

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1424 of 1996

IN

SPECIAL CIVIL APPLICATION No 7296 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes

2. To be referred to the Reporter or not? yes @@te
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

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? No

5. Whether it is to be circulated to the Civil
Judge? No

STATE OF GUJARAT

Versus

YOTISHCHANDRA INDURAI ANTANI

Appearance:

MR DA BAMBHANIA for Appellant.

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE M.S.SHAH

Date of decision: January 31,1997.

C.A.V.JUDGEMENT (PER M.S.SHAH J.):

Admit.

With consent of the learned counsel for the parties the Appeal as well as the Special Civil Application were taken up for final hearing and both are being disposed of by this judgment.

The first respondent in the appeal- original petitioner in Special Civil Application (hereinafter referred to as the petitioner) , who was serving as Assistant Charity Commissioner, was promoted as Deputy Charity Commissioner vide order dated May 4, 1995 passed by the State Government on the basis of the petitioner's service record for the last three years. The promotion was on temporary basis and subject to approval by the Gujarat Public Service Commission (hereinafter referred to as the GPSC). While considering the case of the petitioner, the GPSC examined the service record of the petitioner for the last five years and found that there were certain adverse entries in the service record for the year 1990-91 and the same were not taken into account by the Government while giving the petitioner temporary promotion as per the above order. On account of the said adverse entries, the GPSC did not recommend the case of the petitioner for promotion. On the basis of the non-approval of the case of the petitioner, the State Government passed the impugned order dated September 21, 1996 reverting the petitioner from the post of Deputy Charity Commissioner to that of the Assistant Charity Commissioner.

The aforesaid reversion order came to be challenged by the petitioner in the Special Civil Application No.7296/96. The learned single Judge was pleased to admit the petition and pass an interim order staying the operation of the impugned order till the final hearing of the petition. The ground that appealed

to the learned single Judge was to the effect that since the adverse entries in question were never communicated to the petitioner, the Government was justified in not taking into consideration the same and the GPSC had erred in taking the said adverse entries into consideration. The adverse remarks in question were shown to the Court.

This appeal is directed against the aforesaid interim order dated November 6, 1996. The gravamen of the appellant's case was that the learned single Judge should not have passed such an interim order and that even at the final hearing the learned single Judge could have at the most set aside the order of reversion and direct the authorities to reconsider the case. The learned Asstt.Govt.Pleader for the State Government contended that if the interim order under challenge is not set aside, the respondent will continue on the promotional post till his retirement, as the petition will be heard after a number of years.

The learned counsel for the petitioner supported the order under appeal and submitted that since the Government and the GPSC could not have taken into consideration the adverse entries in the service record for the year 1990-91 as the same were not communicated to the petitioner, the learned single Judge was justified in passing the order under appeal.

In view of the facts and circumstances of the case and the rival submissions, Counsel for the parties jointly requested us that the petition itself may be heard with this appeal finally and accordingly they were heard. Having heard the learned counsel for the parties at length, it appears to us that there is some justification in the grievance made by the learned Addl. Government Pleader and even if the petition were to be allowed at the most the Court could have granted the final relief to the effect that the petitioner's case was required to be reconsidered after ignoring the adverse entries for the year 1990-91 which were not communicated to the petitioner. As per the settled legal position, enunciated by the Supreme Court in the case of State of Mysore Vs. C.R.Seshadra & Ors., AIR 1974 SC 460 it is for the Government (in consultation with the GPSC) to reconsider the matter in accordance with law.

It is an admitted fact that the adverse entries in the confidential reports for the year 1990-91 were not communicated to the petitioner till the consideration of his case by the State Government and passing of order dated May 4, 1995 and till the consideration of the case

of the petitioner by the GPSC in 1996. The impugned order of reversion was obviously vitiated on account of consideration of adverse remarks in the confidential reports for the year 1990-91 without the same having been communicated to the petitioner for more than four years. The appellants is, therefore, required to reconsider the case of the petitioner for promotion from the post of Assistant Charity Commissioner to the post of Deputy Charity Commissioner.

In view of the aforesaid discussion the impugned order of reversion dated September 21, 1996 at Annexure B to the petition is hereby quashed and set aside. The State Government in consultation with the GPSC shall reconsider the case of the petitioner for promotion from the post of Assistant Charity Commissioner to the post of Deputy Charity Commissioner, in light of the aforesaid observations and shall pass necessary orders within a period of two months from the receipt of writ or a Certified copy of this judgment.

Rule is accordingly made absolute in the Special Civil Application with no order as to costs. Letters Patent Appeal accordingly stands disposed of.

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