

Ajaykumar Babulal Parmar Vs State Of Gujarat

Court: Gujarat High Court

Date of Decision: June 25, 2019

Acts Referred: Constitution Of India, 1950 " Article 16, 16(4B), 226, 309
General State Service, Class II Recruitment Rules, 2008 " Rule 14(2), 16

Hon'ble Judges: N.V.Anjaria, J

Bench: Single Bench

Advocate: Mitul Shelat, Disha N Nanavaty, Manisha Lavkumar, KM Antan, Kamal Trivedi, DG Shukla

Final Decision: Dismissed

Judgement

''''

N.V.Anjaria, J",,,,

1. learned advocate Ms.Disha Nanavaty, learned Government Pleader Ms.Manisha Lavkumar assisted by learned Assistant Government Pleader",,,,

Mr.K.M. Antani for respondent No.1 " State and learned Senior Advocate Mr.Kamal Trivedi assisted by learned advocate Mr.D.G. Shukla for",,,,

respondent No.2 " Gujarat Public Service Commission, at length." ,,,,

2. What is prayed in the present petition filed under Article 226 of the Constitution, is to set aside communication dated 21st June, 2018 of the Legal",,,,

Department, Government of Gujarat, addressed to Gujarat Public Service Commission, whereby 374 posts of Assistant Public Prosecutors came to be",,,,

determined to be filled in and requisition for such number of candidates was sent fixing the roster for the same. The second prayer is for issuance of",,,,

direction to quash the select list published by the Gujarat Public Service Commission containing the name of the said 374 candidates. The petitioners",,,,

further want the respondents to proceed on the basis of the list of 425 candidates dated 17th March, 2017, which, according to the petitioners, was",,,,

published as select list",,,,

2.1 From the contents of the impugned communication dated 21st June, 2018, it appears that pursuant to communication dated 08th June, 2018 by",,,,

respondent No.1 " State, the Registrar General of the High Court addressed letter dated 11th June, 2018 indicating that total number of magisterial",,,,

courts in the State entrusted with criminal cases were 689. As per the policy practised to place one Assistant Public Prosecutors in each court, the",,,,,

State Government determined the need to fill up 374 candidates in the courts, considering that 315 Assistant Public Prosecutors had have already been",,,,,

working.,,,,,

3. The process for recruitment to the posts of Assistant Public Prosecutors (APPs) in the courts of the State was commenced by respondent No.2.,,,,,

Ã¢â¬" Gujarat Public Service Commissioner (GPSC) by issuing public advertisement dated 12th February, 2014, in which 554 posts were advertised. As",,,,,

part of the process, written examination was conducted on 03rd May, 2014. 3632 candidates appeared. The result was published on 04th June, 2015.",,,,,

Thereafter the viva voce was held, in which the GPSC called 1455 candidates. The viva voce and personality test was conducted between 21st April",,,,,

2016 and 23rd June, 2016. The final result came to be declared on 04th July, 2016. In all 543 candidates were shown as successful having obtained the",,,,,

minimum qualifying marks prescribed for the oral interview.,,,,,

3.1 The recruitment process is governed and regulated by the statutory rules framed by the State Government in exercise of powers conferred by,,,,,

Proviso to Article 309 of the Constitution, which are called the Assistant Public Prosecutor in the General State Service, Class II Recruitment Rules,",,,,

2008, published under Notification dated 05th August, 2008. By another Notification dated 06th August, 2008, the Assistant Public Prosecutor, Gujarat",,,,,

General State Service Class II Recruitment (Examination) Rules came to be published. The recruitment process was undertaken in accordance with,,,,,

the said Rules.,,,,,

3.2 On the merits of the prayers put-forth in the present petition as above, there is an irrefutable reflection of the merits of two previous petitions. In",,,,,

those earlier proceedings, the challenge was raised in respect of the very recruitment process. The aspects and issues were interwoven and",,,,,

inextricable. Therefore the controversy, the findings, the outcome and the status of the said earlier proceedings deserves to be mentioned in some",,,,,

detail.,,,,,

3.2.1 The first litigation was in form of batch of petitions in Bhavneeta Rajeshkumar Darji v. State of Gujarat being Special Civil Application No.12701,,,,,

of 2016 and allied petitions, in which the prescription of minimum qualifying marks in the viva voce was challenged. While the said petition was",,,,,

dismissed on 16th March, 2018, during the pendency thereof, the GPSC acted to prepare a tentative list of 425 candidates who were such candidates",,,,,

not going to be affected by the outcome either way of the said petition. They were so listed out of the 543 candidates declared successful as result-,,,,,

neutral candidates. The judgment in Bhavneeta Darji (supra) was challenged by one of the petitioners in the group in Special Civil Application,,,

