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**(2010) 09 GUJ CK 0057**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 1930 of 2004**

Bhavnagar Municipal Corporation

APPELLANT

Vs

Munindar Shantilal Dave and Others

RESPONDENT

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**Date of Decision : 30-09-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation : (2010) 09 GUJ CK 0057**

**Hon'ble Judges : Mukesh R. Shah, J**

**Bench : Single Bench**

**Advocate : H.S. Munshaw, for the Appellant; Mamta R. Vyas, for the Respondent**

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## **Judgement**

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the Petitioner Bhavnagar Municipal Corporation has prayed for an appropriate writ, direction and order quashing and setting aside the impugned judgment and award dated 14.5.2003 passed by the Industrial Tribunal, Bhavnagar passed in Reference (ITB) No. 159 of 1999 by which the learned Tribunal has partly allowed the said reference directing the Petitioner to promote the concerned workmen to the post of Sub-Inspector w.e.f. 1.6.1968 and to fix their salary in the pay scale of Sub-Inspector without consequential benefits of revised pay scale w.e.f. 1.2.2002 and to treat the period between 1.6.1998 to 31.1.2002 as Sub- Inspector notionally.

2. The concerned workmen were serving as a Light Inspector in the light department and an industrial dispute was raised by the concerned workmen to promote them on the post of Sub-Inspector and the said dispute was referred to Industrial Tribunal, Bhavnagar, which was registered as Reference being No. (ITB) 159 of 1999. The dispute which was referred to the Industrial Tribunal was, whether all those Light Inspectors who have completed five years of service should be promoted to the post of Sub-Inspector or not? and whether they should be paid the arrears and to decide and determining the promotional channel. It is the case of the concerned workmen that all of them were working

as Light Inspectors and have passed SSC Examination and are qualified to become Sub-Inspectors and they are entitled to promotion to the post of Sub-Inspector. It was also the case on behalf of the concerned workmen that as such there are no rules for promotion to the post of Sub-Inspectors and that even the unqualified persons from other departments are also promoted to the post of Sub-Inspectors. Therefore, it is requested to allow the Reference.

3. The Reference was opposed by Petitioner by submitting that as such there is no promotional post from the post of Light Inspectors in the light department to the post of Sub-Inspectors. It was also submitted that the post of Sub-Inspector are in the Tax Collected Department and Octroi Department etc. and pay scale and channel of promotions are altogether different. It was submitted that there is no post of Sub-Inspectors in the Light Department. Therefore, it was requested to dismiss the Reference.

4. That the learned Tribunal by impugned judgment and award partly allowed the said reference by directing the Petitioner to promote the concerned workmen to the post of Sub-Inspector w.e.f. 1.6.1998 and to even their salary in the pay scale of Sub-Inspector and to pay only arrears w.e.f. 1.2.2002 however to consider their promotions as Sub-Inspector for the period between 1.6.1998 to 31.1.2002 as Sub-Inspector notionally. Being aggrieved and dissatisfied with the impugned judgment and award passed in by the Industrial Tribunal, Bhavnagar, the Petitioner -Corporation has preferred the present Special Civil Application under Article 227 of the Constitution of India.

5. Shri Munshaw, learned advocate for the Petitioner has vehemently submitted that the Tribunal has materially erred in directing the Petitioner to promote the concerned workmen to the post of Sub-Inspector. It is submitted that the Tribunal has materially erred in not properly appreciating the fact that in the Light Department there was no promotional post of Sub-Inspector and that the post of Sub-Inspectors are in the Tax Collection Department and other Departments the channel of promotions are altogether different. It is submitted that even Respondent No. 3 was not holding qualification of SSC and therefore, he cannot be promoted as Sub-Inspector which is higher post to senior clerk. Therefore, it is requested to allow the present Special Civil Application.

6. Petition is opposed by Ms. Mamta R. Vyas, learned advocate for the Respondent. It is submitted that as such the Petitioner did not produce any rules for promotion to the post of Sub-Inspector and therefore, in absence of any rules for promotion to the post of Sub-Inspector, Tribunal has rightly passed the order directing the Petitioner to promote the concerned workmen to the post of Sub-Inspector considering the fact that other persons from other departments are promoted to the post of Sub-Inspector though they are not having requisite qualification of Sub-Inspector. It is further submitted that as such there are no different cadres in different departments as sought to be contended on behalf of the Petitioner. Therefore, it is requested to dismiss the present Special Civil Application by submitting that this is not fit case to interfere with the impugned

judgment and award passed by the Tribunal under Article 227 of the Constitution of India.

7. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that concerned workmen were serving as Light Inspector in the Light Department and they sought promotion to the post of Sub-Inspector. It appears that the post of Sub-Inspector is an administrative post. Nothing is on record that there was a promotional channel to the post of Sub-Inspector in the light department. When the concerned workmen who were serving as Light Inspector in the light department sought promotion to the post of Sub-Inspector in fact, it was for them to prove and establish that from the post of Light Inspector the promotional channel is to the post of Sub-Inspector. As such Respondents have failed to establish the same. It appears that the learned Tribunal has passed the impugned judgment and award solely on the ground that Petitioner has not produced any rules for promotion to the post of Sub-Inspectors. Merely because the Petitioner did not produce any recruitment rules for promotion to the post of Sub-Inspector the Tribunal could not have automatically and straightway passed an order directing the Petitioner to promote concerned workmen to the post of Sub-Inspector, the post which was not in existence in the light department merely on the ground that concerned workmen are having requisite qualification of Sub-Inspectors. It is submitted that even Respondent No. 3 was not having requisite qualification on the post of Sub-Inspector as he had not passed SSC Examination. In any case, the Tribunal is not justified in passing an order directing the Petitioner to promote the concerned Respondent to the post of Sub-Inspector straightway and to put them in the pay scale of Sub-Inspector. The impugned judgment and award prima facie seems to be beyond the jurisdiction of the Tribunal to grant such relief which cannot be sustained.

8. In view of the above and for the reasons stated above, petition succeed and the impugned judgment and award dated 14.5.2003 passed by the Industrial Tribunal, Bhavnagar passed in Reference (ITB) No. 159 of 1999 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No costs.