

(2016) 03 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 2032 of 2002

Commissioner of Fisheries

APPELLANT

Vs

Jitendra Shantilal Pathak

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211

Gujarat Civil Services Tribunal Act, 1972 — Section 10, Section 12, Section 3

Citation : (2016) 03 GUJ CK 0057

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : Swapneshwar Gautam, AGP, for the Appellant; C.B. Dastoor, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

V.M. Pancholi, J.—1. By way of this petition, petitioner-Commissioner of Fisheries-State of Gujarat, Gandhinagar has challenged the order dated 07.05.2001 passed by Gujarat Civil Services Tribunal, Gandhinagar (hereinafter referred to as the "Tribunal" for the sake of brevity) in Appeal No. 75 of 1998, by which, the Tribunal allowed the appeal and thereby directed the present appellant to give the deem date of promotion from 15.11.1997 to the present respondent when his juniors were promoted and it was also directed to fix his pay accordingly in the cadre of Office Superintendent, Class-III and directed to pay consequential benefits within stipulated time limit.

2. Heard learned AGP Mr. Gautam for the petitioner and learned advocate Mr. C.B. Dastoor for the respondent.

3. Learned AGP submitted that by an order dated 15.11.1997 juniors of the respondents-original appellants were promoted from Head Clerk cadre to Office of Superintendent, Class-III cadre. At that time, the case of the respondent herein was not considered because the concerned departmental promotion committee considered the confidential reports of the respondent for last 5 years.

Confidential reports of the petitioner for two years were adverse and there were adverse remarks for 6 months and for a period of another 8 months and therefore, when the Departmental Promotion Committee (hereinafter referred to as "DPC" for short) which met on 12.06.1997, after considering his confidential reports, opined that the respondent is not fit for promotion. On 15.11.1997, the order was passed superseding the respondent.

4. Learned AGP thereafter contended that meeting of the DPC was also held for considering the case of the petitioner for higher grade scale. However, relying upon the adverse remarks and the confidential report of the respondent, the said Committee has not recommended the case of the respondent for higher grade scale. The said decision was taken on 05.07.1996. The present respondent therefore challenged the said decision of the present appellant by filing Appeal No. 351 of 1996 before the Tribunal. The Tribunal after considering the very same adverse remarks held that when the DPC considered the adverse remarks, which has been duly confirmed and were considered by DPC, there is no reason to interfere with the decision taken by the present petitioner, which was taken on the recommendation of DPC. Accordingly, the appeal preferred by the present respondent was dismissed by the Tribunal by an order dated 29.05.1998.

5. Now coming to the facts of the present case, learned AGP submitted that the Tribunal by way of the impugned order, passed on 07.05.2001, now held that the DPC ought not to have relied upon the confidential reports of the present respondent for a period of 6 months and 8 months respectively. The Tribunal thereafter allowed the appeal preferred by the respondent and thereby direction was given to the present petitioner to give deemed date of promotion to the present respondent from 15.11.1997.

6. At this stage, it is contended that the present respondent did not challenge the order dated 29.05.1998 passed by the Tribunal in Appeal No. 351 of 1996, nor the present respondent challenged the decision dated 05.07.1996 taken by the present petitioner by which, higher grade scale was not granted to the respondent relying upon the report given by the DPC based on adverse remarks made in the confidential report of the respondent. Thus, the decision taken by the present petitioner as well as the decision rendered by the Tribunal in Appeal No. 351 of 1996 became final and has attained finality.

7. It is thus, contended that now the DPC has also placed reliance upon the adverse remarks contained in the confidential report of the present respondent during last 5 years and thereby, the DPC has formed the opinion that the respondent is not found fit for promotion. It is not proper for the Tribunal to give the direction to the present petitioner to give deem date promotion to the respondent from the date from which his juniors were promoted. The Tribunal has therefore committed a grave error while giving such direction to the petitioner and such decision is perverse, therefore, the present petition be allowed and the order dated 07.05.2001 passed by the Tribunal in Appeal No. 75 of 1998 be quashed and set aside.

