

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1833 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PANKAJKUMAR J VAISHNAV

Versus

ADDITIONAL CHIEF SECRETARY

Appearance:

MR JM MALKAN for Petitioner

SERVED BY DS for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 2

CORAM : R.K.ABICHANDANI, J

Date of decision: 29/03/96

ORAL JUDGEMENT

Rule. Mr. D.A. Bambhania, Solicitor, waives service of rule on behalf of the respondents. The matter is taken up for final hearing at the instance of both the sides. The only grievance voiced on behalf of the petitioner was that the adverse remarks which were made in his confidential reports for the period between

1.4.1991 and 25.12.1991 and which are now communicated after a period of more than four years by letter dated 28.6.1995 are sought to be relied on by the respondent authorities for the purpose of denying promotion to the petitioner.

Admittedly the adverse remarks for the period from 1.4.1991 to 25.12.119 have been, for the first time, communicated to the petitioner on 28.6.1995. As per the Circular dated 29.1.1977, a copy of which is at Annexure-B to the petition, the adverse remarks are required to be communicated to the Government Officers as far as possible within six weeks from the completion of the confidential report for a particular financial year. Therefore, the adverse remarks ought to have been communicated to the petitioner as far as possible by February 1992.

The Supreme Court in State of Haryana Vs. P.C. Wadhwa reported in 1987 SC 1201 frowned upon such delayed communication of remarks. The Supreme Court observed that the whole object of making of adverse remarks would be lost if they are communicated to the Officer concerned after an inordinate delay. In the instant case there is a delay of 43 months in communicating the adverse remarks to the petitioner. In a case where there was a delay of 13 months in communication of such remarks this Court in the case of C.N. CHAVDA VS. D.G.P. GUJARAT STATE reported in 1992(1) G.L.H. 209, directed the authorities not to consider the adverse entries in the Confidential Reports of the officer concerned and to ignore them.

There is absolutely no justification in the present case for the gross delay in communicating the adverse remarks to the petitioner at a time when he is being considered for promotion. Therefore, following the ratio of the aforesaid decisions, it is directed that the adverse remarks communicated to the petitioner under letter dated 28.6.1995 at Annexure-A to the petition for the period from 1.4.1991 to 25.12.1991 should be ignored while considering the petitioner's case for promotion. Rule is made absolute accordingly with no order as to costs.

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