

(2016) 01 GUJ CK 0176
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1303 of 2015 in Special Civil Application No. 6044 of 2014, Civil Application No. 11528 of 2015 in Letters Patent Appeal No. 1303 of 2015, Letters Patent Appeal No. 1304 of 2015 in Special Civil Application No. 6413 of 2014 and C

Bharwani Jitendra K. and Others	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Citation : (2016) 01 GUJ CK 0176

Hon'ble Judges : Jayant M. Patel, Actg. C.J. and V.M. Pancholi, J.

Bench : Division Bench

Advocate : Jigar G. Gadhavi, Advocate, for the Appellant; D.M. Devnani, AGP, for the Respondent

Final Decision : Partly Allowed

Judgement

V.M. Pancholi, J.—1. Both these appeals arise out of common judgment dated 04.09.2015 rendered by learned Single Judge in Special Civil Application No. 6044 of 2014 and allied matters by which learned Single Judge has dismissed all the petitions filed by the present appellants - some of the original petitioners and other petitioners.

2. Factual matrix of the case is as under:

"2.1. The advertisement for the post of Accountant, Deputy Accountant and Sub-Accountant came to be published on 12.11.2011 by Joint Selection Committee, Finance Department i.e. respondent No. 3 herein. The appellants - some of the original petitioners had applied for the said post. On 09.09.2012, examination for the aforesaid posts was held and thereafter merit-list was prepared on the basis of the result of the said examinations. Thereafter, in September-October 2012, appointments were given to the selected candidates as per the merit-list. The respondent authority thereafter posted the answer-keys on the website of the

Finance Department. When the answer-keys were posted on the website, the candidates came to know that there were certain errors in several answer keys posted on the website and therefore various representations were made by the concerned candidates during the period between November 2012 to September 2013. On receipt of the representations, the Joint Selection Committee decided to seek an opinion of the paper setters and the experts. After receipt of the opinion of the expert on 05.08.2013, Joint Selection Committee decided to convey to the Gujarat Technological University to prepare a revised list as per the correct answer-keys furnished by the experts. Such direction was given in September 2013. Immediately, the Gujarat Technological University prepared the result as per the corrected answer-keys and fresh merit list and waiting list were prepared by the Joint Selection Committee. Thereafter, on 10th January 2014, the Joint Selection Committee decided to cancel the earlier merit-list and instructed the Director of Account and Treasury to terminate the services of all the candidates. As a result of which, on 11.04.2014, the Director of Account and Treasury - respondent No. 2 herein, terminated the services of all the appellants and thereafter on 15.05.2014, revised merit-list along with waiting list were published on the website of the Finance Department. In the meantime, on 24.04.2014, the appellants along with other petitioners had preferred Special Civil Application No. 6044 of 2014, whereby the petitioners have challenged the order of termination passed by the respondent authority. By way of interim direction while issuing notice, learned Single Judge directed nine seats to be kept vacant for the petitioners. The learned Single Judge after hearing the counsel appearing for the original petitioners and the learned Government Pleader, by an impugned judgment dated 04.09.2015 dismissed all the petitions. Thus, out of nine petitioners of Special Civil Application No. 6044 of 2014, five petitioners have preferred Letters Patent Appeal No. 1303 of 2015, whereas out of ten petitioners of Special Civil Application No. 6413 of 2014, only two petitioners have preferred Letters Patent Appeal No. 1304 of 2015. As observed hereinabove, since the issue involved and the impugned judgment passed by the learned Single Judge is common, both these appeals are taken up for hearing together."

3. Heard learned advocate Mr. Jigar Gadhvi appearing for the appellants - some of the original petitioners and learned Assistant Government Pleader Mr. Devnani for respondent authorities.

4. Learned advocate Mr. Gadhvi mainly contended that the appellants have worked for more than one and half years from the date of their appointment on the post in question and thereafter the concerned respondent authorities, without giving an opportunity of hearing to the appellants and even without issuance of any notice, arbitrarily terminated the services of the appellants and therefore the impugned order passed by the respondent authorities is required to be quashed and set aside only on the ground of violation of principle of natural justice. It is settled legal position that if the party has to suffer civil consequence as a result of decision taken by the authority then in such a case the authority is

required to follow the principles of natural justice. In the present case, because of the impugned order of termination passed by the respondent authority, the appellants have suffered civil consequence and they have been rendered jobless. Hence, it was the duty of the respondent authority to give an opportunity of hearing to the appellants before passing the impugned orders. At this stage, he contended that learned Single Judge has not properly considered the aforesaid important aspect of the matter and therefore the impugned order passed by the learned Single Judge be quashed and set aside.

4.1. Learned advocate Mr. Gadhvi thereafter contended that for no fault on part of the appellants their services have been terminated on the premise that answer-keys were subsequently found to be incorrect after the appointment of the appellants and that fresh key-answers were prepared and the select list was revised. Learned advocate would contend that it is not the case of the respondent authority that the appellants were in any way responsible for the wrong answer-keys prepared by the respondent authority. It is not the case of the respondent authority that appellants have committed any fraud or malpractice and thereby got the appointment. Thus, it is submitted that when there is no fault on the part of the appellants, the respondent authority ought not to have terminated the service of the appellants and that too after a period of more than one and half years of service rendered by the appellants and further without even issuance of the notice to the affected parties.