No.12701 of 2016 by filing Letters Patent Appeal No.405 of 2018. The appeal was admitted but interim relief was refused.,,,

3.2.2 Followed thereafter was another group of petition in Prashant Arvindbhai Dave v. Gujarat Public Service Commission being Special Civil,,,

Application No.6760 of 2018 and allied petitions. These petitioners belonged to segment of 118 candidates out of the list of 543 candidates who did not,,,

figure in the aforementioned list of 425 candidates. The grievance was that the exclusion of the petitioners from the list of 425 was arbitrary. It was,,,

held that as the candidates in the list of 425 could not claim any right to be appointed, even the petitioners who belonged to the rest of 118 candidates,",,

could not assert any such right.,,,

3.2.3 In this proceedings, in the additional reply affidavit dated 08th October, 2017 by the GPSC, following was stated as regards the list of 425" ,,,

candidates - "Since the outcome of the above-referred petition has not been certain, a fresh list of successful candidates is prepared in such a" ,,,

manner that it may consist of those candidates who have not only secured at least 25 qualifying marks in the viva voce and personality test but their,,,

overall performance, i.e. the sum total of marks obtained in the written examination as well as viva voce and personality test, has been meritorious. It" ,,,

was under these circumstances that the Commission prepared a fresh list of 425 candidates " ,,,

3.2.4 In course of hearing of the petitions in Prashant Dave (supra), on 09th May, 2018 order came to be passed by the Court when after hearing all" ,,,

the parties concerned, the court required, and learned Government Pleader made a statement, which was recorded, that the State Government shall" ,,,

examine the requirement of exact number of APPs and shall fix roster in consonance with such requirement, that is shall send proposal to the GPSC" ,,,

and that the exercise would be undertaken expeditiously to complete it by 31st May, 2018. The Court directed the GPSC to prepare the revised select" ,,,

list and produce on record of the petition before 12th June, 2018." ,,,

3.25 In terms of the aforementioned order dated 09th May, 2018 that the State Government addressed a letter dated 08th June, 2018 to the High Court" ,,,

on its administrative side inquiring about the total number of subordinate courts dealing with the criminal matters functioning at that time. On 11th June," ,,,

2018, the Registrar General indicated the number of such courts to be 689. In the courts, 315 APPs were already working. As per the policy of" ,,,

allotting one APP in each court, remaining 374 posts were required to be filled in." ,,,

3.3 It was on the above basis that respondent No.1 addressed communication dated 21st June, 2018 determining 374 posts and need for equal number" ,,,

of APPs, and also earmarking the quotas for different categories as per the roster. This communication dated 21st June, 2018 which is sought to be",,,,

challenged in this petition.,,,,

3.4 The determination of 374 posts which was a decision taken by the State, pursuant to exercise undertaken in light of aforesaid order dated 09th",,,,

May, 2018, was examined for its justification or otherwise by this Court in Prashant Dave (supra). Prashant Dave (supra) and connected petitions",,,,

came to be dismissed by judgment dated 20th July, 2018. Against that judgment, Letters Patent Appeal No.1029 of 2018 was preferred.",,,,

3.5 The Letters Patent Bench set aside the judgment, recording as under.",,,,

“51. In view of the above settled position, the GPSC was not justified in recommending the names of only 374 candidates out of total select list if",,,,

543 candidates and withholding the names of remaining candidates. The GPSC is therefore, required to send to recommend the names of all the 543",,,,

candidates as appearing in the merit list dated 04.07.2016 and the State Government, in turn, would be required to make appointments strictly in terms",,,,

of such merit list. If at all the State Government is of view that in view of the fact that number of vacancies have drastically reduced it is not possible",,,,

to make appointments to the vacancies in accordance with the merit list dated 04.07.2016, the only alternative available to it, is to scrap the entire",,,,

exercise and invite fresh applications by notifying such vacancies. However, once the recruitment is conducted for 554 vacant posts, and after",,,,

following due procedure a select list of 543 candidates has been prepared, the GPSC is bound to recommend the names of all the candidates whose",,,,

names find place in the merit list to the State Government and has no authority in law to curtail it to the subsequent number of vacancies.”,,,

