

(2024) 04 GUJ CK 0056

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 447 Of 2016 In R/Special Civil Application
No. 5241 Of 2000

Palanpur Municipality Through Chief Officer, & Ors

APPELLANT

Vs

Kantibhai Ishwardas Patel, Since Decd. Through Legal Heirs &
Ors

RESPONDENT

Date of Decision : 16-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 04 GUJ CK 0056

Hon'ble Judges : Biren Vaishnav, J;Pranav Trivedi, J

Bench : Division Bench

Advocate : HS Munshaw

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. This appeal under Clause 15 of the Letters Patent arises out of the oral judgement passed by the learned Single Judge dated 02.03.2016.

2. By the aforesaid judgement under challenge, the learned Single Judge in a petition filed by the respondent, interfered with the order of compulsory retirement passed by the Palanpur Municipality and issued certain consequential directions. Those consequential directions were issued to be given to the legal heirs of the petitioner who pending the petition had died.

3. Facts in brief would indicate that the respondent was the original petitioner and was working with the Palanpur Municipality as Food Inspector. It was his case that he was serving honestly and diligently and there was no reason for the appellant - Municipality to pass an order of compulsory retirement against the respondent-original petitioner.

4. Various grounds were advanced by the counsel appearing for the respondent-

original petitioner before the learned Single Judge assailing the ground of compulsory retirement.

5. The petition being allowed, the Palanpur Municipality is in appeal before us.

6. Mr.H.S.Munshaw learned advocate appearing for the appellant – Municipality would submit that it was not a case where the respondent-original petitioner could not be said to have a career which was blot-less. Numerous complaints qua public at large were filed against him due to his indifferent manner and method of working. The respondent was caught red handed by Anti-Corruption Bureau for bribe of Rs.3,000/-, for which, a case was lodged before the competent authorities.

7. Mr.Munshaw would submit that in the past the conduct of the original petitioner was found to be bad inasmuch as, it came to the notice of the municipality on the basis of complaints lodged by several businessmen that he was harassing the business community of the Municipality.

8. Mr.Munshaw would take us through different letters of the authorities indicating that his conduct was not above board. That he was harassing the public at large and was playing mischief with the records and reports in different cases concerning the office of the Commissioner of Food and Drugs and that there were complaints against him which is evident from the communications dated 29.01.1991, 12.03.1991 and 23.04.1991. He would also rely on a letter dated 27.11.1989 from the office of the Commissioner of Food and Drugs against the petitioner. Serious complaints were made according to Mr.Munshaw as is evident from the communication dated 28.01.1986. In other words, the emphasis of the submissions of the learned counsel for the Municipality was that retaining the respondent-original petitioner (since deceased) was not in the interest of the Municipality and therefore the order of penalty was justified.

9. Though served, nobody appears for the legal heirs of the respondent (since deceased).

10. We have extensively considered the submissions of learned counsel for the Municipality and also the judgement of the learned Single Judge.

11. Essentially, on perusal of the order of the learned Single Judge which is under challenge, it would indicate that having set out the law with regard to compulsory retirement in the relevant paragraph of the decision under challenge, the issue which the learned Single Judge was required to consider was, whether it was open for the Court in exercise of powers under Article 226 of the Constitution of India to interfere with the order of compulsory retirement ?

12. The learned Single Judge set out various decisions of the Supreme Court on the considerations that should weigh with the authorities in passing an order of compulsory retirement.

13. Perusal of the order of the learned Single Judge would indicate that when

considering whether the order of compulsory retirement was in colourable exercise of powers or whether it was imposed as a punitive measure, the learned Single Judge, in our opinion, has rightly so found that though the Municipality would contend that there were several letters indicating that the conduct of the respondent (since deceased) was amiss, there were on record several certificates issued by the Chief Officer, Administrator and the President of the Municipality, categorically appreciating the conduct of the respondent (since deceased). As far as his conduct with regard to being trapped for an offense under the Prevention of Corruption Act, it is found that the respondent (since deceased) was acquitted and appeal of the State failed. What is also apparent is that the respondent had filed several FIRs against his superior officer who was working as a Chairman of the Food Adulteration Committee. Obviously therefore, what is apparent is that having worked as a Food Inspector and having filed FIRs against his superior officer must have ruffled the feathers of his Superior Officers and therefore the order of compulsory retirement against the respondent was passed.

14. If the submission of the learned counsel for the Municipality that the conduct of the respondent over a period of 10 years was not above board, in the opinion of this Court, as was rightly held by the learned Single Judge, nothing prevented the Municipality from framing charges and holding a departmental inquiry and therefore the learned Single Judge in paras 25 and 26 of the order under challenge based on a material observed thus:

"25. Thus, from the material produced on record, it is clear that respondent Nagarpalika has passed the impugned order on 20.05.2000 with a malafide intention at the instance of respondents No.2 and 3. The petitioner has well in advance shown apprehension about the same. It is further clear that while passing the impugned order, the respondent authority has taken into consideration the irrelevant material and not at all considered the service record of the petitioner i.e. the certificates dated 24.02.1993, 31.08.1994 and 29.09.1999, issued by the various officers of the respondent Municipality, which are produced at page 214 to 216 of the compilation. If the petitioner was working with honesty and sincerity as reflected in the said certificates, there was no question of taking into consideration the irrelevant material while passing the impugned order. Even, no departmental inquiry was pending against the petitioner which is reflected from the aforesaid certificates till 1999. Thus, the observation made by the respondent Municipality in the impugned order that for certain charges, departmental inquiry was initiated against the petitioner in the year 1990 and for a period of 10 years, said inquiry was not concluded because of the petitioner. The said fact is not supported by any material produced on record and the said fact is also incorrect in view of the certificates issued by the respondent authority. Thus, irrelevant material/fact of departmental inquiry pending since 10 years was considered and observed in the impugned order that now if the disciplinary proceedings is initiated against the petitioner, then it would not possible to conclude the inquiry against him and therefore in public interest, it is decided to pass an order of compulsory retirement of the petitioner.

Thus, instead of initiating the inquiry against the petitioner, order of compulsory retirement was passed. This is nothing but a short cut adopted by the respondent Municipality to avoid conducting departmental inquiry, which is not permissible. Thus, such an order is punitive in nature.

26. In view of the aforesaid discussion, this Court is of the opinion that the impugned order passed by the respondent Municipality was with mala-fide intention and at the instance of the respondents No.2 and 3 and therefore, the same is required to be quashed and set aside. The said order is also arbitrary and perverse as irrelevant material was considered by the respondent Municipality and the relevant material was ignored. The said order is also required to be quashed and set aside on the ground that the same was passed as a short cut to avoid departmental inquiry against the petitioner. Thus, though the scope of judicial review is limited while exercising powers under Article 226 of the Constitution of India by this Court, in the facts and circumstances of the present case, and in view of the aforesaid discussion, the impugned order is required to be interfered with and is required to be quashed and set aside. Accordingly, the following order is passed.”

15. Even if a glance is made at the certificate annexed to the rejoinder given by the Municipal Officers of the Municipality, one of the certificates indicate that the respondent (since deceased) was honest, hardworking and that he had no bad record and his track record as a Food Inspector was clean and honest.

16. Obviously therefore, in our opinion and in the opinion of the learned Single Judge which we affirm, the tool of compulsory retirement was used only with a view to shortcut departmental inquiry.

17. For the aforesaid reasons, the appeal is dismissed.