

(2004) 12 GUJ CK 0072
In the Gujarat High Court

Case No : Civil Application No. 7864 of 2004 in Letters Patent Appeal No. 1829 of 2004

B.L. Trivedi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-12-2004

Acts Referred:

Gujarat Civil Services (Discipline and Appeal) Rules, 1971 — Rule 6
Gujarat Civil Services Tribunal Act, 1972 — Section 11, 19, 21
Gujarat Panchayat Service (Discipline and Appeal) Rules, 1964 — Rule 5

Citation : (2004) 12 GUJ CK 0072

Hon'ble Judges : Sharad D. Dave, J;B.J. Shethna, J

Bench : Division Bench

Advocate : S.K. Jhaveri, for the Appellant; H.R. Dave, A.G.P. for Respondent No. 1 and H.S. Munshaw, for the Respondent

Judgement

B.J. Shethna, J.—The Applicant - Appellant Shri B.L. Trivedi, original respondent No. 1 in a writ petition, filed by the petitioner - State of Gujarat, present respondent No. 1, has challenged, in above LPA No. 1829 of 2004, the Judgment and order dated 27.8.2004, passed by Ms.R.M. Doshit,J., in Special Civil Application No. 1852 of 2004, whereby Her Lordship allowed the writ petition filed by the State of Gujarat and quashed and set aside the impugned Judgment and order dated 16.6.2003, passed by the Gujarat Civil Service Tribunal (for short "the Tribunal") in Appeal No. 19 of 1997, filed by the present Applicant - Appellant, only on the ground that the learned Tribunal had no jurisdiction to entertain the Appeal.

2. The said LPA is admitted by the Division Bench consisting of A.R. Dave & K.A. Puj, JJ. on 26.10.2004 and this Civil Application was admitted by the same Bench on 26.10.2004 by issuing Rule on it, making it returnable on 26.11.2004 and by way of Ad. interim relief it was directed that operation and implementation of the Judgment, delivered by the learned Single Judge, shall be stayed so far as the observation with regard to jurisdiction of the Tribunal is concerned. Accordingly,

the matter was placed on 26.11.2004 before this Court and at the request of learned Counsel for the parties it was adjourned till today i.e. on 7.12.2004 and the Ad. interim relief, granted earlier, was ordered to continue till today.

3. Today, this Application for final disposal for confirmation of Ad. interim relief was heard. Learned Counsel Shri S.K. Jhaveri for the applicant - original appellant submitted that once the co-ordinate Bench of this Court found strong prima facie case in his favour and admitted his Appeal then the Ad. interim relief, in above Civil Application, granted earlier by another Bench, be confirmed. It is true that the previous Bench has admitted the Appeal, filed by the applicant appellant on 26.10.2004, and also admitted the present Application by issuing Rule on it with an Ad. interim relief, as stated hereinabove, granted in favour of the applicant. However, we were of the clear opinion that for confirmation of Ad. interim relief this court has also to apply its mind irrespective of the fact as to whether main Appeal is admitted by the other Bench or not. Therefore, before confirming the Ad.interim relief, granted in favour of the applicant appellant, we have carefully gone through the Judgment and order passed by the learned Single Judge allowing the writ petition filed by the State of Gujarat, respondent No. 1 herein. Having carefully gone through the same, we find that the learned single Judge allowed the writ petition, filed by the present respondent No. 1 - State of Gujarat, only on the ground of jurisdiction as Her Lordship was of the considered opinion that the learned Tribunal who entertained and allowed the Appeal, filed by the present Applicant, had no jurisdiction to entertain his Appeal in respect of grant of higher pay scale, as only in the 13 subjects enumerated in the Schedule to the Gujarat Civil Service Tribunal Act, 1972, appeal would lie to the Tribunal. This contention raised by the learned AGP for the present respondent No. 1 - original petitioner State of Gujarat was accepted by the learned Single Judge as the learned counsel Shri Supehia, who had appeared in a writ petition before the learned Single Judge for the respondent No. 1 present applicant, also conceded that the subject of grant of higher pay scale was not covered by the said Schedule to the aforesaid Act.

