

(2005) 03 GUJ CK 0092

In the Gujarat High Court

Case No : Special Civil Application No. 3304 of 1991

Govindbhai Ramjibhai Bhalkar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 03 GUJ CK 0092

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Girish Patel, for the Appellant; Archana Raval, Assistant Government Pleader for Respondent Nos. 1 to 2, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The petitioner has approached this Court with the prayer that, "restrain the respondents from considering and promoting any employee for Class-I post in the Department of Civil Supplies without considering and promoting the petitioner in the vacant posts at Ahmedabad, Gandhinagar and Godhra". The petitioner also prayed that, "declare that the action of the respondents in not considering the petitioner for promotion to the post of Class-I in the Department of Civil Supplies is arbitrary, illegal, null and void." He also sought a declaration to the effect that, "declare the action of the respondents in issuing charge sheet and commencing false enquiry as arbitrary, illegal, null and void and quashing and setting aside the same." The petitioner also sought declaration to the effect that, "declare the action of the respondents in not completing the enquiry even after more than 2 1/2 years is arbitrary, illegal, null and void. Last but not the least the petitioner prayed that, "the action of the respondents in not issuing charge sheet and conducting departmental enquiry against other employees who were in a team in which the petitioner was working and for which work the allegations have been levelled against the petitioner by a charge sheet in September 1988 is arbitrary, illegal, null and void."

2. The facts of the case are that, "the petitioner was serving as Assistant Director, Class II in Food & Civil Supplies Department, under the Directorate of Civil Supplies, the respondent herein. The petitioner had initially joined the Department in the capacity of Junior Inspector with effect from 01.10.1964. He then got promoted to the post of Head Clerk by order dated 01.05.1972, effective from 20.03.1972. Later on the petitioner was promoted to the post of Assistant Director, Class II on 23.01.1984".

It is the say of the petitioner that, "promotion from the post of Assistant Director lies to the post of "Deputy Director", Class I and he was eligible for promotion to the said post, he was not promoted, hence in the year 1991, he filed this petition. As mentioned in para 10 of the petition, three posts of Deputy Director at Ahmedabad, Gandhinagar and Godhra were vacant, but the petitioner was not promoted to any of these posts. The petitioner made representation/s on 30.07.1990, 11.08.1990, 07.09.1990 and last but not the least on 25.09.1990 a copy of which is produced on record of this Special Civil Application. It is the case of the petitioner that even thereafter, he continued to make oral and written representations but as the copy of those representations are not available with him he has not annexed the same. The petitioner has mentioned in para 10 of the petition that in 1989 he was informed that his representation is taken note of, but in reality nothing was done, a copy of this communication dated 23.10.1989 is produced at Annexure "II" to this petition.

The petitioner has asserted that it was only on account of pending inquiry that his case was not considered, though allegations against him were false and fabricated. He has also asserted that this fact can be ascertained from his reply to the said charge sheet.

3. Communication dated 23.10.1989 (Annexure II) reveals that even prior to the representations referred to in para 10 of the petition, the petitioner had made representation on 11.08.1989, a copy of the same is produced at Annexure "G" though it is referred to as dated 11.08.90 in para 10 of the petition. The petitioner then made a reminder of the same on 25.09.1989 (Annexure "I" to the petition). Representation dated 11.08.1989 is referred to in the said communication. It is born out from the same that the petitioner was also seeking "deemed date" of promotion in Class II. But then as the petitioner had filed Special Civil Application No.3495 of 1988 the authority intimated the petitioner that the same cannot be considered as the matter is subjudice. This petition (Special Civil Application No.3495 of 1988) was pending on the day of filing of this petition.

4. The grievance of the petitioner, "non consideration" of his case for promotion to the post of Class-I and "the department not proceeding with the departmental inquiry" though the charge sheet was issued to the petitioner in the year 1988 (Annexure "C" to this petition), to which the petitioner had though replied on 13.10.1988, despite which there was no progress in the departmental inquiry, are ventilated before this Court by this petition.

5. On filing of this petition the Court issued notice on 03.05.1991 and also granted ad interim relief directing the respondents to keep one post vacant. That interim relief continued till 26.07.1991 when this Court modified the same by passing the following order :

"Leave to amend the interim relief.

Rule. By way of interim relief respondent no.1 is directed to expedite departmental inquiry against the petitioner which has not made any progress after issuance of the charge sheet, and complete the same within three months from today. In case before the said inquiry is over if the Departmental Promotion Committee is convened for considering promotions of Class II employees petitioner's case be considered along with others and result of the petitioner be kept in sealed cover and seal cover procedure be followed. Accordingly, ad interim relief granted earlier stands modified to the aforesaid extent."

After passing of this order on 26.07.1991, the petitioner has not done anything till date. The matter was listed for final hearing on 02.11.2004. On that it was adjourned beyond vacation. The matter then came up on Board on 26.11.2004. The learned Assistant Government Pleader sought time to file reply. The matter was adjourned to 01.12.2004. On that day again the learned Assistant Government Pleader sought time to file reply. Time was granted and the matter was ordered to be listed after two weeks. On 24.12.2004 this Court passed the following order:

"This matter was admitted and by way of interim relief, the respondent no.1 was directed to expedite the departmental inquiry against the petitioner, which had not made any progress after issuance of charge sheet. The respondent was further directed to complete the same within three months from the date, i.e. when the order came to be passed on 26th July 1991. It was further directed that in case before the said inquiry is over, if the Departmental Promotion Committee is convened for considering promotion of Class II employees, the case of the petitioner be considered along with others and result of the petitioner was to be kept in sealed cover and sealed cover procedure be followed.

