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(2000) 07 GUJ CK 0018

In the Gujarat High Court

Case No : Second Appeal No. 196 of 1985

Gujarat Agriculture University — APPELLANT

Vs

C.G. Maradia — RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:

Citation : (2000) 07 GUJ CK 0018

Hon'ble Judges : A.M. Kapadia, J

Bench : Single Bench

Advocate : J.R. Nanavati, for the Appellant; R.R. Trivedi and Siddhi Talati, AGP, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Kapadia, J.—What is challenged in this Second Appeal is the judgment and decree dated July 31, 1984 rendered in Regular Civil Appeal No. 126 of 1981 by the learned Second Extra Assistant Judge, Junagadh by which he allowed the appeal filed by the respondent No.1 herein and thereby set aside the judgment and decree of dismissal of suit dated September 30, 1981 rendered in Regular Civil Suit No. 815 of 1975 by the learned Civil Judge (S.D.)., Junagadh which was filed for the relief of declaration and injunction.

2. The present appellant was the original defendant No.1 whereas the respondent No.1 herein was the original plaintiff and the respondent No.2 was the original defendant No.2. Therefore, for the sake of convenience and brevity the parties are hereinafter referred to in this judgment as ''the plaintiff'' and ''the defendants''.

3. The plaintiff filed Regular Civil Suit No.815 of 1975 for a declaration and permanent injunction inter alia stating that he was appointed as a Junior Clerk in the Department of Agriculture, Gujarat State, in the year 1966 and since then he was working till his services were transferred to the Gujarat Agricultural University (''the University'' for short hereinafter) on deputation. The State of

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Gujarat has established the University under the provisions of the Gujarat Agricultural University Act, 1969 (''the Act'' for short hereinafter). The plaintiff thereafter had filled in option form as required u/s 52 (3) of the Act and gave option to remain in the services of the University. The said option once exercised was considered to be final. The plaintiff thereafter was promoted to the post of Senior Clerk vide order dated August 20, 1973 and was posted on the vacant post in the office of the Principal of the Agriculture College, Junagadh. The plaintiff came to know from reliable sources that the defendants were trying to send him back to the original department without hearing him. According to the plaintiff, if he was sent back to the State service again as a Junior Clerk, it would cause irreparable loss to him because it would change the basic conditions of service. The plaintiff, therefore, filed the suit wherein a declaration was sought to the effect that the action of the defendants of sending him back to the original department was illegal and bad in law and consequential relief of permanent injunction restraining the defendants from implementing the said decision was also sought.

4. The suit was resisted by the defendant University by filing its written statement wherein it inter alia admitted most of the averments made in the plaint except the right of the plaintiff to exercise option. In this connection, inter alia, it was contended that the plaintiff was working under the Vegetable Development Scheme which was under the Agriculture Department and the said Scheme was not permanent. Therefore, the staff including the plaintiff working under the said Scheme was not permanently transferred to the University and, therefore, such staff members were not to give any option u/s 52 (3) of the Act since that right was available only to permanent employees who were transferred to the services of the University from the Agriculture Department of the State Government. It was further contended that there was a mistake in forwarding the option exercised by the plaintiff and, therefore, on realising the said mistake action was taken to correct it by calling the plaintiff back to the State service and by reverting him to the post of Junior Clerk. It was also contended that since option exercised by the plaintiff was illegal and void it was not binding to the department. Ultimately it was contended that the plaintiff was not entitled to the declaration and injunction as claimed by him in the suit and prayed that the suit be dismissed with costs.

5. It may be appreciated that the State of Gujarat was impleaded as party defendant No.2 but it has not filed any written statement. However, it has adopted the written statement filed by the University.

6. The learned trial Judge, on appreciation and evaluation of the evidence adduced and produced before him and considering the submissions advanced at the bar, came to the conclusion that the defendant University had the authority to send the plaintiff back to State service and the said action of the University was not proved to be illegal and bad in law and, therefore, it was held by him that the plaintiff is not entitled to any relief claimed in the suit and resultantly

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dismissed the suit filed by the plaintiff.

