
(2012) 12 GUJ CK 0110
In the Gujarat High Court

Case No : Letters Patent Appeal No. 87 of 2009 in Special Civil Application No. 6543 of 2001

Hindustan Petroleum Corporation Ltd.

APPELLANT

Vs

Arvindkumar J. Solanki

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Citation : (2012) 12 GUJ CK 0110

Hon'ble Judges : V.M. Sahai, J;S.G. Shah, J

Bench : Division Bench

Advocate : S.S. Panesar, No. 1, for the Appellant; R.C. Sejpal, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice S.G. Shah

1. The judgment dated 20/10/2008 passed by the Ld. Single Judge of this Court in Special Civil Application No. 6543/2001 preferred by the present respondent, is under challenge in the present appeal, which is preferred by the employer Corporation, so as to confirm their action of termination of the respondent original petitioner, by their order dated 30/5/2001. We have heard learned advocate Mr. SS Panesar for the appellant and learned advocate Mr. RC Sejpal for the respondent. The sum and substance of the litigation between the parties are falling within the narrow compass. It is alleged by the appellant herein that the respondent had furnished false information at the time of getting employment with them and, therefore, they have terminated him and hence order of the Ld. Single Judge allowing the petition preferred by the respondent and thereby directing them to reinstate the respondent in service with all consequential benefits, is not proper and legal.

2. As against that, it is the case of the respondent that he has never submitted false information in any manner and that information in question, regarding his

caste, was very well within the knowledge of the appellant and it is very well on the record with the appellant since the year 1979 and, therefore, action of termination by the Corporation on such count in the year 1992 cannot sustain, more particularly because the impugned order was passed without initiating any proceedings.

3. It is submitted by the learned advocate for the appellant Mr. Panesar that while joining the services and thereafter when he was promoted, the petitioner/respondent has disclosed that he falls in the category of Scheduled Caste; whereas it is admitted fact that he belongs to Socially and Educationally Backward Class [SEBC] and not to Scheduled Caste as disclosed by him in his application for employment. Whereas the respondent has contended that in the prescribed format for application for employment, there is only two categories mentioned for selection i.e. Scheduled Caste and Scheduled Tribe and there was no column for declaration of other specific caste like "General", "OBC or "SEBC", and, therefore, he selected and tick marked option as Scheduled Caste and he has produced his caste certificate with the application for employment itself and after scrutiny of such application in the year 1979, he was appointed in the same year 1979. However, an inquiry regarding his caste after 10 years i.e. in the year 1988 and termination in the year 1992 i.e. again after 4 years of inquiry, is not proper since he was never given any show cause notice for termination on such count.

4. It is further contended by the respondent that his brother, namely, Dharmendra J Solanki is also serving with the appellant and against whom, similar proceedings were initiated by the appellant, which was challenged before the Bombay High Court and Bombay High Court has by its judgment dated 25/7/2001 in Writ Petition No. 1294/2001 set aside the termination order dated 30/5/2001 of Dharmendra J Solanki. SLP No. 16064/2001 against such judgment was also dismissed by the Hon'ble Apex Court by order dated 28/9/2001. The termination based upon false information at the time of joining service is now not tenable in view of the decision rendered by the Bombay High Court and Hon'ble Apex Court, which is relied upon by the Ld. Single Judge in the order impugned herein, and hence such judgment cannot be disturbed.

5. On perusal of the record, it becomes clear that though the respondent has disclosed his caste by putting tick mark against Scheduled Caste, there is no provision to disclose other caste in the application for employment which was submitted before the appellant on 12/9/1979 and thereafter, the respondent was selected for subsequent interview and thereby selected as Clerk. On such selection, appellant has issued appointment letter dated 12/11/1979. It is evident from the record that in fact the respondent was serving with the appellant Corporation since 1975 as intermittent Clerk-cum-Typist against some leave vacancies and was given regular employment by above referred appointment letter dated 12/11/1979. It is also evident that it was only in September 1989 i.e. after 10 years, the appellant has asked for caste certificate

in a format prescribed by them and respondent has submitted such caste certificate dated 22/12/1978, the copy of which was already submitted with the application for appointment, again on 26/9/1989. It is also evident on record that after submitting such copy of the caste certificate in September 1989, show cause notice; that why disciplinary action should not be initiated; was issued only on 19/8/1992, which was replied by the respondent on 2/9/1992 and thereafter, it was only on 1/6/2000 the respondent was placed under suspension for some other issues stating that criminal proceedings has been initiated against him by the C.B.I. It is significant to note that though the appellant is pressing for allowing the appeal on the ground of such criminal proceedings being initiated against the respondent, proper information and evidence of such criminal proceedings is not brought on record throughout the proceedings. The show cause notice dated 19/8/1992 does not disclose anything about the criminal proceedings or other allegations against the respondent though termination order dated 30/5/2001 discloses that the respondent was placed under suspension with effect from 1/6/2001 for the criminal proceedings initiated against him.

6. Thus, one thing is certain that the show cause notice for submitting false information was issued in the year 1992 and thereafter, till the year 2000 the appellant has not taken any step and all of sudden, in the year 2001 the appellant terminated the respondent from the services referring some criminal proceedings, details of which was never brought on record and, therefore, the Ld. Single Judge has rightly observed that the termination has taken place without holding any inquiry as per Order 32[2] of the Standing Orders of the Corporation, which provides that an employee cannot be discharged or dismissed from his service except after holding an inquiry against him in respect of the alleged misconduct.

7. The appellant could not succeed in showing irregularity or illegality in the judgment of the Ld. Single Judge except referring para. 13 of the judgment dated 25/7/2001 rendered by the Bombay High Court, arguing that such judgment is solely relied upon on the premises that the service record of the petitioner before the Bombay High Court was unblemish and, therefore, when CBI inquiry is pending against the present respondent, he should not be given benefit of the decision rendered by the Bombay High Court, which is confirmed by the Hon''ble Apex Court. It is further stated that the observation made by the Ld. Single Judge in the impugned judgment that fact of CBI inquiry was not reflected in the order of termination is factually incorrect and, therefore, when respondent has disclosed false information and when he is facing serious charges which are being investigated by the CBI, the action of the termination of the respondent is proper.

8. On perusal of the original record, the impugned order and discussion made hereinabove, when it is clear that there is no intention of the respondent to disclose false caste, more particularly when he has produced caste certificate on

day one; when Bombay High Court and Hon"ble Apex Court has confirmed such disclosure by the brother of the present respondent in the similar manner as proper; when appellant has not followed the rule of law by initiating proper inquiry against the respondent as per Standing Orders; when the appellant has failed to confirm the outcome of CBI inquiry, which is alleged to be started in the year 2000, and more particularly when employment of respondent - original petitioner was not on reserved post for Scheduled Caste, we do not find anything which can be termed as illegal or irregular in the impugned judgment rendered by the Ld. Single Judge, which is a reasoned judgment touching all the aspects of the appellant and, therefore, only because of one statement in such judgment that CBI inquiry is not reflected in the order of termination, though there was reference of such inquiry in termination order, such single sentence is not enough to disturb the impugned judgment, which is otherwise proper, having no irregularity or illegality in the findings arrived at by the Ld. Single Judge. In view of the above facts, circumstances and discussion, the appeal deserves to be dismissed and is hereby dismissed.