

(1999) 12 GUJ CK 0080
In the Gujarat High Court

Case No : Letters Patent Appeal No. 350 of 1992 in Special Civil Application No. 2842 of 1986

Superintendent

APPELLANT

Vs

Vanrajsinh Gambhirsinh Jadeja

RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:

Citation : (1999) 12 GUJ CK 0080

Hon'ble Judges : P.B. Majmudar, J; J.M. Panchal, J

Bench : Division Bench

Advocate : S.T. Mehta, AGP instructed by M.G. Doshit and Co, for the Appellant;

Judgement

J.M. Panchal, J.—This appeal, which is filed under clause 15 of the Letters Patent, is directed against judgment dated April 20, 1992, rendered by the learned Single Judge, in Special Civil Application No. 2842/86, by which order dated May 17, 1986 discharging the respondent from service is set aside and the appellant is directed to reinstate the respondent in service with two thirds of the backwages from the date of his discharge from service till reinstatement.

2. The respondent had registered his name with Employment Exchange Office situated in Porbandar. On requisition being made, his name was forwarded for the post of Constable in the office of the appellant. The respondent was called for an oral interview vide letter dated January 3, 1985, which is produced at Annexure-A to the original petition. The interview was held on January 21, 1985 and as the respondent was found fit for the post of constable, he was appointed on the said post by an order dated February 27, 1985. The appointment of the respondent was subject to production of medical fitness certificate by him. The respondent got himself examined by R.M.O. at H & M.R. Hospital, Porbandar to get the required medical certificate. The Medical Officer gave him the required medical certificate on April 22, 1985 after examining him. A copy of the said certificate is produced at Annexure-C to the petition. The respondent was thereupon continued in service. However, subsequently it was found that the

respondent was not physically eligible as per Rule 4(d) of the recruitment rules and, therefore, the appellant by an order dated May 17, 1986 discharged the respondent from service. Thereupon the respondent instituted Special Civil Application No. 2842/86 in the High Court and prayed to set aside the said order. The learned Single Judge by the impugned judgment has set aside the order discharging the respondent from service and directed the appellant to reinstate the respondent in service with two thirds of backwages, giving rise to the present appeal.

3. The appeal was placed for admission hearing before Division Bench comprising G.T. Nanavati, J. (as he then was) and S.D. Dave, J. and the Division Bench had passed following order on August 19, 1997 :-

"Admit. The learned advocate for the appellant now states that this appeal is confined only to the question of backwages"

We may mention that Civil Application No. 1261/92 was moved in Letters Patent Appeal Stamp No. 11004 of 1992 in Special Civil Application No. 2842/86 for stay of operation and implementation of the judgment which is impugned in the present appeal. The Division Bench hearing the Civil Application had passed following order on September 30, 1992 :-

"The applicant has prayed for the stay of the operation of the order made on 20.4.1992 by the learned Single Judge, during the pendency of this appeal. We have heard the learned counsel for both the parties. Having regard to the facts and the circumstances of the case, we find that stay of the impugned order should be granted on the condition that the respondent employee is paid an amount of Rs. 50,000/- within four weeks from today, subject to the outcome of the Letters Patent Appeal. The total amount, according to the learned counsel for the applicant, which would be due under the impugned order, would work out to approximately Rs. 1.5 lacs and keeping that in view, we have fixed the amount of Rs. 50,000/- by way of interim disbursement, subject to the outcome of this appeal. We, therefore, direct that the impugned order dated 20.4.1992 is stayed, as regards payment of backwages, on the condition that the applicant pays to the respondent a sum of Rs. 50,000/- within four weeks from today, subject to the outcome of the Letters Patent Appeal.

(S. Nainar Sundaram, C.J.) 30th September, 1992 (R.K. Abichandani, J.)"

3. As is evident from the order dated August 19, 1997, the appeal is confined only to the question of backwages and the direction given by the learned Single Judge to the appellant to reinstate the respondent in service is not under challenge at all. Even at the stage of final hearing of the appeal, it is not mentioned that the learned advocate who had argued the matter for admission hearing, was not justified in confining the appeal only to the question of backwages and that the legality or otherwise of the direction given by the learned Single Judge to reinstate the respondent in service should be examined by this bench. In view of this clear position, we will now proceed to examine the

question whether the learned Single Judge was justified in directing the present appellant to reinstate the respondent in service with two thirds of backwages from the date of discharge of the respondent from service till his reinstatement in service.

4. Mr. S.T. Mehta, learned Assistant Government Pleader has produced a statement indicating as to how much backwages are liable to be paid by the appellant pursuant to the direction given by the learned Single Judge in the impugned judgment. A xerox copy of the statement is ordered to be taken on record of the case. It indicates that the respondent was discharged from service from May 17, 1986 and was reinstated in service on June 14, 1992 pursuant to the order passed by the learned Single Judge and for this period, backwages payable to him would be Rs. 61,818.25 ps. It is relevant to notice that pursuant to order dated September 30, 1992 which was passed by the Division Bench in Civil Application No. 1261/92 filed in Letters Patent Appeal Stamp No. 11004/92, the respondent is already paid a sum of Rs. 50,000/-. The question which arises is whether the appellant should be directed to pay a further sum of Rs. 11,818.25 ps. by way of backwages to the respondent. The learned Counsel for the appellant has produced a statement of the respondent recorded by the Sub-Inspector, Prohibition and Excise, Porbandar on June 3, 1992. Photostat copy of said statement is ordered to be taken on record of the case. In the said statement, the respondent has clearly admitted that during the time of his forced unemployment he was earning Rs. 400/- per month and was maintaining himself and his family members. In the said statement, it is also mentioned by him that during the relevant time he and his family members were staying with his elder brother. We may state that the direction given by the learned Single Judge to the appellant to pay two thirds of backwages to the respondent from the date of discharge from service till reinstatement proceeds on the footing that the respondent during the interregnum period was earning only Rs. 75/per month. In view of the statement of the respondent which is recorded by the competent authority on June 3, 1992, we are of the opinion that further direction to the appellant to pay the remaining amount of backwages to the respondent is not warranted in the facts and circumstances of the case. On overall view of the matter, we are satisfied that interest of justice would be served if the order of the learned Single Judge is modified by holding that the respondent would be entitled to a sum of Rs. 50,000/- by way of backwages.

For the foregoing reasons, the appeal partly succeeds. In view of the concession made at the bar by the learned advocate for the appellant, the order of reinstatement of the respondent in service is not disturbed. The order granting two thirds of the backwages to the respondent from the date of discharge from service till reinstatement is modified and it is held that the respondent would be entitled to a sum of Rs. 50,000/- by way of backwages. As the respondent is already paid the said sum pursuant to the order dated September 30, 1992 passed by the High Court in Civil Application No. 1261/92 which was filed in Letters Patent Appeal Stamp No. 11004/92, nothing further requires to be done

by the appellant in compliance with the judgment rendered by the learned Single Judge. The appeal accordingly, stands partly allowed, with no order as to costs.