

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 15471 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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 ?	

HIREN DAHYABHAI RATHOD
 Versus
 STATE OF GUJARAT

Appearance:

MR. JIT P PATEL(6994) for the Petitioner(s) No. 1
 MR KRUTIK PARIKH, AGP for the Respondent(s) No. 1
 NOTICE SERVED for the Respondent(s) No. 1,2

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 13/04/2022

ORAL JUDGMENT

RULE. Learned AGP waives service.

[1]. Heard Mr. Jit P. Patel, learned counsel for the petitioner and Mr. Krutik Parikh, learned AGP for the respondent – State.

[2]. The Challenge in this petition is to the order of termination dated

16.3.2017 passed by the respondent – authority, by which, the services as Assistant Motor Vehicle Inspector, Class-III of the petitioner has been terminated on the ground of lodging of an FIR under Sections 7, 8, 12, 13(1)(D) and 13(2) of the Prevention of Corruption Act registered at ACB Police Station, Banaskantha.

[3]. Mr. Patel would submit that even otherwise `A' summary report has been filed in context of the FIR in question. The short ground on which the petitioner has assailed the order of termination that it is contrary to the law laid down in a decision rendered by the Division Bench of this Court dated 24.07.2020 rendered in Letters Patent Appeal No.1596 of 2019 *in case of State of Gujarat v. Chetan Jayantilal Rajgor.*

[4]. Mr. Patel, learned counsel for the petitioner would rely on the orders passed in similar matter by this Court namely; SCA No.15419 of 2019 dated 18.1.2022. He further requested to pass the similar order in this order. The order dated 18.1.2022 reads as under:

“1. Heard Mr.Jigar Gadhavi learned advocate for the petitioner and Mr.Meet Thakkar learned AGP for the State.

2. The challenge is to the order dated 22.04.2014 passed by the respondent by which the services of the petitioner were put to an end alleging misconduct and financial irregularities.

3. The short contention raised by Mr.Gadhavi learned counsel for the petitioner is that the services of the petitioner could not have been put to an end without an appropriate notice and inquiry.

4. Mr.Thakkar learned AGP would submit that the conditions of the

order of appointment, particularly condition no.10 envisaged the situation where in case of a misconduct, the services of the petitioner could be put to an end without inquiry, particularly when he had given an undertaking that he would, if found committing any irregularities, not be entitled to any terminal benefits on being terminated from service.

5. Mr.Meet Thakkar would also submit that the order of 2014 has been challenged in the year 2019 after more than delay of five years.

*6. The present issue is covered by a decision of the Division Bench of this Court dated 24.07.2020 rendered in Letters Patent Appeal No.1596 of 2019 in case of **State of Gujarat v. Chetan Jayantilal Rajgor and a recent judgment of Division Bench of this Court in case of Kaminiben Thakorbbhai Patel v. State of Gujarat rendered in LPA No.761 of 2021.** The said decision held as under:*

*“6. When the order of termination passed against the appellants petitioners and impugned before the learned single Judge is considered in light of the aforesaid principles laid down, it could be discerned that the termination was founded on the alleged misconduct of the petitioner that they fabricated the documents or at least as parties to the process of such fabrication in order to seek transfer and that they had committed misconduct by submitting transfer applications which was impermissible. Even otherwise the order was manifestly on the ground of misconduct. It became stigmatic order. It could not have been passed without full scale inquiry. There was a clear nexus between the alleged misconduct and the order of termination. 6.1 The Supreme Court in **Gujarat***

Steel Tubes Limited v. Gujarat Steel Tubes Mazdoor Sabha [(1980) 2 SCC 593] stated and observed thus, "53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used."

6.2 The law laid down in *Chetan Rajgor (supra)*, in *Manishbhai Nayanbhai Mod (supra)* as well as in *Sandip Ajitsinh Vaghela (supra)* and in *Rahul Vank (supra)* holds the field. In respect of the impugned order in the instant case, the

said law will apply. A vain attempt was made on behalf of the respondents to submit that when learned single Judge decided the petition and passed the impugned order, the above decisions were not holding the field. This submission is fallacious inasmuch as the decision in Manishbhai Nayanbhai Modh (supra) was prior to the impugned order dated 26th March, 2019. Even otherwise, it is trite principle that law prevalent at the time of deciding the controversy shall govern and shall have to be applied for crystallising the rights of the parties.

7. We now advert to the nature of relief to be granted in the facts of the present case. The termination of service having been found stigmatic and without compliance of requirements of holding full fledged inquiry, the same has to be set aside. However, the petitioners were appointed initially for a period of five years as per order dated 14th December, 2001. The impugned order came to be passed on 16th October, 2003. Therefore, while directing reinstatement of the appellants petitioners after setting aside the impugned order, the relief of reinstatement to the petitioners would ensue so as to make up good the total period of five years of employment for the petitioners. All the rest of the conditions of appointment shall govern.

8. As far as the aspect of grant of back wages to the appellants is concerned, while on behalf of the appellants, the relief of back wages was pressed by submitting that the back wages have to follow automatically when the reinstatement is directed upon holding the termination illegal, certain

conspicuous aspects stare at the face of the controversy in this case fir considering the issue of back wages. Not only that long time has elapsed since the appellants are ordered to be reinstated by this order and the principle of no work no pay would apply. What becomes decisive in the matter on this score is the factum that the appellants were appointed for five years initially and during such five years their services came to be terminated by passing the impugned order. They are reinstated as per the above direction for the remainder period providing further that all other conditions in respect of nature of their appointment would operate. In such circumstances, the question of grant of back wages does not arise. The appellants will not be entitled to any back wages.”

7. The fact that there is a delay on the part of the petitioner in approaching this Court has also been considered by this Court. However, considering the decisions as cited herein above, the order of termination dated 22.04.2014 is quashed and set aside. The petitioner is directed to be reinstated without back-wages. It goes without saying that the respondent authorities will not be precluded from proceeding against the petitioner for the alleged misconduct in accordance with law.

8. The petition is allowed in the aforesaid terms.”

[5]. In view of above and considering the decisions as cited herein above, the order of termination dated 16.3.2017 is quashed and set aside. The petitioner is directed to be reinstated without back-wages within ten weeks from the date of certified copy of the order. It goes without saying that the respondent authorities will not be precluded from proceeding

against the petitioner for the alleged misconduct in accordance with law.

[6]. The petition is allowed in the aforesaid terms. Rule is made absolute to that extent. Direct Service is permitted.

VATSAL S. KOTECHA

(BIREN VAISHNAV, J)

