

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8081 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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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?

HASMUKHLAL KARSANDAS JHA

Versus

BARODA MUNI. CORPORATION

Appearance:

MR PJ PATEL for Petitioner

MR PRANAV G DESAI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/02/98

ORAL JUDGEMENT

Petitioner before this Court is a former employee of the respondent-Corporation {hereinafter referred to as "The Corporation"}. It appears that petitioner was appointed as Vaccinator on 17.11.1959. However in view of the disciplinary proceedings pending against him, he

was suspended from service under order dated 20th May, 1986. It appears that in course of disciplinary proceedings the imputation of charge made against the petitioner was held to be proved and under order dated 2nd January, 1990, the petitioner was ordered to be removed from service. Feeling aggrieved, petitioner preferred an appeal before the Appellate Authority. The appellate authority under its order dated 26th July, 1990 {annexure "B" to the petition} set-aside the order of removal made against the petitioner and directed that the petitioner be visited with the punishment of reduction in rank and he be appointed in the lower rank. Soon after the order of the appellate authority, the petitioner reached the age of super annuation and he retired from service on 31st March, 1991. The order made by the appellate authority was not complied with by the Competent Authority, therefore, the petition.

In the present petition, the petitioner initially prayed for a direction to the Corporation to comply with the order passed by the Appellate Authority on 26.7.1990 and to direct the Corporation to pay wages and other consequential benefits to the petitioner.

Pending this petition, the Corporation has made an Order dated 23rd June, 1997 giving effect to the order of the Appellate Authority made on 26th July, 1990. In view of the said order dated 23rd June, 1997, the prayer made in paragraph 12(B) does not survive, however, the petitioner has added prayer paragraph 12 (CC). The petitioner has contended that though the order of 23rd June, 1992 is purported to be the implementation of the order of the appellate authority, it does not carry out the order of the appellate authority in substance. Mr. Patel has submitted that Section 56 of the Bombay Provincial Municipal Corporation Act, 1949 ennumerates punishments that can be imposed upon the delinquent municipal employee. The said penalties do not include penalty of fresh appointment. He, therefore, submits that the Appellate authority never intended to give a fresh appointment to the petitioner in the lower rank. All that it meant was to impose punishment of reduction in rank as well as reduction in pay. However, the Corporation has wrongly interpreted the said order and has refused to pay the retiral benefits to the petitioner.

Be that as it may, the petitioner has not challenged the order of the Appellate authority made on 26th July, 1990. If at all the said order requires any

clarification, the same can be done by the Appellate authority alone. Besides, the order dated 23rd June, 1997, being the order of the Corporation, can also be challenged before the Appellate authority. In that view of the matter, this petition cannot be entertained. Petition is, therefore, dismissed. The petitioner shall however be at liberty to approach the Appellate authority either to seek clarification of order dated 26th July, 1990 or to challenge the order dated 23rd June, 1997. If at all the petitioner approaches the Appellate authority, as aforesaid, the petitioner's application or appeal; as the case may be, may be disposed of as expeditiously as possible preferably within six months from the date of such application/appeal. Mr. Patel further states that by way of interim arrangement made at the suggestion of the Court, the petitioner is being paid monthly pension of Rs. 500/= for last six months. The said arrangement shall continue to operate for a further period of seven months from today or till the application/ appeal preferred by the petitioner before the Appellate authority; if any, is finally disposed of, whichever be the earlier.

Subject to the above observations, rule is discharged. There shall be no order as to costs.

Prakash*