3.5.1 The Letters Patent Bench took the view that recommendation of 374 candidates only was not justified and the remaining candidates out of the",,,,

list of 543 could not have been withheld. It was a view taken that all the candidates who found their names in the merit list were liable to be",,,,

recommended in the facts of the case. It was further held and directed,",,,,

“52. In light of the above discussion, the letters patent appeals succeed and are accordingly allowed. The impugned judgment and order dated",,,,

20.07.2018 passed by the learned Single Judge in the captioned writ petitions is hereby quashed and set aside. The respondent no.1 GPSC is hereby",,,,

directed to recommend the names of candidates whose names find place in the final merit list of 543 successful candidates dated 04.07.2016 to the",,,,

State Government. The entire captioned writ petitions stand allowed to the aforesaid extent. There shall be no order as to costs.”,,,

3.6 However, in Special Leave to Appeal (c) Nos.3373-3376 of 2019, the Supreme Court by its interim order dated 20th February, 2019 stayed the",,,,

above order of the Letters Patent Bench. The relevant part from the order reads as under.,,,,

“There shall be stay of the impugned order till the next date of hearing.,,,,

In the meantime, it would be open to the petitioner(s) to proceed further and appoint 374 Public Prosecutors. However, we make it clear that it would",,,,

be subject to the orders which are passed by the learned Single Judge of the High Court before whom some writ petitions are pending. The learned.,,,,

counsel for the respondents have stated that in the said writ petitions a statement is made by the Advocate General on behalf of the State of Gujarat.,,,,

that the State would not proceed further in appointing the appointees. It would, therefore, open to the State of Gujarat to seek permission of the High",,,,

Court, in case any such statement is made.”,,,

3.6.1 The Division Bench while setting aside the judgment, had required the GPSC to recommend all 543 candidates who were found successful to be",,,,

in merit list. But that came to be stayed by the Apex Court as above. The Apex Court thereafter allowed “to proceed further and appoint 374,,,

Public Prosecutors”. Since the present petition was pending, it was observed that it would be subject to the orders which are passed. Pursuant to the",,,,

aforementioned order of the Supreme Court, the State proceeded to make appointments as permitted by this Court as observed. It was stated on",,,,

behalf of the State that the appointments have been made.,,,,

3.7 The prayers made in this petition by 37 petitioners herein, come forth for consideration in the above light and the background.",,,,

4. The determination of 374 number of vacancies, is again called in question in the present petition, re-urging the ground of its sufficiency, by",,,,

professing that greater number of vacancies were required to be filled in and more number of candidates needed to be recommended. Learned.,,,,

advocate for the petitioners vehemently submitted that the figures of 689 courts and 315 APPs shown as already working, were not accurate.",,,,

According to his submission, as per the information given by the High Court, total number of judicial officers were 771 and barring the number of",,,,

APPs already working, the remainder posts were required to be filled in. In the affidavit-in-rejoinder dated 30th July, 2018 it was stated that as per the",,,,

information received, there were 37 courts of Metropolitan Magistrates, 447 were the Judicial Magistrate First Class, 215 Additional Chief Judicial",,,,

Magistrates and 31 Chief Judicial Magistrates, making total of 730 courts. It was submitted that 24 new courts were going to become functional.",,,,

4.1 The submissions were raised such as that in order to secure efficiency in the administration of criminal justice, sufficient number of APPs were",,,,

required to be appointed, that as per decision in State of U.P. v Johri Lal [(2004) 4 SCC 714,] burden of cases should not be created on the court or" ,,,,

upon APP and that sufficient number of APPs would facilitate the right to speedy trial etc., which all were the submissions more with academic value, " ,,,,

less in their legal succinctness.,,,,

4.2 In the affidavit-in-reply filed to this petition, the State reiterated its stand that at the material time the sanctioned working strength of Civil Judges" ,,,,

and Judicial Magistrates First Class were 429, which was augmented by creating of 375 ad hoc post under the Gujarat Swarnim Project, which" ,,,,

brought the total sanctioned post in the cadre of Civil Judges and Judicial Magistrate First Class to be 804, out of which 534 were vacant. Total posts" ,,,,

advertised were 554. Thereafter the actual need was adjudged to be of 374 posts which was an exercise done pursuant to order of this Court dated ,,,,

