IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1803 of 2004

        in

SPECIAL CIVIL APPLICATIONNo 4829   of 2004

For Approval and Signature:

        HON'BLE MR.JUSTICE B.J.SHETHNA
                        and
        HON'BLE MR.JUSTICE SHARAD D.DAVE

 ==
1. Whether Reporters of Local Papers may be allowed   : YES
   to see the judgements?

2. To be referred to the Reporter or not?   : YES

3. Whether Their Lordships wish to see the fair copy   : YES
   of the judgement?

4. Whether this case involves a substantial question   : NO
   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 concerned   : NO
   Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

 SURENDRA T AMIN
Versus
 GUJARAT STATE FERTILISERS &   CHEMICALS LTD.

 Appearance:
 1. LETTERS PATENT APPEAL No. 1803 of 2004
     MR NK MAJMUDAR for Appellant No.
     MR SP MAJMUDAR for Appellant No.
     .... for Respondent No. 1-3

        CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and
                HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/12/2004

ORAL JUDGEMENT
                    (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#.   The appellant - petitioner was serving as Manager
(Agro Project) in the respondent - Gujarat State
Fertilizers and Chemicals Ltd. His monthly salary with
perquisites was about Rs.20,000/- per month.   He was
posted at Godhra and looking after the Seed Project
Programme in AD and AS department.   He had committed
serious irregularities in respect of said transactions of
seeds and involved in misappropriation and committed
forgery, cheating and concealment and thereby caused huge
financial loss to the respondent to the tune of
Rs.71,89,367/- by conspiring with Shri Modi, Supervisor
(Sales). Criminal complaint i.e. criminal case no.   67
of 1996 was also filed against him for misappropriation,
cheating, forgery etc.   Having lost the trust and
confidence of respondent, his services were terminated by
an order dated 09.04.1997 under Rule 44 of the Company
Services Rules by paying three   months notice pay in
lieu of three months notice.

#. Appellant had earlier approached this court by way of
special civil application no. 10772 of 2000 praying for
pension on the ground that the impugned order of
discharge was an order of termination simpliciter and not
passed by way of penalty. Therefore, he was entitled for
pension but the same was not given to him. Therefore, he
first made representation to the Chairman   of the
respondent - company on 28.03.1998 which remains
undecided. His said writ petition no. 10772 of 2000 was
rejected by S.K.Keshote, J on 18.10.2000 (Annexure `C').
However, while rejecting the petition, learned single
Judge observed that the petitioner would be free to make
fresh representation to the Chairman of the company for
alleged claim of pension.   If such representation was
made within seven days from the date of the receipt of
the certified copy of the order, then the Chairman shall
decide the same within 15 days from the date of receipt
thereof and if the claim was not acceptable, then a
reasoned order be passed.   Accordingly, the appellant
petitioner made representation dated 19.12.2000 (Annexure
`D') to the Chairman of the respondent - company which
was rejected on 04.01.2001. Hence, appellant petitioner
filed another special civil application no. 4829 of 2004
which was dismissed by A.L.Dave, J on 19.04.2004. Hence,

this appeal.

#. Learned counsel Shri Suthar for the appellant submitted that the Chairman of the respondent – company had wrongly rejected his representation. He also submitted that though his first petition no. 10772 of 2000 for pension was rejected by S.K.Keshote,J, he can file fresh petition after rejection of his representation because the learned single Judge himself, while dismissing his earlier writ petition, made it clear that if he makes a representation then the same shall be decided by the Chairman of the respondent – company by a speaking order. It is true that while rejecting the first writ petition, the learned single Judge observed that if the petitioner makes representation to the respondent – company, then the same shall be decided by a speaking order. However, learned single Judge had not reserved any liberty to the appellant – petitioner to file fresh petition in case of rejection of his representation by the authority. In our considered opinion, when his first petition for pension was specifically rejected by the learned single Judge, then second petition on same subject would not be maintainable. Merely because, his representation was rejected, would not give fresh cause of action to the appellant – petitioner to challenge the order. Even assuming for the sake of argument that writ petition after rejection of the representation was maintainable, even then this court would not have interfered with such a reasoned order passed by the respondent company. It is to be noted that this court is not sitting in appeal over the decision of the Chairman of the respondent – company rejecting the representation of the appellant petitioner and therefore in absence of any specific grounds made out in the writ petition, this court cannot interfere with said decision taken by the Chairman of the respondent company rejecting the representation of appellant petitioner.

#. Bare look at the rejection order passed by the Chairman of the respondent – company rejecting the representation of the appellant – petitioner, it clearly appears to us that under Rule 16 of the Trust Deed of G.S.F.C. Officers Pension Fund Trust Rules which is quoted by the Chairman in its impugned order dated 04.01.2001, the appellant – petitioner would not be entitled for pension.

#. Having carefully gone through the order passed by the learned single Judge dismissing the writ petition on 19.04.2004, we are of the considered opinion that the

learned single Judge rightly exercised his discretion against the petitioner on peculiar facts of this case, more particularly, when the appellant - petitioner had not thought it fit to challenge his impugned order of termination before this court or any other court.

#. In view of the above discussion, this appeal fails and is summarily dismissed.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

srilatha