

(2023) 05 GUJ CK 0010

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 556 Of 2023, R/Special Civil Application No. 15473 Of 2020, Civil Application (For Stay) No. 2 Of 2022

State Of Gujarat

APPELLANT

Vs

Sanjaybhai Ishwarbhai Desai

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Citation : (2023) 05 GUJ CK 0010

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

Bench : Division Bench

Advocate : Kurven Desai, Jit P Patel

Final Decision : Dismissed

Judgement

Vipul M. Pancholi, J

1. The present appeal is directed against the order dated 19.04.2022, whereby learned Single Judge has allowed the petition filed by the respondent - original petitioner and directed the present appellants - original respondents to reinstate the petitioner.

2. Heard learned AGP Mr. Kurven Desai for the appellants, learned advocate, Mr. Jit P. Patel for the respondent.

3. Learned AGP Mr. Desai submitted that the petitioner was appointed on the post of Deputy Mamlatdar (Class-III) vide order dated 25.05.2015 on certain terms and conditions, copy of said order is placed on record at Page No.24 of the compilation. It is further submitted that the services of the petitioner came to be terminated on 15.06.2020 on the ground that FIR came to be registered against the petitioner under the Prevention of Corruption Act, copy of said order is placed on record at Page No.20 of the compilation. It is submitted that the services of the petitioner came to be terminated relying upon Condition No.14(A) of the appointment order and, therefore, the original respondents have not committed any illegality while passing an order of termination, inspite of that, learned Single

Judge has quashed and set aside the order and thereby allowed the petition filed by the original petitioner.

4. On the other hand, learned advocate, Mr. Patel appearing for the original petitioner submitted that learned Single Judge has allowed the petition filed by the petitioner relying upon the order dated 22.07.2022 passed in Special Civil Application No.15083/2021. It is submitted that while allowing the said petition, learned Single Judge has also placed reliance upon the decision rendered by the Division Bench dated 24.07.2020 in Letters Patent Appeal No.1596/2019. It is further submitted that recently, this Court has passed an order on 17.03.2023 in Letters Patent Appeal No.300/2023 as well as order on 18.04.2024 in Letters Patent Appeal No.525/2023. It is submitted that the issue involved in the present matter is covered by the aforesaid orders passed by this Court. Learned advocate, therefore, urged that this appeal be dismissed.

5. 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 petitioner came to be appointed on 25.05.2015 on contractual basis for a period of five years and in the year 2020, FIR under the Prevention of Corruption Act came to be lodged against the petitioner and, therefore, the original respondents passed an order of termination on 15.06.2020, whereby the services of the petitioner came to be terminated, copy of said order is placed on record at Page No.20 of the compilation. It is revealed from the said order that the services of the petitioner is terminated because of registration of the FIR against him. It is not in dispute that before terminating the services of the petitioner, full-fledge departmental inquiry was not conducted. We have gone through the order of termination, from which, it is revealed that the said order is stigmatic order and, therefore, the original respondents were required to conduct full-fledge departmental inquiry.

6. In similar type of matters, the Division Bench of this Court has passed an order on 17.03.2023 in Letters Patent Appeal No.300/2023, wherein this Court has observed in Paragraph Nos.9, 10 and 11 as under,

9. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, it would emerge that the original petitioner was appointed in the year 2012. Order of appointment is placed on record. It is the case of the respondents that petitioner was appointed on contract basis on certain terms and conditions and as per Clause 14(A) of the order of appointment, service of the petitioner can be terminated after giving one month's notice. It is true that the respondents issued show-cause notice to the petitioner, however, without holding departmental inquiry, his services came to be terminated vide order dated 07.03.2020. If the order of termination is carefully examined, it is revealed that while terminating the services of the petitioner, the respondent has mainly placed reliance upon the FIR filed against him under the provisions of the Prevention of Corruption Act. Thus, this Court is of the view that the order of termination passed by the respondent authority is a

stigmatic order and therefore the respondent was required to conduct departmental inquiry against the petitioner as per the decision rendered by the Division Bench of this Court in the case of Chetan Jayantilal Rajgor (supra).

10. In identical matter, the Co-ordinate Bench of this Court has recently passed an order on 11.01.2023 in Letters Patent Appeal No.1416 of 2022, wherein, the Division Bench of this Court has observed in para 3.3, 3.4, 4, 4.1, 5.1, 5.2 and 6 as under:

"3.3 The position of law discussed in Chetan Jayantilal Rajgor (supra) came to be highlighted and reiterated by the Division Bench as under.

"8.1 In the cognate matter also, almost similar observations are visible and as such, we do not propose to over burden the present order. These observations if to be examined in the background of present fact situation, the same are found to be just and proper. It appears here that the original petitioners were dealt with by issuance of show cause notice with respect to serious charges levelled against them and the notice was given stating as to why in terms of their appointment, they may not be dismissed from the services. Now, this show cause notice appears to have been replied at length by the original petitioners and subsequently, by giving a brief opportunity, without conducting full-scale departmental inquiry, an order of dismissal came to be passed. This procedure which has been adopted by the department against both the original petitioners and undisputedly, no departmental inquiry having been conducted against them, the learned Single Judge, on the basis of relevant proposition of law laid down by the Apex Court, was justified in his view that in the absence of fullscale departmental inquiry, the services of the writ petitioners cannot be terminated in the manner in which it has been put to an end. We see no infirmity in the order passed by the learned Single Judge, particularly having gone through the relevant record made available to us.

8.2 This view which has been taken by the learned Single Judge, to which we are also in agreement, stands fortified by few decisions by the Division Bench of this Court which have already been relied upon by the learned Single Judge.