09th May, 2018 mentioned above. The details of the functional courts where the APPs in the ratio of one-is-to-one were to be appointed, were" ,,,,

obtained from the High Court and the said information was acted upon to requisition the equal number of candidates from the GPSC.,,,,

4.3 The submission of learned advocate for the petitioners based upon the decision of the Supreme Court in Malik Mazhar Sultan v. Uttar Pradesh ,,,,

Public Service Commission [(2008) 17 SCC 703]that greater number of vacancies were available, could not bring any help for the petitioners. On" ,,,,

behalf of the respondent Āçâ,-" State it was explained in affidavit-in-reply dated 06th March, 2019 that the information provided in the said proceedings" ,,,,

by the High Court on the administrative side pertained to Āçâ,-" (a) vacancy position in all courts in the State of Gujarat and ,,,,

(b) vacancy position in all courts as on November, 2018. It was stated that requisition called for in the present proceedings was based on the" ,,,,

information provided by the High Court with respect to actual functional criminal courts in the State as on 31st May, 2018. Therefore, it could be" ,,,,

readily stated that the proceedings in Malik Mazhar Sultan (supra) before the Apex Court and the orders passed therein would not render any ,,,,

assistance to the petitioners for furthering their case.,,,,

5. Noticeably, the uncontroverted fact was that out of the above-mentioned 375 ad hoc posts in the cadre of Civil Judge and Judicial Magistrate First" ,,,,

Class created under the Swarnim Gujarat Project, 275 courts came to be surrendered by the High Court. This resulted into reduction in the" ,,,,

requirement of APPs per court leading to determination of their number to be 374. In Prashant Dave (supra) this aspect was scrutinised and ,,,,

observations were made in paragraph 4.1 and 4.2 of the judgment. The basis for determining 374 numbers of vacancies required to be filled in was ,,,,

also noticed and was endorsed to.,.,.,

5.1 Thus, when the State determined 374 candidates to be requisitioned for the purpose of appointment to the post of APPs pursuant to order dated" .,.,.,

09th May, 2018 of this Court in the proceedings of Prashant Dave (supra), it was done on a definite footing and on the basis of the reliable figures as" .,.,.,

obtained on 11th June, 2018 and made available by the High Court on its administrative side." .,.,.,

5.2 The process of appointment of APPs sized to be 374 in number as above, was a culmination of legal process. The working of the aforementioned" .,.,.,

statutory rules called The Assistant Public Prosecutor in the General State Service Class-II Recruitment Rules, 2008 showed that according to Rule" .,.,.,

16 of the Rules, the Commission would recommend the Legal Department the list of candidates. In Prashant Dave (supra) it was held that conjoint" .,.,.,

reading of Rule 14(2) and 16(1) suggested that the recommendation by the GPSC amongst the candidates qualified for the purpose of appointment.,.,.,

would be to meet the vacancies and the number of vacancies which are to be determined by the State Government. It was held that number of.,.,.,

vacancies adjudged by the State Government would form the basis for recommendation by the GPSC and that the number of recommended.,.,.,

candidates would match the requirement expressed by the State Government.,.,.,

5.3 What is manifested by necessary implication is that when the State put its requirement at 374 posts and the consequential recommendation was.,.,.,

made by the GPSC of equal number of posts on the basis of the roster and reservation applied by the State to the said strength, it was a lawful" .,.,.,

process culminated and such process comprised of definite legal events. The fixation of 374 numbers was not a product of bald calculation or an.,.,.,

outcome of bare mathematical process of additions and subtractions of figures, but the submission on part of the petitioners was." .,.,.,

