

(2003) 02 GUJ CK 0053
In the Gujarat High Court

Case No : Letters Patent Appeal No. 567 of 2002 with Civil Application No. 4735 of 2002

Khant Harishchandra Amarsinh

APPELLANT

Vs

Superintendent of Police

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Letters Patent Act, 1865 — Clause 15

Citation : (2003) 02 GUJ CK 0053

Hon'ble Judges : K.A. Puj, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : Mamta R. Vyas, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—By this Letters Patent Appeal, under Clause 15 of the Letters Patent, the challenge is against the judgment and order of the learned Single Judge, dated 29.4.2002 in writ petition being Special Civil Application No.12947 of 2000, whereby the appellant- original petitioner, challenging the order of termination of the respondent-authority from the post of Unarmed Police Constable, on the ground of medically certified " Colour Blindness " came to be rejected. The short question, which emerges from the record for consideration and adjudication in this Letters Patent Appeal, is as to whether the medically certified " colour blindness" could be said to be a disability, rendering the person, like the original petitioner for the post of Unarmed Police Constable unfit ? This question is answered in the negative by the learned Single Judge, holding that the original petitioner's service has been terminated in consonance with the terms of appointment. With a view to appreciating this issue in focus, let us have at the outset, a short, but relevant spectrum of material facts, giving rise to this Letters Patent.

2. The appellant- original petitioner, who is also hereinafter referred to as the "

petitioner" for the convenience sake, who came to be selected and appointed as an Unarmed Police Constable on 03.5.1999, and he started working and in course of his service, he was examined by the Medical Board, and upon examination, it was certified by the Chair person of the Medical Board that he is having " colour blindness". It is further certified by the Medical Board, by certificate dated 01.2.2003 that "colour blindness" sustained by the petitioner is a disqualification, rendering him unfit for the service of a Police Constable. The medical report of the Civil Surgeon dated 16.8.2000 issued by the Civil Surgeon of the Jamnabai Hospital, Vadodara was taken into consideration by the respondent authority before passing the impugned order of termination, dated 30.8.2000. It is stated in the report itself that the Chair Person of the Medical Board of Ophthalmic Department of Civil Hospital, Ahmedabad also confirmed the opinion rendered by the Civil Surgeon. Relying on the medical report, termination order came to be passed.

3. During the course of hearing before us, we desired to examine the medical report. We had also accordingly, passed order on 20.1.2003 and pursuant to our order, the medical record was called for by the learned A.G.P. It was scrutinized by us and it was found that the unfitness is rendered only on the ground of colour blindness, as certified by the Medical Board. Again pursuant to our direction, opinion of the Chair Person of the Medical Board, Ophthalmic Department of Civil Hospital, Ahmedabad, dated 1.2.2003 and on scrutiny of the said medical report, it is found that the so-called, disability afflicted to the original petitioner is to the colour blindness, which warranted the impugned order of termination from the service as Unarmed Police Constable. We have also dispassionately considered the impugned judgment of the learned Single Judge, and it appears from the same that the learned Single Judge, could not enjoy the pleasure of hearing the learned counsel Mr. Pancholi for the petitioner, as sick note filed by him, was not considered expedient to keep the matter pending. Be that as it may, after having enjoyed the pleasure of hearing of both the learned advocates, appearing for the parties and in absence of any specific provisions or decision prescribing the medical standard "colour Blindness", as disqualification for the performance of duties of the post of Unarmed Police Constable, and the decision of the Hon'ble Apex Court rendered in Union of India and others Vs. Satyaprakash Vashistha 1994 SCC [L & S] 792 [II], we are of the opinion that the view taken by the learned Single Judge, and the ultimate conclusion recorded in the impugned judgment, requires interference in exercise of our powers under Clause 15 of the Letters Patent. During the course of hearing to our pointed question is as to whether the ophthalmic affliction of " colour blindness" is considered or treated as a disqualification by any provision of governing the service conditions ? To which the clear answer of the learned A.G.P. was in the negative. Therefore, it becomes clear that there is no any provision which disqualifies or renders " colour blindness" unfit for the post of Unarmed Police Constable. In absence thereof, the view expressed by the learned Single Judge in the impugned judgment that the termination of the service of the petitioner is in

consonance with the terms of his appointment, is not the correct interpretation and observation. Merely because the order of appointment, stipulating that the appointment is subject to the medical unfitness, does not necessarily ipso facto will lead to unerring inference that such an appointment, despite the colour blindness certified by the medical Board is not legal and proper. It is a matter which requires no further probe that any appointment in the government service, is always subject to medical fitness, either the medical fitness is ascertained before the order of appointment or the appointment is made subject to medical fitness. However, whether a particular type of unfit certificate by the Medical Board would be ground of termination of service or cancellation of the appointment order or not, will have to be adjudicated upon the terms and conditions of the service and the governing rules. It cannot be ipso facto judged that the colour blindness, is itself disqualification for any post in question. This issue requires serious consideration. In other words, the unfitness certified by the Medical Board, medically certified unfitness or rendering a particular employment unfit or not is required to be closely scrutinized in terms of the governing service rules and the nature and type of colour of service to be rendered or person holding such a post or appointment ? There is no any specific rule provisions which treats special colour blindness as a disqualification or unfitness for the post of Unarmed Police Constable. In the present case, therefore, merely medically certified unfitness, on the ground of affliction of colour blindness, cannot be treated as a ground of termination of service without considering the rule provision or the service condition of the post in question. In our opinion, in absence of any specific provision providing physical standard, colour blindness as a disqualification or unfitness for the post in question, the impugned order of termination ipso facto on such medical opinion, cannot be sustained on the judicial scrutiny. The view, which we are taking is materially reinforced by the decision in Union of India and Ors. Vs. Satyaprakash Vashistha [supra]. We would also like to point out that the provision incorporated in benevolent legislation i.e. The persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 with Rules 1997, are also required to be examined by the Management or the employer. The design and desideratum, of the said Act is clearly articulated in the preamble, which reads as under:-

"Whereas the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993- 2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region;

And whereas India is a signatory to the said Proclamation ;

And whereas it is considered necessary to implement the Proclamation aforesaid

Be it enacted by Parliament in the Forty-sixth year of the Republic of India as follows.

It has come into effect from 1.1.96, since detailed and meticulous scrutiny of the provisions of the aforesaid Act are not called for in determining and adjudicating upon the controversy in view of the facts of the present appeal, we do not deem it expedient to dwell on those provisions minutely. However, suffice to say that in the beginning of this century " 21st century", till the opsimathy notion of condemning the physically or mentally handicapped and aged old mind set, requires overall change, in view of the human rights started as well as the proclamation of the UNO on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, to which India is a signatory member of the United Nation. After taking into consideration the factual profile as well as the relevant proposition of law, we are of the opinion that the termination of the appellant original petitioner by the respondent authority only on the medically certified "colour blindness" is required to be quashed and set aside by allowing this Letters Patent Appeal, in exercise of powers under Clause 15 of the Letters Patent.

4. Consequently, the appeal shall stand allowed by quashing and setting aside the impugned order of termination as well as the impugned judgment of the learned Single Judge. It is directed that the original petitioner shall be reinstated forthwith without any backwages, in the peculiar facts and circumstances of the case and the period from the date of termination till the reinstatement shall be treated as a part of his continuous service for all the purpose including the retiral benefits and fixation of his seniority and promotion. We observe and indicate that the promotion, if any, already given to the persons junior to the original petitioner, during the period of termination of the petitioner, shall not be disturbed as a result of relief granted in this petition. Accordingly, the civil application is also disposed of. No order as to costs.