8.3 The bone of contention of appellants – State authorities is that since the original petitioners are employed on a contract basis and fixed pay, the Department is not under an obligation to conduct a detailed fullscale departmental inquiry. Now, this contention has been the subject matter of scrutiny on earlier occasion before a Coordinate Bench in Letters Patent Appeal No.189 of 2018 between Vadodara Municipal Corporation v. Manishbhai Nayanbhai Modh, decided on 20.2.2018. The relevant observations contained in the said decision are reflecting in Para.4.1 which are also based upon the decision of the Apex Court and in consonance with the provision of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. The said observations have also been considered at length by the learned Single Judge which are reflecting in Para. 5.7 of the impugned order.

9. Yet in another decision again by the Division Bench of this Court rendered in Letters Patent Appeal No.841 of 2019 between Rahul Aydanbhai Vak v. State of Gujarat, decided on 15.4.2019, in which the same issue has been considered. The relevant discussion of the Division Bench in the said case is contained in Para.7, 8 and 9, in which in no uncertain terms, almost in similar set of circumstance, the Division Bench has clearly opined that full-scale departmental inquiry will have to be undertaken, if initiation of action on the basis of unsatisfactory work, gross negligence or indiscipline or any act which may tantamount to be stigmatic and as such, consistently this view has been clearly opined by the Division Bench.

10. Yet in further decision which is brought to our notice rendered in Special Civil Application No.10928 of 2014, decided on 29.9.2014, in which also the Division Bench has examined even the status of contractual employment. But since we are not called upon nor concerned with the said issue to be dealt with in the present case, we refrain ourselves from commenting anything and leaving the said issue as it is.

11. From the overall material on record and in consideration of aforesaid observations, we see no distinguishable material to take a different view or deviate from the same. Since almost in similar issue, the proposition is to the effect that whenever any charge is levelled and action is found to be stigmatic, a full-scale departmental inquiry deserves to be undertaken irrespective of whether the delinquent was a regular employee or contractual employee on a fixed salary. As a result of this, we are of the considered opinion that since undisputedly by a brief procedure, an action is initiated against the respondents herein while dismissing their services, said action itself is found to be not on the touchstone of aforesaid proposition of law. As a result of this, no error is committed by the learned Single Judge. Having perused these material, we are not satisfied with the submissions made by learned counsel for the appellants in both these appeals.

12. Additionally, we are also of the opinion that these Letters Patent Appeals have arisen out of the learned Single Judge's decision. The scope of Letters Patent Appeal is well defined by the Apex Court in the case of Management of Narendra & Company Private Limited v. Workmen of Narendra & Company, reported in 2016 LawSuit (SC) 94. Relevant Para.5 of the said decision is reproduced hereinafter : "Once the learned Single Judge having seen the records and come to the conclusion that the industry was not functioning after January, 1995, there is no justification in entering a different finding without any further material before the Division Bench. The appellate bench ought to have noticed that the statement of MW-3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order

passed by the Single Judge, unless both sides agree for a fairer approach on relief." Hence, we see no other distinguishing circumstance pointed out by the learned counsel for the appellants and as such, we are in complete agreement with the view taken by the learned Single Judge."

3.4 After quoting paragraph Nos.8.1 to 12, from the decision in Chetan Jayantilal Rajgor (supra), also affirmed the position that the cases where the termination order caste stigma, a full fledged departmental inquiry would have to be conducted before effecting termination.

"In both the aforesaid judgments, the entire case law has elaborately been discussed and it is held that in absence of full scale departmental inquiry, services of the delinquent cannot be terminated if the order of termination is found to be stigmatic and hence we are unable to take a different view as the same is based on numerous judgments referred to in those decisions."

4. Learned Assistant Government Pleader submitted that in one of the cases, involving the same issue, in State of Gujarat Vs. Sanjay Bhanubhai Makwana being Special Leave to Appeal No.15479 of 2021, is pending and that notice is issued by the Apex Court.

4.1 It was sought to be submitted that even against decision in LPA No. 1596 of 2019, SLP (C) No. 013220 of 2020 is pending. It was however fairly stated that no stay is granted by the Apex Court.

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5.1 Incidentally, the aspect of pendency of Special Leave Petition against the decision in Letters Patent No.1596 of 2019 was referred to in Dipeshkumar Somabhai Vasava (supra) and it was observe thus,

"We are conscious of the pendency of this matter, before the Apex Court with a Special Leave to Appeal (C) No.013220 of 2020, where the judgment of Letters Patent Appeal No.1596 of 2019 is challenged by the State. No details of date beyond 15.2.2021 is available. According to Mr.Jayneel Parikh, learned Assistant Government Pleader, no date thereafter is being shown. However, that itself may not be the ground for the Court to entertain or grant stay in this petition with no specific order of stay of the earlier order. The request of keeping the matter pending also does not deserve entertainment."

5.2 As the issue is covered as above by various decision of this Court including in this Court in Chetan Jayantilal Rajgor (supra), Deputy District Development Officer (supra) and Dipeshkumar Somabhai Vasava (supra), we do not see any reason to entertain the present challenge.

6. We make it clear that appellant authorities are not precluded from proceeding against the respondent employee in accordance with law."

11. We are of the view that the issue involved in the present appeal is squarely covered by the aforesaid order passed by the Division Bench of this Court and

therefore we are not inclined to entertain the present appeal."

7. We have also gone through the reasoning recorded by learned Single Judge and we are of the view that learned Single Judge has not committed any error and, therefore, no interference is required in the present appeal.

8. It is pertinent to note that learned Single Judge has already clarified in the impugned order that the original respondents are not precluded from proceeding against the original petitioner in accordance with law.

9. In view of the aforesaid discussion, the present appeal stands dismissed. Connected civil application also stands dismissed.