
(1993) 04 GUJ CK 0016
In the Gujarat High Court
Case No : L.P.A. No. 250 of 1984

N.K. Bellaney

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-04-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1994) 1 LLJ 788

Hon'ble Judges : S. Nainar Sundaram, C.J; M.S. Parikh, J

Bench : Division Bench

Advocate : S.K. Zaveri, for the Appellant; L.R. Pujari, for the Respondent

Final Decision : Allowed

Judgement

S. Nainar Sundaram, C.J.—This Letters Patent Appeal is directed against the order of the learned single Judge in Special Civil Application No. 3159 of 1982. The petitioner in the Special Civil Application is the appellant in this Letters Patent Appeal and the respondent in the Special Civil Application is the respondent in this Letters Patent Appeal.

2. The appellant, who was in the cadre of a District Health Officer, was given promotion as Zonal Officer (Malaria) - Class I on July 14, 1980. However, without assigning any reason and without even putting on notice the appellant of the action to be taken his promotion was kept in abeyance. The appellant would say that this happened pursuant to a telegram from the Secretary, Health Department received by the concerned District Development Officer, on July 16, 1980. Admittedly, on that day, there was no disciplinary proceedings pending against the appellant. It is found that the disciplinary proceedings were, subsequently, prosecuted and the appellant was, on April 2, 1981, visited with a punishment of stoppage of two increments, with future effect. It must be noted that the appellant was also kept under suspension pending the disciplinary proceedings. The appellant came to this Court preferring the above Special Civil Application putting forth the main prayers as follows:

"xxxx the Hon"ble Court be pleased to issue of mandamus or the writ, in the nature of mandamus or any other appropriate writ, direction or order, directing the respondent-Government to revive the promotion order of the petitioner dated July 14, 1980 by cancelling the order of keeping it in abeyance so as to make it effective from July 14, 1980 and be pleased to further direct the respondent-Government to quash and set aside the order of punishment dated April 2, 1981 and be pleased further to direct the respondent-Government to pay the petitioner his fix pay and allowances for the period of suspension by treating that period as a period spent in duty as if he was not suspended."

As we could see from the main prayer extracted, as above, it has got three facts; one concerning the order keeping in abeyance the promotion accorded to the appellant; the second concerning the punishment imposed on the appellant, and the third concerning the disbursement of the pay and allowances during the period of suspension.

3. The learned single Judge, who dealt with the Special Civil Application, was asked to examine the propriety of withholding of the promotion accorded to the appellant. The learned single Judge did not find any infirmity tainting the order keeping in abeyance the promotion accorded to the appellant and further, did not find any warrant to interfere with the order of penalty imposed on the appellant on April 2, 1981 and as a result, rejected the Special Civil Application.

4. Mr. S.K. Zaveri, learned Counsel for the appellant, would submit that once the promotion has been accorded to the appellant on July 14, 1980, in the absence of power to withhold the same reserved for the respondent, it could not be withheld, as happened in the present case, and, in any event, the said action is penal in nature and before there could be a withholding of the order of promotion already made, the appellant ought to have been afforded an opportunity to make his say and this opportunity was totally denied to the appellant. The learned Counsel for the appellant would plead that, upholding this contention, we must frown upon the disciplinary action prosecuted against the appellant in the lower cadre despite his entitlement to function in the post, to which he was promoted and also the order of suspension, which was made against the appellant in the lower cadre. In order to find out as to whether any power has been reserved for the respondent to withhold a promotion after the same has been accorded to a servant, like the appellant, we afforded adequate opportunity to the learned Assistant Government Pleader Mr. L.R. Pujari, appearing for the respondents. The learned Assistant Government Pleader is not in a position to expose before us any specified power reserved for the respondent to withhold a promotion already accorded to a servant, like the appellant. If any material, reserving such power is exposed before Court, it will have been an occasion to examine the tenability or otherwise of such a power, because a contention is being raised by the learned Counsel for the appellant that promotion should be withheld merely because some disciplinary criminal proceedings are pending against the servant and to deny the said benefit, they must be, at the relevant point of time, pending at the

stage when charge memorandum/charge-sheet has already been issued to the servant. In this behalf, the learned Counsel for the appellant would place reliance upon the pronouncement of the Supreme Court in *Union of India Vs. K.V. Jankiraman, etc. etc.*, . Here, we find that the Court is not made wiser of any power that is available for the respondent to withhold a promotion already accorded to a servant, like the appellant. Assuming that there is such a power, as already noted, on the date when the impugned action, withholding or keeping in abeyance the promotion already accorded to the appellant, was taken, admittedly, there was no issuance of a charge memorandum/charge-sheet against the appellant. If that is so, the case squarely comes within the mischief of the ratio decidendi set down by the Supreme Court in the above pronouncement. We also find force in the submission of the learned Counsel for the appellant that once the appellant has been found fit for promotion and, in fact, has been accorded promotion, to withhold such a promotion would, virtually, amount to imposition of a penalty and such visitation of penalty should not happen without the appellant being afforded an adequate opportunity to make his say on the question. Obviously, this opportunity was denied to the appellant. This infirmity also we are bound to take note of since it vitiates the impugned action of withholding or keeping in abeyance the promotion already accorded to the appellant. The reasonings which have preceded, as above, compel us to countenance the grievance of the appellant over the impugned action of withholding or keeping in abeyance the promotion of the appellant. When once that action is deleted and the appellant is said to be entitled to the promotional benefits from the date he was accorded the promotion, viz., July 14, 1980, the resultant position is that the prosecution of the disciplinary action against the appellant in the lower cadre cannot have any sanctity in the eye of law and all the proceedings must fall to the ground. Consequently, the imposition of penalty on April 2, 1981 and the order of suspension during disciplinary action stand effaced and quashed. The appellant would be entitled to all the service benefits on the aforesaid basis. But, here, we are bound to take note of one aspect, viz., as to whether the appellant reaping the service benefits as per the above discussion will affect the service benefits of any other personnel which have accrued to and reaped by them in the interregnum. Such service personnel are not before us. Accordingly, we direct that the appellant reaping all the service benefits pursuant to the present judgment of ours shall not, in any way, disturb and take away the service benefits that have accrued to and reaped by other service personnel in the service.

5. This Letters Patent Appeal is allowed in the above terms. We make no order as to costs.