4. However, today, before us, learned Counsel Shri Jhaveri for the applicant - original appellant, submitted that his case would definitely fall, at least, in two items at No. 4 - Non-promotion to a higher post and No. 11 - withholding of increments, out of 13 subjects of Schedule attached to the Act of 1972. Therefore, the Appeal filed by the present applicant - appellant before the Tribunal was maintainable, and the learned Single Judge has wrongly allowed the writ petition, filed by the State of Gujarat, and set aside the order passed by the Tribunal only on the ground that the Tribunal had no jurisdiction to entertain the Appeal in a case of higher pay scale. Apart from the fact that this contention was never raised before the learned Single Judge, prima facie at this stage, we are of the considered opinion that this submission has no force. 13 subjects mentioned in the Schedule to the Act of 1972 relates to the cases of --(1) Dismissal or removal from service or reduction in rank; (2) Reduction of pay or to a lower time-scale of pay; (3) Non-confirmation in service; (4) Non-promotion to a

higher post; (5) Reversion to a lower post; (6) Discharge from service; (7) Compulsory retirement within the meaning of Rule 6 of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971 or Rule 5 of the Gujarat Panchayat Services (Discipline and Appeal) Rules, 1964 as the case may be); (8) Reduction to a lower stage in the time-scale of pay for a specified period; (9) Censure; (10) Reduction in or withholding the pension or denial of the maximum pension admissible under the rules; (11) withholding of increments; (12) Stoppage at Efficiency Bar in time-scale of pay; (13) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order. We are concerned with Sections 11, 19 and 21 of the Act of 1972. Grant of higher pay scale is not a subject included in the Schedule. Therefore, prima facie we do not find any substance in this submission. At this stage Shri Jhaveri, learned Counsel for the applicant, submitted that on behalf of the State of Gujarat, original petitioner, no where contention regarding jurisdiction was raised and without raising that specific contention in the writ petition, at the time of hearing of the main writ petition this contention regarding jurisdiction on the part of the Tribunal was raised by the learned AGP, at the time of hearing of the writ petition. Therefore, they were not prepared to meet with the said argument. At the cost of repetition we may state that the learned Counsel for the present applicant - original respondent No. 1 in the writ petition had in fact conceded that the Tribunal had no jurisdiction.

5. Shri Jhaveri then contended that number of matters are filed before the Service Tribunal and if this Court vacate the Ad.interim relief then it would come in the way of several persons. He, therefore, submitted that by confirming the Ad.interim relief the main LPA be immediately heard and decided. He also submitted that he is ready to go on with his Appeal even day-after-tomorrow. It is true that by vacation of Ad.interim relief, others who have approached the learned Tribunal by way of Appeal in case of grant of higher pay scale may suffer. But, in our considered opinion, that should not be a ground for this Court to vacate the Ad.interim relief when prima facie at this juncture this Court is fully convinced that though the Division Bench of this Court has admitted the Appeal, the view taken by the learned Single Judge seems to be just and proper.

6. In view of the above discussion this Civil Application is dismissed and the Ad.interim relief, granted earlier in the matter, stands vacated forthwith. Rule discharged. No order as to costs.

7. This bring us to the request made by Shri Jhaveri for fixing the early date of hearing of his Appeal as, according to him, he is ready and willing to go on with the main Appeal day-after-tomorrow. The above Appeal is a recent Appeal of 2004 which is admitted only on 26.10.2004, just before 1-1/2 months. There are many genuine and urgent cases pending before this Court since long, therefore, at this stage oral request of Shri Jhaveri to fix the above Appeal for final hearing immediately day-after-tomorrow cannot be acceded to at this stage and accordingly the said request is rejected.

8. At this stage, the request is made by Shri Jhaveri for the applicant to stay this order as he wants to approach the Hon"ble Apex Court. Having regard to the facts and circumstances of the case, the request is rejected.