5.4 It may be that need for more number of APPs in the courts may grow with passage of time, which aspect by itself would not invalidate the" .,.,.,

determination of 374 posts by the State as above. Though the petitioners have tried to assert higher numbers, the justification in law about" .,.,.,

determination of numbers in a select list for appointment to any post however, do not stem from the jugglery of figures. Mere play of statistics, bare" .,.,.,

calculation of numbers or handy shuffling of figures does not make a statement of law on that count. The process culminating into the determination of.,.,.,

number of the APPs to be requisitioned and recommended to be appointed in the courts has to be, and was a process in accordance with cannons of" .,.,.,

law and observance of rules. As noticed above, the requirement was assessed, the statutory process was undertaken and completed to arrive at the" .,.,.,

decision.,.,.,

5.5 The numerical accuracy, necessity and justification of determination of 374 posts was established in view of the above cogent facts. The statutory" ,,,,

rules were acted upon and the factual data obtained with reference to the cut-off date of 31st May, 2018 were applied to reach the said requirement" ,,,,

assessed by the State in its perception. While it is true that aforementioned Special Leave to Appeal against the judgment of Prashant Dave (supra) is,,,,

pending and the Supreme Court would be the final arbiter of all the aspects and issues, for and before this Court, no new material was placed, or any" ,,,,

other or further submissions were canvassed which may persuade the Court to depart in any way from what was observed and held in Prashant Dave,,,,

(supra). No reason stands, nor any ground exists to take a different view." ,,,,

5.6 Thus the challenge to the list of 374 candidates and the prayer to set aside the same is misplaced and meritless, both on facts and in law. It was a" ,,,,

virtual effortless finding which could be recorded that the determination of 374 posts of the APPs required to be filled in was eminently proper and,,,,

legal.,,,,

6. Another grounds on which the said select list of 374 candidates was questioned for its legality was that principles of reservation of roster were not,,,,

followed. Adverting to such contentions, firstly it was canvassed that the mandatory ratio of 50% of the total posts required to be kept in General" ,,,,

Category was violated inasmuch as 175 posts in the said category were provided for which were less than the limit of 50% of total 374 posts.,,,,

Decisions of the Supreme Court in Indra Sawhni v Union of India [1992 Supp (3) SCC 21,7 paragraphs 807-809] as well as in Jitendra Kumar v State" ,,,,

of Uttar Pradesh [(2010) 3 SCC 119, paragraphs 41-42] were pressed into service." ,,,,

6.1 The second contention was that the reservation for women candidates was initially mentioned to be 30%, but in the impugned select list it became" ,,,,

33%, because 123 posts instead of 112 posts out of 374 total were earmarked, which exceeded 30%. In support of this contention, the decision of the" ,,,,

Apex Court in Shyam Sunder Reddy v State of Andhra Pradesh [(2015) 8 SCC 410] was relied on.,,,,

6.2 Next raised was the contention about the increase in the number in the category of Physically Challenged and ex-servicemen category, which," ,,,,

according to the petitioners, should have decreased proportionately. It was thereafter submitted that the claim of the State that 315 APPs working" ,,,,

actually was inaccurate and that such number of APPs were only 311.,,,,

6.3 It was next submitted that there existed a variation in the total posts as shown or earmarked in the advertisement vis-À-vis in the impugned select,,,,

list in the different categories and that the number ought to have been reduced in view of the reduction in the total posts to 374 but contrary had,,,,

happened. In this regard, the petitioners in their rejoinder affidavit dated 30th July, 2018 contended that (i) in the women's category posts initially",,,,

mentioned were 52 whereas in the impugned list 58 numbers were indicated, marking increase of 6 posts, (ii) in the category of physically challenged",,,,

persons there was an increase of 7 posts from 12 indicated in the advertisement to 19 in the impugned list, (iii) in the category of ex-servicemen, the",,,,

increase was alleged to be of 3 posts, from 4 to 7, (iv) in the category of OBC and Scheduled Tribe also, numerical increase in the number by 12 to 18",,,,

was shown, (v) in the general category, 191 posts mentioned in the advertisement stood reduced to 175 and (vi) in the Scheduled Caste category from",,,,

original 26 mentioned in the advertisement, posts were reduced to 22 becoming less by 4.",,,,

6.4 Yet another additional affidavit dated 04th August, 2018 came to be filed by the petitioners to raise an issue that the cadre strength of APPs was",,,,

shown to be of 880 but roster was applied against 689 posts. It was sought to be contended that roster applied was vacancy-based and not post-based.,,,,

The petitioners indeed went on to furnish new facts to proceed to foment issues-after-issues in their subsequent affidavits as if their main petition was,,,

founded on rejoinder affidavits and additional affidavits.,,,,

6.5 The State Government's response was that there was a scrupulous compliance of the reservation policy as contained in the Government,,,

