

(2010) 12 GUJ CK 0185

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1572 of 2010 in Special Civil Application No. 8004 of 1990

Mohanbhai J. Oza

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 161(1)
Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0185

Hon'ble Judges : J.C. Upadhyaya, J;D.H. Waghela, J

Bench : Division Bench

Advocate : M.J. Mehta, for the Appellant; N.J. Shah, Asst. Government Pleader for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The Appellant challenged in this Letters Patent Appeal, oral order dated 7.4.2010 of learned single Judge of this Court in Special Civil Application No. 8004 of 1990 whereby the petition filed by the Appellant came to be dismissed.

2. The Appellant had challenged order of his premature retirement dated 1.10.1990 and prayed for reinstatement. He had joined the revenue department on 4.11.1957 as Clerk and was promoted to the post of Mamlatdar in 1985. It further transpires that one A.C B case being C.R. No. 2 of 1998 came to be filed against him and pursuant thereto, he was placed under suspension by order dated 2.6.1998. The impugned order of compulsory retirement came to be passed while he was under suspension.

3. In the impugned order dated 7.4.2010, while discussing the case of the Petitioner, learned single Judge in paragraph 7 observed as under:

7. As a result of hearing and perusal of the record I am of the view that the State

government can exercise power for premature retirement in appropriate case. While examining the matter under Rule 161 (1) (aa) of the Rules the Court has limited jurisdiction whether it is in the public interest to allow such man to continue in service or not. From the facts of the case it is evident that the Petitioner is suspended for corruption charge. Further it is borne out that the Government has reviewed the case of the Petitioner when he attained the age of 55 years, on the basis of his poor performance reflected in his confidential reports and the criminal case and departmental enquiry against him. It was pointed out that the Petitioner's performance was inadequate. The Respondents are the proper authority to decide the matter whether to continue the Petitioner in service or not. This Court cannot substitute the decision of the authority especially when there is corruption charges against the Petitioner.

4. Learned Counsel, Mr. Mehta, for the Appellant, assailed the impugned order on the ground that under the pretext of compulsory retirement, virtually, the department has passed the punitive order. There was only one adverse remark in the confidential report of the Appellant and that too with regard to some irregularity in revenue recovery. Upon the communication of the adverse remark, he had made a representation against the adverse remark, but the representation remained pending till the impugned order of his compulsory retirement came to be passed. It is further submitted that Rule 161(1) of the Bombay Civil Services Rules has not been duly complied with in the instant case.

4.1 Mr. Mehta relied upon the cases of Baidyanath Mahafatra v. State of Orissa 1989 GLHEL SC 2510, Ram Ekbal Sharma v. State of Bihar 1990 GLHEL SC 23036 and Vasant M. Desai v. State of Gujarat 2004 (3) GLH 554.

5. Considering Rule 161(1), it clearly transpires that the Court has very limited power to examine the aspect as to whether the compulsory retirement is in public interest or not. While disposing of the petition, learned single Judge has taken into consideration all the relevant aspects of the matter and as seen above, in paragraph 7, cogent reasons are assigned while coming to the conclusion that the petition was devoid of any merits. It is, therefore, rightly observed that in exercise of the powers conferred under Article 226 of the Constitution, this Court cannot substitute the decision of the authority, as the Respondent is the proper authority to decide whether to continue the Appellant in service or not. It is further pertinent to note that the order of premature retirement was passed way back in the year 1990.

6. We have given our thoughtful consideration to the ratio laid down in the above-mentioned judgments relied upon on behalf of the Appellant. Considering the facts and circumstances of the instant case, it does not appear that the order of compulsory retirement was passed as a measure of punishment. The overall performance of the Appellant was reviewed and the Respondent arrived at the conclusion that further continuation of the Appellant in the department was not in public interest.

7. The appeal, therefore, lacks merits and deserves dismissal, and accordingly it is dismissed.