

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 12000 of 2022**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA		Sd/-
1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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DIVYESH GOVINDBHAI KUNVARIYA
Versus
STATE OF GUJARAT

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Appearance:

MR. RAJAN J PATEL(6775) for the Petitioner(s) No. 1
MR JAYNEEL PARIKH, AGP for the Respondent(s) No. 1
MR HEMANG M SHAH(5399) for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 09/01/2023

ORAL JUDGMENT

1. **Rule.** Learned advocates appearing for the respective respondents waive service of notice of rule.

2. Since a short issue is involved in the writ petition, the same is heard and finally decided today with the consent of the learned advocates appearing for the respective parties.

3. In the present writ petition, the petitioner is seeking quashing and setting aside the order dated 02.03.2022 rejecting the request of the petitioner for seeking permission to defend his case through a legal

practitioner in the Departmental Inquiry Case No.4 of 2021, which is pending before the respondent no.2.

4. The brief facts of the case are as under:-

4.1. One Mr.Kaushik Bhemabhai Gothi - the original complainant has filed a complaint dated 03.08.2021 against the petitioner. On the basis of the complaint, Special Vigilance Officer, City Civil Court has forwarded a report to respondent no.2 to initiate appropriate departmental inquiry against the petitioner and the Principal Judge City Civil & Sessions Court Ahmedabad – The Disciplinary Officer has registered Departmental Inquiry Case No.4 of 2021.

4.2. On 24.01.2022, the petitioner has filed an application seeking permission to appoint an advocate to defend the proceedings, which was rejected by the respondent no.2 and allowed the petitioner to take assistance from a retired employee as per the discipline rules.

4.3 Thereafter, again on 22.02.2022, the petitioner filed an application to review the aforesaid order and again requested to grant permission for appointment of an advocate, as the petitioner is not able to get assistant of any retired employee.

4.4 The respondent no.2 rejected the request made by the petitioner seeking permission to appoint an advocate and confirmed the earlier order vide the impugned order dated 02.03.2022.

5. At the outset, learned advocate Mr.Patel appearing for the petitioner has placed reliance on the provisions of Rule 9(5)(c) of the Gujarat Civil Services (Disciplinary and Appeal) Rules, 1971 (for short

“the Rules”) and has submitted that there is no complete bar in engaging the legal professional in defending the disciplinary proceedings. It is further submitted that in the present case, the Inquiry Officer is a City Civil Judge and the petitioner will not be able to effectively cross-examine the witnesses and hence, the impugned order may be set aside. It is submitted that despite his best efforts, the petitioner is unable to appoint any retired government servant for defending his case and hence, the petitioner may be allowed to engage an advocate in the departmental proceedings which are complex in nature. In support of his submissions, he has placed reliance on the judgment of the Apex Court in the case of Professor Ramesh Chandra vs. University of Delhi, AIR Online 2015 SC 483 (2015 (5) SCC 549). Thus, it is submitted that the impugned order may be set aside.

6. In response, learned advocate Mr. Shah appearing for the respondent no.2 has submitted that the orders are appropriately passed rejecting the request of the petitioner for engaging an advocate for defending his case in the departmental proceedings. He has submitted that there are no specific circumstances, which would entitle the petitioner from engaging an advocate in the departmental proceedings. In support of his submissions, he has placed reliance on the judgment of this Court in the case of P.H. Shrimali vs. State of Gujarat, 2006 (4) SLR 140, in the case of K.C. Mani vs. Central Warehousing Corporation and Ors., 1993 (2) GLH 784 and on the judgment of the Apex Court in the case of The Rajasthan Marudhara Gramin Bank and Ors. vs. Ramesh Chandra Meena and Ors., AIR 2022 SC 392. Thus, it is submitted that the writ petition may not be entertained.

7. The short issue, which falls for consideration is whether the application of the petitioner for engaging an advocate in the departmental proceedings is permissible in view of 9(5)(c) of the Rules. The fact, which is not established, is that the petitioner is serving as an Assistant in the City Civil Court, Ahmedabad. A charge-sheet has been issued to him on 29.11.2021 for conducting a regular disciplinary inquiry against him *inter alia* alleging various charges. It is also not in dispute that the Inquiry Officer i.e. the respondent no.2 - City Civil Sessions Judge.

