



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9760 of 2024

With

CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2024

In R/SPECIAL CIVIL APPLICATION NO. 9760 of 2024

FOR APPROVAL AND SIGNATURE: Sd/-

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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VAISHALI GAGJIBHAI VARIYA

Versus

GUJARAT PUBLIC SERVICE COMMISSION

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Appearance:

MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1

IG JOSHI(8726) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 18/10/2024

COMMON ORAL JUDGMENT

1. Considering the issue involved in the main matter, since, the learned Advocates for the parties agreed and prayed that instead of hearing Civil Application (for Amendment) No. 1 of



2024, the main matter be heard, the same is taken-up for hearing and final disposal along with the civil application for amendment, today.

2. Hence, **Rule**. Learned Advocate, Mr. Joshi, waives service for the Respondent - GPSC.

3. The brief facts of the case, as is pointed out by the learned Advocate, Mr. Vyas, appearing for the petitioner are that the present petitioner is serving in the GST Department of the State and she applied for the post of Gujarat Administrative Service Class-I, Gujarat Civil Service, Class - I & II and Gujarat State Municipal Chief Officers' Service, Class-II, pursuant to the notification, bearing Advertisement No. 47/2023-24, issued by the Respondent - GPSC, whereby, 293 posts are sought to be filled-up.

3.1 Pursuant to the application made by the petitioner, she was issued a call letter on 26.12.2023 for appearing in the Preliminary Examination, which was scheduled to be held on 07.01.2024, indicating her seat number to be 107056711. The mode of examination was to answer the 'Multiple Choice Questions' (in brief, 'MCQR') in 'Optical Mark Recognition sheet' ('OMR Sheet', herein after). The candidates were given three hours time to attend 200 questions. The call letter also indicated that the petitioner had to appear at Sakar English School, Unit-1, Chandkheda, District: Gandhinagar.

3.1.1 It is, further, submitted by learned Advocate, Mr.



Vyas, that on 07.01.2024, while appearing in the aforesaid examination, the petitioner did not hear the warning bell, which is usually rung before about 10 minutes of the completion of the exam and therefore, when the final bell, declaring the completion of the exam, was rung, she mistook it for the warning bell and continued to write her answers. Such an act on the part of the petitioner was not approved by the concerned invigilator and the petitioner was asked to handover her OMR sheet. However, the petitioner allegedly refused to do so and continued to answer the questions and then, she started arguing with the invigilator. When the situation seemed to be going out of control, the concerned invigilator called a lady police constable, who pulled the petitioner out of the examination hall. It is alleged that, even after the petitioner was pulled out of the examination hall, she continued her unruly behaviour and she even alleged to have misbehaved with the said lady police constable, as well.

3.2 It appears that after the incident of 07.01.2024, somewhere in April, 2024, i.e. after about three months from the date of the alleged incident, the petitioner started making representations to the Respondent - GPSC, on different dates, starting from 18.04.2024, 19.04.2024, 20.04.2024, 23.04.2024, 25.04.2024, 30.04.2024 up to 02.05.2024.

3.3 It appears that the Respondent - GPSC, finally, issued a notice dated 02.05.2024 to the petitioner, asking her to show-cause, as to why actions should not be initiated against her for the breach of Instruction Nos. 12(D) & (F), 12(1) and warning



clause Nos. (9), (9)(a), (9)(b), (9)(c) and 9(d) of the Appendix-1. She was also asked to remain present, by way of the aforesaid notice, before the Respondent - GPSC on 23.05.2024, at 05:00 p.m., to put-up her case in person.

3.4 On 23.05.2024, the petitioner personally remained present before the Respondent - GPSC and tendered an unconditional, written apology, wherein, she narrated the entire incident.

3.4.1 Learned Advocate, Mr. Vyas, submitted that, though, Annexure-G to this petition, in the beginning as well as in the end, indicates that the petitioner had remained present before the Respondent - GPSC on 23.04.2024, but, the same is incorrect and in fact, the petitioner had remained present before the Respondent - GPSC on 23.05.2024.

3.5 It appears that the explanation tendered by the petitioner was not accepted by the Respondent - GPSC and it passed the impugned order dated 04.06.2024, whereby, the petitioner is debarred from appearing in the main examination, pursuant to the Advertisement No. 47/2023-24, for violation of Instruction Nos. 12(D) & (F), 12(1) and warning clause Nos. (9), (9)(a), (9)(b), (9)(c) and 9(d) of the Appendix-1. Hence, the petitioner preferred the present petition.

3.6 From the record, it appears that the Coordinate Bench of this Court issued notice in the main matter on 05.07.2024, making the same returnable on 22.07.2024.



3.6.1 During the pendency of the main matter, since, the Respondent - GPSC published the notification for conducting the main examination for different posts, which is scheduled to be held between 13.10.2024 to 27.10.2024, the petitioner filed Civil Application (for Amendment) No. 1 of 2024, seeking permission to appear in the main examination.

