

A ARUNABEN T. BHOJAK
v.
SECRETARY, AHMEDABAD EDUCATION SOCIETY AND ORS.
JANUARY 27, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law—Appointment to a post reserved for Schedule Tribes—Scheduled Tribe candidate available but not selected—Later appointment of same candidate cannot be per se illegal.

C The Gujarat University published a notification calling for recruitment to the post of Lecturer (Psychology). Appellant belonging to a Scheduled Tribe in the State of Gujarat, though available, was not selected. Respondent came to be selected and sought to be appointed. Appellant went to Court and pending appeal, she was selected and appointed as
D Lecturer (Psychology). The Division Bench of the High Court held that when the selection was made, the appellant did not have the requisite qualification for appointment to the post. Hence this appeal.

Allowing the appeal, this Court

E HELD : Though initially, the appellant did not have the laboratory experience but later on she acquired it and was, therefore, eligible and accordingly appointed. The post was reserved for Scheduled Tribe and when a Schedule Tribe candidate was available, the appointment cannot be held *per se* illegal. [669-D]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3010 of 1995.

From the Judgment and Order dated 22.11.93 of the Gujarat High Court in L.P.A. No. 161 of 1987.

G Mrs. J.S. Wad for the Appellant.

Raju Ramachandran and R.P. Wadhvani for the Respondents.

The following order of the Court was delivered :

H Leave granted.

This appeal by special leave arises against the order of the Division Bench of the High Court of Gujarat in LPA No. 161/87 dated November 22, 1993. The appellant admittedly belongs to Bakshi Panch which is one of the Nomadic Tribes, notified as a Scheduled Tribe in the State of Gujarat. The Gujarat University had published a notification calling for recruitment to the post of Lecturer (Psychology). Initially though the appellant was available, she was not selected. Consequently, the contesting respondent came to be selected and sought to be appointed. The appellant ultimately went to the court. Pending appeal, she was selected and appointed and has now been working as Lecturer (Psychology) in the Gujarat University. The Division Bench of the High Court held that when the selection was made, she was not found to be suitable. The requisite qualifications were not sufficient for appellant's claim to the post.

We are unable to appreciate the reasoning of the Division Bench. It is true that initially the respondent did not have the laboratory experience but later on she had acquired that experience. She was also eligible and was accordingly appointed. Admittedly, the post was reserved for the Scheduled Tribes and when a Scheduled Tribe candidate is available, his/her appointment cannot be held *per se* illegal. Therefore, the High Court was not right in negating the right of the appellant in this behalf.

The appeal is accordingly allowed. The appointment made to the appellant shall continue as one reserved for Scheduled Tribes. No costs.

A.G.

Appeal allowed.