However, no reply is filed today. Even time was sought earlier on 26.11.2004 and on 1.2.04 (sic., 1.12.2004). However, in the interest of justice, time is granted. The matter stands adjourned beyond winter vacation."

6. Today, when the matter is taken up for hearing learned Assistant Government Pleader, Ms. Archana Raval submitted that she has no instructions in the matter. It is shocking that despite the aforesaid order of the Court and learned Assistant Government Pleader seeking time to file affidavit in reply no affidavit in reply is filed in the matter. The learned Assistant Government Pleader further informs this Court that on the very day, i.e. 24.12.2004 the office of the Government Pleader had sent a telegram to the concerned department-concerned Branch with Ticket No.A-71-72.99. Still however, "no action" is taken in the matter. This shows the attitude of the Government Department in Court matters. The Court is

of the considered opinion that there is no purpose in giving further time to the Government Department for filing an affidavit in the matter of 1991, after about fourteen years. Hence the matter is proceeded further.

7. Coming back to the case of the petitioner the learned advocate appearing for the petitioner today produced a xerox copy of the communication dated 27.05.1992 received by the petitioner from the Food & Civil Supplies Department, on the same day. For the reasons best known to the petitioner, the petitioner did not move this Court on expiry of three months time which was granted by this Court to complete the "departmental inquiry". He did not move this Court even after having received communication dated 27.05.1992 whereby he was informed that departmental inquiry is over and he is punished with censure. The petitioner is equally negligent for getting his rights enforced. It is also not the case of the petitioner that after order dated 26.07.1991 before the departmental inquiry was completed any Departmental Promotion Committee had met and did not carry out directions given by this Court, to consider the case of the petitioner even in the face of "pending departmental inquiry". Even today it is not submitted by the petitioner that subsequent to 1992 any DPC has met and has not considered the case of the petitioner. Even if that would have been the case of the petitioner. Assuming for the sake of argument that it was so, then in the considered opinion of this Court it would have been a fresh cause of action and petitioner could have challenged either non consideration of the petitioner's case or non promotion of the petitioner.

8. The petitioner has placed on record a xerox copy of the Recruitment Rules for the post of Deputy Director of Civil Supplies, Deputy Director of Food, Deputy Food and Civil Supplies Controller and District Supply Officer, Class-I of 1979 at Annexure "C". The petitioner is aspiring for promotion to the post of Deputy Director of Civil Supplies. Rule 2 of the aforesaid Rules is relevant. The same is reproduced hereunder for ready perusal:

"2. Appointment to the post of Deputy Director of Civil Supplies, Deputy Director of Food, Deputy Food and Civil Supplies Controller and District Supply Officer, Class-I shall be made either -

(a) by promotion of a person of proved merit and efficiency from amongst the persons holding class II posts in the cadre of Assistant Director of Civil Supplies, Assistant Director of Food and Assistant Food and Civil Supplies Controller in Food and Civil Supplies Department for about five years; or

.. .."

It is to be noted that the petitioner has stated in para 9 of the petition memo that,

".. .. an employee is eligible for being promoted to the post of Dy Director after he puts in service as Asstt Director for 7 years."

9. The petitioner, holding the post of "Assistant Director" is not careful enough to

make correct averments in the petition.

10. The situation emerging from the aforesaid facts brings down the controversy in a narrow compass. The petitioner had two grievances at the time of filing of the petition, (i) non consideration of his case for promotion to the post of Deputy Director, and (ii) delay in conducting departmental inquiry. The second grievance of "delay in conducting departmental inquiry" stood redressed on this Court issuing direction to the department to complete the departmental inquiry within three months from the date of order. From the communication dated 27.05.1992 of the Food & Civil Supplies Department, which is produced and is taken on record, the departmental inquiry was completed and the Inquiry Officer submitted his report dated 12.02.1992. May be that the compliance was not within the strict time frame, and as directed by this Court, i.e. three months, but then the departmental inquiry was completed and result was communicated to the petitioner.

The second grievance of the petitioner of not considering his case for promotion will not survive for the reason that the criteria for promotion to the post of Deputy Director is "proved merit and efficiency". The petitioner has not made out any ground on which this Court can come to the conclusion that the said criteria is breached by the authorities. Therefore, this petition fails.

11. Besides, the learned Assistant Government Pleader submitted on the basis of the instructions received at the relevant time, in the year 1991, three posts, which were vacant for promotion but then the same were manned by the persons brought on deputation. The Department did not find anybody fit for promotion to the said posts. The learned Assistant Government Pleader submitted that filling up the posts by persons on deputation was within the discretion of the authority as provided in clause (b) of Rule 2 of the aforesaid Rules, which reads as under:

"(b) by transfer of a person from the cadre of Deputy Collector or a person holding Class-I post in Agriculture Department preferably having experience of knowledge of work relating to the Food and Civil Supplies;" In view of the aforesaid discussion this Court is of the opinion that the petitioner does not deserve any relief at the hands of this Court, more particularly when it is exercising jurisdiction under Article 226 of the Constitution of India.

12. The petition is dismissed. Rule is discharged. Interim relief is vacated. The fact that the petitioner has retired from service on reaching the age of superannuation in 1998, this Court restrains itself from awarding "costs" in the matter.

In view of the observations made by this Court in later part of para 5 and 6 of this judgement the office is directed to send a copy of this judgement to the Principal Chief Secretary of the State, who shall take appropriate note of the observations and also the necessary action in the matter so as to see that in future similar lapse does not take place. The Principal Chief Secretary shall place on record the details of the action taken in the matter.