IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 956 of 2020

In R/SPECIAL CIVIL APPLICATION NO. 8555 of 2019

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/LETTERS PATENT APPEAL NO. 956 of 2020

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STATE OF GUJARAT
Versus
VINUBHAI KHANABHAI MAKWANA

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Appearance:
MR TIRTHRAJ PANDYA, AGP(1) for the Appellant(s) No. 1,2,3
for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 15/12/2020

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 This appeal under Clause 15 of the Letters Patent is at the instance of the State of Gujarat (original respondent) and is directed against the order passed by a learned Single Judge of this Court dated 23rd September 2019 in the Special Civil Application No.8555 of 2019, whereby the learned Single Judge allowed the writ application filed by the respondent herein (original writ applicant) and thereby quashed and set aside the order of suspension passed against the writ applicant.

2 The learned Single Judge, while allowing the writ application, has observed as under:

> *"5.2 As per sub-rule (2) of Rule 5, in the event of detention, conviction etc., the government servant shall be deemed to have been suspended. In sub-rule (2A), it is contemplated that suspension made or deemed to have been made under Rule 5 shall be reviewed by the competent authority before expiry of ninety days. Further extension could be passed on after reviewing it. It is contemplated that all subsequent review shall have to be undertaken before expiry of the extended period. It is provided also that an order of suspension made or deemed to have been made under sub-rule (1) or sub-rule (2) shall not be valid after a period of ninety days unless the same is extended after review, and the review was undertaken before the expiry of ninety days.*
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> *5.2 In the present case, the suspension order was passed against the petitioner on 23.6.2017. It is an admitted position that thereafter no chargesheet has been issued to the petitioner and the departmental proceedings have not been initiated. In proviso to sub-rule(1) of Rule 5, it is contemplated that suspension of a government servant shall not be valid unless before the expiry of period of 90 days from the date of suspension, the disciplinary proceedings are initiated against him. If the suspension period is to be extended in absence of the initiation of disciplinary proceedings, the same has to be supported by valid reasons. The charge sheet has not been given to the petitioner nor any departmental proceedings are contemplated. Satisfactory reasons have not been coming forth. The proviso to Rule 5(1) of the above rules, would operate to render the suspension illegal.*
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> *6. At this stage, noticing the principles laid down by the Apex Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291], in that case, the Supreme Court issued time-bound direction for expeditious disposal of the disciplinary proceedings and directed that currency of a suspension order should not extend beyond three months if within three months the memorandum of charges is not served on the delinquent employee. It was held that if chargesheet has served, a reasoned order must be passed for extension of suspension.*
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> *6.1 The Apex Court in Ajay Kumar Chaudhary (supra) cautioned against undue and unreasonably long protection of suspension by holding thus,*
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> > *"Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period of its renewal is not based on sound reasoning contemporaneously available on*

the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay." (Para 11)

6.2 The Apex Court proceeded to observe its anxiety in the following words,

"Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence, His torment is his knowledge that if and when charged, it will inexorably take and inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement." (Para 12)

6.3 The law laid down in Ajay Kumar Chaudhary (supra) was reiterated by the Supreme Court in a recent decision in State of Tamil Nadu vs. Promod Kumar being Civil Appeal No.8427-8428 of 2018 decided on 21.8.2018.

6.4 The outweighing aspect of the case is that so far no departmental proceedings against the petitioner have been initiated, no chargesheet is given to the petitioner. The suspension all along as above, came to be continued and protracted without initiation of any departmental proceedings. The suspension could therefore stand invalid. The prolonged suspension of the petitioner in the aforesaid facts and circumstances evidently become arbitrary and in violation of Articles 14 and 16 of the Constitution.

7. As a result of the above, the petition is entitled to succeed. Suspension order dated 23.6.2017 against the petitioner and further extension thereof, are hereby set aside. The petitioner shall be taken back in service, which shall be done immediately and in no case within 10 days from the date of receipt of copy of the present order.

The petition stands allowed in the aforesaid terms. Direct service is permitted."

3 We have heard Mr. Tirthraj Pandya, the learned A.G.P. appearing for the State. We have also gone through the materials on record.

4 We are of the view that the learned Single Judge committed no error, not to speak of any error of law in passing the impugned order warranting any interference in this appeal. In the facts and circumstances of this case, the learned Single Judge could be said to be justified in taking the view that the prolonged suspension of the original writ applicant would render the same arbitrary and in violation of Articles 14 and 16 of the Constitution. We take notice of the fact that the writ applicant was placed under suspension vide order dated 23rd June 2017 for a period of two years. The department failed to issue any departmental chargesheet for the purpose of regular department inquiry. For a period of more than two years, the writ applicant remained under suspension. In such circumstances, he thought fit to come up before this High Court and challenged the continuance of suspension. The learned Single Judge is right in taking the view that if the suspension period is to be extended in absence of the initiation of disciplinary proceedings, the same has to be supported by valid reasons. It has been noted by the learned Single Judge that satisfactory reasons have not been coming forth. The proviso to Rule 5(1) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 would come into play to render the suspension

illegal.

5 In the overall view of the matter, we are convinced that we should not interfere with the impugned order passed by the learned Single Judge. At this stage, Mr. Pandya, the learned A.G.P. pointed out that the impugned order passed by the learned Single Judge has already been implemented. The writ applicant has been taken back in service. We may only say while dismissing this appeal as to who is responsible for this. An officer of the R.T.O. Department whose integrity is tainted had to be taken back in service only because the concerned department failed to issue departmental chargesheet in time for a regular departmental inquiry. This appeal stands dismissed.

6 Consequently, the Civil Application for stay also stands disposed of.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

CHANDRESH