7. Aggrieved by the judgment and decree recorded by the learned trial Judge, the plaintiff filed Regular Civil Appeal No. 126 of 1981 before the District Court of Junagadh. Learned Second Extra Assistant Judge, Junagadh, upon reappreciation and reevaluation of the evidence, held that since the action of the defendant University of reverting the services of the plaintiff to the State service was illegal and bad in law, the University had no authority to revert the services of the plaintiff to the State service. He further held that the judgment and decree recorded by the trial court was erroneous and wrong. He, therefore, allowed the appeal by setting aside the judgment and decree of dismissal of the suit recorded by the trial court by allowing the suit filed by the plaintiff for the relief of declaration and injunction as prayed for in the suit. It is this judgment and decree which has given rise to the present Second Appeal at the instance of defendant No.1 which was admitted for hearing on the following substantial questions of law:

"(1) Whether in the facts and circumstances of the case the appellant has right and authority to revert the respondent No.1 to the State service?

(2) Whether in the facts and circumstances of the case there is promissory estoppel against the appellant?"

8. Mr. J.R. Nanavati, learned counsel for the defendant No.1 University, contended that the lower appellate court has erred in holding that since the option form filled in by the plaintiff was accepted by the University, the option became final u/s 52 (3) of the Act. It was emphatically submitted by the learned counsel that the plaintiff was on deputation and his services were not permanently transferred to the University and, therefore, there was no question of filling in option form attracting the provisions contained in Section 52 (3) of the Act. What was stressed by the learned counsel was that the defendant University has right and authority to revert the services of the plaintiff to the State service since he was temporarily deputed to the services of the University. It was emphasized by the learned counsel for the defendant University that the principles of promissory estoppel u/s 115 of the Indian Evidence Act cannot be invoked since the services of the plaintiff were transferred by way of deputation purely on temporary basis. On the basis of the aforesaid submissions, it was urged that the substantial questions of law formulated at the time of admission of this appeal are required to be answered in favour of the defendant University by allowing the appeal and he urged that the appeal be allowed and the judgment and decree recorded by the lower appellate court which is impugned in this appeal may be set aside.

9. Mr. Trivedi, learned advocate for the plaintiff, throughout supported the judgment and decree recorded by the lower appellate court and contended that the substantial questions of law formulated by this Court at the time of admission of this appeal are in reality not questions of law, much less substantial

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questions of law but they are questions of fact which cannot be assailed in Second Appeal. The finding of fact recorded by the lower appellate court with regard to the defendant University having no right or authority to revert the services of the plaintiff to the State service after exercising the option by filling in the form as per the provisions of Section 52 (3) of the Act being a question of fact, cannot be assailed in this Second Appeal. So far as the principles of promissory estoppel invoked against the defendant University is concerned, it is also a finding of fact which cannot be assailed in this Second Appeal. He, therefore, urged to dismiss the appeal by confirming the judgment and decree impugned in this Second Appeal.

10. There is no dispute that the plaintiff was initially appointed in the year 1966 as a Junior Clerk in the Agriculture Department of the Gujarat State and since then he was working as such with the said department till he was transferred to the services of the University on deputation. The University was established under the provisions of the Act and, therefore, it has the statutory character. During the deputation period, the plaintiff had filled in the option form as required u/s 52 (3) of the Act and selected to remain in the services of the University. There is also no dispute that thereafter the plaintiff was promoted to the post of Senior Clerk vide order dated August 20, 1973 and posted on the vacant post in the office of the Principal, Agriculture College, Junagadh and since then he is serving as a Senior Clerk there.

11. In the backdrop of the aforesaid factual aspects, let us have a look at Section 52 (3) of the Act, which reads thus:

"52. University to absorb staff of existing colleges and institutions transferred to it.