8. On the other hand, learned advocate Mr. C.B. Dastoor appearing for the respondent mainly submitted that the respondent had not challenged the order dated 29.05.1998 passed by the Tribunal in Appeal No. 351 of 1996 because the Tribunal has no jurisdiction to entertain the appeal where the subject matter was denial of higher grade scale to the present respondent. Thus, the said order which was passed by the Tribunal was a nullity and without jurisdiction. Thus, the present respondent thought it fit not to challenge the said order before this Court. Merely because the respondent has not challenged the said order which was nullity, it cannot be said that in the present proceedings, when the Tribunal has given the direction to the present petitioner to give deem date of promotion to the present respondent after considering the adverse remarks in the confidential report of the respondent, Tribunal has committed any illegality.

9. Learned advocate Mr. Dastoor thereafter submitted that present petition is not maintainable as the same is filed by Commissioner of Fisheries and not by the State Government. The Tribunal is exercising powers of the State Government and therefore, the order of the Tribunal can be said to be an order passed by the State Government and therefore, the officer subordinate to the State Government viz. Commissioner of Fisheries has no authority to challenge the said order by filing the present petition. He therefore, submitted that present petition be dismissed only on this ground.

10. In support of the aforesaid contention, learned advocate has placed reliance upon the decisions rendered by the Hon"ble Division Bench of this Court in the case of R.M. Patel v. State of Gujarat, reported in , 2015 (2) GLR 1242 and more particularly, paragraph No. 23, which reads as under:

"23. We have already held that a writ petition at the hands of the State Government, if it is otherwise aggrieved, calling in question the decision of the Tribunal, would be maintainable. Our view is supported by the decision of the Supreme Court in case of Roop Chand (Supra). Besides, the present is not a case where the writ petition was filed by an officer subordinate in rank than the officer whose order was challenged. It was a case where the Government itself approached the High Court by filing writ petition. For all these reasons, the challenge to the maintainability of the State Governments writ petitions must fail."

11. Learned advocate Mr. Dastoor thereafter contended that now the respondent has been promoted by an order dated 30.12.2000 and thereafter, higher grade scale was also granted to the respondent by an order dated 19.03.2007, passed by the petitioner. Thus, the only question is with regard to giving deem date of promotion to the respondent from 15.11.1997 and not from 30.12.2000. Thus, Tribunal has not committed any illegality. Hence, the present petition be dismissed.

12. Learned advocate Mr. Dastoor thereafter submitted that the remarks made in the confidential report of the respondent during the period between 04.07.1992

to 21.01.1993 and during the period between 01.04.1993 to 03.10.1994 and 18.10.1993 to 31.12.1993 cannot be said to be an adverse remarks. Learned advocate referred to the aforesaid remarks which are produced at page Nos. 46 and 51 respectively with the compilation. After referring to the same, learned advocate has referred to the guidelines issued by the State Government by circular dated 19.12.2000, which is produced at page 175 of the compilation and also referred the circular dated 01.05.2004, which is produced at page 177 of the compilation. After referring to the aforesaid guidelines issued by the State Government, learned advocate submitted that the concerned authority has not followed the said guidelines while making adverse entries in the confidential report of the respondent. He further contended at this stage that even the remarks made by the concerned authority cannot be said to be an adverse remarks and the reviewing authority has without issuance of notice to the respondent herein, made certain remarks in the confidential report of the respondent, which is in violation of principles of natural justice and therefore, the DPC ought not to have considered the said entries as adverse remarks. Thus, the DPC has wrongly considered such remarks on the basis of which the present petitioner has taken a wrong decision of not promoting the respondent on higher post, the Tribunal has rightly given the direction to the petitioner to give deemed date of promotion to the respondent from the date on which his juniors were promoted. Thus, no illegality is committed by the Tribunal and therefore, the present petition be dismissed.

