

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5409 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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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

BACHUBHAI C HARIJAN(BHANGI)

Versus

CHIEF MEDICAL OFFICER HEALTH

Appearance:

MR NR TANDEL for Petitioner
MR RA MISHRA for Respondent No. 1
RULE SERVED for Respondent No. 2
GOVERNMENT PLEADER for Respondent No. 3
DELETED for Respondent No. 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 30/03/2001

ORAL JUDGEMENT

#. Heard learned counsel Mr.N.R.Tandel and
Mr.K.N.Prajapati for Mr.R.A.Mishra, learned counsel for

the respondent no.1.

#. By way of this petition under Articles 14, 16 and 226 of the Constitution, the petitioner, a part time attendant-cum-sweeper claiming to be in service since 7 years under the respondent no.1 has prayed for setting aside the order dated 21.1.1990 terminating his services and for reinstatement with full benefits. By way of an amendment, the petitioner has also claimed that the termination of his service being in violation of principles of natural justice, he should be reinstated not only with back wages but absorbed as a permanent employee by way of regularisation.

#. According to the factual averments made in the petition, the petitioner had put in continuous service of 7 years and to prove that fact he has placed reliance on certificate issued by the Medical Officer which is annexed to the petition as Annexure-B. It is also averred that although the petitioner was appointed as attendant/wardboy/ sweeper on a part time basis, he was in fact working full time and several duties were assigned to him including that of dresser/attendant/sweeper and wardboy. According to the impugned order, the post of wardboy-cum-peon was filled up and upon the new regular appointee reporting for duty, the petitioner was discharged from his part time daily rated job with effect from 17.1.1990. It was contended on behalf of the petitioner that he was appointed on compassionate ground after the death of his grand father who had worked as a sweeper in the dispensary for many years. It was submitted that the continuous part time service put in by the petitioner ought to have been regularised by the respondents and that the new appointment on the permanent basis was in violation of the rules applicable to the Panchayat itself.

#. According to the affidavit-in-reply filed by the Chief Medical Officer of the respondent no.1, the petitioner worked as a part time sweeper from 1.12.1985 to 31.7.1988 and thereafter from 3.5.1989 to 31.5.1989, from 3.6.1989 to 25.6.1989, from 1.7.1989 to 28.7.1989 and from 1.1.1990 to 17.1.1990. It is further stated that the dispensary in which the petitioner was serving was upgraded as Primary Health Center and two posts of Class-IV were sanctioned. Till the new posts were regularly filled up, the work of sanitation and sweeping was required to be entrusted to petitioner as part time sweeper. The regular appointee having been appointed on compassionate ground alongwith 6 other employees, the services of the petitioner were terminated. The original

appointment of the petitioner was not on a permanent sanctioned post and even the grand father of the petitioner was not appointed on regular establishment. It is further stated that the certificate issued by the Medical Officer on which reliance was placed by the petitioner was bogus and incorrect, in view of the fact that the Medical Officer himself had joined the Primary Health Center with effect from 21.8.1987.

#. Considering the facts on record as above, it is clear that the period of continuous service put in by the petitioner is seriously disputed and the petitioner has not approached this Court with clean hands. The learned counsel for the petitioner failed to show the violation of any specific provision of law in the matter of termination of his service, particularly in view of the fact that the last employment of the petitioner was only for a period from 1.1.1990 to 17.1.1990. A grievance was made that the petitioner ought to have been invited at the time of regular appointment on the post and that he should have been allowed to participate in the selection process. However, the regular appointment appears to have been made on compassionate ground and the legality or otherwise of the regular appointments on the post are not the subject matter of this petition. In any view of the matter, on the basis of seriously disputed facts, the petitioner cannot be granted the relief either of reinstatement or of regularisation. The petitioner would be at liberty to raise an industrial dispute, if so advised and then, if the dispute is referred, it can be adjudicated by the appropriate forum. The learned counsel for the petitioner relied upon the unreported judgment of this Court rendered in Special C.A. No.3403/1990 which is not applicable in the facts of this case.

#. In the result, this petition being based on seriously disputed facts and the petitioner having an alternative remedy it is found to be not maintainable and, therefore, rejected. Rule is discharged with no order as to costs.

(D. H. WAGHELA, J.)

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