

(2014) 01 GUJ CK 0123
In the Gujarat High Court

Case No : Letters Patent Appeal No. 514 of 2008 in Special Civil Application No. 3182 of 1994

Hitubha Chandrasinh Zala

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 01 GUJ CK 0123

Hon'ble Judges : K.S. Jhaveri, J;A.G. Uraizee, J

Bench : Division Bench

Advocate : I.S. Supehia, for the Appellant; J.K. Shah, AGP for the Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of this appeal, the appellant original petitioner has challenged the judgement and order passed by the learned Single Judge in Special Civil Application No. 3182 of 1994 on 8/2/2008, whereby learned Single Judge has dismissed the writ petition preferred by the petitioner. The brief facts of the present appeal are that the petitioner was serving as an Armed Police Constable in the State Reserve Police Force, Cadre No. 10, Ukai until he came to be dismissed from service on 8/4/1993. A charge sheet dated 26/2/1991 came to be served on the petitioner on the ground that on 14/9/1990, when the petitioner was posted at a very sensitive point of Wadi Police Station area of Vadodara during the communal riots near Ranavav Masjid, he remained absent. On that day, when the communal atmosphere was surcharged in the City of Vadodara, without obtaining permission of the superior, the petitioner remained absent from 20.15 hrs and left the said point. For the said misconduct, charge sheet dated 26/2/1991 was served upon the petitioner by respondent No. 2 for holding a departmental inquiry in respect of a charge that on 14-9-1990, he left the duty point at 20.15 hours without permission of his superior. The disciplinary

authority found the charges proved as per his inquiry report. Thereafter, respondent No. 2-Disciplinary Authority issued a show cause notice dated 11/3/1993 calling upon the petitioner to show cause as to why he should not be dismissed from service. The appellant replied to the show cause notice on 29/3/1993. Vide order dated 8/4/1993, respondent No. 2 has dismissed the appellant from service.

2. Against the aforesaid order, the appeal has filed appeal before the Deputy Inspector General of Police Armed Units, which came to be dismissed by order dated 27/7/1993. Thereafter, the appellant has filed review application before the Additional Director General of Police Armed Units, Gujarat State, which was also dismissed by order dated 11/1/1994.

3. Being aggrieved by the order of the dismissal dated 8/4/1993, confirmed in appeal vide order dated 27/7/1993, and upheld by the Revisional Authority vide order dated 11/1/1994, the appellant has preferred the writ petition under Article 226 of the Constitution of India with a prayer to quash and set aside the orders of dismissal and reinstate the appellant in service with all consequential benefits including back wages with interest. The writ petition was rejected by the learned Single Judge vide order dated 8/2/2008 against which the present appeal is preferred.

4. Learned advocate Mr. Supehia appearing for the appellant states that the learned Single Judge has committed error in not holding that the appellant could not be held guilty since important witness Ajitsingh, with whose oral permission the appellant had left the place of duty for half an hour for fetching medicine from the tent, was not examined during the departmental inquiry.

5. It is next contended by him that learned Single Judge has failed to appreciate the fact that the penalty of dismissal was liable to be quashed and set aside on the ground that the authorities had taken into consideration the previous service record of the appellant without notice.

6. He further states that the judgement and order passed by the learned Single Judge are contrary to law and evidence on record, therefore, the interference would require by this Court.

7. Learned AGP Mr. Shah supports the order passed by the learned Single Judge as well as Competent authorities. He states that the order passed by the learned Single Judge is just and proper. Hence, the appeal deserves to be dismissed.

8. We have heard learned advocate Mr. I.S. Supehia on behalf of the appellant and learned AGP Mr. J.K. Shah appearing for the respondent at length and in great detail. We have also perused the order passed by the Competent authorities as well as order of the learned Single Judge. It emerges from the record that the appellant was a member of State Reserve Police Force created by the State Government in addition to regular police force to maintain law and order situation. The appellant was posted at a very sensitive point of Vadi Police

Station area of Vadodara City during the communal riots near Ranavav Masjid but in gross dereliction of duty he remained absent without obtaining permission of his superior. This conduct of the appellant exhibits gross and utter negligence and carelessness in performance of his duty. A slight dereliction of duty by a member of discipline force is very likely to result into uncontrollable situation leading to grave law and order problem. Considering the facts and circumstances of the case, we are in complete agreement with the view taken by the learned Single Judge. We do not find any illegality in the order passed by the learned Single Judge. The order of dismissal cannot be said to be disproportionate to prove misconduct or in any manner, unjust, unreasonable, arbitrary or violative of principles of natural justice. Hence, no case is made out, the appeal stands dismissed.