

(2022) 02 GUJ CK 0023

In the Gujarat High Court

Case No : R/Special Civil Application No. 11518 Of 2020

Dineshbhai Dhudabhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2022) 02 GUJ CK 0023

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Bharat T Rao, Hs Munshaw, Meet Thakkar

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Heard Mr.B.T.Rao learned advocate for the petitioner, Mr.Meet Thakkar learned AGP for the State and Mr.H.S.Munshaw learned advocate for respondent no.3.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 14.09.2020 passed by the respondent

no.3, by which, the petitioner's services were put to an end. Facts in brief would indicate that the petitioner was working as a Junior Clerk

(Administration).

Pursuant to a selection held by the Gujarat Panchayat Services Selection Board, he was engaged in a five years contract basis by an order dated

08.12.2011. A complaint was filed by Corporation Act for an allegation of the petitioner having accepted the bribe, the petitioner's services

pursuant to the complaint filed before the ACB were terminated by an order

dated 29.07.2015. On an appeal filed by the petitioner against the order of termination from service, the District Development Officer on 27.04.2015 set aside the order of termination and directed the petitioner to be reinstated and his period of probation was extended for a period of one year. The petitioner was posted at Taluka Panchayat:Morbi.

3. Correspondences ensued between District Development Officer and the Development Commissioner with regard to the propriety of reinstating the petitioner being faced with the complaint of allegations of corruption. It appears that finally on 13.03.2019, the State sent a letter to the District

Development Officer asking for an explanation on the order dated 27.07.2016. By the impugned order, the petitioner's services were terminated

reiterating the fact that the earlier termination was justified on the ground of he facing allegation of corruption.

4. Mr.H.S.Munshaw learned counsel for the Panchayat would rely on the affidavit in reply filed by the Deputy District Development Officer, Morbi.

He would submit that on a letter received from the Police Inspector, Anti Corruption Bureau, Police Station, Rajkot, which stated that the petitioner

was trapped on 21.07.2015 and an FIR was lodged against him, he would taken into police custody to an examination of the matter by the Disciplinary

Authority, it was thought fit to terminate the services of the petitioner and so it was done by the order of 29.07.2015. On an appeal, the order was

quashed and the petitioner was reinstated for a period of one year on probation.

5. Justifying the impugned order dated 14.09.2020, Mr.Munshaw would submit that the petitioner was appointed on a fixed term basis as a junior clerk

and was caught red handed while accepting an amount of Rs.3000/-. Condition no.12 of the appointment order clearly stipulated that on account of

any misconduct, the services of the petitioner can be terminated. It was accordingly thought fit to terminate the services of the petitioner. It was only

after a new district of Morbi was carved out, the appeal was accepted.

6. Having considered these submissions raised before this Court in Special Civil Application No.7166 of 2019, the Court has extensively considered the

decisions rendered in by this Court over the period of time. The relevant paragraphs of the said order read as under:

5. In short, the controversy that arises to be adjudicated before this court is whether the termination of the employee, the petitioner who was

engaged on contractual terms can be done in the manner that it was, merely by issuance of a show-cause notice or was a full fledged inquiry

necessary preceding the action of termination. In the course of submissions therefore the decisions referred to by learned Senior Counsel Mr. Mehta

need to be considered. In the case of Rahul Vank (supra), this court vide oral order dated 05.09.2018 while considering the order of a similar nature

where the appointment was on contractual terms and where the contest by the State also was on similar lines that the show-cause notice suffices the

court held as under:

Â 5.3 All the aforesaid principles squarely apply in facts of the case of the present petitioner. The decision in Manishbhai Nayanbhai Mod (supra)

came to be confirmed by the Division Bench in Letters Patent Appeal No.189 of 2018 decided on 20th February, 2018. In addition to the other

reasoning endorsed to by the Division Bench, the following was also stated which stands in complete answer to the contentions raised on behalf of the

respondents.

4.1 As a necessary corollary, when there is a breach of procedure of instituting full-fledged departmental inquiry, particularly, when

termination order referred to following of Gujarat Civil Services [Discipline & Appeal] Rules, 1971, the issuance of show cause notice, receiving reply

and then to take final decision to terminate services of an employee was unjust, unreasonable, arbitrary, in breach of the Rules, 1971, violative of

principles of natural justice and Article 14 of the Constitution as it would not make any difference whether the employee was appointed temporarily

for a fixed term on a fixed salary incorporating various conditions.

5.3 When the order impugned in this petition is scanned and considered in light of and by applying the aforesaid principles, even without lifting the veil,

it could be concluded that the order casts stigma. The order was manifestly stigmatic as was passed on the allegations of misconduct. On a plain

reading, it was a stigmatic action taken to terminate petitioner's service. Such an action could not have been taken even though the petitioner was a

fixed period employee without giving the petitioner a fullfledged opportunity to defend and after holding regular departmental inquiry. The employer is

not allowed to hire and fire even if the employee, may be ad hoc or probationer, and the services cannot be given a go-bye by one stroke of pen on the

ground of misconduct by casting stigma, without holding a regular inquiry in accordance with the principles of natural justice.â??

5.1 The court thereafter directed reinstatement of the contractual employee to be continued in service for the remaining period of his term. The order

of the co-ordinate bench was carried in appeal by the State. The Division Bench by order dated 15.04.2019 in Letters Patent Appeal No. 841 of 2019

after considering various decisions held as under:

â??8. Even decision relied by learned Assistant Government Pleader in the case of Chaitanya Prakash and Another (supra) quotes decision in the

case of Pavanendra Narayan Verma (supra) where three tests are enumerated to determine whether in substance an order of termination is punitive

or not. We find in the present case all above tests namely a full scale formal inquiry, allegation involving moral turpitude or misconduct and culminating

into guilt stands satisfied and therefore we have no hesitation to hold that the learned Single Judge committed no error of fact or law or jurisdiction

warranting interference in this appeal under Clause 15 of the Letters Patent.