3.7 In the above background, the main matter as well as the civil application are taken-up for final hearing, today.

4. Learned Advocate, Mr. Vyas, appearing for the petitioner submitted that the petitioner did not hear the warning bell and therefore, when the final bell was rung, she was under the *bona fide* impression that 10 minutes remained in the completion of the exam and therefore, she continued to answer the questions. It was, therefore, submitted that at the most, such a conduct of the petitioner can be said to be a *bona fide* mistake and by no stretch of imagination, the same can be termed as a misconduct and therefore, the penalty of debaring the petitioner from appearing in the main exam, imposed by the Respondent - GPSC, is very harsh and uncalled for.

4.1 It was, further, submitted that it is true that the petitioner was called and her statement was recorded by the Respondent - GPSC on 23.05.2024, but, the same is not in consonance with the instructions appended with Appendix-1, more particularly, instruction No. 10, thereof, whereby, the



procedure is prescribed. Thereby, it was submitted that on account of non-adherence to the prescribed procedure by the Respondent - GPSC and as no fullfledge inquiry is conducted against the petitioner, a grave prejudice is caused to the petitioner and therefore, it vitiates the entire procedure. It was, therefore, prayed that the impugned order, debarring the petitioner from appearing in the main examination, be quashed and set aside.

4.2 It was submitted that the notice dated 02.05.2024, issued by Respondent - GPSC, mentions that as to why one or more punishments should not be inflicted on the petitioner for breach of Instruction Nos. 12(D) & (F), 12(1) and warning clause Nos. (9), (9)(a), (9)(b), (9)(c) and 9(d) of the Appendix-1. It was submitted that before inflicting the aforesaid punishment, neither the petitioner was issued any charge-sheet nor any proceedings or inquiry was conducted against her and therefore, the petitioner is denied a fair chance to put-up her defence. It was, hence, prayed that the impugned order be quashed and set aside.

4.3 No other submission was made.

5. On the other hand, learned Advocate, Mr. Joshi, appearing for the Respondent - GPSC strongly opposed this petition and submitted that the scope of entertaining this petition by this Court, in exercise of the powers under Article 226 of the Constitution of India, is very limited.



5.1 It was submitted that, in a way, the petitioner has challenged the finding of facts, i.e. her misconduct with the invigilator in the examination hall and her misbehavior with the lady police constable, outside the examination hall. It was submitted that the entire episode was captured by the CCTV cameras, installed on the premises of the Sakar English School, Unit-1, Chandkheda, District: Gandhinagar.

5.1.1 It was also submitted that, if, this Court is desirous to examine the CCTV footage, then, the Respondent - GPSC is ready and willing to produce the same either in the form of a compact disc (i.e. CD) or pen drive to demonstrate the behaviour and conduct of the petitioner, at the time of incident, i.e. as to how the petitioner continued to answer the questions, even after the final bell, declaring completion of examination was rung and which was duly heard by the petitioner, as per her own statement, and as to how, she misbehaved with the invigilator as well as with the lady constable, who had driven the petitioner out of the examination hall.

5.2 It was, further, submitted that, though, the misconduct / misbehavior on the part of the petitioner was very grave, the Respondent - GPSC has adopted a very liberal approach in the matter and has neither informed the parent department of the petitioner, where, she is discharging duties as a government servant, nor has lodged any complaint for her misbehavior with the lady police constable.



5.3 It was brought to the notice of this Court that the petitioner wrote a number of letters to the Respondent - GPSC, between 18.04.2024 to 02.05.2024, whereby, she tendered unconditional apology for her misbehavior and misconduct, which would amount to admission of guilty on the part of the petitioner. Thereby, it was submitted that as the petitioner had already accepted her guilt, there was no question of conducting an inquiry against her.

5.4 It was, further, submitted that the petitioner was called upon and was asked to tender her explanation by the Respondent - GPSC, whereupon, the petitioner had remained present before the Respondent - GPSC on 23.05.2024 and had given her statement and had also tendered an unconditional apology and had admitted her guilt, which would go to show that the petitioner had actively participated in the proceedings and she had never raised any question or objection with regard to the conducting of the proceedings. It was, therefore, submitted that once the petitioner participated in the proceedings and admitted her guilt, now, it is not open for her to question the same.

5.5 It was submitted that the petitioner had applied for the post of Class-I officer and therefore, it was expected from her to have behaved properly and to have self-restraint, since, the persons applying for the post of Class-I officer are expected to deal with the difficult situations tactfully.

5.6 It was submitted that in the case on hand, the petitioner



was issued show-cause notice and she was also given an opportunity to remain present in person and to put-up her case and therefore, there is no violation of the principles of natural justice.

5.7 Lastly, it was submitted that even otherwise, considering the fact that the punishment inflicted by the Respondent - GPSC on the petitioner, bearing in mind the gravity of the misconduct committed by her, being very light, just and proper, this petition deserves to be dismissed.

