IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1027 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV
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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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NARENDRASINH DOSABHAI GOHIL
Versus
MANAGING DIRECTOR & 2 other(s)
==
Appearance:
MR RAJESH P MANKAD(2637) for the Petitioner(s) No. 1
MR DIPAK R DAVE(1232) for the Respondent(s) No. 1,2,3
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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 04/07/2022

ORAL JUDGMENT

1. Heard Mr.Rajesh Mankad learned advocate for the petitioner and Mr.Dipak Dave learned advocate for the respondent.

2. The prayer in the petition by the petitioner is to declare that the order passed by the respondent-

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company rejecting his Second Appeal on the ground that the statutory rule for preferring such an appeal was effective from 16.09.2016, is bad.

3. Based on this prayer, what is also prayed is that the petitioner is entitled to have his period of suspension from 18.01.2003 to 23.10.2003 counted as regular for all purposes and the action of the respondents in treating such period as such, is bad.

4. Facts in brief would indicate that the petitioner was working as a driver with the respondents. He was issued a charge-sheet on 18.01.2003 and also by the same order suspended from service. On a response filed by the petitioner to the charge-sheet on 17.02.2003, the respondents conducted a departmental proceedings and an inquiry report was submitted on 29.05.2003 holding the petitioner guilty of the charge. A show cause notice was given to the petitioner on 25.08.2004 asking the petitioner to show cause as to why a penalty of stoppage of three increments with future effect be not imposed

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upon the petitioner for the misconduct in question. The petitioner responded to such notice by filing a detailed reply and by an order of 29.09.2004, a penalty of stoppage of two increments with future effect was imposed upon the petitioner. On a First Appeal being preferred, the appeal was rejected by an order dated 24.03.2005. Be it noted that in the interregnum, the authority thought it fit to revoke the order of suspension and reinstate the petitioner by an order dated 23.10.2003. Against the order of rejection of the First Appeal on 24.03.2005, the petitioner preferred a Second Appeal on 28.03.2018 which was rejected on 02.05.2018.

5. Mr.Mankad learned counsel for the petitioner would submit that after the departmental proceedings, a show cause notice was issued as to why a penalty of stoppage of three increments with future effect be not imposed. On the authority being satisfied with the response, the penalty that was imposed was a lower one to that of stoppage of two increments with future effect. Moreover, no order was passed

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denying the petitioner any benefits for the period of suspension of 10 months. He also would submit that when the petitioner was reinstated on revocation of the order of suspension on 23.08.2003, the reinstatement was only till the departmental inquiry is finally disposed of. This has made it mandatory for the employer to pass an order regularizing the period of suspension and pay consequential pay and allowances that could have an effect on his terminal benefits of he having attained the age of superannuation in the year 2018. He made representations in the year 2018 and also addressed a notice through the advocate on 03.10.2018. In support of his submissions that the period of suspension ought to be regularized, he relied on several decisions.

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(i) Reliance was placed on the decision in case of ***Chimanlal Virjibhai Bhalani v. Paschim Gujarat Vij Company Limited*** reported in ***2020 JX (Guj) 410.*** to submit that in a similar case, though the penalty was imposed, a direction was issued to the

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Vij Company to consider the case for regularization.

(ii) Reliance was also placed on a decision in case of ***Brahma Chandra Gupta v. Union of India*** reported in ***1984 (2) SCC 433,*** to submit that when the suspension was held wholly unjustified, natural consequences of treating the period for the purposes of full salary should be awarded. Also reliance was placed on the decision in case of ***State of U.P. v. Ram Avtar Sharma*** reported in ***2004 (13) SCC 755.***

6. Mr.Mankad would submit that the imputation of charges contained five charges, of which, three were held not to be proved against the petitioner and therefore when the penalty order was passed in light of the fact that three charges of the petitioner were not proved, a decision with regard to the suspension being treated as regular for pay and allowance ought to have been considered.

7. Mr.Dipak Dave learned counsel appearing for the company would submit that the order of penalty was

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passed in the year 2004 to which an appeal was filed and rejected on 24.03.2005. Second Appeal was preferred 15 years after the order of rejection of the First Appeal and therefore only on the ground of delay of 13 years, the petition challenging the order should not be entertained.

8. That apart, inviting the attention of the Court to the prayers made in the petition, he would submit that having accepted the order of penalty and thereafter even in the year 2003 when the order of suspension was revoked and order of reinstatement was passed, the petitioner did not think it fit to approach this Court and did so post his superannuation in the year 2013. For this submission on the aspect of delay, Mr.Dave would rely on the decision in case of ***C. Jacob v. Director of Geology and Mining*** reported in ***2008 (10) SCC 115.*** Para 6 of the decision was pressed into service.

