

(2003) 02 GUJ CK 0029
In the Gujarat High Court

Case No : L.P.A. No. 1181 of 2001 with C.A. No. 1181 of 2001 and Ors.

Babubhai Jensing Solanki

APPELLANT

Vs

Deputy Vansanrakshak

RESPONDENT

Date of Decision : 19-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2003) 23 GLH 267 : (2003) 4 GLR 742 : (2003) 3 LLJ 909

Hon'ble Judges : K.A. Puj, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : Mukul Sinha, for the Appellant; M.A. Bukhari, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—Since both these appeals, by invocation of provisions of Clause 15 of the Letters Patent, raise identical questions and also arise out of one recruitment process and, also being interconnected, upon request, they are being disposed of by this common judgment.

2. A short spectrum, and conspectus of the facts, giving rise to these Letters Patent Appeals needs narration at the inception, with a view to examine and appreciate the merits of appeals and challenge against that, and since even most of the factual aspects being common, they are proposed to be referred at this stage, and later on, as and when required in accordance with the discussion in this common judgment, the individual aspects will also be considered.

3. The appellants, are the original petitioners, who were working as Daily Wagers, as Bit Guards as per the Government Resolution, since almost 10 years prior to the regular recruitment for the said post came to be undergone by the respondent-authority, Daily Wagers were called for recruitment test, as Bit Guards as per the decision of Forest and Environment Department, and as such five posts of Bit Guards were sanctioned by the Government for Gandhinagar

division.

4. The Selection Committee constituted for the purpose, and after taking interview, and test of almost 37 persons, prepared a list and out of 37 persons, only 11 persons, who were eligible, were called for test and interview and out of them, two could not appear, at the time of walking test. Out of 9 persons, who underwent test, and interview, 5 persons were placed in the merit list as 5 posts were sanctioned. The said merit list, is at Annexure II, prepared on November 6, 1999, in which the appellant-original petitioner in Special Civil Application No. 9257 of 2001, came to be placed at Sr. No 2, Mr. B.B. Thakore, whereas the petitioner in Special Civil Application No. 9259 of 2001 Mr. B.J. Solanki's name was placed at Sr. No. 4 in the said select list. The Letters Patent Appeal No. 1182 of 2001 is arising out of Special Civil Application No. 9257 of 2001 and Letters Patent Appeal No. 1181 of 2001, is arising out of Special Civil Application No. 9259 of 2001 filed by Mr. B.J. Solanki.

5. The respondent-authority appointed original petitioners, appellants before us along with three other persons appointed on regular basis, on the post of Bit Guards on November 6, 1999. They were also directed to undergo training and the petitioners successfully completed the training period. The petitioners, after regular appointment, on the post of Bit Guards on completion of one year service were also given increments.

6. The appellants original petitioners without giving any opportunity of hearing came to be terminated from the service as Bit Guards. Therefore, they filed aforesaid two writ petitions, which came to be decided by the learned single Judge, against the original petitioners.

7. The learned single Judge, while dismissing the petitions, as it appears from the text and tenor of the impugned judgment, was led away by the impression that the termination of service of both the appellants, was on account of mistake, which came to be rectified. It is also found by the learned single Judge that after rectification, names of the petitioners were not falling within the sanctioned posts numbers and, therefore, the termination of service without an opportunity of hearing and observing the principles of natural justice, could be directed. It appears from the text, context and the texture of the impugned judgments in both the Letters Patent Appeals that, with due respect, the learned single Judge without meticulous, and proper application of mind, rejected the petitions with an observation to make the representation to the authority by the petitioners. It is also held by him that since the petitioners are in the revised list, below 5 numbers, their case could be considered for appointment later on and thus, he declined to exercise the jurisdiction vested in him under Article 226 of the Constitution of India.

8. It is stated at the Bar that the representation was made by both the petitioners, but unsuccessfully, the respondent-authority did not accept any version or plea of the petitioners and rejected the representation.

9. The learned advocate Mr. Mukul Sinha, appearing for the appellants-original petitioners-workmen and learned A.G.P. Mr. Bukhari have offered their submissions, which we have heard, dispassionately. We have also made evaluative and analytical assessment of factual profile. We have also considered the relevant proposition of law, and scope and ambit of the powers of writ Court, under Article 226 of the Constitution and also of an Appellate Court, under Clause 15 of the Letters Patent.

10. At this juncture, it would be not only expedient but also incumbent upon us to highlight the facts, which are no longer in controversy.

(1) Both the petitioners were working almost for a spell of one decade, as Daily wagers, and were doing work of Bit Guards and, in course of the process of recruitment of 5 posts of Bit Guards, which came to be sanctioned for Gandhinagar division, by virtue of Government Resolution dated October 18, 2001, issued by the Forest and Environment Department of State of Gujarat, a first select list was prepared by the selection committee issued by the respondent-authority, in which the petitioners were placed at Sr. No. 2 and 4. The first-select list was prepared only after considering the seniority and merits of first five daily wagers for the post of Bit Guards on November 6, 1999, in which both the petitioners were within first five number.

