

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5040 of 2026

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PATEL HARSH KIRTIBHAI & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR MIT S THAKKAR(11223) for the Petitioner(s) No.

1,2,3,4,5,6

MS KINJAL VYAS ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 1,3

MR PREMAL R JOSHI(1327) for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 27/04/2026

ORAL ORDER

1. On 09.04.2026, this Court passed the following
order:

"Issue Notice, returnable on 27.04.2026.
Learned AGP waives service of notice for
Respondent No.1 and 3 and learned advocate
Mr.Premal Joshi waives service of notice
for Respondent No.2.

Learned advocate Mr. Joshi has assured
this Court that an affidavit-in-reply
shall be filed on or before 27th April,
2026. Considering the nature of the
litigation, list the matter on the
returnable date, immediately after fresh
matters."

2. Despite the assurance given by learned advocate

Mr. Joshi, the affidavit has not been filed today. He submits that it will be filed within the next 2–3 days and, on instructions, further states that on the date of issuance of notice, i.e. 27th March, 2026, the GPSC had already recommended the names for appointment to the State Government.

3. Learned Assistant Government Pleader Ms. Kinjal Vyas, appearing for the respondent–State, under instructions, states that the persons recommended for appointment are at the stage of document verification, and that the said process is likely to take some time.

4. On behalf of the petitioner, it was contended that the entire process of selection was contrary to the settled proposition of law, as out of 300 marks, the weightage of the written examination was given to the extent of only 17%. Learned advocate Ms. Jani stated that the entire process of selection is based on a preliminary test and interview consisting of 300 and 100

marks respectively, out of which 50% of the weightage is given to the preliminary test and 50% weightage is given to the oral interview, and therefore, the normalized value of 1 mark would come down to 0.167 or one-sixth of the total mark for the marks obtained in the preliminary test, and for the interview, the same would be one-half or 0.5%, and therefore, the marks obtained in the preliminary test would constitute only 33% of the total marking system and 66% of the weightage is given to the interview, which is contrary to the settled proposition of law as pronounced by the Hon'ble Supreme Court in various judgments.

5. Learned counsel for the petitioner relied upon the following judgments:

(i) (1985) 4 SCC 417 in case of Ashok Kumar Yadav and others Versus State of Haryana and others;

(ii) (1991) 1 SCC 662, in case of Mohinder Sain Garg Versus State of Punjab and others;

(iii) (2014) 5 SCC 774, in case of Bishnu Biswas and others versus Union of India and others and
(iv) (2019) 20SCC 17, in case of DR (Major) Meeta Sahai Versus State of Bihar and others.

6. By relying upon the above judgments, learned counsel for the petitioner submits that the total weightage of the oral interview should not exceed 25%, whereas in the present case, it amounts to 66%, and therefore, the entire process is contrary to the settled proposition of law as pronounced by the Hon'ble Supreme Court in the above-cited judgments. He therefore submits that, in view of the recruitment process being underway and presently at the stage of document verification, as stated by learned Assistant Government Pleader Ms. Kinjal Vyas, and considering that the number of petitioners is only 6 as against 14 advertised posts, the State Government may either be directed not to fill up any vacancies or, at least, to keep 6 posts vacant for the petitioners; as against 14

posts.

7. Considering the grievance of the present petitioner as well as the fact that the respondents are at the stage of document verification, and when the Court specifically inquired from learned Assistant Government Pleader Ms. Kinjal Vyas as to how long the said process is likely to take, she, on instructions, stated that it is likely to take some time, but no specific time limit was indicated as to the period that would be required by the authorities to verify the documents and issue appointment orders. This has led to a situation that, in case the petitioner succeeds and all the posts are filled up, even then the petitioners will be deprived of appointment for want of availability of the advertised posts. At the same time, if the Court permits the respondents to fill up all the posts subject to the final outcome of the petition, it will only complicate the issue further, as in that case some of the candidates

will be appointed and, if their appointment is made subject to the final outcome of this petition, even the persons who would otherwise be appointed as per the result declared by GPSC and the names recommended by GPSC would remain in a state of uncertainty as to whether their appointment would result in a permanent appointment or not. To avoid this uncertainty, the Court deems it appropriate to ensure that the matter is heard at the earliest and that the process of awarding weightage to marks, i.e. the marking system, whether it can be said to be in accordance with law or not, is examined and adjudicated at the earliest so as to ensure that neither the selected candidates nor the present petitioners are required to remain in a state of uncertainty. The respondents are directed to keep at least six posts for the present petitioners vacant so as to ensure that, in case the petitioners succeed in the respective category, neither the petitioners nor the candidates whose names have been recommended are

required to join the service under a cloud of uncertainty regarding their future. To ensure that the matter is heard at the earliest, as a last chance, the GPSC and the State both are granted time to file their replies latest by 6th May, 2026, and rejoinder, if any, is to be filed on or before 8th June, 2026.

8. List the matter for Final Hearing on the top of the Board on 11th June, 2026.

9. In the meantime, as stated in the foregoing paragraph, the State Government is directed to keep at least six posts vacant, of the category to which the present petitioners belong. In case the State Government considers that the said posts are required to be filled up on an urgent basis, it shall file an appropriate application stating the reasons for filling up the posts and why it is not in a position to wait till the date fixed for final hearing by this Court, i.e. 11th June, 2026.

10. It is amply clarified that if, within the time frame prescribed by the Court, either party fails to file the reply or rejoinder, as the case may be, the erring officer or the petitioners shall be required to deposit a sum of Rs. 25,000/- with the Registry of this Court, and only thereafter the respective reply or rejoinder shall be taken on record. This condition is imposed only to ensure that the posts advertised do not remain vacant for a longer period and that the matter is heard at the earliest.

11. The Registry is directed to accept the reply or rejoinder, as the case may be, from either side, even during the vacation, in view of the time frame fixed by this Court.

(NIRZAR S. DESAI,J)

Pallavi