

(1999) 01 GUJ CK 0011
In the Gujarat High Court

Case No : Civil Revision Application No. 418 of 1998

State of Gujarat

APPELLANT

Vs

R.R. Lalaji

RESPONDENT

Date of Decision : 22-01-1999

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1999) 2 GLR 398

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Government Pleader, for the Appellant; M.D. Rana, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—This Revision application arises from the order dated 24.7.97 of 6th Extra Assistant Judge, Vadodara in Civil Misc. Application No.253/97 under which it granted ex parte interim injunction directing the respondent petitioners to maintain status quo in relation to the post in dispute till further orders. The facts of the case are as follows:-

1. The plaintiff respondent filed a suit for declaration and permanent injunction in the court of Civil Judge (SD) on Vadodara on 10.2.97. In the suit he has prayed for the following reliefs:-

a. Your Lordships may be pleased to call for the records and proceedings of Misc. Civil Appeal No.253/97 from the court of learned District Judge, Vadodara;

b. Your Lordships may be pleased to quash and set aside the order passed by the learned district Judge on 24.7.97 in Misc. Civil Appeal No.253/97;

c. during pendency and final disposal of this petition your Lordships may be pleased to stay the order passed by the learned Dist. Judge on 24.7.97 in Misc. Civil Appeal No.253/97;

d. any other or further order, which your Lordships may deem fit be passed in the interest of justice.

Alongwith the suit he filed an application below Ex.5 for grant of temporary injunction which came to be rejected by the Trial court against which order he filed Civil Misc. Appeal No.253/97 before the appellate court in which the impugned order has been passed. The plaintiff respondent was appointed on 14.12.72 as Clerk at the office of the Forest Department in Baroda Circle. He was promoted to the post of Accountant on 2.9.82.

2. While he was working on the post of Accountant in the Forest Department, the department has given him purely adhoc and temporary appointment on the post of Legal Superintendent for a fixed term of 11 months or till the candidate selected by GPSC is made available whichever is earlier. This appointment was given to the plaintiff respondent vide order dated 22.3.91 which post he joined on 3rd March, 1991. It is not in dispute that the post of Legal Superintendent in the Forest Department is a post within the perview of the GPSC. As this appointment was purely a adhoc and fixed term appointment the plaintiff respondent before the expiry of the terms of 11 months filed in SCA No.495/92 before this court for the relief as prayed for:-

a. be pleased to admit this petition;

b. be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to appoint the petitioner to the post of Legal Superintendent on permanent and regular basis from 22.2.1992;

c. Pending admission and final disposal of this petition, be pleased to direct the respondents not to terminate the services of the petitioner from the post of Legal Superintendent or revert this petitioner from the post of Legal Superintendent to the post of Accountant.

d. be pleased to pass such other and further orders as may be deemed fit in the interest of justice.

This Court has protected the petitioner by grant of temporary injunction. The temporary injunction granted by this Court reads as under:-

"Adinterim relief against the termination of the services of the petitioner except and when the candidate selected from GPSC is available. On such a candidate being available the respondent would be at liberty to terminate the services of the petitioner."

3. The Special Civil Application of the petitioner was came to be decided by this court (Coram : S.K.Keshote, J) on 17.11.97. The petition filed by the plaintiff respondent was dismissed and the interim relief granted by this Court was ordered be vacated.

4. It is not in dispute that GPSC advertised the posts of Legal Superintendent in the Forest Department for selection, in the newspaper. The plaintiff respondent