8. It is the case of the petitioner that since the Inquiry Officer is a legal expert, he would not be able to cross-examine the witnesses and hence, an advocate would be required in the disciplinary proceedings to defend himself since the charges are complex in nature. At this stage, it would be apposite to refer to the provisions of Rule 9(5)(c) of the Rules, which are incorporated as under:-

“Rule 9(5)(c):

(c) The Disciplinary Authority may nominate any person hereinafter referred to as the Presenting Officer to present the case in support of the charge before itself if it itself is to enquire into the charges or before the Inquiry Authority. (The Government servant may present his case with the assistance of any other Government Servant approved by the Inquiry Authority, but may not engage a legal practitioner for the purpose unless the Disciplinary Authority having regard to the circumstances of the case so permits).

(Note:- The Government Servant may also take the assistance of a retired Government Servant to present the case on his behalf subject to such conditions as may be determined in general or special orders issued by the Government from time to time.)

A bare perusal of the aforesaid rules suggests, there is no absolute bar in appointing a legal practitioner in the disciplinary proceedings by the delinquent.

9. In the present case, since the Inquiry Officer himself is a City Civil Judge and expert in the legal proceedings, the assistant of a legal practitioner for defending the case of the petitioner cannot be denied. The Supreme Court in the case of **Professor Ramesh Chandra (supra)**, in an analogous situation has held thus:-

“27 The Inquiry Officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The Presenting Officer also would be a person who had sufficient experience in presenting case before Inquiry Officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not.

28 In Board of Trustees of the Port of Bombay vs. Dilipkumar Raghvendra Nath Nandkarni and others, (1983) 1 SCC 124, this Court observed:

"10.....Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex [pic]or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner..... 12.....In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated....."

29 In J.K. Aggarwal v. Haryana Seeds Development Corporation, (1991) 2 SCC 283, this Court held that the denial of the assistance of a legal practitioner in inquiry proceedings would be unfair. This Court held as follows:

"8. It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to

entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are [pic]for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in Board of Trustees of the Port of Bombay v. Dilipkumar⁸. However, it was held in that case (SCC p. 132, para 12) "... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated...."

30 In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair."

10. Thus, the Apex Court has emphatically held that if any person, who possesses legal acumen is appointed as an inquiry officer in an inquiry initiated against an employee, the denial of a legal practitioner for assistance in inquiry to the charged employee will be unfair. The petitioner, who is serving as an Assistant will have to face the legal acumen of the City Civil Judge, who is appointed as an inquiry officer. Thus, in order to defend himself in the proceedings which include the

examination of witnesses and the documents, the denial of legal practitioner to him for taking the assistance on such issue will be absolutely unfair. The judgments, on which reliance is placed by the learned advocate Mr.Shah, will not apply in the facts of the present case since in none of the aforesaid judgments the Inquiry Officer, was in any manner connected with the legal background or was a City Civil Judge or any other retired employee having legal background. The judgements also do not refer to any rule which is akin to Rule 9(5)(c) of the Rules which permit the assistance of legal practitioner to the charged employee.

11. Under these circumstances, the writ petition succeeds. The impugned order dated 02.03.2022 is hereby quashed and set aside. The respondent no.2 shall permit the petitioner to engage a legal practitioner for defending himself in the inquiry. The name of such legal practitioner shall be given to the respondent no.2-Inquiry Officer within a period of 15 days. After such name is given, the Inquiry Officer i.e. the respondent no.2 shall permit the advocate to represent the case of the petitioner in the departmental proceedings.

12. It goes without saying that the petitioner shall fully cooperate with the departmental proceedings and shall not take any adjournment without any justification. It is further clarified that the disciplinary proceedings shall not be protracted, and the same shall be completed at the earliest.

Sd/-
(A. S. SUPEHIA, J)

ABHISHEK/pc-2