At this stage, it is further submitted by learned advocate for the respondent that in case of one Mr. R.H. Parmar, there were certain adverse remarks made in his confidential report. Though the Criminal Case was pending against him, he was not considered fit for promotion by the concerned DPC, which met on March 1997, the petitioner has given deemed date promotion to said Mr. Parmar on 07.10.2008. However, it is fairly admitted by learned advocate Mr. Dastoor that said Mr. Parmar was acquitted by the Criminal Court and therefore, such promotion was granted to him. The said documents are produced at pages 243 and 247 of the compilation. Thus, it is contended that discriminatory treatment was given to the respondent. Hence, the Tribunal has not committed any error while allowing the appeal preferred by the respondent.

13. Learned advocate Mr. Dastoor lastly contended that the scope of judicial review is very limited to interfere with the order passed by the Tribunal when the Tribunal has considered the entire material produced before it and granted direction to the present petitioner, this Court may not interfere with the same. Learned advocate has placed reliance upon the following decisions in support of the aforesaid contentions.

"? In case of Union of India v. Ajitkumar Singh, reported in , 2004 (2) GLR 952

? In case of N.I. Mehta, Ex-Dy. Commissioner of Industries v. State of Gujarat and Another, reported in , 1997 (1) GLH 810

? In case of H.B. Desai v. State of Gujarat and others reported in , 1997 (2) GLH 16

? In case of Collector, Rajkot v. Bavabhai Karshanbhai Patel, reported in , 2002 (3) GLH 599

? Order dated 04.03.2011 passed by this Court in Special Civil Application No. 5356 of 2001"

14. I have considered the submissions canvassed on behalf of learned advocates appearing for the parties. I have also gone through the material produced on record and the decisions upon which the reliance is placed by learned advocates appearing for the parties.

15. It would emerge from the record that there were adverse entries in the Annual Confidential Reports of the respondent for the years 1992-93 and 1993-94. Relying upon the aforesaid entries, when the DPC met for considering the case of the respondent employee for grant of higher grade scale, the said committee had not recommended the case of the respondent for such benefit. Thus, on the basis of the recommendation of the DPC, the petitioner did not grant higher grade scale to the respondent. He therefore challenged the said order by filing appeal No. 351 of 1996 before the Tribunal. Tribunal by an order dated 29.05.1998, dismissed the appeal filed by the respondent, wherein, the adverse entries made in the annual confidential report of the respondent for the aforesaid period were considered. It is an admitted position that the respondent herein had not challenged the said order passed by the Tribunal before the higher forum. The contention is raised by the learned advocate appearing for the respondent that the Tribunal has no jurisdiction to consider the dispute of the higher grade scale and therefore, the order passed by the Tribunal is nullity and the said order is void ab initio and therefore, the respondent has not challenged the said order before the higher forum. The aforesaid contention is required to be rejected on the ground that even if the Tribunal has no jurisdiction to consider the dispute with regard to higher grade scale as contended by the learned advocate for the respondent, even then, the respondent ought to have challenged the said order before the higher forum or the order passed by the petitioner, by which higher grade scale was denied to the respondent on the basis of the report of the DPC. The respondent could have challenged the order of the petitioner by filing a petition before this Court, pointing out that he has wrongly approached before the Tribunal and therefore, he is now approaching before this Court. However, respondent has not challenged the order of the Tribunal before higher forum, nor he had challenged the order passed by the petitioner before this Court or before the forum which has jurisdiction to entertain such dispute. Hence, the order dated 29.05.1998 passed by the Tribunal and/or order dated 05.07.1996 by which, the present petitioner has not granted higher grade scale to the respondent has attained finality. Thus, in the aforesaid facts of the present case, when the DPC has considered the adverse entries in the annual confidential reports of the respondent for the years 1992-93, 1993-94 while not granting

higher grade scale to the respondent and thereafter once again the DPC met for considering the case of the respondent for grant of promotion and when the same adverse remarks were considered by the DPC and thereby formed the opinion that the respondent is not fit for promotion, the same Tribunal has wrongly interfered with the decision taken by the petitioner based on the recommendation of the Departmental Promotion Committee. In short, when the adverse entries made in the confidential reports of the respondent are not quashed by any higher authority/forum, it was open for the DPC to consider the said adverse entries while considering the case of the respondent for promotion and relying upon the said entries, if the recommendation is made by the Committee that respondent is not fit for promotion, it was open for the respondent authority to give the promotion to the juniors to the respondent by keeping aside the case of the respondent. Thus, the Tribunal has committed an error in considering the adverse entries made in the confidential reports of the respondent and by directing the petitioner to give promotion to the respondent.