has not applied for the post and reason is given out that he was not fulfilling the eligibility as prescribed for the said post under the relevant rules framed under article 309 of the Constitution. In pursuance of the said advertisement the GPSC has selected many candidates for appointment on the posts of Legal Superintendent in the Forest Department. At this juncture as the plaintiff respondent has to be reverted from the post of Legal Superintendent in the Forest Department, he filed this Civil Suit out of which this Civil Revision Application has arisen and an application therein for grant of temporary injunction. It is necessary to mention here that in the suit very conveniently, I am constrained to observe that it is deliberate attempt on the part of the respondent, concealed the fact that he has already filed SCA No.495 of 1992 in this Court in which a conditional interim relief against the termination of his service has been granted with the condition that when a candidate selected by GPSC is made available to the petitioners they are at liberty to terminate the services of the respondent. From this order of the interim relief granted by this Court, on the availability of a candidate selected by GPSC, the services of the plaintiff respondent as Legal Superintendent has to be discontinued by the petitioners. When a candidate duly selected by GPSC is made available this suit has been filed by the plaintiff-respondent in which this material fact has not been disclosed. The plaintiff respondent could not have approached to this Court for grant of the interim relief as prayed for in the Suit, as this Court had protected the respondent only till the regular selected candidate is made available by the GPSC. In fact after availability of the candidate selected from GPSC, the services of the respondent are to be terminated and that is the reason that he has filed this suit and deliberately concealed this fact from the Civil Court also. In these facts, the filing of the suit is clearly an abuse of the process of the Court. It is a different matter that the Learned Trial Court has felt contended and satisfied by rejecting Exh.5 but otherwise the matter should have been taken seriously and the appropriate order of the dismissal of the suit should have been passed under order 7 rule 11 of the CPC. It is unfortunate that the Civil Courts are being misled by the litigants and they manuvre and manage the things in a way that they continue to enjoy the interim relief for years together otherwise for which they would not have been entitled.

5. The Learned Trial Court rejected Ex.5 and declined to grant temporary injunction in favour of the petitioner vide order dated 17.7.97. This order has been challenged by the plaintiff respondent by filing a civil Appeal No. 253/97 in the District Court of Vadodara which appears to have been transferred to the Court of 6th Extra Assistant Judge, Vadodara. From the order of the Trial Court, I find that it declined to grant the interim relief to the plaintiff respondent on the ground that he has concealed the fact of filing of SCA No.495/98 before this Court. The day on which the learned Trial Court decided Ex.5 the SCA aforesaid has not been decided by this Court.

6. In the appeal as usual by filing Ex.5, the prayer has been made for grant of ex parte interim injunction and the learned first Appellate Court on 24.7.97

granted *ex parte* interim relief in the appeal under which the petitioners were directed to maintain status quo in relation to the post in dispute till further orders. I am constrained to observe here that both the learned Trial Court as well as the First Appellate Court have not taken care and caution to find out what order has been passed by this Court in the Special Civil Application in respect of the prayer of the plaintiff respondent for grant of interim relief. In case, the Trial Court as well as the First Appellate Court would have care to see that order, and I am confident that the Trial Court and First Appellate Court should not have granted any interim relief to the plaintiff respondent. The way and the manner in which the petitioners have taken the litigation in the Trial Court and first appellate Court also deserves to be deprecated. The SCA has been decided by this Court on 17.11.1997 and instead of approaching to the First Appellate Court for vacation of the *ex parte* interim relief granted in favour of the plaintiff-respondent they have approached this Court by filing of this revision application. In case, this course would have been adopted and infact that would have been appropriate and proper course, the learned First Appellate Court would have certainly vacated that *ex parte* interim injunction granted in favour of the plaintiff respondent. On being asked by the Court the Learned Counsel for the petitioners is unable to give out any satisfactory explanation for its action not to approach the First Appellate Court for the vacation of the *ex parte* interim relief order passed by it in favour of the plaintiff respondent.

7. The candidate selected by GPSC are available since 24.12.97 and the learned Counsel for the petitioners has submitted that because of the interim relief granted by the First Appellate Court one candidate is not able to get appointment so far. The learned Counsel for the petitioners submits that though the appointment order of the plaintiff respondent was not only purely *ad hoc* on the post of Legal Superintendent but was also conditional and though the selected candidate is made available by GPSC, still the plaintiff-respondent is continuing on the post because of the *ex parte* interim relief granted by the first Appellate Court and the selected candidate is suffering without any fault on his part.

