
(2000) 08 SC CK 0096

In the Supreme Court Of India

Case No : Civil Appeal Case No: 4612 of 2000

V.D. Barot

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-08-2000

Acts Referred:

Constitution of India Art 227— Art 226 Indian Penal Code, 1860— Sec
324,149,148,147,302,307,325,452,323Bombay Police Act, 1951— Sec 135

Citation : (2000) 2 ACC 1 : (2000) AIRSCW 3880 : (2000) AIRSCW 1717 :
(2000) 5 JT 526 : (2001) 2 LW 8 : (2001) 2 LW 28 : (2000) 3 MLJ 124 : (2000)
4 SCALE 297 : (2000) 4 SCC 543 : (2000) 7 Supreme 710 : (2000) 3 Supreme
673 : (2000) 2 UPLBEC 1611 : (2001) WritLR 303

Hon'ble Judges : Shivaraj V. Patil, J;S. Rajendra Babu, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

S. Rajendra Babu J.-Leave granted.

2. The order under challenge pertains to discharge of the appellant from the post of probationary Police Sub-Inspector. The appellant had been prosecuted for offences punishable under Sections 302, 307, 325, 324, 323, 452 read with Sections 147, 148 and 149 of the Indian Penal Code and for the offence punishable under Section 135 of the Bombay Police Act. The Additional Sessions Judge, Mehsana acquitted him of all charges by an order made on 25-8-1999. However, the appellant, having been discharged from service by an order made on 13-1-1999 filed a writ petition challenging the same. The appellant sought for withdrawal of the writ petition to enable him to make a representation regarding his discharge and that request was allowed by the High Court. The representation having been rejected, the appellant filed another writ petition challenging the rejection of his representation. The petition was dismissed on the basis that the withdrawal was unconditional and hence the appellant cannot reagitate the same matter. LPA was filed against the said order. The High Court took the view that a fresh petition is not maintainable in respect of the same

subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. In substance the appellant is challenging the order of discharge and not merely the order made rejecting the representation to reconsider the order of discharge.

3. The Division Bench of the High Court also held that as the appellant had abandoned the writ proceeding filed in the first instance, the Court is not expected to investigate further into the matter and the order of discharge had become final.

4. We cannot subscribe to the view expressed by the High Court in the order under appeal. In the first place the High Court ought to have examined whether the rejection of the representation was justified in the circumstances set forth in the order impugned in the High Court. Secondly, the matter had not been abandoned as such but to enable the appellant to make representation in the matter, the petition had been withdrawn. That course of action does not amount to abandonment of the matter. Moreover, such a matter should not be dealt with in a hypertechnical manner but on the totality of the circumstances arising in the case of the appellant. Hence, we set aside the order of the High Court and remit the writ petition to the High Court for fresh disposal on merits in accordance with law. The appeal is allowed accordingly.

WP (C) No. D-5941 of 2000

5. In the light of the order passed in CA No. 4612 of 2000 [arising out of SLP (C) No. 6690 of 2000] the writ petition is disposed of.