

(1985) 04 GUJ CK 0003
In the Gujarat High Court

Dharamji Fataji Head Constable

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 04-04-1985

Acts Referred:

Citation : (1985) 2 GLR 888

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—The appellant who is a Police Constable instituted a Civil suit being Civil Suit No. 4248 of 1984 on October 18, 1984 in the City Civil Court, Ahmedabad, and challenged the legality and validity of the show cause notice of proposed punishment of dismissal from service. He also prayed for interim relief by taking out notice of motion. The appellant plaintiff did not give necessary particulars with regard to the charges levelled and held proved against him at the conclusion of the departmental inquiry. As it has transpired later on, the charge against him was that he aided and abetted one Police Constable Babubhai in taking bribe of Rs. 500/- from one Bhagwandas. For this purpose he made false panchnama and took signature of said Bhagwandas on blank paper. Without mentioning these particulars in the pleadings, the plaintiff obtained interim order against the department and by an order of injunction issued by the Court, the Department was restrained from dismissing the plaintiff from service, or from taking any further action pursuant to the show cause notice by which the appellant plaintiff was called upon to explain as to why the proposed punishment of dismissal from service should not be imposed upon him. Ultimately, the trial court vacated the interim relief by its order dated February 22, 1985. It is against this order that the present appeal from order is filed by the appellant plaintiff.

2. It is an admitted position that the suit has been filed before the conclusion of departmental inquiry. At this stage, the appellant plaintiff has a right to make representation against the proposed punishment of dismissal from service. The

reply or the representation which he may make is to be considered by the appropriate authority of the Government. In such suits, it would be better if the lower courts be little more cautious and wary before granting ex parte interim relief or even bi parte interim relief. It play not be possible for the civil courts straightaway to say that the suit is not maintainable at all and therefore the suit shall not be entertained. But in such suits if the civil courts grant ex parte ad interim order or even bi parte interim order, the result would be that persons who are prima facie found to be undesirable and who are required to be removed from public service, would remain in public service and that too under the protection of the orders of the court. Such protection may last for a period of 3 months, 4 months or even for a period of one year or more. In such cases, apart from the assistance that may be rendered by the counsel "for the government, it should be considered obligatory by the civil court itself to see that on account of its order, interests of the administration in general and the public interest are not marred. It does not require any reserch or enterprise to understand that a suit against show cause notice calling upon an employee to explain as to why the punishment mentioned in the show cause notice should not be imposed upon him would in all probability be premature. All that the authority asks the employee is to show cause why the proposed punishment should not be imposed upon him. The employee concerned has a right to make representation before the concerned authority where he can take all possible contentions including the contention that the authority issuing the show cause notice had no power to issue the same. Therefore, ordinarily, when the proceedings before the departmental authority are not terminated it will not be proper for the civil court to interfere at an interim stage. At such interim stages the administrative machinery of the Government/establishment should be allowed to have its full play and should be allowed to reach the termination of the departmental proceedings and take appropriate action. Even when a grossest case of lack of jurisdiction or mala fides is prima facie made out. the considerations of public interest and the fact that the delinquent concerned has been held to be prima facie guilty and therefore undesirable for being retained in service, should be held sufficient by the court not to grant ad interim relief. This is much more so, because it is always possible to retrieve the situation even if the order or proposed punishment is allowed to come into operation. The department or the employer concerned can be asked to pay the compensation to the employee in case the action is held to be grossly mala fide and absolutely lacking in jurisdiction. It is hoped that in such suits, the civil courts will be little more conscious and wary. In such types of suits before granting even ex parte interim relief at the initial stage of the institution of the suit, by which the employee who is prima facie held to be undesirable and against whom prima facie conclusion has been reached that he is required to be punished, it would be better if the civil courts lake into account the far reaching effects of its order on discipline and morale of the administration and the likely evil effects on the public at large.

3. For the following reasons it would be proper for the civil courts not to grant

the ex parte or even bi pane interim relief in such cases:

(1) Ordinarily the show cause notice is issued at the initial stage of ,the inquiry or at the stage of proposed punishment, In either case the employee will have right to put up his case before the authority concerned.

(2) There is no presumption that the authority initiating the inquiry or issuing the show cause notice lacks in jurisdiction or that the authority concerned is acting with mala fides. On the contrary, the presumption is otherwise which does not get replaced or stand rebutted simply because the plaintiff makes certain averment and the plaint is cleverly drafted and certain allegations of mala fides have been made in the plaint or in the application for interim relief. Ordinarily, at the initial stages of the suit when the other side has no Opportunity to meet with such allegations, howsoever strong the allegations may have been made and howsoever cleverly the pleadings may have been drafted, it would be proper to hold that the statutory presumption that official acts are done regularly would not get displaced or rebutted on account of such averments made in the pleadings alone. This would be so because it would be easy to make allegations of mala fides and very difficult to prove.

(3) Before initiating the inquiry or before issuing show cause notice of proposed punishment calling upon the employee to render his explanation, some prima facie inquiry is generally made. Similarly, the show cause notice of proposed punishment is issued at the end of departmental inquiry when the delinquent employee is found guilty. In either case, an employee who is prima facie found guilty will continue in service on account of the protection afforded by the court. One who is found to be prima facie guilty will continue in service and even if it happens for a brief period, it is likely to play havoc with the administration.

(4) It will not be in public interest that such an employee be allowed to continue in service. If he is really guilty and if he is allowed to continue in service and the department is restrained from taking any action, it will bring down the morale of superior officer and it will result into administrative slackness.

(5) Normally, it should be considered proper that this is the sphere where executive should have its full play. The civil courts "should be slow to take any action in this sphere which is primarily within the scope of the executive authorities. The process of judicial review would and ordinarily should start only at the conclusion of the inquiry and the departmental action is taken. At the intermittent stage, if the interim relief is granted and the employee is allowed to remain in service, there is likelihood of incalculable loss being caused to the society. As it has happened in this case, the appellant Police Constable who has been held prima facie guilty of corruption practices has continued in service on account of the protection of the interim order passed by the Court. On the other hand, to protect the interests of the plaintiff, the court can impose suitable terms on the Department. It can be directed that in case the employee concerned succeeds, he may be reimbursed for the loss which he may have to suffer on

account of the action taken or proposed to be taken by the Department. Thus. as far as the loss to the employee is concerned, that can be compensated while the loss that may be caused to the entire administrative machinery and to the society at large would be irreparable.

4. It would be better if the civil courts keep in mind that in their anxiety to protect the interest of each and every individual plaintiff, if they go on granting such interim orders, the entire system may come to a stand still. Therefore. it is better that some hardship may be caused and suffered by the individual rather than the system itself may break-down. The action of the department was challenged on the ground of lack of jurisdiction of the authority issuing the show cause notice of proposed punishment. However, the counsel for the appellant seeks permission to withdraw the appeal. Permission granted. Subject to the aforesaid observations, the appeal from order is permitted to be withdrawn. Dismissed as withdrawn.