9. He would also invite the Court's attention to Regulation 241 of the service regulations and submit

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that the question of treating the period of suspension and awarding the benefits of full pay and allowance can only be considered if an employee is fully exonerated. He would invite the Court's attention to provisions of sub-clauses (3) and (5) of the regulation.

10. Considering the submissions made by the learned counsel for the respective parties, the first issue deserves attention of the Court is whether the order rejecting the appeal by the impugned communication dated 02.05.2018 is just and proper. Without getting into the question as to whether a statutory appeal can be entertained in the present case, a Second Appeal when at the point when the order of penalty was passed, such a provision was available or not. Even on the ground of delay, the order deserves no interference.

11. Facts on hand would indicate that on an order of penalty being passed against the petitioner that of stoppage of two increments with future effect on

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29.09.2004, which was confirmed in the First Appeal on 24.03.2005, the petitioner did not approach the authorities and the appeals were only filed after 13 years i.e. in the year 2018. Para 6 of the decision in case of ***C. Jacob*** (supra) reads as under:

> *"6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/ petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do*

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they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

12. On that count alone, this Court would have ousted the petition.

13. There are sufficient reasons other than the aspect of delay which should make the case of the petitioner a case not deserving consideration. Regulation 241 of the service regulations reads as under:

"(1) When an employee of the Board who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and made a specific order. a) Regarding pay and allowances to be paid to the employees for the period of his absence from duty. b) Whether or not the said period shall be treated

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as period spent on duty.

(2) Where the authority mentioned in sub Rule (1) is of opinion that the employee has been fully exonerated or in the case suspension that it was wholly unjustified the employee shall be given the full pay and allowance to which he would have been entitled had he not been dismissed, removed or suspended as the case may be.

(3) In other case i.e. when the suspension is not wholly unjustified or the employee has been partially exonerated, he shall be given such proportion of pay and allowance as the competent authority prescribed by a specific order.

(4) In case failing under clause (2), the period of absence from duty shall be treated as a period spent on duty for all purpose.

(5) In case failing under clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specific purpose provided if the employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the employee.

(6) If the employee is found to be guilty or partially guilty he shall be liable to be punished according to the gravity of charge against him."

14. Reading of the resolution makes it apparent that only when an employee is partially exonerated, would the authority need to decide the question of whether the suspension can be treated to be wholly unjustified and whether he should therefore be given

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such proportion of pay and allowance as the competent authority would prescribe by a specific order. Only then Clause-5 shall come into play. In the facts of the present case, what is evident is that though Mr.Mankad would submit that in light of the revocation of the order of suspension by the order of 23.10.2003 and of passing a penalty lower than the one which was contemplated in the show cause notice would justify his case for pay and allowances, that does not seem to be the case when the regulation is read. Here is a case where on a charge-sheet being issued, the order of penalty was passed. Obviously therefore not exonerating the petitioner from the charge. It was therefore, within the right of the employer to treat the period of suspension as such reinstating the petitioner in service with a condition that orders of regularization of suspension is kept in abeyance till the inquiry is finally disposed of, can only mean that the same has to be done in accordance with the provisions of the regulation and not otherwise.

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15. The decision of this Court in case of ***Chimanlal*** (supra) would not be of any assistance to the learned counsel for the petitioner inasmuch as it was a case where an order of dismissal was set aside by the employer on it being harsh. The penalty was modified by the Appellate Authority. It was in these circumstances, that a direction was issued to the authorities to consider the case of the petitioner in light of the regulation. No positive finding with regard to the period being treated as regular was a question that was decided.

16. The decision in case of ***Bramhachandra Gupta (***supra) is a case where the delinquent was suspended and thereafter removed from service on he effected in a criminal case. When the delinquent on an appeal to the higher Court was awarded an acquittal, he was reinstated in service. It was on this count that the employer was bound to treat the pension of suspension as justified as the suspension was solely on the ground of pendency of a criminal case. Facts before the Supreme Court would

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indicate that the employer had not initiated any departmental proceedings and the suspension was only on the ground that the criminal charge was laid against him and pending the trial of the offense. It was a case where it can be safely inferred that there was a complete exoneration on acquittal and therefore even this case decided by the Supreme Court would not help the cause of the petitioner.

17. In the case cited that of ***Ram Avtar*** (supra) was again on facts whether the Tribunal on a challenge to the order of dismissal had moved the same to that of withdrawal of all actual increments.

18. Here is a case where the petitioner was imposed a penalty which was commensurate with the conduct on the charge being proved and the suspension therefore could not have been treated as wholly unjustified when read in light of the Regulation 241.

19. No case is made out and therefore the petition is accordingly dismissed.

(BIREN VAISHNAV, J)

ANKIT SHAH

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