
(2022) 12 GUJ CK 0031

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 1455 Of 2022 In R/Special Civil
Application No. 14382 Of 2021, Civil Application (For Stay) No. 1 Of
2022

Director (Mgnrega)

APPELLANT

Vs

Shaktisinh Ghanshyamsinh Jadeja

RESPONDENT

Date of Decision : 01-12-2022

Acts Referred:

Citation : (2022) 12 GUJ CK 0031

Hon'ble Judges : A.J.Desai, J;Nisha M. Thakore, J

Bench : Division Bench

Advocate : Premal R Joshi, Meet Thakkar, AS Asthavadi

Final Decision : Disposed Of

Judgement

A.J.Desai, J

1. By way of present appeal under Clause – 15 of the Letter Patent, present appellant - original respondent No.3 i.e. Director, MGNREGA has challenged the oral order dated 26.07.2022 passed by learned Single Judge in captioned writ petition, by which, the action of the appellant of terminating the services of the respondents herein, by order dated 04.09.2021, is quashed and set aside treating the order as stigmatic and passed without following due procedure of law and without holding any departmental inquiry.

2. The respondent No.1 herein was working as Assistant Programmer, respondent No. 2 herein was working as Account Assistant and respondent No. 3 herein was working as MIS Coordinator with the appellant herein and their services were extended time and again. It also appears from the record that a writ petition being Special Civil Application No. 13621 of 2014 was filed by the respondents herein before this Court. On 01.07.2016, the said petition was allowed, by which, following directions were issued by learned Single Judge, which reads as under:

"52.1 The prayer of the petitioners to regularize their contractual services and

make them permanent on the establishment is rejected. Limited immunity that is made available to the petitioners is by allowing them to continue on their contractual employment and not to be replaced by other set of contractual employees on ad-hocism. The petitioners shall be continued in the existing cadre as long as the said Scheme continues, but purely on contractual basis and such employment shall be co-terminus with the scheme, subject to evaluation of their performance, service and disciplinary rules as may be made applicable to them. The respondent – State shall insist on periodical upgradation of knowledge, improvisation of technical skill and overall preparedness on the subject, so also on computerization.”

3. By order dated 04.09.2021, the appellant, by observing that all the respondents have committed financial illegalities, terminated their services. The said decision was challenged by filing captioned writ petition by the respondents herein. Learned Single Judge, after hearing all the parties, allowed the petition. Hence, this appeal.

4. Mr. Premal Joshi, learned advocate appearing for the appellant, would submit that an FIR was also registered against respondents and having found that they have committed financial illegalities by using their posts, their services came to be terminated. He would submit that there are no vacancies available so that the respondents can be reinstated. He, therefore, would submit that the appeal may be allowed and stay may be granted.

5. On the other hand, Mr. Asthawadi, learned advocate for the respondents herein, supported the decision of learned Single Judge. He would submit that the order passed by the concerned authority, which has been quashed and set aside by learned Single Judge is stigmatic in nature, and therefore, the concerned authority ought to have followed the procedure for holding departmental inquiry. He would submit that learned Single Judge, by relying upon the decision of the Hon’ble Supreme Court, has quashed and set aside the termination order and directed the concerned authority to reinstate the respondents herein. He would submit that learned Single Judge also directed the appellant to take legal action in accordance with law. By relying upon the judgment and order dated 17.02.2021 passed by the Coordinate Bench of this Court in Letters Patent Appeal No. 270 of 2021 and judgment and order dated 24.07.2020 passed in Letters Patent Appeal No. 1596 of 2019, he would submit that the appeal may be dismissed.

6. Heard learned advocates for the respective parties. Perused the order dated 04.09.2021 passed by the appellant as well as the order passed by learned Single Judge. It is an undisputed fact that appropriate procedure has not been followed by the appellant before terminating the respondents herein. As far as the submissions made by the appellant that they were on contractual services, and therefore, their services could be terminated without following due procedure is not sustained in view of the judgment and order dated 24.07.2020 passed in Letters Patent Appeal No. 1596 of 2019. The observations made in

Para – 8 and 9 of the decision dated 24.07.2020 passed in Letters Patent Appeal No. 1596 of 2019 as as under.

"8. The bone of contention of appellants – 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."

7. Learned Single Judge, by relying upon the decision dated 24.07.2020 passed by of the Division bench of his Court in Letters Patent Appeal No. 1596 of 2019, has passed the impugned order. It is also pertinent to note that learned Single Judge has observed that present appellant would not be precluded from proceeding against the respondents herein in accordance with law. In view of the above, we do not find any merits in this appeal. Hence, present appeal is dismissed.

8. In view of the order passed in Letters Patent Appeal, connected civil application does not survive. Accordingly, civil application stands disposed of.