

(2011) 06 GUJ CK 0021
In the Gujarat High Court

Case No : Letters Patent Appeal No. 479 of 2002 in Special Civil Application No. 10001 of 2001

State of Gujarat

APPELLANT

Vs

R.B. Shah

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Citation : (2011) 06 GUJ CK 0021

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Jirga D. Zaveri, Assistant Government Pleader, for the Appellant;

Final Decision : Allowed

Judgement

Honourable Mr. Justice V.M. Sahai

1. Though Rule has been served on the respondent, neither he has appeared nor he has engaged any counsel. Heard Ms.Jirga D.Zaveri, learned Assistant Government Pleader for the appellant.

2. The respondent-petitioner filed Special Civil Application No. 10001 of 2001 praying for issuance of a direction to the respondent-appellant to give promotion to the petitioner on the post of Superintending Engineer with effect from 29.9.2001 with all consequential benefits of service and another prayer was made to promote the petitioner on the post of Superintending Engineer on ad hoc basis. This another relief granted by the learned Single Judge amounts to granting final relief to the petitioner-respondent.

3. The Apex Court in Rajesh Jagdamba Avasthi Vs. State of Goa, wherein in paragraph 8, the Apex Court clearly held that final relief cannot be granted by way of interim relief. Paragraph 8 of the aforesaid decision is extracted below :-

To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ

petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable Government Order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, at p. 265), State of Rajasthan and Others Vs. Swaika Properties and Another, State of U.P. v. Visheshwar Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa Shiv Shankar and Others Vs. Board of Directors, U.P.S.R.T.C. and Another, and Commissioner/Secretary to Government Health and Medical Edu. Deptt. Civil Sectt., Jammu Vs. Dr Ashok Kumar Kohli, No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a prima facie case was made out though as noted above that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable preferably within six months from the date of receipt of this judgment.

4. In view of the law settled by the Supreme Court that by interim relief, final relief cannot be granted. We find force in the submission of the learned Assistant Government Pleader. This Appeal is allowed and the order of the learned Single Judge dated 8.11.2001 passed by the learned Single Judge in Special Civil Application No. 10001 of 2001 is set aside. Rule is made absolute.

5. As the Special Civil Application is of the year 2001, we remit the matter back to the learned Single Judge with a request to the learned Single Judge to decide the same expeditiously subject to His Lordship's convenience.