

(2011) 11 GUJ CK 0049
In the Gujarat High Court

Case No : Letters Patent Appeal No. 475 of 2001 in Special Civil Application No. 870 of 1991

Bavaji Mohanbhai Karsanbharti

APPELLANT

Vs

Malia Hatina Gram Panchayat and 1

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 11 GUJ CK 0049

Hon'ble Judges : V.M. Sahai, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : M.D. Rana, for the Appellant; Manoj N. Popat, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. By way of this Intra-Court Letters Patent Appeal, the appellant - original petitioner has challenged the judgment and order dated 03.04.2001 passed by the Learned Single Judge in Special Civil Application No.870 of 1991 by which while dismissing the writ petition, the Learned Single Judge by exercising suo motu power of superintendence under Article 227 of the Constitution of India, issued the following directions :

By exercising suo motu power of superintendence under Article 227 of the Constitution of India, the judgment and decree of the District Judge, Junagadh, in Regular Civil Appeal No.55/82 decided on 4-4-1983 is quashed and set aside. As a result of the quashing and setting aside of the judgment of the learned District Judge, Junagadh in Regular Civil Appeal No.55/82 dated 4-4-1983, the resolution of the Gram Panchayat under which the services of the petitioner were brought to an end is revived and the petitioner shall no more be in service henceforth. However, whatever salary paid to the petitioner during this period as well as the consequential benefits given to him in pursuance of the decree of the

learned District Judge, Junagadh shall not be recoverable by the Gram Panchayat from him. Rule is accordingly discharged. In the facts of this case, no order as to costs.

2. We have heard Mr. M. D. Rana, learned counsel appearing for the appellant and Mr. Disant Manoj Popat, learned counsel appearing for the respondents.

3. Learned counsel Mr. M. D. Rana has submitted that the petitioner has approached this Court seeking direction to the respondents to grant the petitioner pay scale as prescribed by the Pay Commission which was already made available to the Panchayat employees of various Panchayats. However, while dismissing the writ petition, the Learned Single Judge exercised suo motu powers under Article 227 of the Constitution of India and quashed and set aside the judgment of the learned District Judge, Junagadh in Regular Civil Appeal No.55/82 dated 4-4-1983 after almost 18 years, which was not the subject matter of the writ petition. He, has, therefore, submitted that the Learned Single Judge has travelled beyond his jurisdiction and hence, the said direction may kindly be quashed and set aside.

4. Learned counsel Mr. Popat has submitted that even if the observations made by the Learned Single Judge in the last paragraph are quashed, the petitioner is not entitled for the pay scale in view of the decision of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

5. We have heard learned counsel for the parties. The petitioner has filed the writ petition for the following reliefs :

(a) directing the respondent to grant the prescribed pay scale prescribed by the Pay Commissions to the petitioner which is already made available to the Panchayat employees of the various Panchayats and the State Govt. employees on regular establishment with arrears for the class IV post with increments;

(b) pending the admission, hearing and final disposal of this petition, to issue interim direction to the respondent Panchayat to fix the pay scale from the date of the petitioner on proposition of equal wage for equal work.

6. In the above view of the matter, the contention raised by the appellant regarding the last paragraph of the Learned Single Judge is required to be accepted in as much as the judgment of the learned District Judge, Junagadh in Regular Civil Appeal No.55/82 dated 4-4-1983 was not the subject matter of the petition and it would not be proper for this Court to exercise the suo-motu powers after almost 18 years. Therefore, the observations made by the Learned Single Judge in the last paragraph of the impugned judgment, referred to hereinabove, is required to be quashed and set aside.

7. Accordingly, the Letters Patent Appeal is partly allowed to the above extent. The impugned judgment and order of the Learned Single Judge so far as it dismissed the writ petition of the appellant is hereby confirmed. However, the observations made by the Learned Single Judge in the last paragraph, referred to

herein above, is hereby quashed and set aside. Rule is made absolute to the above extent. There shall be no order as to costs.