6. Heard learned Counsels for the parties and perused the material on record and I find that the misconduct, which is alleged against the present petitioner, is very serious in nature and the same is not expected from a person, who is appearing in the examination for Class-I officer. When, the petitioner is appearing in an examination for the post of Class-I officer, it was expected of her to respect and comply with the instructions issued by the Respondent - GPSC for the said purpose. It is not about the petitioner's failure to hear the warning bell and, according to her, mistaking the final bell for the warning bell, but, it is about the overall behaviour and conduct of the petitioner with the invigilator as well as the lady police constable that has disturbed this Court to the core.

6.1 Further, from the above as well as from the submissions made by the learned Advocate, Mr. Vyas, it can be seen that the petitioner's entire case is based on the facts and the Respondent - GPSC has also passed the order of punishment



on the basis of the above finding of facts and therefore, when the finding of facts are recorded and the entire case of the petitioner as well as the defence of the petitioner are also based on the facts, the scope of interference by this Court, in exercise of powers under Article 226 of the Constitution of India, is very limited. Further, in the present case, learned Advocate, Mr. Vyas, has failed to demonstrate that this is an exceptional case, wherein, the findings of facts are, though, against the petitioner, the interference of this Court is necessary.

6.2 As per the allegations made against the petitioner, when the final bell was rung and the invigilator asked her to handover the OMR sheet, the petitioner not only refused to do so, but, she also continued to mark the answers on the OMR sheet. Had the petitioner really failed to hear the 'Warning Bell' and mistook the 'Final Bell' for the 'Warning Bell', she could have stopped marking the answers on the OMR Sheet, once her attention was drawn by the invigilator and she could have handed over the same to the invigilator, but, she did not do so and instead, continued to mark the answers for about 5 to 7 minutes. Further, when the invigilator found that the situation was going out of control and called a lady constable to save the situation, the petitioner also misbehaved with the lady police constable. It may be noted that, though, CCTV cameras are installed at the examination hall, the same also could not deter the petitioner from misbehaving with the invigilator as well as the lady constable.



6.2.1 Pursuant to the show-cause notice was issued to the petitioner, the petitioner appeared before the Respondent - GPSC on 24.05.2024 and tendered an unconditional apology in writing, by admitting her guilt, and thereafter, the Respondent - GPSC inflicted the punishment of debaring her from appearing in the main examination, pursuant to Advertisement No. 47/2023-24. Thus, the punishment inflicted by the Respondent - GPSC is in respect of the main examination pursuant to Advertisement No. 47/2023-24 and the petitioner is not debarred from the future exams. Under the circumstances, when the petitioner appeared in person before the Respondent - GPSC on 23.05.2024 and tendered a written, unconditional apology, by admitting her guilt, and did not question either the show-cause notice or the procedure adopted by the Respondent - GPSC, till the final order inflicting punishment of debaring her from appearing in the main examination, pursuant to Advertisement No. 47/2023-24, was passed, none of the contentions raised by the learned Advocate, Mr. Vyas, with regard to the non-adherence to the standard procedure, cannot be accepted. In above view of the matter, even the prayer made by the learned Advocate, Mr. Vyas, to direct the Respondent - GPSC to conduct an inquiry, also cannot be accepted, as the admission of guilt on the part of the petitioner would render the same futile.

6.3 From the record, it also emerges that, in connection with the alleged misbehavior and misconduct, the petitioner was also issued a show-cause notice dated 02.05.2024, whereby, she was asked to remain present before the Respondent -



GPSC on 23.05.2024, whereupon, the petitioner did remain present and gave her detailed statement and admitted her guilt and also tendered a written, unconditional apology. Therefore, it was rightly submitted by learned Advocate, Mr. Joshi, that the petitioner, since, had admitted her guilt and had tendered a written, unconditional apology, there was no need to adhere to the instruction No. 10 of Appendix-1, since, an inquiry is required to be conducted only when, a person does not admit his / her guilt. In the case on hand, as the entire incident was recorded on the CCTVs installed at the examination hall and as the petitioner had already admitted her guilt, the Respondent - GPSC committed no error by not adhering to the procedure prescribed under instruction No. 10 of Appendix-1.

6.4 Further, it is also brought to the notice of this Court that, though, the misconduct committed by the present petitioner is of very serious nature, the Respondent - GPSC has neither informed the parent department of the petitioner, where, she is discharging duties as a government servant, about the alleged misconduct nor has lodged any complaint of her misbehavior with police, which could, otherwise, have an adverse impact on the petitioner's existing service with the state government and instead, the Respondent - GPSC, taking a lenient view in the matter, has merely, debarred her from appearing in the main examination, pursuant to Advertisement No. 47/2023-24, which cannot be termed as unjust or unreasonable.



7. Resultantly, this petition fails and the same is **dismissed**. Rule is discharged.

7.1 In view of the disposal of the main matter, Civil Application (for Amendment) No. 1 of 2024 shall not survive and the same also stands **disposed of**, accordingly.

UMESH/-

Sd/-
(NIRZAR S. DESAI,J)