8. After dismissal of the SCA and the vacation of interim relief granted by this Court therein, the petitioners should have taken the steps to pass the order to revert the plaintiff respondent. It is true that in the meanwhile the plaintiff respondent who is sufficiently smart person before the SCA is dismissed by this Court and the interim relief is vacated, he got a protective umbrella from the Trial Court. But I fail to see why the petitioners are not acting as smart as it is expected from them. They could have taken this matter to the First Appellate Court or to have approached to this Court much earlier in point of time then in the year 1998. The selected candidates from GPSC were made available in December 1997 and this revision application is filed only in the month of March 1998. After filing of this revision application also they have not taken prompt steps to get it listed for admission earlier.

9. The learned Counsel for the petitioner contended that the plaintiff respondent

has no right to hold the post of Legal Superintendent and more so when his ad-hoc appointment was conditional and after a candidate selected from Gujarat Public Service Commission is made available, he cannot be permitted to continue to hold the post. It is next been contended that it is only a case of reversion of the plaintiff-respondent from the higher post which he is holding purely on ad-hoc basis. It is not a case of termination of services and though the suit has been filed by the plaintiff respondent and he has not been protected by the Court granting temporary injunction, he will not suffer any irreparable injury, which cannot be compensated in terms of money.

10. On the other hand the learned counsel for the plaintiff-respondent has not challenged contentions of the learned Counsel for the petitioners made on merits of the matter and further the facts as given out to this court by the learned counsel for the petitioners have also not been controverted. Only contention raised is that the order impugned in the civil revision application is interlocutory order, which does not fall in the category of case decided and this Civil revision application is not maintainable.

11. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

12. In view of the decision of this Court in the SCA No.495/92 decided on 17.11.97 the suit itself is not maintainable. In fact the filing of the suit is clearly a case of abuse of process of the court by the petitioner. When the prayer of the plaintiff-respondent for regularisation of service as Legal Superintendent on the basis of his purely adhoc appointment has not been granted by this court, I fail to see how far it is justified for him to continue the suit and enjoy the temporary interim relief granted by the Civil Court for all the time. This Court in the SCA No.495/92 held that as the appointment of the plaintiff-respondent on the post of Legal Superintendent is purely on adhoc and temporary basis and fixed term with the specific condition that the same is liable to be terminated even earlier to the fixed period on the availability of the selected candidate from GPSC. It has further been held by this Court that a temporary appointee while continuing on the post even for a long time does not acquire any right to the post. So in this case of the plaintiff-respondent, this Court has decided that he has not right to hold the post and on the availability of the GPSC selected candidate his reversion from the post is as a consequence of the nature of his appointment. The judgement given by this Court interse parties is binding on the plaintiff - respondent and his suit is clearly barred for the self same relief. If we go by the pleadings made in the civil suit and in the SCA as well as the prayers made in both thse proceedings, it is clearly borne out that the identical reliefs have been prayed in these 2 proceedings. When for the regularisation of service as Legal Superintendent, the SCA was pending before this Court, the plaintiff respoondent could not have availed of this remedy by filing this suit. The filing of the suit by the plaintiff respondent clearly shows that he may have a apprehension that SCA may be dismissed by this Court. Further the process would have been started by

the petitioners to make the selection on the posts of Legal Superintendent by GPSC and naturally in case a selected candidate is made available by GPSC, there are all chances of his reversion in view of the fact that this Court has protected him conditionally. So that is the reason that he has filed this suit and to see that this Court's conditionally interim relief order may not come to the notice of the Civil court he has concealed this fact to be disclosed in the suit. By concealing this material fact the plaintiff respondent has got the interim relief in his favour from the Trial Court which continued for all the time till this day.