4.2. Learned advocate Mr. Gadhvi would further submit that as a result of termination of services of the appellants, the appellants are rendered jobless. Most of the appellants are not in a position to appear in another examination after more than four years. This would seriously affect the economic security of families of the appellants. Some of the appellants are more than 35 years of age whereas some of them are more than 32 years of age and therefore at this stage it is difficult for them to get another job. Thus, it is submitted that this Court may take a sympathetic view in the facts and circumstances of the present case and if the matter is considered for even fresh appointment, the appellants shall not claim for back-wages during the period of termination.

4.3. In support of his aforesaid contentions, learned advocate Mr. Gadhvi has placed reliance upon the decisions rendered by the Hon"ble Supreme Court in the case of *Vikas Pratap Singh & Others v. State of Chhattisgarh & Ors.*, reported in , (2013) 14 SCC 494 and in the case of *Rajesh Kumar & Others v. State of Bihar & Others*, reported in , (2013) 4 SCC 690.

5. On the other hand, learned AGP Mr. Devnani has mainly contended that the decision of the respondent authorities to revise the select list on the basis of the corrected key-answers could not be termed as arbitrary or unreasonable in any manner. The errors in the key-answers were apparent and having come to the notice of the respondent authority, it became imperative for the respondent authorities to rectify the errors by preparing fresh key-answers. Because of the preparation of fresh key-answers and on the basis of which when the revised

merit-list was prepared, the appellants could not find place in the said revised list and therefore their services were terminated. The aforesaid exercise was undertaken after seeking the opinion of the expert committee constituted by the State Government. At this stage, learned AGP further urged that the Court may not grant relief to the appellants at the cost of meritorious candidates whose merit has been ignored because of incorrect answers declared in the key-answers at the first instance. Because of the preparation of the revised merit-list on the basis of the corrected key-answers if the appellants have not found place in the said list their services were required to be terminated and accordingly the same were terminated. Hence, no illegality is committed by the respondent authorities. Learned AGP further contended that in the aforesaid circumstances it is not necessary for the respondent authorities to observe the principles of natural justice as contended by learned advocate for the appellants. He further submitted that the Court should be slow in entering into the controversy which relates to the examination or test held for the appointment to a particular post. Therefore, this Court may not grant relief to the appellants at the cost of the meritorious candidates. Learned AGP, therefore, submitted that the learned Single Judge has rightly dismissed the petitions filed by the present appellants and therefore no illegality is committed by learned Single Judge while exercising the discretion and therefore the present appeals be dismissed.

5.1. In support of the aforesaid contentions, learned AGP has placed reliance upon the following decisions rendered by the Hon''ble Supreme Court:

"(i) In case of Union of India & Ors. v. Anand Kumar Pandey & Ors., reported in , (1994) 5 SCC 663.

(ii) In case of Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education & Ors., reported in , (2003) 8 SCC 311

(iii) In case of Chairman, All India Railway Recruitment Board & Anr. v. K. Shyam Kumar & Ors., reported in , (2010) 6 SCC 614

(iv) In case of Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Limited & Ors. v. Surendra Nath Pandey & Others, reported in , (2011) 15 SCC 81."

6. We have considered the submissions canvassed on behalf of the learned advocates appearing for the parties. We have also gone through the material placed on record, impugned order passed by the learned Single Judge and the decisions relied upon by the learned advocates appearing for the parties.

7. From the record it has emerged that the appellants appeared in the examination for the post in question as per the advertisement issued by the respondent No. 3. Their names appeared in the merit-list at the first instance and they got appointment on the basis of the merit-list. The appellants worked on the post in question for a period of one and half year. In the meantime, representations were received by the respondent authorities about the wrong

key-answers for some of the questions and therefore the concerned respondent authorities has taken the help of the experts and found that certain answer-keys were incorrect. Accordingly, decision was taken to rectify the said mistake and on the basis of correct answer-keys, revised merit-list was published and in the said revised merit-list the appellants could not get the place. Accordingly, their services were terminated. It has also emerged from record that before terminating the services of the appellants the respondent authorities have not issued any notice to the appellants nor any opportunity of hearing was given to them. Thus, in view of the aforesaid admitted position it is clear that the respondents have violated the principles of natural justice.

8. From the affidavit filed by the respondent authorities and from the submissions canvassed on behalf of the learned AGP, it is also clear that it is not the case of the respondent authorities that the appellants have played any fraud or adopted any malpractice. It is also an admitted position that it was the mistake on the part of the concerned authority while preparing the answer-keys on the basis of which the merit-list was prepared in which the names of the appellants were reflected and they got the appointment. It is also true that because of the mistake of the concerned authority while preparing the key-answers, meritorious candidates should not suffer and therefore there is no fault on the part of the respondent authorities in correcting the key-answers and on the basis of which in preparing the revised merit-list. Thus, we are of the opinion that the respondent authorities have not committed any illegality while preparing the revised merit-list on the basis of the corrected key-answers.