Resolution dated 08th March, 1999 laying down the principles, which, in turn, were strictly in accordance with the law laid down by the Supreme Court",,,,

in R.K. Sabharwal v State of Punjab [(1995) 2 SCC 745].,,,

7. Dealing with the petitioners' contentions in the context of the facts and figures furnished by the State in its affidavits-in-reply, ",,,,

(a) The contention about limit of minimum 50% of the total posts having not been observed in the impugned select list stood devoid of merits, as it",,,,

could be demonstrated that 51% of the 689 posts were required to be filled in with General Category candidates, in that 169 APPs had already been",,,,

working, therefore considering the total available pool of 352 posts, 175 seats would be available to be filled in as per the roster in the General",,,,

Category, which was the actual requisition for open category in the select list of 274 candidates. Thus it met with the criteria of minimum 50% to be",,,,

maintained in that category.,,,,

(b) As regards the reservation in the women's quota, the facts stated were that when the recruitment was advertised on 13th February, 2014, the",,,,

reservation prescribed for women was 30% in view of policy Notification dated 09th April, 1997 of the General Administration Department prevalent",,,,

at that time, which policy came to be amended by Notification dated 11th November, 2014, wherein the reservation for women was hiked to 33%",,,,

Quota,"Extent of Reservation

(of 689 posts)","Available Posts against

the Quota","Working Strength at

posts","Post to be filled up from

374 posts

Physically Challenge,3%,21,2,19

ExServiceman,1%,7,0,7

General,51%,352,169,175

SC,7%,48,24,22

ST,15%,103,43,64

SEBC,27%,189,73,113

7.4 Recollecting the details, the classification demonstrated before the Court stands as under "total posts are 689 of which 352 in General Category,"

48 in SC Category, 103 in ST Category and 186 posts are in SEBC Category. In the total of 689, 315 are already filled in, therefore 374 are to be filled,"

in which is the select list and the requisition-cum-recommendation by the respondent "State and the GPSC. Looking at the further division, out of,"

352 General Category seats, 169 have already been filled in, resulting into 183 required to be filled in. in SC Category 24 are filled in and same number,"

of posts would have to be filled in. In ST Category total posts are 103 of which 43 are already manned, whereas 60 are the posts to be filled in. In the,"

SEBC Category out of 186 total, 79 incumbents are already working, leaving 107 needed to be placed. The total carried-forward seats in the entire,"

select list of 374 are 10 in number which comprises of 04 in the SC Category and 06 in the SEBC Category.,,

7.5 It was given out that as per above mentioned policy Resolution dated 08th March, 1999 regarding reservation policy while preparing the roster, the,"

reserved category candidates appointed on merit were counted against the unreserved posts, that is, open merit. It is to be taken note that upon the,"

insertion of 81st Constitutional Amendment in Article 16(4B) of the Constitution, the General Administration Department of the Government passed,"

Resolution dated 19th January, 2005, which provides that in all cases of direct recruitment and promotion, the reserved vacancies of Scheduled Castes,"

and Scheduled Tribes, wherever applicable and which have remained unfulfilled in the past years, that is the backlog vacancies and/or carry forward,"

vacancies, would be treated as separate class and the same would not be considered with reserved vacancies of the year in which such vacancies are,"

filled up for determining 50% reservation on the total number of vacancies of that year. In other words, the position of law required was that the filling,"

of 50% in filling up the reserved vacancies would apply on the reserved vacancies arising in the current year and the backlog or carried forward,,,,

vacancies in the reserved categories in respect of the earlier years would be treated as a separate and distinct group and the same would not be,,,,

subjected to any ceiling.,,,,

7.6 The mechanism adopted by the State in applying the roster and in following the reservation policy was in accordance with law, in compliance with" ,,,,

policy Resolution dated 08th March, 1999 and in adherence to the principles laid down by the Supreme Court in R.K. Sabharwal (supra). All the" ,,,,

contentions raised by learned advocate for the petitioners regarding alleged flaws in the application of roster and reservation for select list of 374,,,,

candidates, thus, fell flat as meritless." ,,,,

8. The pleadings in the petition were replete with contentions raised by the petitioners repeatedly on the same count to question the the justification of,,,,

the requisition of 374 candidates and determination of such number of posts to be filled in, as well as in respect of the submissions about the non-" ,,,,

observance of roster and reservation. They left an impression in the end that same facts and figures were twisted by the petitioners to project them in,,,,

form of different set of contentions which in disguise were same and similar.,,,,

