

(1990) 03 GUJ CK 0016
In the Gujarat High Court

M.D. Parmar

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 21-03-1990

Acts Referred:

Citation : (1991) 1 GLR 580

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Judgement

M.B. Shah, J.—Rule. Learned Addl. Govt. Pleader Mr. Dave waives service on behalf of the respondents.

2. The question at this stage is whether an employee who is dismissed from service on the ground of corruption, serious misconduct or lack of honesty and integrity should be foisted on the department without setting aside the dismissal order. There is no law that as soon as the matter is admitted, interim relief should be granted in such a manner that without deciding that the impugned order is illegal and void the Court should permit the petitioner to continue in service by granting interim relief and permit him to commit some further misdeeds. Presuming that even if he does not commit further misdeeds, the order imposing penalty cannot be set aside even temporarily till the petition is decided. In the rarest of rare cases the Court may exercise such jurisdiction. Further, if the petition is finally allowed, then the order of reinstatement with full back wages can be passed and the petitioner would not suffer any loss. As against this, if the order passed by the departmental authority holding the petitioner guilty of charges of corruption or other serious misconduct, is stayed without deciding it, it may result in serious prejudice to the society at large and the administration may suffer irreparable loss which cannot be imagined and remedied subsequently by the Court.

3. However, Mr. Oza, learned Advocate appearing on behalf of the petitioner, vehemently submitted that this Court should grant interim relief staying the dismissal order because the Enquiry Officer has not given sufficient opportunity

of hearing to the petitioner.

As the notice was issued, on behalf of the respondents affidavit-in-reply is filed which indicates that sufficient opportunity of hearing was given to the petitioner but the petitioner, though initially took part in the inquiry, remained absent thereafter. At the time of hearing of this petition, learned Addl. Govt. Pleader Mr. Dave has produced for perusal the record of the departmental inquiry which contains the evidence recorded at the time of departmental inquiry and the record which reveals as to on how many occasions the matter was adjourned because the petitioner sought adjournment. Learned Advocate Mr. Oza has also produced on record today, i.e., after about 2 months the order passed by the State Govt, dismissing him from service. From the record it seems that six witnesses were examined in the presence of the petitioner and his friend. They are cross-examined in detail by the petitioner. Prima facie even if this Court exercise appellate jurisdiction (which this Court has none), yet it is possible to arrive at the conclusion that the evidence of these witnesses is sufficient to hold that charge against the petitioner is proved. These observations are made only at prima facie stage because it is the contention of the learned Advocate Mr. Oza that there is no sufficient evidence on record to hold the petitioner guilty of the chagres levelled against him. At the time of admission hearing of the matter, it was suggested that if the petitioner wants to cross-examine the witnesses, then opportunity would be given to him by setting aside the order but during that time he would remain under suspension. That suggestion was also not accepted by the petitioner. It seems that under the pretext that the petitioner was not given sufficient opportunity to cross-examine some witnesses and by obtaining an interim relief he wants to continue on the job.

4. Hence interim relief is refused.

However, some allegations of mala fide are made and the question whether sufficient opportunity was given to the petitioner requires to be finally adjudicated, the matter is admitted.