
(1983) 04 GUJ CK 0002
In the Gujarat High Court

Bipinchandra M. Sheth

APPELLANT

Vs

Gujarat State Financial Corporation

RESPONDENT

Date of Decision : 27-04-1983

Acts Referred:

State Financial Corporations Act, 1951 — Section 40, 40

Citation : (1984) 1 GLR 1

Hon'ble Judges : P.D. Desai, Acting C.J.; M.B. Shah, J

Bench : Division Bench

Judgement

P.D. Desai, Actg. C.J.

1. On December 29, 1979, the petitioner was appointed as Manager and posted in the Appraisal section of the respondent-Corporation. The appointment was subject to several conditions, one of them being that it was on probation "in the first instance" for a period of twelve months. By an order made on March 10, 1980, the period of probation was extended upto March II, 1980 and by another order passed on the same day, the petitioner's services were terminated with effect from the next day on account of "unsatisfactory performance". The petitioner challenged the termination in a writ petition which was rejected by the learned single Judge at the final hearing. Hence the present appeal.

2. In exercise of the powers conferred by Section 40 of the State Financial Corporation Act, 1951, the respondent-Corporation has made Regulations called "The Gujarat State Financial Corporation (Staff) Regulations, 1961". Chapter 11, Section 2 of the said Regulations deals with "Probation". Regulation 15, which finds place in the said section, reads as under:

15. Period of probation - (1) An Officer directly recruited to the Corporation's service shall be required to be on probation for a period which shall not be less than one year and more than two years as may be fixed at the time of the appointment.

(2) Employees not included in Sub-regulation (1) of this regulation shall, on their

first appointment in the Corporation's service, be required to be on probation for one year.

3. Mr. Anand submitted that the last few words of Sub-regulation (1), namely, "as may be fixed at the time of the appointment" indicate that the extent or duration of the period of probation can be determined only at the time of appointment and that it cannot be varied subsequently. In other words, the contention was that the power with regard to the fixation of period of probation was required to be exercised once and for all at the time of appointment and that there was no power in the appointing authority to extend the period of probation at any subsequent stage. We are unable to agree. On a true and correct interpretation, the sub-regulation leaves discretion with the appointing authority to determine the period of probation between the two specified limits. The period cannot be less than one year but it also cannot exceed two years. The occasion for the exercise of power with regard to the fixation of period of probation is when the appointment takes place. This is manifest from the concluding words of the sub-regulation. Those words cannot be read, however, as providing that the extent or duration of probation must necessarily be determined once and for all on that occasion. The appointing authority may, in exercise of the power on that occasion, finally determine the extent or duration of probation or it may fix the period of probation initially (such period being not less than one year) and reserve the power to extend the period subsequently but so as not to exceed two years. In the first category of cases the power having been fully and finally exercised on that occasion, is exhausted. In the second category, the power having been exercised conditionally or provisionally on that occasion, is not exhausted and it may be exercised from time to time thereafter so as to extend the period of probation subject, however, to the limitation that such exercise must be within the specified period of two years and further that the probation cannot be extended, in any case, beyond the said outer limit. This being the true meaning and content of the sub-regulation, Mr. Anand's submission must be rejected.

4. In the instant case, while appointing the petitioner, the respondent-Corporation fixed one year as the period of probation "in the first instance". By the very terms of the exercise of power on that occasion, it was clearly indicated that the period of probation was not finally fixed. The power was reserved by the respondent-Corporation unto itself to extend the period at a later stage. Of course the probation period could not have been extended beyond two years and that has not "been done in the instant case. The services of the petitioner were terminated on the ground of unsatisfactory performance during the extended period of probation. The termination was, therefore, valid.

5. Having regard to this legal and factual position, there is no substance in the appeal and it is summarily dismissed.