

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 878 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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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?  
Nos. 1 and 2 Yes. Nos. 3 to 5 No

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HIRABHAI KALUBHAI ROHIT

Versus

COMMISSIONER OF POLICE BARODA

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Appearance:

MR BP GUPTA FOR MR YN OZA for Petitioner

MR VB GARANIA, AGP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 26/12/97

ORAL JUDGEMENT

The petitioner herein was initially appointed as constable in the police department on 15.3.1976. On 6.4.1984 while the petitioner was on duty, he was found drunk near his residence by the police and with regard to this incident he was placed under suspension on 16.4.1984 and was prosecuted for offence under section 66(1)(3) of the Bombay Prohibition Act. The petitioner was acquitted by the Criminal Court of the offence under the Bombay Prohibition Act on 10.1.1986 and thereafter he was reinstated from suspension on 4.3.1986. Thus the petitioner suffered suspension during his prosecution for the period on and from 16.4.1984 to 3.3.1986.

After the acquittal and after the reinstatement from suspension the petitioner was chargesheeted for the same wrong i.e. with regard to the incident dated 6.4.1984 in which he was found drunk. For the very same charge for which he had been acquitted he was now subjected to departmental inquiry and this time, as a result of inquiry he was removed from service by an order dated 23.7.1990 which was served on him on 5.8.1990.

It is this order of removal of 23.7.1990 which is under challenge in this Special Civil Application. The petitioner has sought to challenge the removal order dated 23.7.1990 on the grounds more than one. However, I do not find it necessary to deal with and go into those questions because in the inquiry notwithstanding the acquittal in the criminal case the charge has been found to be proved on preponderance of evidence as against the evidence which is required in the criminal case to prove the charge to the hilt and beyond doubt. Therefore, the charge could be held to be proved on preponderance of evidence even if the petitioner had been acquitted in the criminal case. But I do find that in the facts and circumstances of the present case, the punishment of removal from service imposed against the petitioner is highly excessive and certain mitigating factors which ought to have weighed with the disciplinary authority have not been considered at all inasmuch as the petitioner had suffered agony of criminal prosecution for a period of nearly two years. He had also suffered the suspension during the pendency of the criminal case from 16.4.1984 to 3.3.1986, that he was not on duty on 6.4.1984 i.e. the date of the incident, that he had a service of about 14 years to his credit at the time when the removal order was passed. In the backdrop of these factual aspects and mitigating circumstances, any minor punishment short of rendering the petitioner jobless would have been sufficient. For the reasons aforesaid, the removal order dated 23.7.1990 which was served upon the petitioner on 5.8.1990 is hereby quashed and set aside. The respondents are directed to reinstate the petitioner into service and it is left open for the respondents to pass any order imposing minor penalty against the petitioner so that the petitioner does not lose his job and continuity of service. The continuity of the petitioner's services shall be maintained for all purposes and so far as the question of payment to the petitioner for the period i.e. 5.8.1990 and onwards till the date of reinstatement is concerned, the concerned authority shall pass the orders in accordance with the relevant service rules applicable to the petitioner so as

to follow all legal consequences. The orders with regard to petitioner's reinstatement shall be issued at the earliest possible opportunity but in no case later than 12.1.1998.

In the result, this Special Civil Application is allowed. Rule is made absolute accordingly. No order as to costs.

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m.m.bhatt