
(1996) 01 GUJ CK 0015
In the Gujarat High Court

Balkrushna V. Oza and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 GLR 788

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard learned Counsels for the parties. The petitioners by this writ petition had challenged the proposed decision of the respondents to revert them from the post of Police Sub-Inspector to the post of Head Constable. The order of reversion has not been filed. On the apprehension of the reversion this writ petition has been filed. On 19th July 1983 the notice was issued in this case to the respondents and ad interim relief in terms of para 17(d) has been granted. When the order of reversion has not been filed, how the question does arise of quashing of the same? It was a case which has been filed at a premature stage only on the apprehension of reversion. I fail to see any reason in the action of the petitioners in approaching to this Court in haste. They should have approached this Court only after when the order of reversion is passed. The possible apprehension of the petitioners that after passing of the order of reversion this Court may not pass the order staying the operation of the order of reversion but, that apprehension is without any substance. When this Court can grant the interim relief merely on apprehension, I fail to see any justification in the apprehension that after the order of reversion this Court will be powerless to grant any interim relief in favour of the petitioners. In case appropriate case is made out, the Court has ample powers to protect the petitioners by granting the interim relief pending the disposal of this writ petition. Not only this but the action of approaching this Court by the petitioners in hot haste knowing well that their order of reversion has been passed but without waiting for the receipt of the same deserves to be disapproved. In para 14 the petitioners have stated that

the respondents are likely to revert them in order to make room for Sub-Inspectors who are transferred from other offices. In para 2 the petitioners stated that they are constrained to file this petition as the respondent Nos. 2 and 3 have decided to revert the petitioners to the lower posts of Head Constables and to post them at the present place of posting or in different district towns on the lower post. From reading of the aforesaid averments made by the petitioners, it is clear that instead of first accepting the order of reversion, they have straightaway filed this writ petition. It is to be noticed that order should be filed along with the writ petition, otherwise, what the Court will quash? Be that as it may, I do not consider it to be a case where the petition has to be dismissed on the ground more so but when the petitioners are protected by grant of ad interim relief. The petitioners made a statement that during the pendency of this writ petition, the petitioners have already retired from the services and as they have been retired from the post of Sub-Inspector in case the writ petition is dismissed, then it will affect their pension which has been protected by interim relief. I do not find any substance in the contention of the learned Counsel for the petitioner. Under Article 226 of the Constitution, the Court has to only protect the legal or fundamental rights of the petitioners. On mercy or sympathy, this Court will not grant any relief to the petitioners much less in a service matter. The petitioners will get the relief only in case they have a legal right to hold the post of Sub-Inspector. The petitioners were given the promotion to the post of Sub-Inspector by the order dated 1-12-1978. In the order dated 1-12-1978 it has been mentioned that the petitioners are unqualified for promotion. It is clear from the order of promotion that it was ad hoc promotion. It has been made clear by the authority that the promotion has been given as a local and temporary arrangement. It has further been a condition of promotion that the petitioners are liable for their reversion to their substantive posts of Head Constables as and when substitutes are provided against the existing vacancies. It is not the case of the learned Counsel for the petitioners that the petitioners are qualified for the promotion. What the learned Counsel for the petitioners has contended that as they are continuing on the basis of this order for a long time and as they are due for retirement within a short time, there is no justification for reverting them. I do not find any substance in this contention too. It was an ad hoc promotion and that too as a local arrangement. An ad hoc promotion as a local arrangement does not give any right to the petitioners to continue on the post. Moreover, this promotion of the petitioners was conditional and they have to be reverted as and when substitutes are provided against the existing vacancies. From the reading of the averments made in para 14, it is clear that the reversion of the petitioner has been decided to make the room for the Inspectors, transferred from the other offices meaning thereby the substitutes were provided against the existing vacancies. In view of these facts, no illegality whatsoever has been committed by the respondents to decide to revert the petitioners. It is the case where the petitioners have been given promotion though they were not qualified.

2. It was only a stop-gap arrangement made and for one or other reason if they would have continued for some years, it will not confer any right of permanency on the post to the petitioners. The Supreme Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, has considered somewhat similar case though there was a case of temporary appointee. The Supreme Court in the said case held that a temporary Government servant does not become permanent unless it acquires that capacity by force of any Rule or is declared as permanent servant. The promotion is a mode of appointment like the recruitment. It is true that channel for promotion was provided from the post of Constable to that of Sub-Inspector but for that, the petitioners were required to possess requisite qualification which, admittedly, they did not possess. It is also not the case of the petitioners that they have been given a regular promotion. It could not be the case of the petitioner that they were qualified for the promotion. In view of this fact, there is no question of any regularisation of their promotion or acquiring any right to continue on the post. A case of ad hoc promotees and consequential rights accrued to them has been considered by the Supreme Court in the case of State of Orissa and Another Vs. Dr. Pyari Mohan Misra, . The Supreme Court held that the ad hoc services, like the petitioners in the present case, does not ripen in the regular services. The case of the petitioners is worst because, even it cannot be said to be a case of ad hoc or temporary promotion because it was only a stop-gap local arrangement.

3. In view of the aforesaid discussion, this writ petition has no merits whatsoever and the same deserves to be dismissed. In the result, the writ petition fails and the same is dismissed. Rule is discharged. Ad interim stay granted earlier is vacated.