

(2000) 04 GUJ CK 0007

Gujarat High Court

Case No: Special Civil Application No. 5649 of 1987

Mayooriben J. Thakore

APPELLANT

Vs

Gujarat Agro
Industries

RESPONDENT

Date of Decision: April 4, 2000

Acts Referred:

- Gujarat Agro Industries Corporation Limited Service Rules, 1969 - Rule 21

Hon'ble Judges: C.K.Thakker, J

Bench: Single Bench

Advocate: D.D. Vyas, for the Appellant; N.J. Mehta Asso. for Respondent No. 1, 2, for the Respondent

Final Decision: Allowed

Judgement

C.K. Thakkar, J.

This petition is filed by the petitioner for quashing and setting aside the order dated August 27, 1987, Annexure 'E' to the petition passed by the Divisional Manager (P & A), Gujarat Agro Industries Corporation, Ahmedabad ('Corporation' for short) and for consequential benefits.

2. The case of the petitioner was that in pursuance of an application, she was appointed as Manager (Public Relations) by the Corporation vide order dated 6th November, 1985, Annexure 'C' to the petition. Said order inter alia stated that the petitioner was appointed initially, on probation, for a period of six months on satisfactory completion of which, she would be confirmed. Relevant condition No. 1 is material for deciding the controversy raised in the petition and may be quoted:

"Initially, you will be on probation on the post for a period of six months on satisfactory completion of which your services will be confirmed, if found satisfactory. During the probationary period, at any time, your services are liable to be terminated if not found satisfactory."

3. After taking over charge of the post, the petitioner started working. The period of six months was over. No separate orders were passed thereafter. According to the petitioner, she was shocked and surprised when she received an order dated 27th August, 1987 (after about two years) by which her services were terminated. It was stated in the order that in terms of Service Rule No.21 of the Gujarat Agro Industries Corporation Limited Service Rules, 1969, she shall stand relieved from the Corporation with immediate effect i.e. from 27th August, 1987. A cheque of Rs. 2774.65 was also enclosed along with the office order. It is that order which is challenged in the present petition.

4. Rule was issued and today, the matter is called out for final hearing.

5. I have heard Mr. D.D. Vyas, senior advocate of Vyas Advocates for the petitioner. Appearance of N.J. Mehta Associates is shown. Mr. Shalin Mehta stated that the client has already taken papers and that he is not appearing in the matter.

6. Mr. Vyas raised several contentions. He submitted that appointment of the petitioner was made by the Executive Selection Committee of the Corporation and hence, her services could not have been terminated by the Divisional Manager (P & A) and the order is, therefore, without jurisdiction.

7. He further submitted that the appointment of the petitioner was initially on probation for a period of six months and on satisfactory completion of the said period, she stood confirmed. Her services thereafter could not be terminated without holding inquiry and without affording an opportunity of hearing. The order is, therefore, illegal and contrary to law.

8. It was also contended that though the order is innocuous, in reality, it is punitive in nature which is clear from the affidavit in reply and particularly, para 5 thereof in which it was denied by the Divisional Manager (P & A) that "the petitioner had worked diligently or honestly or satisfactorily". Since the action could not have been taken without observance of principles of natural justice and fair play, the order deserves to be quashed and set aside.

9. My attention, in this connection, was invited by the learned counsel to following decisions of the Supreme Court in-

(i) [V.P. Ahuja Vs. State of Punjab and Others](#), ;

(ii) [Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others](#), .

10. It is not necessary to enter into other questions as the petition can be disposed of on one ground.

11. From the appointment order, particularly condition No. 1, extracted hereinabove, it is clear that the petitioner was appointed initially on probation "for a period of six months on satisfactory completion of which" her "services will be

confirmed if found satisfactory". In my opinion, therefore, the appointment of the petitioner was made on probation for a period of six months initially. It is true that the petitioner must undergo the said period satisfactorily and it was open to the employer to take appropriate action if that period is not completed satisfactorily. At the same time, however, the condition specifically provides that on satisfactory completion of the said period, her services would be confirmed.

12. Two eventualities have been contemplated by the above order; (i) Where the petitioner does not complete the period of probation satisfactorily; and (ii) where she completes the period of probation satisfactorily. In the former case, it was open to the employer to take appropriate action. The fact, however, is that the period of six months was over and no action was taken against her nor the period of probation was extended. An affidavit in reply is filed by the Divisional Manager (P & A). In the said affidavit also, it was stated that the petitioner was not specifically informed about extension of probation, but she was not confirmed. In my opinion, hence, the case is covered by the second alternative, viz. that she had completed the period of probation successfully. Condition No.1 specifically provides that on completion of the probation period of six months satisfactorily, her services would stand confirmed. In these circumstances, it was not necessary to pass a specific order of confirmation.

13. In this connection, it will be profitable to refer to a Constitution Bench decision of the Supreme Court in [State of Punjab Vs. Dharam Singh](#), . In that case, relevant provisions of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961, provided for probation period and extension of the said period. It was, however, provided that such extension would not be for a period of more than three years. The said period was over and it was contended that there was automatic confirmation of the employee on the post. On the other hand, it was argued on behalf of the State that since no express order for confirmation was passed in favour of the employee, he was continued on the same terms and conditions i.e. as a probationer. Negating the contention and upholding the argument of the employee, the Supreme Court held that when maximum period of probation was prescribed and it was over, an employee would be automatically confirmed.

14. In the instant case also, in my opinion, the ratio laid down above would apply inasmuch as condition No.1 specifically provided for initial period of probation for six months and on satisfactory completion of the said period, services of the petitioner would be confirmed. No order was passed before or after period of six months. After completion of six months, therefore, the petitioner stood confirmed. Obviously, services of a confirmed employee could not have been terminated otherwise than in accordance with law. No inquiry was held, and even according to the respondents, the action is not punitive. The order, therefore, could not have been passed.

15. For the foregoing reasons, petition deserves to be allowed and is accordingly allowed. Order passed by the Divisional Manager (P & A) of the Corporation is set aside. I may state that though other points have been raised by the learned counsel for the petitioner, since I have disposed of the petition only on the above ground, I have not dealt other points. As the order is set aside, the petitioner would be entitled to all consequential benefits as if no order of termination was passed and she has been continued in service all throughout. Rule is made absolute accordingly. There shall be no order as to costs.