

(2005) 01 GUJ CK 0033

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1961 of 2004 in Special Civil Application No. 2727 of 1994 and Letters Patent Appeal No. 2645 of 2004 with Civil Application No. 8707 of 2004

State of Gujarat

APPELLANT

Vs

Somabhai Mathurbhai Vasava Adivasi

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Letters Patent Act, 1865 — Clause 15

Citation : (2005) 106 FLR 332 : (2005) 2 GLR 1105 : (2005) 3 LLJ 453

Hon'ble Judges : M.B. Shah, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : P.R. Abichandani, AGP in Letters Patent Appeal No. 1961 of 2004 and D.N. Pandya, in Letters Patent Appeal No. 2645 of 2004, for the Appellant; Adil Mehta in Letters Patent Appeal No. 1961 of 2004, for the Respondent

Judgement

J.N. Bhatt, J.—Both these Letters Patent Appeals are filed by invocation of Clause 15 of the Letters Patent, challenging part of the order of

the learned Single Judge recorded in SCA 2727/04 dated 23rd February, 2004 and has raised identical questions. Upon request, we have heard

these appeals together and, therefore, they are being proposed to be disposed of by this common judgment.

2. We have heard the learned Advocates appearing for the parties. We have also followed and examined the text and tenor of the impugned

judgment of the learned Single Judge and the relevant provisions of the circulars, as well as, the procedure followed for the employment of the

original petitioner.

3. We are satisfied from the record and the facts stated in the judgment of the learned Single Judge that the selection of the original petitioner, one

Somabhai M. Vasava, could not be said to be a back-door entry, as the appointment was made by public advertisement, inviting candidates to appear in the interview, and upon finding the original petitioner to be suitable, he came to be appointed as a Peon, as early as, in 1980. He also continued on the same post for a period upto 31st August, 1985. It is, therefore, apparent from the record that the original petitioner came to be appointed by the original Respondent No. 3-Vikas Education Trust on 1.7.1980 and that too after observing and following the requisite procedure then in force. He continued to work till August, 1985 and, thereafter, his services came to be terminated, which is rightly found to be not legal and valid by the learned Single Judge.

4. Upon consideration of the Letters Patent Appeal, at the instance of the respondent-State, we find that there is no substance and, therefore, it deserves to be rejected at the admission stage. Again, a Letters Patent Appeal No. 2645 of 2004 initiated at the instance of the original petitioner for a limited prayer of enhancement of the quantum of backwages, is also in our opinion meritless in the peculiar facts and special circumstances obtainable from the record of the present case. With a view to award backwages under the law, the Court is pledged to consider various aspects and circumstances and at times special reasons qua the petitioner. There cannot be a straight jacket formula, that whenever and wherever an employee is directed to be reinstated, invariably 100% backwages should follow award regardless of other special circumstances. This proposal is so vehemently urged before us by learned Advocate Mr. Pandya in the second Letters Patent Appeal, which cannot be accepted. In fact, there are hosts of judicial pronouncements and as propounded by case-law, the discretionary-power exercised, ordinarily should not be interfered with, unless, special and extraordinary circumstances exist and such circumstances do not exist. However, the reliance on a decision of the Hon'ble Division Bench of this Court reported in ""Yamini J. Dave v. The Director , I.U.C.A.A.and Anr."" 2004 (2) GLH by learned Advocate Mr. Pandya is considered by us, and in our opinion, it is of no avail to the petitioner for the simple reason that the factual profile in the present group of two Letters Patent Appeals are quite different. In the present case, firstly, the writ petition is not filed for a long spell of 9 years. It will be also material

to note, at this juncture, that the petitioner had invoked the provisions of the Industrial Disputes Act, 1947 and hence, agitated his grievance before

the Labour Court in a Reference, which was ultimately withdrawn. Therefore, the discretion exercised in awarding 50% of the backwages could

not be said or it cannot be shown or spelt out from the record of the present group of two Letters Patent Appeals that it was unjust or

unreasonable, requiring our interference in exercise of our powers under Clause 15 of the Letters Patent. Therefore, the Letters Patent Appeal No.

2645/04, at the instance of original petitioner, is also required to be dismissed at the threshold.

5. In the result, both the Letters Patents shall stand dismissed at the admission stage. No order on Civil Application.

6. Before parting, learned Advocate Mr. Pandya submits that the 50% backwages amount has yet not been paid fully and the petitioner was led to

file an application for Contempt of Court for no fault of his own, even though, he has been awarded 50% backwages against the claim of 100%.

We are fully concerned by this submission and the original respondents are directed to comply with the direction of the learned Single Judge on or

before 28th February, 2005. The State is also directed to take immediate requisite actions so that the directions of the learned Single Judge could

be scrupulously followed. In the event of any difficulty or non-compliance of the directions, as stated by us hereinabove on or before 28th

February, 2005, it will be open for the original-petitioner to make an application to this Court for further direction.