(1) xxxxx xxxxx

(2) xxxxx xxxxx

(3) Notwithstanding anything contained in sub-section (1) every officer or servant of the State Government taken over by the University shall, within a period of two years, from the date he is so taken over (or such further time, if any, as the State Government may decide), give notice in writing to the State Government -- (a) that he should be permitted to retire and thereupon he shall be permitted to retire from Government service and shall be entitled to such terminal benefits as compensation pension or gratuity, or the like, as may be prescribed, or (b) that he should be permanently absorbed in the service of the University and thereupon the University shall absorb him permanently in its service and any service rendered by him under the State Government shall be deemed to be service under the University, and he shall be entitled to receive from the University such terms and conditions of services as respect remuneration, leave and pension such rights as respects disciplinary matters or rights similar thereto as changed circumstances may permit as are not less favourable than those to which that person was entitled to immediately before he

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was taken over by the University, or (c) that he should be permitted to revert to Government service and thereupon he shall be permitted to revert to the service on the same terms and conditions of service applicable to him immediately before he was taken over by the University."

12. It would also be appropriate to refer to sub-section (4) of Section 52 of the Act which reads thus:

"52 (4) If any officer or servant of the State Government fails to give notice under sub-section (3) within the time referred to therein, he shall be deemed to have opted to be permanently absorbed in the service of the University under clause (b) of sub-section (3)."

13. On having a bare look at the aforesaid provisions of the Act, it becomes abundantly clear that any employee of the State Government taken over by the University shall, within a period of two years, from the date he is so taken over, give notice in writing to the State Government about his intention to be permanently absorbed in the services of the University and thereupon the University shall absorb him permanently in its services and any service rendered by him under the State Government shall be deemed to be service under the University. It further clarifies that such an employee shall be entitled to receive from the University such terms and conditions of services as respect remuneration, leave and pension such rights as respects disciplinary matters or rights similar thereto as changed circumstances may permit as are not less favourable than those to which that employee was entitled to immediately before he was taken over by the University. Sub-section (4) of Section 52 of the Act further clarifies that if any officer or servant of the State Government fails to give notice under sub-section (3) of the Act within the time referred to therein, he shall be deemed to have opted to be permanently absorbed in the service of the University under clause (b) of sub-section (3) of Section 52 of the Act.

14. It is an undisputed fact that the plaintiff had exercised option to remain in the services of the University and the said option was accepted by the University. It may be appreciated that in view of the aforesaid statutory provisions of law as envisaged under the Act, the option exercised by the plaintiff has become final. Hence, when the option exercised by the plaintiff became final, it was not open for the State Government to call him back to the parent department and that too by reverting him to the original position as a Junior Clerk as he had already earned one promotion in the University and has become a Senior Clerk. Therefore, undisputedly and in view of the provisions contained in the Act, it was not open for the defendant to call him back to the parent department as it has no right or authority to call him back to the parent department, i.e., to the State service.

15. It may be appreciated that during the pendency of the appeal before the lower appellate Court, application Ex.16 under the provisions of Order 41 Rule 27 of the CPC was moved by the plaintiff to permit him to produce additional

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evidence and thereby he intended to bring documentary evidence on record pertaining to the entry made in File No.2 of the Administrative Branch in the office of the Principal, Agriculture College, Junagadh. The said entry was pertaining to filling up the vacant posts of Senior Clerk. The said application was allowed by the learned lower appellate Judge and pursuant to that the matter was sent back to the trial court for leading additional evidence and before the trial court the documents were produced with list Ex.71 and thereafter the matter was again transmitted to the lower appellate court with the record and additional evidence which was produced vide list Ex.71. Perusal of the document produced vide list Ex.71 goes to show that the entry made in File No.2 of the Administrative Branch in the office of the Principal of Agriculture College, Junagadh, was relating to filling up the vacant posts of Senior Clerk. Vide order dated August 20, 1973 the plaintiff was promoted as Senior Clerk. It also further shows that the plaintiff was eligible for promotion to the post of Senior Clerk but he could not be promoted to the said post as he was on deputation without prior approval or sanction of his parent department. Three other persons came to be promoted by keeping some posts of Senior Clerk vacant for considering the case of the plaintiff and thereafter certain negotiations had taken place between the Director and the Principal with regard to giving promotion to the plaintiff and in the discussion it was decided to consider the case of the plaintiff for promotion if option to remain in the service of the University was given by him. Thereafter again a note was put up by the Office Superintendent before the Principal who endorsed below it to promote the plaintiff on the said condition. It would be important to note that the Director had approved the said proposal by making necessary endorsement below it. In view of this, now it can be said that the plaintiff must have been called upon thereafter to fill in the option form and in pursuance to the above stated negotiations the plaintiff had opted to remain in the services of the University because the option form Ex.49 was filled in by him on August 20, 1973 after the entry in File No.2 which appears to have been made on August 18, 1973. It is an admitted position that the Office Order giving promotion to the plaintiff was issued on August 20, 1973 vide Ex.73 and the said Office Order was issued by the same Principal, Mr. S.N. Joshi of the Agricultural College, Junagadh before whom the relevant proposals as per Ex.72 were made for considering the case of the plaintiff for his promotion.