16. Learned advocate for the respondent contended that the present petition is not maintainable as the order passed by the Tribunal can be said to be an order of the State Government and therefore, the Commissioner of Fisheries cannot challenge the said order. Learned advocate has placed reliance upon the decision rendered by this Court in the case of Bavabhai Karshanbhai Patel (supra). This Court, in paragraph No. 2 of the said order, observed as under:

"2. At this stage, reference is required to be made to Section 211 of the Bombay Land Revenue Code, 1879, which provides as under:--

"

211. Power of State Government and of certain revenue officers to call for and examine records and proceedings of subordinate officers.-The State Government and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officer may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely, a Mamlatdar, a Mahalkari, an Assistant Superintendent of Survey and an Assistant Settlement Officer.

And to pass orders thereupon--If in any case, it shall appear to the State Government or to such Officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit:

Provided that an Assistant or Deputy Collector shall not himself pass such order

in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

....."

The Principal Secretary, in the instant case, has exercised the powers under Section 211 of the Act and, accordingly, he has exercised the powers of the State Government itself. In my view, therefore, it is highly improper on the part of the Collector, the Deputy Collector or the Mamlatdar to challenge the decision of the Principal Secretary by filing this Special Civil Application. It is hoped that appropriate care will be taken in future before taking decision for challenging such order and filing such petition by subordinate revenue officer, challenging the order of the superior officer. Considering the Scheme of the Act, in my view, no such Special Civil Application at the instance of the present petitioners can be entertained in law and apart from that, even on the basis of propriety, it is not open for the Subordinate Officer to challenge the order of the superior officer by filing the petition to challenge the said decision unless specifically authorised by the State Government in that behalf. The petition, therefore, deserves to be dismissed on this preliminary ground."

The aforesaid decision is not applicable to the facts of the present case. In the aforesaid case, while exercising powers under Section 211 of the Bombay Land Revenue Code, the Principal Secretary, State of Gujarat, passed an order, which was in fact, exercised on behalf of the State Government. This Court observed that on the basis of the scheme of the Bombay Land Revenue Code, it is improper in law and in propriety on the part of the Collector to challenge the order passed by the State Government because the Collector is subordinate officer of the State Government. Thus, after considering the scheme of the Bombay Land Revenue Code, this Court passed the aforesaid order. Facts of the present case are different.

17. Learned advocate for the respondent has also wrongly placed reliance upon the observations made by the Hon'ble Division Bench of this Court in paragraph No. 23 in the case of R.M. Patel (supra). This Court, on the contrary, observed in paragraphs No. 16 and 17 as under:

"16.

In other words, the Tribunal was given exclusive jurisdiction to decide such matters to the total exclusion of the jurisdiction of the State Government. This was, clearly, thus, not a case of delegation of powers by the State Government to the Tribunal but it was the case of creation of a statutory Tribunal to exercise powers of appellate and revisional jurisdiction, which the State Government hitherto enjoyed with respect to the specified civil servant concerning the matters specified in the Schedule. In a case of delegation, the delegator always enjoys concurrent jurisdiction and may even withdraw the authority of the delegatee. In the present case, the jurisdiction of the State Government is totally

ousted upon creation of the Tribunal under Section 3 of the Act of 1972 and vesting of the powers to the Tribunal under Section 10 of the Act of 1972. Significantly, under Section 12 of the Act of 1972, the State Government itself can be a petitioner before the Tribunal. An order or decision of the officer or authority, which was till the constitution of the Tribunal, was appealable or revisable by the State Government would now have to be questioned before the Tribunal by the State Government, if it was of the opinion that such order was contrary to law or inconsistent with the material on record or required modification, annulment or reversal on any other sufficient reasons in the interest of justice. It can easily be conceived that the order that the Tribunal may pass on such a petition of the State Government, in a given case, may even aggrieve the State Government. It would be incorrect, therefore, to suggest that the State Government would be bound by the view of the Tribunal and would be compelled to accept the finality of the view of the Tribunal prohibiting a writ before the High Court at the hands of the State Government.

