

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4400 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
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

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R D MAKWANA

Versus

PERSONAL OFFICER  
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Appearance:

MR SHAILESH C PARIKH for Petitioner

MR NANDESH for KS NANAVATI for Respondent No. 2, 3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/08/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. For the misconduct of the unauthorised absence from duties without any prior application and sanction thereof the petitioner was charge sheeted and in the inquiry the charges were proved and he was awarded the punishment of removal from service vide order No.MBO/10870 dated 30.6.1983. The petitioner was a workman and application

has been filed by the respondent-Corporation before the Central Government Industrial Tribunal No.I, Bombay seeking approval for its action of removing the petitioner from the services. This application was accepted and the Tribunal has approved the action of the respondents of removing the petitioner from services vide order dated 23.11.1984.

#. The learned counsel for the petitioner does not dispute that this order has been passed by the Central Government Industrial Tribunal, No.I, Bombay after notice to the petitioner. The petitioner has not raised any industrial dispute but he filed appeal before Commercial Director, AIR, Bombay which came to be rejected on 10.11.87. Still the petitioner has not raised any industrial dispute and straightaway filed this Special Civil Application under Article 226 of the Constitution of India.

#. The order of the appellate authority is there on the record of the Special Civil Application at page No.19 and, a finding of fact is recorded by the appellate authority that the petitioner has only pleaded that in view of the family circumstances he should be reinstated in service and has not given any reason as to why he had remained absent for such a long number of days as mentioned in the charge-sheet.

#. The learned counsel for the petitioner has challenged the fairness of the departmental inquiry conducted by the respondents. I find from the order of the appellate authority that the principles of natural justice have been followed by the disciplinary authority in inquiry. Notices were given by the inquiry officer to the petitioner at the address which was available of his in his service record. It is not the case of the petitioner that the addresses on which the notices were sent to him by the respondents at his Ahmedabad, Viramgam and Bombay were not correct. The past conduct of the petitioner has also been taken into consideration and he is in habit of remaining absent from duty. He joined the service on 1.8.79 and in four years he had remained absent for 296 days. For earlier absence the Corporation acted fairly and reasonably and instead of taking any disciplinary action against the petitioner the entire period of his absence was treated as leave on loss of pay. The ground given for the absence, during the course of arguments, otherwise also is difficult to accept. Even if it is taken that his wife was ill it is hardly a ground for remaining absent. In such case job is more important for the petitioner. The very fact that during the illness of

his wife, the petitioner has not cared for the job goes to show that possibly either the petitioner is reach person or has other sources of livelihood. That also goes to show from his past conduct of remaining absent from duty from time to time.

#. Taking into consideration the facts and circumstances of the case, the order passed by the appellate authority is perfectly legal and justified. It is not a perverse order. As a result of the aforesaid discussion, the Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated. No order as to costs.

(S.K.Keshote, J.)

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