13. The judgement of this Court as stated earlier concludes finally the right of the plaintiff respondent to hold and continue on the post of Legal Superintendent and he has been not granted the regularisation on the post as his appointment thereon was purely adhoc and the consequences of the decision of this Court is only of his reversion from this post immediately on 17.11.97. Even a selected candidate from GPSC on that date was available, it was open to the petitioners to revert the plaintiff respondent from the post of Legal Superintendent. It is a different matter that even after a selected candidate is made available by the GPSC he was not reverted for the reason that firstly Learned Trial Court has protected him and then the First Appellate Court, but legally he has no right to continue on the post in view of the judgement of this court in his SCA and many other decisions of this Court and the Apex Court. In this respect the reference may have to the decision of the Supreme Court and this Court in the cases *Bhanumati Tabubhai Maurya Vs. State of Gujarat* 1992 GLH 288, *Dr. Arpita J Ahuja Vs. State of Gujarat* 1996 2 GLH 827, *State of Gujarat and another Vs. P.J. Kampavat and others*, , *Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others*, , *State of Rajasthan Vs. Rajendrakumar* 1989 Supp 2 SCC 168, *Smt. P.K. Narayani Vs. State of Kerala* 84 Supp SCC 212, *M.D. Annie and Ors. v. State of Kerala and Ors.* , *K. Sureshkumar and Others Vs. State of Kerala* 1988 (2) SLR 73773, *Patel Ashokkumar Babulal Vs. State of Gujarat & Others* 1992 (2) GLR 535.

14. The case of the plaintiff-respondent is worst. He was not even eligible for the appointment on this post as per the eligibility laid down under the service rules and he has not applied for the post also when it was advertised by GPSC.

15. In view of this fact and position of law which is well settled by the decisions of Hon''ble Supreme Court and this court, I am of the considered opinion that the plaintiff respondent have no right to hold the post even for a day after the selected candidate is made available by GPSC. The suit filed by the plaintiff respondent is clearly an abuse of the process of the Court and the same is the Civil Misc. Appeal. The matter has been concluded by this Court under article 226 of the Constitution. The right of the plaintiff respondent of his regularisation on the post of Legal Superintendent and to hold that post was not accepted by this Court. How far this cause of action which is concluded could have been made a cause of filing of suit in the civil Court. Order 7 Rule 11 of the CPC, 1908 provides that the plaint shall be rejected in case where it does not disclose the

cause of action. Clause (d) of rule 11 of order 7 further provides that in a case where the suit appears from the statement in the plaint to be barred by any law the plaint shall be rejected by the Court. As stated earlier the relief prayed for in the suit is barred and it is also equally true that any decision given under article 226 of the Constitution by this court, it will certainly operate as a binding decision between the parties and has to be taken as if matter has finally been concluded and decided between the parties. So this relief as prayed for by the plaintiff respondent in the suit is clearly barred by the principle of constructive res judicata. Secondly on this cause of action this Court has already concluded the matter against the plaintiff-respondent no further cause of action does arise and this suit deserves to be dismissed under order 7 rule 11 of the CPC. There is yet another reason for which I am satisfied that the suit has to be dismissed by this court in exercising its suo moto powers of the revision u/s 115 of the CPC. This is a case where the plaintiff respondent clearly made attempt to abuse the process of the court and he got the benefit of the interim relief granted by the Courts below.

16. In the result this revision application succeeds and the same is allowed. The impugned order of the 6th Extra Assistant Judge, Vadodara is quashed and set aside.

17. Considering it to be a fit case where to exercise the suo moto revisional powers u/s 115 of the CPC, the civil suit no. 277 of 1997 pending in the court of 7th Joint Civil Judge, Vadodara is dismissed with costs. The learned Trial Court is directed to draw the decree in the suit accordingly. As a consequence of the dismissal of the said suit the Civil Misc. Appeal No. 253/97 pending in the court of 6th Extra Assistant Judge, Vadodara becomes infructuous and accordingly the same is dismissed. The parties are directed to bear the expenses of this Civil Revision Application.