17. In the case of *Roop Chand v. State of Punjab & Anr.* reported in , AIR 1963 SC 1503, the Constitution Bench of the Supreme Court considered the question of powers of the State Government to revise an order passed by the officer, who was delegated such powers by the State Government. In the majority opinion, it was held that where the State Government has delegated its powers to hear appeals to an officer, the order passed by such officer is an order passed by the State Government itself and not an order passed by any officer under the Act. The provision providing for revision contemplated an order passed by an officer in his own right and not as a delegate. It was, therefore, held that the State Government was not entitled to call for and examine the record of the case disposed of by the officer acting as a delegate. In the present case, we are not dealing with the situation where the powers of the State Government has been delegated to the Tribunal but, as noted above, the Tribunal is exercising its independent statutory powers vested under Section 10 of the Act of 1972. In the said decision, in the minority opinion, it was expressed that the appellate powers of the State Government are exercised by the officer to whom such powers are delegated and the officer though exercising such powers possessed by the State Government, is still an officer of the State Government. The power of the State Government for revision is distinct from the power exercised by the delegate. The revisional powers give overall control to the State Government to see that the appellate orders passed by its officers are legal and proper because one illegal or improper order may start a chain of reaction which may disturb the whole scheme of consolidation of land and prevent such scheme from coming into existence."

Thus, the Hon"ble Division Bench observed that "In the present case, we are not dealing with the situation where the powers of the State Government has been delegated to the Tribunal but, as noted above, the Tribunal is exercising its independent statutory powers vested under Section 10 of the Act of 1972." Thus, independent statutory powers are vested under Section 10 of Gujarat Civil

Services Tribunal Act of 1972 to the Tribunal. The powers of the State Government are not delegated to the Tribunal as contended by learned advocate for the respondent. Thus, when the Tribunal has exercised independent statutory powers vested in it, it cannot be said that Tribunal has exercised the powers of the State Government. The Hon"ble Division Bench of this Court further held that writ petition at the hands of the State Government if it is otherwise aggrieved, calling in question the decision of the Tribunal, would be maintainable. Thus, it cannot be read that the petition filed by the Commissioner of Fisheries challenging the order of Tribunal is not maintainable. Thus, the aforesaid argument canvassed on behalf of learned advocate for the respondent is misconceived. Accordingly, the same is not entertained.

18. Similarly, the decision rendered by this Court in case of N.I. Mehta, Ex-Dy. Commissioner of Industries (supra) and H.B. Desai (supra) are not helpful to the respondent. In the said cases, the adverse remarks were given arbitrarily without justification and the controlling officer did not use due diligence in passing remarks. Such deficiency was not pointed out to the employee and therefore, this Court held that such adverse remarks cannot be considered. It is also held that where the circulars directing the superior officers, subordinate officers to improve, such directions are required to be followed and must be complied with. Failure to follow such directions should be treated as insubordination and as gross misconduct. However, as observed herein above, in the present case, the respondent had not challenged the order dated 29.05.1998 passed by Tribunal in Appeal No. 351 of 1996, by which, Tribunal dismissed the appeal preferred by the respondent and held that when there were adverse entries in the confidential reports of the respondent for the period between 1992-93 and 1993-94, he is not entitled to higher grade scale and therefore, no illegality is committed by the petitioner by not granting higher grade scale to the petitioner. The same adverse remarks were considered by the DPC for not granting promotion to the respondent and therefore on the basis of the said recommendation of the DPC, petitioner has not promoted the respondent, therefore, it cannot be said that petitioner has committed any illegality. The adverse entries made in the confidential reports of the respondent for the aforesaid period has attained finality in absence of challenge of the earlier order of the Tribunal and in absence of challenge of earlier decision of petitioner.