9. This leaves the Court to the second prayer whereby the petitioners want implementation of list of 425 candidates which was prepared by the GPSC,,,,

on 17th March, 2017 and wants the respondents to proceed in accordance with the said list. As already noticed, the said list was prepared by the" ,,,,

GPSC in course of the proceedings of Special Civil Application No.12701 of 2016. It was a tentative list prepared for no apparent purpose but to,,,,

notice the status of such candidates at that stage who were not to be affected, whatever may be the result of the petition. This list did not have any" ,,,,

roster compliance in it. It had no significance.,,,,

9.1 The list of 425 candidates which was prepared by the GPSC as an interim measure without determining the roster thereto was neither of any,,,,

consequence or significance. It was prepared by the GPSC out of anxiety to see that the further process could be sped up in accordance with law as,,,,

it was not to be clear as to when the petition would culminate into finality. This list had no operational value nor had any legal sanctity. No right could,,,,

have been claimed on that basis, nor does any right flow therefrom for the petitioners. Therefore, the prayer with regard to seeking implementation of" ,,,,

the said list always stood, as far as the present petition was concerned, on a perishable premise or on already-perished-premise to be without factual" ,,,,

and legal merit. The prayer to seek implementation thereof was virtually a still-born prayer.,,,,

9.2 On demurer also, even the context of so called list of 425 candidates was never to give rise to any right for any of the petitioners. The petitioners",,,,

claimed that they were recommended under the said list and ought to have been offered appointment. It is categorically settled position of law that",,,,

candidates selected in the process of recruitment does not acquire right to be appointed to the post. In Shankarsan Dash v. Union of India [(1991) 3",,,,

SCC 47] the Constitution Bench observed and held in paragraph 7 that it is not correct to say that if a number of vacancies are notified for",,,,

appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed. It was held that",,,,

unless relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies."",,,,

9.3 In S.S. Balu v. State of Kerala [(2009) 2 SCC 479,] it was held that the State as an employer has a right to fill up all the posts or not to fill up",,,,

them. A candidate will have no legal right for claiming a writ in the nature of writ of mandamus. In Pitta Navinkumar v Raja Narsaiah Zangiti [(2006)",,,,

10 SCC 261] the Supreme Court reiterated that candidate does not have any legal right to be appointed and has right only to be considered in terms of",,,,

Article 16. It was held in Kulvinder Pal Singh v State of Punjab [(2016) 6 SCC 532]that name of candidate may appear in the merit list but he has no",,,,

indefeasible right to seek an appointment. Therefore, just for the reason that the petitioners were placed in the list of successful candidates at some",,,,

point of end during the process of recruitment, they cannot thereby assert any right for them to be appointed."",,,,

9.4 In State of Haryana v Subash Chander Marwaha [(1974) 3 SCC 220] the Supreme Court was more emphatic to lay down the statement of law on",,,,

this aspect",,,,

“The existence of vacancies does not give a legal right to candidate to be selected for appointment. The examination is for the purpose of showing",,,,

that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how",,,,

many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed.",,,,

Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a",,,,

legitimate grievance on the ground that the State Government had departed from the Rules in this respect.",,,,

In order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and",,,,

the aggrieved party has a legal right under the statute to enforce its performance.",,,,

Since there was no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the",,,,

rules to enforce its performance the petition was clearly misconceived. “The petition was clearly misconceived.",,,,

10. In light of all the foregoing discussion and reasons, none of the grounds could be sustained as meritorious either on the count of determination of" ,,,,

374 posts for appointment of learned Additional Public Prosecutor or in respect of breaches in application of reservation policy . It has to be held on,,,,,

facts that the State Government was justified in determining the number of posts of APPs to be filled in and reservation and roster thereto was,,,,,

correctly applied.,,,,,

10.1 As a result, the prayer to set aside communication dated 21st June, 2018 recommending 374 candidates for equal number of posts of Assistant" ,,,,,

Public Prosecutors to be filled in and the roster fixed on that basis, cannot be granted nor the direction could be issued to the State to proceed as per" ,,,,,

the select list of 425 candidates published by the Gujarat Public Service Commission.,,,,,

11. The present petition was meritless and did not book any relief for the petitioners. Therefore, the same is dismissed. Notice is discharged. Interim" ,,,,,

order stands vacated.,,,,,