9. When the appointment of the petitioner had genesis in the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, incorporation

of certain terms and conditions contractual in nature pale into insignificance when the termination order is expressly stigmatic as rightly concluded by

the learned Single Judge which required no lifting of veil and therefore the appeal is bereft of merit.â??

5.2 What is observed by the Division Bench is that where the termination of an employee who is appointed as contractual is on the ground of stigma

or involving moral turpitude or misconduct a full scale formal inquiry needs to be carried out. In the case of Chetan Rajgor (supra), this court by an

order dated 08.05.2019 albeit in case of an employee where he was faced with criminal case by lodging of an FIR considered the issue on hand and

found that mere notice would not suffice. An inquiry had to be held and therefore the order of termination was set aside. Once again the matter was

carried before the Division Bench by way of Letters Patent Appeal No. 1596 of 2019. The Division Bench of this court on 24.07.2020 in paras 8 and

9 held as under:

â??8. The bone of contention of appellants â?" State authorities is that since the original petitioners are employed on a contract basis and fixed pay,

the Department is not under an obligation to conduct a detailed full-scale departmental inquiry. Now, this contention has been the subject matter of

scrutiny on earlier occasion before a Coordinate Bench in Letters Patent Appeal No.189 of 2018 between Vadodara Municipal Corporation v.

Manishbhai Nayanbhai Modh, decided on 20.2.2018. The relevant observations contained in the said decision are reflecting in Para.4.1 which are also

based upon the decision of the Apex Court and in consonance with the provision of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

The said observations have also been considered at length by the learned Single Judge which are reflecting in Para. 5.7 of the impugned order.

9. Yet in another decision again by the Division Bench of this Court rendered in Letters Patent Appeal No.841 of 2019 between Rahul Aydanbhai

Vak v. State of Gujarat, decided on 15.4.2019, in which the same issue has been considered. The relevant discussion of the Division Bench in the said

case is contained in Para.7, 8 and 9, in which in no uncertain terms, almost in similar set of circumstance, the Division Bench has clearly opined that

full-scale departmental inquiry will have to be undertaken, if initiation of action on the basis of unsatisfactory work, gross negligence or indiscipline or

any act which may tantamount to be stigmatic and as such, consistently this view has been clearly opined by the Division Bench.â??

5.3 What is evident from reading the contents of the decision is that if initiation of action is based on an unsatisfactory work, gross negligence or

indiscipline, it tantamounts to being stigmatic and unless and until a full scale departmental inquiry is held, irrespective of whether the employee is a

regular employee or a contractual employee, the result has to be the same. It has to be noted that before the Division Bench it was the stand of the

State that an employee who is appointed on contractual basis need not be terminated after holding a full fledged inquiry. It was in the background of

this objection of the government that the Division Bench held thus.

â??11. From the overall material on record and in consideration of aforesaid observations, we see no distinguishable material to take a different view

or deviate from the same. Since almost in similar issue, the proposition is to the effect that whenever any charge is levelled and action is found to be

stigmatic, a full-scale departmental inquiry deserves to be undertaken irrespective of whether the delinquent was a regular employee or contractual

employee on a fixed salary. As a result of this, we are of the considered opinion that since undisputedly by a brief procedure, an action is initiated

against the respondents herein while dismissing their services, said action itself is found to be not on the touchstone of aforesaid proposition of law. As

a result of this, no error is committed by the learned Single Judge. Having perused these material, we are not satisfied with the submissions made by

learned counsel for the appellants in both these appeals.â??

6. Having considered the decisions and the question of law that the courts have decided, there is no reason therefore not to agree with the submissions

of Mr. Mehta, learned Senior Counsel inasmuch as the order that has been passed terminating the services of the petitioner could not have been so

passed on the allegation of misconduct without holding full scale inquiry as laid down by the decisions referred to hereinabove.

7. Accordingly, the orders impugned are quashed and set aside. The petitionerâ??s appointment was for a tenure of 5 years from 10.12.2013. The

tenure of service would have been up to 10.12.2018. His services were put to an end approximately 3½ months before the tenure ended.

Accordingly, while quashing the orders impugned, the respondents are directed to reinstate the petitioner for the remaining term of his contractual

appointment for which he could not discharge his duties as Tax Inspector. In other words, since the order of termination is set aside, the respondents

are directed to take back the petitioner in service for the remaining period on his original post with continuity of service for the interregnum as well as

consequential benefits as if the order of termination was not passed. Reinstatement of the petitioner shall be up to the original tenure of engagement as

per the order of appointment. The monetary benefits shall be paid to the petitioner within a period of eight weeks. The respondents are however not

precluded from proceeding against the petitioner in accordance with law. Petition is accordingly allowed. Rule is made absolute. No costs.

7. Accordingly the order dated 14.09.2020 is quashed and set aside. The petitioner is directed to be reinstated on his original post. The petitioner shall

continue to be on probation for a period of one year from the date of his reinstatement. The order of reinstatement shall be without consequential

benefits. Notional pay may be fixed as if the petitioner was continued in service and as if the initial order dated 29.07.2015 and also the order dated

14.09.2020 was also not passed. However, it is clarified that in the event the respondents contemplating terminating services of the petitioner, the same shall be done only in accordance with law after holding an appropriate inquiry.

8. The petition is accordingly allowed.