19. It is also required to be noted that concerned authority has while making entries in the year 1992-93, 1993-94 considered the relevant guidelines issued at the relevant time by the Government. However, surprisingly, the respondent has placed reliance upon the circulars dated 19.12.2000 and 01.05.2004, issued by the Government by which guidelines are issued for writing and communicating the adverse remarks to the concerned employees. Such subsequent circulars would not be applicable to the case of the present respondent and therefore, learned advocate has wrongly placed reliance upon the subsequent circulars. Hence, the aforesaid argument is also misconceived. Accordingly, the same is not entertained.

20. Learned advocate Mr. Dastoor has wrongly placed reliance upon the case of Mr. Parmar. The Tribunal has not considered the said material while passing the impugned order, nor such an argument was canvassed before the Tribunal by the present respondent. Mr. Parmar was promoted on 07.10.2008 after the order of acquittal passed by the competent Criminal Court. Thus, such an order of October 2008 cannot be taken into consideration while deciding the present petition. Thus, the aforesaid argument is also misconceived.

21. Another contention of learned advocate for the respondent that scope of judicial review while entertaining the petition against the order of Tribunal is very limited and in support of the said contention, learned advocate has placed reliance upon the decision rendered by the Hon"ble Division Bench of this Court in case of Ajitkumar Singh (supra), the Hon"ble Division Bench has observed in paragraph No. 13 as under:

"13. The Union of India has challenged the order of Central Administrative Tribunal before us. We cannot act as an appellate authority. We cannot reappreciate the same evidence again which was already appreciated by the tribunal. Even in case two views are possible, no interference can be made and nor even permissible. The scope of judicial review has been recently been examined by the Apex Court in case of SYED T.A. NAQSHBANDI AND OTHERS V. STATE OF JAMMU & KASHMIR AND OTHERS reported in , [2003] 9 SCC 592. The relevant observations made by the Apex Court in Head Note [H] is referred to under:

"Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the material by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before Courts."

This Court is conscious of the scope of judicial review while entertaining the petition against the order passed by the Tribunal. However, in the aforesaid case before the Hon"ble Division Bench, the facts were different. Hon"ble Division Bench observed that this Court cannot re-appreciate the same evidence again which was already appreciated by the Tribunal. However, as discussed herein above, in the present case while relying upon the adverse entries for the period of 1992-93 and 1993-94, the DPC has not considered the case of the respondent for higher grade scale and therefore, the petitioner had not granted higher grade scale to the respondent. Respondent therefore challenged the said decision by

filing appeal before the Tribunal. The Tribunal, as observed herein above, after considering the adverse entries, dismissed the appeal preferred by the respondent in the year 1998. Thereafter, relying upon the same adverse entries for the aforesaid period, another meeting of the DPC, when the case of the respondent was considered for promotion, the said committee opined that the respondent is not found fit for promotion. Relying upon the said recommendation of the committee, the petitioner has not granted promotion to the respondent and promoted his juniors. It is once again observed that the earlier order passed by the Tribunal in the year 1998 and the decision of the petitioner of not granting higher grade scale to the respondent has attained finality. Surprisingly, the Tribunal has in the present case, considered the same adverse entries made in the confidential reports of the respondent and made certain observations contrary to the observations made by the Tribunal in the earlier case, it was not open for the Tribunal in the present case to take contrary view than the view which was taken in the earlier round of litigation by the Tribunal. When the earlier decision of the Tribunal has attained finality, the same evidence/material cannot be re-appreciated by the Tribunal. Thus, keeping in mind the aforesaid facts of the present case, though the scope of judicial review is limited, this Court is of the opinion that in the impugned order, Tribunal has committed an illegality and the order passed by the Tribunal is perverse, the same is required to be interfered with.

22. Another decision of this Court dated 04.03.2011 passed by this Court in Special Civil Application No. 5356 of 2001 relied upon by learned advocate for the respondent is not helpful to the respondent in view of the decision rendered by the Hon''ble Division Bench in case of R.M. Patel (supra).

23. In view of the aforesaid discussion, the impugned order dated 07.05.2001 passed by the Tribunal in Appeal No. 75 of 1998 is hereby quashed and set aside. Rule is made absolute. No order as to costs.