

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5372 of 2016

FOR APPROVAL AND SIGNATURE:

Sd/-

HONOURABLE MR. JUSTICE A.Y. KOGJE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
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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AMRISHBHAI NATUBHAI PATEL

Versus

STATE OF GUJARAT & 2 other(s)

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Appearance:

MR UT MISHRA(3605) for the Petitioner(s) No. 1

MR. ROHAN SHAH, AGP for the Respondent(s) No. 1

MR MEHUL SHARAD SHAH(773) for the Respondent(s) No. 3

NOTICE SERVED BY DS for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

Date : 06/06/2022

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India is filed with following prayers :.

“(A) YOUR LORDSHIPS may kindly be pleased to issue Writ of Mandamus or any other appropriate Writ, direction or Order to quashed and set aside the impugned order of suspension dated 24.09.2014 vide No.464/2014 passed by the respondent Nagarpalika by holding and declaring that the Order of suspension dated 24.09.2014 is illegal, arbitrary, discriminatory, contrary to the provisions of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 and contrary to the law laid down by the Hon'ble Apex Court.

“(B) YOUR LORDSHIPS may kindly be pleased to direct the respondents to reinstate the petitioner on his original post of Tax Inspector forthwith with full back wages from the date of suspension till the actual date of reinstatement alongwith all consequential benefits including the arrears of salary.”

2. It is the case of the petitioner that the petitioner was put under suspension by the impugned order relying upon the Circulars issued by the GAD dated 05-10-2004 and 20-07-2007.
3. It is submitted that the order of suspension is required to be revoked and period of suspension is required to be regularized. It is submitted that by an interim order passed by this Court in the very petition dated 23-06-2017, the petitioner was ordered to be reinstated and was accordingly reinstated in July, 2017 and therefore, also now, the petition is required to be allowed and the period of suspension is required to be regularized.
4. As against this, learned Advocate for the respondent- Nagar Palika has drawn attention of this Court to the subsequent development to indicate that as per the directions of this Court in the order dated 23-06-2017, departmental inquiry was conducted as per the provisions of law and ultimately, the petitioner was held guilty and dismissed from service, for which the petitioner has filed separate petition, which is pending after issuing of the notice. It is therefore, submitted that present petition may not be entertained, as the order has now merged into the order of dismissal and ultimately, what is claimed by the petitioner in the present petition, will have to be decided only when the order of dismissal is considered by this Court.

5. Having considered the rival submissions of the parties and having perused the documents on record, it appears that the petitioner appears to have been suspended by order dated 24-09-2014 by invoking the provisions of Section-48 of the Gujarat Municipalities Act, 1963 and pursuant to the Resolution of the Executive Committee vide Resolution No.3/36.
6. From the pleadings, it appears that petitioner was serving as Tax Inspector in the Tax Department of Karamsad Municipality since 03.01.1985. It was noticed by the Nagarpalika that petitioner has committed serious misconduct and misappropriated the funds of the Nagarpalika as well as shown negligence in discharging his duties and thereby caused great financial loss to the Nagarpalika. Therefore, in the meeting dated 22.09.2014 of the Executive Committee of Karamsad Nagarpalika, it was decided to suspend the petitioner during the pendency of the inquiry against him. It appears that the Executive Committee has narrated as many as 11 charges against the petitioner in the resolution No.36 dated 22.09.2014 and it was decided to initiate inquiry against him and till the inquiry is over to suspend him.
7. When the subsequent development has been brought to the notice of this Court that as contemplated under the order dated 23-06-2017 passed in this very petition, appropriate proceedings have been initiated and after carrying out the departmental inquiry as per the provisions, the petitioner stands dismissed from the service since August, 2021. It is also brought on record that said order of dismissal is the subject matter of challenge in Special Civil Application No.8498 of 2022.
8. In the facts of this case and in view of the subsequent development, the Court is not inclined to entertain this petition as the claim of the petitioner with regards to the regularization of the period of suspension as prayed for now before this Court, cannot be examined in isolation, pending the challenge to the order of dismissal which the petitioner has already made in a separate petition.

9. In view of the aforesaid, this petition deserves to and is hereby ***dismissed***. Rule is discharged. Interim relief granted earlier stands vacated.

PARESH SOMPUA

Sd/-
(A.Y. KOGJE, J)

