recruitment of Vidhya Sahayaks and therefore, the matter may be admitted and further considered by this Court and till then, the impugned judgment of the learned Single Judge may be stayed.

13. We find that the learned Single Judge after considering the facts, has made observations for the legal norms at para 32. Hence, we need not repeat the same by making the very observations save and except that the State may provide preferences to such MRCs only if the resultant effect is not the deprivation of the employment to the candidates belonging to reserved category as per the quota. But if giving of such preferences though otherwise not provided by statute to MRCs is to result into deprivation of the employment to the candidates belonging to reserved category as per the quota in the respective district, such MRCs are to be treated for all purposes as in open merit including for preferences. It appears to us that possibly this is the course which may enhance the constitutional mandate for upliftment of the reserved category candidates by offering employment as per the reserved quota.
14. In view of the aforesaid observations and discussions, we find that the judgment and order of the learned Single Judge calls for no interference. Hence, the present appeal is dismissed.

(JAYANT PATEL, J.)

(MOHINDER PAL, J.)

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