

(2023) 04 GUJ CK 0035

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 463 Of 2023, R/Special Civil Application No. 8527 Of 2021, Civil Application (For Stay) No. 1 Of 2022

State Of Gujarat

APPELLANT

Vs

Devendrakumar Vinodbhai Shrimali

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Citation : (2023) 04 GUJ CK 0035

Hon'ble Judges : Vipul M. Pancholi, J;Hasmukh D. Suthar, J

Bench : Division Bench

Advocate : Kurven Desai, Digant B Kakkad

Final Decision : Dismissed

Judgement

Vipul M. Pancholi, J

1. This appeal under Clause 15 of the Letters Patent has been filed by the appellants - original respondents against the order dated 21.01.2022 passed by the learned Single Judge, whereby learned Single Judge allowed the petition filed by the respondent - original petitioner and direction has been issued to the present appellants to reinstate the petitioner without backwages.

2. Heard learned AGP Mr. Kurven Desai for the appellants and learned advocate, Mr. Digant Kakkad for the respondent.

3. Learned AGP Mr. Desai mainly submitted that an advertisement came to be issued for the appointment to the post of Foremen Inspector (Class-III) in January, 2012 and pursuant to the said advertisement, the respondent - original petitioner appeared in the competitive examination and after following recruitment procedure, the respondent - original petitioner was appointed on a fixed pay for a period of 5 years and as per the policy of the State Government, after completion of 5 years, the respondent - original petitioner was required to be placed in regular pay scale. It is submitted that after considering the confidential report for the period between 01.04.2017 to 31.12.2017, the

appellants - original respondents issued notice to the respondent - original petitioner and after considering the reply submitted by the respondent - original petitioner and after placing reliance upon Condition No.14(a) of the appointment order, the services of the respondent - original petitioner came to be terminated on 01.06.2020. It is submitted at this stage that the respondent - original petitioner challenged the said order of termination by filing captioned petition before this Court and the learned Single Judge, vide impugned order dated 21.01.2022, allowed the petitioner filed by the respondent - original petitioner and thereby direction has been issued to the present appellants to reinstate the respondent - original petitioner without backwages. The appellants have, therefore, preferred present appeal.

4. Learned AGP would mainly contend that learned Single Judge has, after placing reliance upon the order dated 18.01.2022 passed by this Court in Special Civil Application No.15419/2018, allowed the petitioner filed by the respondent - original petitioner and thereby aforesaid direction has been issued. It is submitted that while passing an order dated 18.01.2022 passed in Special Civil Application No.15419/2019, this Court had placed reliance upon the order dated 24.07.2020 passed by the Division Bench of this Court in Letters Patent Appeal No.1596/2019. Learned AGP would contend at this stage that against the order passed by the Division Bench in Letters Patent Appeal No.1596/2019, the State of Gujarat has preferred SLP before the Hon'ble Supreme Court and the said SLP is pending for hearing. However, it is fairly submitted that the Hon'ble Supreme Court has not granted any stay against the order passed by the Division Bench of this Court in the aforesaid appeal. It is also contended that the facts of the present case are different from other cases, upon which reliance is placed by the respondent - original petitioner and, therefore, learned Single Judge ought not to have placed reliance upon the said decision. Learned AGP further submitted that the appellants - respondent authorities have passed an order of termination after placing reliance upon Condition No.14(a) of the appointment order and, therefore, full fledged departmental inquiry was not required to be conducted. Learned AGP, therefore, urged that the impugned order passed by the learned Single Judge be set aside.

5. On the other hand, learned advocate, Mr. Kakkad for the respondent - original petitioner has opposed this appeal and mainly submitted that the learned Single Judge has not committed any error while passing impugned order and, therefore, this Court may not interfere with the order passed by the learned Single Judge.

6. We have considered the submissions canvassed by learned advocates for the parties. We have also perused the material placed on record. It would emerge from the record that the respondent - original petitioner was appointed on 07.10.2012 initially for a period of 5 years on contractual basis and on a fixed pay basis and the said appointment was made after following recruitment process as per the policy of the State Government. It appears from the record that while terminating the services of the petitioner, the appellant - respondent

authority has considered adverse remarks made by the concerned authority in the confidential report of the respondent - original petitioner for the year 2017-18. If the impugned order dated 01.06.2020, by which the services of the respondent - original petitioner came to be terminated, is carefully examined, it is revealed that the services of the respondent - original petitioner are terminated by observing that the respondent - original petitioner has remained negligent while performing his duty and there was misconduct on the part of the respondent - original petitioner while performing his duty. Thus, we are of the view that the order passed by the appellants - respondent authorities is stigmatic and, therefore, full fledged department inquiry was required to be conducted by the authorities, however without conducting full fledged inquiry, the services of the respondent - original petitioner came to be terminated.

7. Learned Single Judge has passed impugned order after relying upon the order dated 18.01.2022 passed by another learned Single Judge in Special Civil Application No.1541/2019, relevant portion of the said order is reproduced in paragraph no.3 of the impugned order. In the said order, there is reference with regard to the order dated 24.07.2020 passed by the Division Bench of this Court in Letters Patent Appeal No.1596/2019. We have gone through the observations made by the Division Bench of this Court in the aforesaid appeal as well as similar matter i.e. Letters Patent Appeal No.761/2021.

8. It is pertinent to note at this stage that against the order dated 18.01.2022 passed in Special Civil Application No.16419/2019, the State of Gujarat preferred Letters Patent Appeal No.1085/2022 and the Division Bench of this Court has dismissed the said appeal filed by the State of Gujarat vide order dated 07.09.2022, copy of said order is produced for perusal of this Court during the course of hearing.

9. Thus in view of the aforesaid facts of the present case, when the Division Bench of this Court has taken a view in various matters and that in case of adhoc employees that if the service is terminated and the said termination is stigmatic, full scale departmental inquiry will have to be undertaken. It is also observed that if initiation of action is based on unsatisfactory work, gross negligence or indiscipline or any act which may tantamount to be stigmatic, full scale departmental inquiry is to be conducted.

10. We have also gone through the reasoning recorded by learned Single Judge while passing impugned order. It is revealed that the learned Single Judge has specifically granted liberty to the present appellants to proceed against the respondent - original petitioner for the alleged misconduct in accordance with law. Thus, we are of the view that no interference is required in the impugned order passed by the learned Single Judge and, therefore, we are not inclined to entertain the present appeal.

11. Accordingly, the present appeal stands dismissed. Connected civil application also stands dismissed.