
(1995) 07 GUJ CK 0049
In the Gujarat High Court

Case No : Letters Patent Appeal No. 432 of 1995 in Special C.A. 12031 of 1994

Bhanmati Tapubhai Muliya

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1996) 1 GLR 54

Hon'ble Judges : B.N. Kirpal, C.J;H.L. Gokhale, J

Bench : Division Bench

Judgement

B.N. Kripal, C.J.—In the instant case, the appellant was appointed on ad hoc basis in November, 1984. It was further clarified in the appellants order that her appointment was only upto 31st of July, 1985.

2. Before 31st of July, 1985, the appellant filed a suit before the Civil Judge (Senior Division), Gondal and was successful in obtaining an interim injunction. After a period of 8 years, the suit was dismissed on 28th of April, 1993 and an appeal was filed. This appeal was dismissed and thereafter, the present writ petition has been filed which has been dismissed by the learned single Judge and against which the present Letters Patent Appeal has been filed.

3. In our opinion, the Civil Court initially was wrong in granting an injunction in the year 1985, when the appointment of the appellant was for a fixed period only, i.e., upto 31st July, 1985. It is contended by the learned Counsel for the appellant that in some other cases, relief has been granted, with or without the help of the Courts. Merely because wrong orders may have been passed in other cases can be no ground for allowing an illegality to be continued. The appointment of the appellant was, admittedly, for a fixed period, i.e., upto 31st July, 1985 and by ordering a status quo to be maintained, the civil Court has, in fact, extended the period of appointment beyond 31st of July, 1985, a jurisdiction which no Court can have. In matters like this, viz., termination of service or suspension, it has been repeatedly held by the Supreme Court that

interim injunction should not be readily granted. The principle behind this is very simple, viz., that if the suit is dismissed, can restitution be ordered? Obviously, if the period of appointment could not be extended beyond 31st of July, 1985, the question of any reinstatement being ordered with the vacation of injunction cannot arise. On the other hand, if injunction had been refused but ultimately, the plaintiff had succeeded, the Court would always order restitution, by awarding back wages, interest and promotions, in appropriate cases.

4. The grant of an injunction under Order XXXIX of the Code of Civil Procedure, 1908 has to be according to the known principles of law. Merely because hardship may be caused, cannot by itself be the sole ground for the Court to grant an injunction. There has to be a substantive right which requires protection and it is in those cases that an injunction should be granted. The Supreme Court in *Chandigarh Administration and another Vs. Jagjit Singh and another*, has clearly stated that the mere fact that an authority has passed a particular order in the case of another person similarly situated can never be a ground for issuing a writ in favour of the petitioner on the basis of discrimination. The same principle, in law, will apply even in a case, where another employee may have been successful in getting a judicial order which is contrary to established principles of law. The appellant is unable to satisfy this Court that she has any right to the post in question and the only right which is being claimed is founded on the basis of the injunction, which was granted and which allowed her to continue in service for 9 years.

5. Lastly, reference is made to a single Judge judgment of this Court in the case *Mukesh Pragjibhai Bhojani v. Director, Office of Rojgar & Talim Sanstha & Anr.* 1992 (1) GLH 218. It is submitted by the learned Counsel that the present appellant was also selected in the manner in which Mr. Bhojani was selected. In Bhojani's case, from the facts set out in the judgment, it appears that there were draft Recruitment Rules. In the advertisement, three essential qualifications were mentioned, one of them being that the candidate should have three years' experience as a Gujarati Stenographer. It was also mentioned in the advertisement that if suitable candidates, with requisite three years' experience were not available, then candidates having more than one year's experience would be considered for selection. The learned single Judge came to the conclusion that the Draft Rules could not be relied upon for making recruitment as that had not been made under Art. 309 of the Constitution of India.

6. With respect, we are unable to agree with the decision in the aforesaid Case of *M.P. Bhojani*. The reason for this is that it is now well-settled that in the absence of statutory Rules, the Government can make recruitment on the basis of Administrative Instructions. The draft Recruitment Rules are no different from Administrative Instructions. Secondly, the power of relaxation of a qualification is a discretionary power. The Government or the recruiting authority cannot be compelled to exercise this discretion when it chooses not to do so. In that case, ad hoc appointment was made because qualified Stenographer was not available.

By directing that relaxation should have been granted, the Court, in effect, exercised the jurisdiction of the appointing authority which it could not do. In that case, the appointment was for a fixed period, upto 31st of July, 1984, as in the present case, and, therefore, Shri Bhojani, like the appellant in the present case, had no right to continue after 31st of July, 1984. It is difficult to accept that his appointment for a fixed period was in violation of any law or any Constitutional provision. The decision in M.P. Bhojani's case is not correct and we overrule the same.

7. Before concluding, reference may be made to the decision of the Supreme Court in the case of State of Gujarat & Anr. v. P.J. Kampavat & Ors. 1993 II CLR 340, wherein it was held that persons appointed on a specific condition that their services will be purely temporary and liable to be terminated forthwith without any notice cannot seek any protection. In that case, the appointment was made for a limited period upto tenure of the Minister's establishment and the Supreme Court held that with the tenure of the Minister coming to an end, the services of the employee also ended simultaneously and that no order of termination as such was necessary for putting an end to their service, much less a prior notice. In the present case also, when the appointment is for a fixed period, i.e., upto 31st of July, 1985, the legal effect is that the appointment would automatically come to an end after 31st of July, 1985 and even a formal order terminating the appointment would not be necessary.

8. Another case, to which reference may usefully be made, is that of Dr. Arundhati Ajit Fargaonkar v. State of Maharashtra & Anr. 1994 II CLR 1113. In that case, the appellant was appointed after selection on 16th September, 1978 and the letter of appointment stated that the appointment was "..... on a purely temporary basis pending further orders as Lecturer in Dentistry at the B.J. Medical College, Pune from date of taking over charge....." She worked for about 9 years and then, her services were terminated. The appellant sought regularisation of her services and it was observed by the Supreme Court that eligibility and continuous working for howsoever long periods should not be permitted to overreach the law. The appellant was held not entitled to claim regularisation even though she had worked without break for 9 years.

9. For the aforesaid reasons, we find no merit in this Appeal and the same is dismissed.

No order in the Civil Application.

10. Appeal dismissed summarily.