(2) The petitioners, therefore, pursuant to the selection on seniority-cum-merit in the select list prepared by the selection committee, appointed by the respondent authority came to be appointed on the post of Bit Guards with effect from November 6, 1999.

(3) The first list was modified and revised, as a result of which in the second list, the names of petitioners, who were at Sr. No. 2 and in the first select list, and who came to be appointed as such, given to Sr. No. 6 and 8.

(4) Their services, pursuant to the revision and modification of the select list, after the implementation and appointment pursuant to the said list, came to be revised and without any show-cause notice or any principles of natural justice, as if the doctrine of audi alteram partem, is a relic of the past.

11. We had also called for the original record for our examination, evaluation and satisfaction as to whether the defence propounded by the respondent-authority, any termination of the service, long after the appointments on the alleged plea of bona fide mistake, was really a bona fide one or not? We threadbare examined the entire file and we found shocking signals of flagrant violation of the principles of natural justice.

12. The proposition that ordinarily, no person should be allowed to visit with civil consequences without an opportunity of hearing being given is, admittedly, not followed, before termination of service of the original petitioners-appellants before us, only on the supposed ground of bona fide mistake, which from the record could not be substantiated by the respondent authority.

13. In view of our close and critical examination of the factual spectrum, emerging from the record of both the appeals as well as the original file, which was specially called for our consideration, the impugned judgments of the learned single Judge have found with lack of meticulous probe even into the factual profile. They do not remotely bear out that the first select list on the basis of which the appointment came to be made in the year 1999 and revised list, upon mandate contained in a letter of Principal of Chief Conservator of Forest, State of Gujarat whereas such, the examination in its correct perspective or not. Be that as it may, with due respect, the impugned judgments, in our opinion radiate an imprint of without application of mind to the vital facts. We have no hesitation in finding that even the question of non-observance of the principles of natural justice was also ever addressed or not. Apart from that the impugned judgments in our opinion, again, with due respect, are quite slipshod and cryptic in jurisprudential terms. It leaves, therefore, not (sic) any manner of doubt that both the judgments are vulnerable and therefore, not supportable.

14. A person, who has worked for more than 10 years, as a daily wager in the same department, in the forestry work, upon having been interviewed and tested, having found name in the select list within the first five numbers, out of nine such daily wagers and pursuant to which having received the appointment order and having worked as such for more than 2 years, after completing the service training and also having received the increments, could be deprived of his such right even without issuance of a show cause notice and without undergoing exercise for the due observance of the principles of natural justice, be thrown out of coveted government employment like a fly from the tea and be subjected to consequential humiliation to which our clear consistent, coherent answer is positively in the negative. Unfortunately, such a vital aspect is lost sight of by the learned single Judge, and, therefore, the impugned judgments are required to be quashed and set aside being highly, legally, jurisprudentially vulnerable.

15. Although, the proposition that in a factual profile of a given case, as highlighted hereinbefore the termination of service is directly violative of constitutional safeguards enshrined in Article 311, no amount of authority is required in support of such a view, to make the point and take drive the point at home illegally, we would be tempted to say and refer the decision of the Hon'ble Apex Court rendered in the case of H.V.P.N.L. Vs. Mahavir, , in which it has been categorically propounded cancellation of appointment without being given a opportunity of hearing to the appointees shall be invalid and it has to be quashed and set aside. Para-7 of the said decision is very important wherein pertinent observations have been made. Again, the view on facts of the case and in the background of constitutional safeguards and the protection to the public employment enshrined in Article 311 of the Constitution of India any action is indefensible. This view is further reinforced by the decision of the Hon'ble Apex Court rendered in Lakhanlal Tripathi v. Commandant General and Anr., 2000 (10) SCC 184 , it has been clearly held that the principles of natural justice, if not observed, and termination order has been passed, it is not only arbitrary, but

illegal too.

16. After having considered the catalogue of events, circumstances, dates of the service period of both the original petitioners-appellants before us, and the manner and mode in which the legal appointment to the post of Bit Guards to the petitioners, who were working for more than a decade spell, prior to their is appointment as Daily wagers in violation of principles of natural justice, as well as the statutory parameters, the impugned judgments, in both the appeals and the orders of termination, are required to be quashed and set aside.

17. Consequently, in both the appeals, the impugned orders of termination of service issued by the respondent-authority and confirmed by the learned single Judge in two petitions are hereby quashed and set aside, restoring the appointments pursuant to the appointment orders made by the respondent-authority out of the first selection list with a direction to reinstate them immediately with continuity in service but only with 50% back wages within a period of three months from today. Both the appeals, therefore, shall stand allowed. Accordingly, civil applications are disposed of. No order as to costs.