9. Thus, in view of the aforesaid facts and circumstances of the case, the issue which this Court has to decide is whether the appellants are entitled to claim any relief from this Court?

10. As observed hereinabove, learned AGP has placed reliance upon various decisions rendered by the Hon"ble Supreme Court. In the case of Anand Kumar Pandey & Ors. (supra), there was large-scale copying at a particular centre and therefore after preparation of the select list when the complaint was received by the Railway Authorities, inquiry was conducted and it was found that the complaint was correct and therefore the Railway Authorities decided to deny the appointment to the candidates who were qualified in the written examination from that particular centre and fresh written examination was held. Thus, this decision relied upon by learned AGP is not applicable to the facts of the present case.

11. In the case of Ram Preeti Yadav (supra), the Hon"ble Supreme Court has held that once the fraud is proved, it will deprive the person of all advantages or benefits obtained thereby and in such cases it is not necessary for the authority to observe the principles of natural justice. This decision is also not applicable to the facts of the present case.

11.1. Similarly, in other decisions relied upon by the learned AGP it was found

that the concerned candidates played fraud or adopted malpractice and therefore the Hon''ble Supreme Court in such background held that if malpractice or fraud is played by the candidates it is not necessary for the authority to observe the principles of natural justice.

12. Admittedly, in the present case, it is not the case of the respondent authorities that the present appellants have played any fraud or malpractice during the course of the examination or in preparation of key-answers. It was only a mistake on the part of the respondent authorities in preparing the key-answers. Thus, in the facts of the present case the respondent authorities were duty bound to follow the principles of natural justice and without giving opportunity of hearing to the appellants their services ought not to have been terminated.

13. In the case of Rajesh Kumar & Others (supra) relied upon by learned advocate Mr. Gadhvi for the appellants, the Hon''ble Supreme Court in similar set of facts, observed in para 22 as under:

"22. In the result, we allow these appeals, set aside the order passed by the High Court and direct that:

(1) answer scripts of candidates appearing in "A" series of competition examination held pursuant to advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) CN Sinha and Prof. KSP Singh and the observations made in the body of this order and a fresh merit list drawn up on that basis.

(2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.

(3) In case writ petitioners-respondent Nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

(4) Such of the appellants as do not make the grade after reevaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No. 1406 of 2006 and the second selection held pursuant to advertisement No. 1906 of 2006.

(5) The needful shall be done by the respondents - State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them."

14. The facts of the present case are almost similar to that of the case decided by the Hon''ble Supreme Court in Vikas Pratap Singh & Others (supra), wherein

the Hon''ble Supreme Court held and directed as under:

"27. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

29. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.

30. We clarify that their appointment shall for all intents and purpose be fresh appointment which would not entitle the appellants to any back wages, seniority or any other benefit based on their earlier appointment.

31. The order passed by the High Court shall stand modified to the above extent. Appeals disposed of. There shall be no order as to costs."

15. Keeping in mind the aforesaid decisions rendered by the Hon''ble Supreme Court in *Rajesh Kumar & Others (supra)* and *Vikas Pratap Singh & Others (supra)*, we are of the opinion that in the present case also the error committed by the respondent authorities in the matter of preparation of the key-answers could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit-list nor in preparation of the erroneous key-answers. Moreover, the appellants have worked on the post in question for more than one and half years and because of termination of the services of the appellants it would not only affect the economic security of the appellants and their dependants but also adversely affect their careers more particularly when most of the appellants are more than 32 years of age and some of them are more than 35 years of age. Thus, if their termination orders are not quashed and set aside, it would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous preparation of the answer scripts. However, at the same time, we are of the

opinion that their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list. We are informed that because of the interim relief granted by the learned Single Judge and thereafter by this Court, five posts of Accountant are kept vacant so far as Letters Patent Appeal No. 1303 of 2014 is concerned. Similarly, two posts of Accountant are kept vacant so far as Letters Patent Appeal No. 1304 of 2014 is concerned. Thus, total seven posts are kept vacant by way of interim orders.

16. In view of the aforesaid discussion, the following order:

"(a) The impugned orders of termination of service of the appellants passed by the concerned respondent authorities are quashed and set aside.

(b) The respondents are directed to appoint the appellants herein in the revised merit-list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.

(c) The appellants shall be accommodated on seven posts which are kept vacant as per the interim orders passed by this Court.

(d) It is clarified that the appointments of the appellants shall for all intents and purpose be fresh appointment which would not entitle the appellants to any back wages, seniority or any other benefit based on their earlier appointment.

(e) The order passed by the learned Single Judge shall stand modify to the aforesaid extent qua the present appellants only as the other original petitioners have not approached before this Court."

17. The appeals are allowed to the aforesaid extent.

18. In view of the order passed in main Letters Patent Appeal, Civil Applications do not survive and accordingly stand disposed of.