

(2000) 12 GUJ CK 0043

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1418 of 1999 in Special Civil Application No. 9158 of 1997 with Civil Application No. 13077 of 1999 and Letters Patent Appeal No. 1908 of 1999 in Special Civil Application No. 9158 of 1997 with Civil Application No. 15450 of 1999

Sarkhej Okaf Nagarpalika

APPELLANT

Vs

Somabhai Bhaishabhai Thakore

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Citation : (2000) 12 GUJ CK 0043

Hon'ble Judges : J.N. Bhatt, J;D.P. Buch, J

Bench : Division Bench

Advocate : Paresh Upadhyay, in LPA No. 1418 of 1999 and Mukul Sinha and V.J. Thakore, in LPA No. 1908 of 1999, for the Appellant; Mukul Sinha and V.J. Thakore for Respondent No. 1, V.M. Pancholi, AGP, in LPA Nos. 1418 and 1908 of 1999 and Paresh Upadhyay, in LPA Nos. 1418 and 1908 of 1999, for the Respondent

Judgement

J.N. Bhatt, J.—Both these Letters Patent Appeals under clause 15 of the Letters Patent arise out of one common judgment and order recorded by the learned single Judge, on 15.8.99, in Special Civil Application No.9158 of 1997, whereby, the writ petition, at the instance of the Nagarpalika came to be partly allowed and the order of the Director of Municipalities, Gujarat State, dated 17th November, 1997 passed in Appeal No.881/97 came to be quashed and set aside with a direction to hold inquiry de novo and with a further direction that the delinquent-employee shall remain under suspension during the period of fresh round of inquiry.

2. Being aggrieved by the directions adverse to the original parties, both of them have filed Letters Patent Appeals. LPA No.1418/99 is filed by Sarkhej-Okaf Nagarpalika, whereas, LPA No.1908/99 is filed by the employee, Somabhai Thakore. In view of the fact that common questions are involved and upon joint request, both the appeals are being disposed of by this composite judgement.

3. Learned counsel appearing for the employee, Somabhai Thakore, has not disputed the unauthorised absence from service as per the chargesheet dated 19.3.97. However, he has raised contention with regard to quantum of punishment. In other words, it is contended that the order of removal, dated 25.7.97, from the service passed against the employee, who was, working as a Junior Clerk in the Nagarpalika, at the relevant time, is disproportionate to the proved delinquency and, therefore, it is extremely harsh. Learned advocate appearing for the Nagarpalika, Mr Upadhyay, has, also, in his candid and fair submission stated that the impugned order of removal on the ground of unauthorised absence from service may be substituted by an appropriate order in the light of the facts and circumstances that may be found expedient by the Court.

4. Precisely, for the aforesaid very clear, candid and fair submissions raised before us, we would not be detained any longer in analysing and evaluating the merits of both the appeals, and therefore, it would not be necessary to highlight all the facts and circumstances leading to the rise of this group of two LPAs.

5. In view of the fair submissions raised on behalf of the employee, Somabhai Thakore, the judgment and order of the learned single Judge and also the order dated 17.11.97 in Appeal No.881/97 of the Director of Municipalities, Gujarat State, are required to be quashed and set aside. Therefore, aforesaid orders shall stand quashed and set aside, restoring the order dated 25.7.97 to the extent of establishment of delinquency for remaining unauthorisedly absent from service.

6. Obviously, therefore, now the question which is required to be considered is about the quantum of punishment, or in other words, the proportionality of punishment. Undoubtedly and very fairly it is submitted that the extreme penalty of removal from service in view of the delinquency established on the part of the workman-employee is excessive and harsh. Therefore, that order shall stand quashed and set aside. What should the just and reasonable punishment in the light of the delinquency of the workman will be the last question to be addressed by us.

7. After taking into account the fact situation, the period of service put in by the employee of more than 20 years, before the initiation of inquiry, the extent and type of the delinquency and other relevant aspects, the ends of justice will be met, if two increments are allowed to be withheld without future effect with a further direction of payment of 50 per cent backwages from the date of removal of the employee till the date of reinstatement. Therefore, while quashing and setting aside the order of removal, it shall stand substituted by withholding two increments without future effect and the 50 per cent backwages from the date of removal till the date of reinstatement. Obviously, in view of the quashing of the removal order, the employer shall reinstate the employee on or before 1st January, 2001.

8. In the result, the impugned order of removal dated 25.7.97 shall stand

quashed and set aside and the employee shall be reinstated with continuity of service, including the period of suspension. Two increments of the employee shall be withheld without future effect. He shall be paid fifty per cent of the backwages during the period from the date of removal till reinstatement, as expeditiously as possible, but not later than three months from today. Both the appeals shall stand, partly, allowed to the aforesaid extent without any order of costs.