16. From the aforesaid discussion, it becomes abundantly clear that the principles of promissory estoppel u/s 115 of the Indian Evidence Act will be applicable in the facts and circumstances of the case and the defendants are, therefore, estopped under the law from calling the plaintiff back to State service and reverting him to the post of Junior Clerk once the option was exercised by him and it was accepted by the defendants.

17. In the case of S.R. Patel Vs. State of Gujarat and Others, , wherein the petitioner was selected by the Public Service Commission but subsequently as fault was found with his qualification his services were terminated, the Court held that as the appointment was made by the Public Service Commission it could not

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be called in question. It was further held that such termination of service is made by way of punishment. The Court, therefore, quashed the same by allowing the petition.

18. In the case of Sardar Vallabhbhai Patel Memorial Society and Another Vs. State and Another, it was held that when a clear promise was given to the petitioner under earlier resolution the same promise requires to be fulfilled and the State cannot deny as the action would be barred by promissory estoppel and the petition was allowed on the said ground.

19. At this stage it would be profitable to refer to a decision of this Court in the case of Gujarat Krushi University v. D.M. Vegad, reported in 1993 (2) GLH 149. It was the judgment rendered in Second Appeal No. 49 of 1992 which was filed on identical facts and identical question of law had arisen in the said case. In that matter, this Court (Coram: A.N. Divecha, J.) (as he then was) has observed that it becomes clear from bare perusal of S. 52 (3) (4) of the Gujarat Agricultural University Act, 1969 that a duty is cast on every officer or servant of the State Government taken over by the University to give notice in writing within two years from the date he is so taken over (or such further time, if any, as the State Government may decide), inter alia, if he wanted to be permanently absorbed in the service of the University or if he wanted to be repatriated to the Government service. Sub-sec. (4) creates a deeming fiction of option to be permanently absorbed in the service of the University if no written notice is given under sub-sec. (3) within the time referred to therein.

20. In view of the aforesaid discussion and more particularly the statutory provisions contained in Section 52 (3) and (4) of the Act and Section 115 of the Indian Evidence Act as well as the case law referred to hereinabove, when the defendant No.1 had called for the option of the plaintiff for considering his case for promotion to the post of Senior Clerk and in view of the said offer if the plaintiff had exercised option to remain in the service of the University and in consequences thereof when the defendants have acted upon it and had promoted the plaintiff as Senior Clerk vide Office Order Ex.73 they cannot now deny the right of the plaintiff to continue on the said post and in the services of the University and, therefore, any action to be taken in contravention of the said fact and promise would be illegal and bad in law when the plaintiff has already worked on the post of Senior Clerk since his promotion from August 1973.

21. In view of the above discussion, I hold that the appellant/defendant University has no right or authority to revert the plaintiff to the State service and in the facts and circumstances of the case there is promissory estoppel against the appellant/defendant University. The substantial questions of law which have been formulated by this Court are answered accordingly.

22. In this view of the matter, no error either of law or fact has been committed by the lower appellate court warranting interference with the impugned judgment and decree which, on the contrary, requires affirmation by this Court.

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23. For the foregoing reasons, the appeal fails and accordingly is dismissed, however, with no order as to costs.

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