

(1998) 03 GUJ CK 0028

In the Gujarat High Court

Case No : Letter Patent Appeal No. 1521 of 1997 in Spl. Civil Appli. No. 7472 of 1996

Poonamchand Somabhai Patel

APPELLANT

Vs

Kapadwanj Nagarpalika and Others

RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 47, 48

Citation : (1998) 2 GLR 1636

Hon'ble Judges : C.K.Thakker, J;A.L. Dave, J

Bench : Division Bench

Advocate : Suresh M. Trivedi, for the Appellant; V.C. Desai and Parekh, for the Respondent

Judgement

C.K. Thakker, J.—This appeal is directed against an order passed by the learned single Judge in Special Civil Application No. 7472 of 1996. On April 28, 1997.

2. Appellant is the original petitioner. He was appointed as Chief Officer of Kapadwanj Nagarpalika ("Nagarpalika" for short) by a resolution dated October 31, 1988. On November 3, 1988, a formal order was issued in his favour appointing him to the post of Chief Officer. Since then he is working as Chief Officer of Nagarpalika. It is his case that he was on leave from August 29, 1996 to September 30, 1996. In the meanwhile, however, an order of suspension came to be passed against him on September 20, 1996 (Annexure-A to the petition). The action suspending him from active service was challenged by filing the above petition.

3. It was contended before the learned single Judge that in the light of the provisions of Secs. 47 and 48 of Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") no action could have been taken against the appellant. It was without jurisdiction and was, therefore, liable to be quashed and set aside. The learned single Judge, after hearing the parties, did not think it fit to interfere with the action, taken by the respondents and dismissed the petition. It is

against that order that the present Letters Patent Appeal is filed.

4. We have heard Mr. S. M. Trivedi, learned Counsel for the appellant. Mr. V. C. Desai, learned counsel for respondent No. 1 and Ms. Parekh, Assistant Government Pleader, for respondent Nos. 2 to 4.

5. Mr. Trivedi submitted that the State Government has no power, authority or jurisdiction to take an action of suspending the appellant. The learned single Judge has dealt with the point and recorded reasons in support of the order and we do not see any reason to interfere with that part of the order.

6. Secondly, it was contended that suspension is one of the penalties prescribed u/s 48 of the Act. It was, therefore, obligatory on the part of the authorities to issues show cause notice, to call for explanation and to comply with principles of natural justice, and only thereafter, an order of punishment could be imposed. For that purpose, attention of the Court was invited to Section 48 of the Act. Section 48 states that certain penalties can be imposed without prejudice to the provisions of any law for the timebeing in force for good and sufficient reasons upon any officer or servant of a Municipality. Clause (vi) of sub-section (1) speaks of suspension. Sub-section (2) enacts that any or the penalties mentioned in sub-section (1) [which includes suspension also] can be imposed on any officer or servant of a Municipality by the authority competent to make the appointment of such officer or servant. Sub-section (3) then reads :

"(3) No officer or servant shall be reduced to a lower post or removed or dismissed from service and no punishment involving any monetary loss shall be imposed on him under this section unless he has been given a reasonable opportunity of showing cause against such punishment."

The contention of Mr. Trivedi is that since suspension is one of the penalties specified in sub-sec (1) of Section 48 and as that penalty is imposed on the appellant and since it is not disputed by the respondents that no opportunity has been afforded before imposing the said penalty upon the appellant, the action was bad in law and requires to be quashed and set aside.

7. So far as legal position is concerned, there cannot be two opinions that, if a penalty is imposed, principle of natural justice ought to have been observed. The question, however, is : Can it be said that the order which is passed against the appellant in the instant case is by way of penalty or punishment ? Now, if one looks at the order, it is clear that it is not by way of penalty or punishment, but is an action which is preventive in nature. The order states that in pursuance of an enquiry held by the Collector, Kheda and report submitted by him, it was recommended to initiate disciplinary proceedings against Mr. P. S. Patel (appellant herein) as it seems that there is some substance in the allegation against him. It was then stated : "So the Government has decided to initiate departmental inquiry against the serious allegations on him". Looking to the order, there is no doubt in our minds that the action, which is taken, is suspension of appellant pending disciplinary inquiry against him and the order is

not passed in purported exercise of power under sub-section (1) of Section 48 of the Act, which speaks of penalties. Even in affidavit-in-reply, the Deputy Secretary has stated so. In these circumstances, in our opinion, provisions of Section 48 would not apply.

