

(2006) 11 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application No. 1698 of 1996

S.S. Parmar

APPELLANT

Vs

Gujarat State Warehousing Corporation and Another

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2006) 11 GUJ CK 0023

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : I.S. Supehia and R.M. Hakim, for the Appellant; P.J. Kanabar, for Respondents 1-2, for the Respondent

Judgement

M.R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner who was initially appointed as Warehouseman (Grade II), has challenged the legality and validity of the order of penalty dated 27-6-1995 passed by the Managing Director of respondent Corporation as well as consequential order dated 27-7-1995 passed by the Manager (Administration) of the respondent Corporation.

2. Facts leading to the present Special Civil Application are that the petitioner was appointed as Warehouseman (Grade II) with the respondent Corporation w.e.f. 31-7-1976. A departmental inquiry was initiated against the petitioner and some of the charge came to be proved against the petitioner. However, for some of the charges, the petitioner was exaggerated. A show cause notice was issued on the basis of the report submitted by the Disciplinary Authority for penalty and by impugned order dated 27-6-1995, the petitioner was reverted to the post of Clerk and a further order was also came to be passed to recover the amount of Rs. 6000.87paise from the petitioner towards loss suffered by the respondent Corporation to be recovered from the salary of the petitioner by monthly deduction of Rs. 500/-. It appears from the record that by order dated 27-7-1995, a consequential order came to be passed by the Manager

(Administration) by which the salary of the petitioner was fixed in the pay-scale of Junior Clerk for the period between 31-7-1976 to 31-7-1995 in the pay-scale of Rs. 260-400 and accordingly his salary was fixed at Rs. 314/- which was further revised in view of the revision in the pay. It appears that the petitioner preferred appeal before the appellate authority and by communication dated 5-1-1996, the appellant was informed that the appellate authority has dismissed the said appeal. Being aggrieved by the order of punishment dated 27-6-1995, consequential order dated 27-7-1995 and the order passed by the appellate authority rejecting the appeal, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Number of submissions have been made on merits on behalf of the petitioner. However, as the petition is to succeed on the one ground that the petitioner could not have been reverted to the post of the Clerk which was never held/ possessed by the petitioner and the matter is to be remanded, the other submissions made on behalf of the petitioner are not considered.

4. Shri Supehia, learned advocate appearing on behalf of the petitioner has submitted that the petitioner was appointed as Warehouseman (Grade II) by direct recruit and the petitioner did not hold at any point of time, the post of clerk and therefore, there was no question of reverting the petitioner to the post of the clerk which the petitioner never possessed. He has relied upon the judgment of the Hon"ble Supreme Court in the case of P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, in support of his above submission. He has also further submitted that in fact the aforesaid order could not have been made applicable retrospectively which was done pursuant to the consequential order passed by the Manager (Administration) dated 27-7-1995.

5. Petition is opposed by Shri PJ Kanabar, learned advocate appearing on behalf of the respondents. It is submitted by him that pursuant to the interim order passed by this Court, the salary of the petitioner was revised and the order of punishment was given effect retrospectively and accordingly even the amount which was required to be paid on such a modification was paid to the petitioner subsequently. It is also further submitted by him that during the pendency of the present Special Civil Application, the petitioner has retired on attaining the age of superannuation and the order is already exhausted, therefore, the petition is required to be dismissed. It is further submitted that if the matter is to be remanded to the respondents for passing afresh order by quashing and setting aside the impugned order, then all the things are kept open and that even whatever the payment is made by the respondents, that may be ordered to be subject to the ultimate decision that may be taken by the respondents on conclusion of the inquiry and imposing of the penalty, if any.

6. Heard the learned advocates appearing on behalf of the parties.

7. By interim order dated 16-2-1999, this Court directed that the respondent shall review the order dated 27th July 1995 and make the order of re-fixation of

pay, treating the petitioner to be reduced in rank w.e.f. The date of the communication of the impugned order. It is reported that pursuant to the aforesaid interim order, the pay of the petitioner was re-fixed and the order dated 27-7-1995 was modified to the aforesaid extent and the petitioner is already paid the difference.

8. It is not in dispute that the petitioner was appointed by direct recruit as Warehouseman (Grade II) by order dated 31-7-1976 and the petitioner has never worked as a clerk and the petitioner has never possessed the post of clerk at any point of time and therefore, there is no question of reverting the petitioner to the post of clerk. As held by the Hon"ble Supreme Court in the case of P.V. Srinivasa Sastry (supra), no person can be reverted by way of a punishment to a post or lower than that to which he was initially appointed. It is also observed by the Hon"ble Supreme Court that the expression "reduction in rank" occurring in Article 311(2) covers only such reversions which are by way of punishment. It is further observed that the expression in the context means reduction from a higher to a lower rank or post and even while imposing the punishment of reduction in rank, the order must have nexus with the post held by the delinquent officer concerned, from which he had been promoted to the post from which he is being reverted. It is also further observed by the Hon"ble Supreme Court that if such an officer had not held that post or was not member of that cadre then he cannot be reverted to a lower cadre to which he did not belong or to a lower rank which he did not hold at any stage. Considering the aforesaid observations of the Hon"ble Supreme Court, the order passed by the respondents dated 27-6-1995 reverting the petitioner to the post of Clerk which was never held/possessed by the petitioner, is required to be quashed and set aside. Accordingly, the matter is to be remanded to the Disciplinary Authority for passing afresh order in accordance with law and on merits, more particularly considering the charges levelled against the petitioner. It goes without saying that whatever the amount is paid by the respondent Corporation pursuant to the interim order passed by this Court and on re-fixation of the pay on modification of the order dated 27-7-1995 is subject to the final order that may be passed by the respondent Corporation on remand, for which the learned advocate appearing on behalf of the petitioner also cannot dispute.

9. For the reasons as stated above, the petition succeeds in part. The impugned order dated 27-6-1995 passed by the Managing Director of the respondent Corporation as well as the consequential order dated 27-7-1995 (which was subsequently modified pursuant to the interim order passed by this Court) are hereby quashed and set aside. The matter is remanded to the Disciplinary Authority of the respondent Corporation for passing an appropriate order in accordance with law and on merits. The aforesaid exercise be completed within a period of six months from the date of receipt of this order. It goes without saying that whatever the amount is paid to the petitioner after the impugned order which is now set aside and even after the interim order, it is always be subject to the final order that may be passed by the respondent Corporation on conclusion

of the departmental inquiry and passing of the fresh order on remand. Rule is made absolute to the aforesaid extent. No costs.