8. It was, however, contended by Mr. Trivedi that civil consequences ensue from the order of suspension and that the appellant will not be entitled to full salary. He, therefore, submitted that, as per settled law, if any action adversely affects an employee, he ought to have been afforded opportunity of hearing. For that proposition of law, reliance was placed on a Supreme Court decision in *Khem Chand Vs. Union of India (UOI)*, . In paragraph 15, Their Lordships observed :

"... There is no doubt that the order of suspension affects a Government servant injuriously. There is no basis for thinking, however, that because of the order of suspension he ceases to be a member of the service."

In our opinion, this contention also cannot be upheld as it is well-settled that suspensions are of two types : (i) suspension by way of penalty or punishment and (ii) suspension pending prosecution and/or departmental inquiry. If the case falls in the former category, obviously, apart from statutory provisions, it is penal in nature and it can only be taken by observing principles of natural justice and fair play. In the latter category it has been held now and again that the action is preventive in nature and at that stage, principles of natural justice have no application.

9. A similar contention was raised before the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, . In paragraph 55, the Court observed :

"... The order suspending the Government servant pending enquiry is partly an administrative order. What has been held to be quasi-judicial is the enquiry on the charges of misconduct, an enquiry which under the rules it is necessary to have an explanation of the Government servant to the charges and to have oral evidence, if any, recorded in his presence and then to come to a finding. None of these steps is necessary before suspending a Government servant pending enquiry. Such orders of suspension can be passed if the authority concerned, on getting a complaint of misconduct, considers that the alleged charge does not appear to be groundless, that it requires enquiry and that it is necessary to suspend the Government servant pending enquiry."

Recently, a similar question was raised before a Division Bench of this Court in *Kaushik T. Patel v. Gujarat Water Resources Development Corporation Ltd.*, 1996 (2) GLH 838 : [1997 (1) GLR 701] to which one of us (C. K. Thakker, J.) was a party. There also it was argued that an order of suspension was passed without affording opportunity of hearing to the delinquent and, hence, the action was bad in law. Dealing with the contention, the Division Bench observed that, since the action was preventive in nature and not punitive, the delinquent was not entitled to notice, explanation or opportunity of hearing and the order could not be said to be illegal on that ground. We, therefore, see no substance in that contention

of the learned Counsel as well.

10. Lastly, it was urged that the appellant was on leave between August 29, 1996 and September 30, 1996 and the order of suspension was passed on September 20, 1996, i.e., during the period when the appellant was on leave. It was not even the case of Nagarpalika that any order was passed cancelling and/or revoking leave granted in favour of the appellant - Chief Officer. Hence, according to the learned Counsel, no order of suspension could have been passed during that period when the appellant was on leave as leave was not cancelled and/or revoked. For that, reliance was placed on Pratap Singh (supra). In that case, an employee was on leave. His leave was cancelled and he was placed under suspension. Both the notifications, namely, suspending the delinquent and cancelling his leave, were issued on the same day, on June 3, 1961. Dealing with contention that an order of suspension could not have been passed before revoking or cancelling leave, the Court observed :

"The order in which the two orders were issued does not affect in substance the validity of the two orders so long as the Governor had the power to suspend the appellant and revoke his leave. Orders may be issued in any sequence."

11. Thus, the Supreme Court did not uphold the contention raised on behalf of the delinquent that no order of suspension could have been passed without cancelling or revoking leave. As, according to the Court, the authority had power to place an employee under suspension. That apart, in the instant case, no such point appears to have been raised in the petition nor argued before the learned single Judge. When we drew the attention of the learned Counsel, he stated that, the point was not specifically raised. He, however, drew our attention to paragraph 6 of the petition, wherein it was stated as under :-

"6. The petitioner herein states that at present the petitioner is on leave. The order of suspension passed by the respondent No. 4 is not communicated or served to the petitioner. Under the circumstances, the petitioner is still continued on his post as Chief Officer of Kapadwanj Nagarparlika."

Looking to this averment, we are clearly of the opinion that the point which is sought to be raised by the learned Counsel for the appellant in the present Letters Patent Appeal was not taken even in the petition. But even otherwise, as observed in Pratap Singh (supra), such an action could have been taken. Hence, even that contention does not carry the case of the appellant further.

12. For the foregoing reasons, we do not see any ground to interfere with the order passed by the learned single Judge. The appeal deserves to be dismissed and is, accordingly, dismissed. We may say that all the observations made by us hereinabove are made only for deciding this Letters Patent Appeal and we may not be understood to have stated anything on merits. No costs.

13. Appeal dismissed.