
(2008) 02 GUJ CK 0082

Gujarat High Court

Case No: Letters Patent Appeal No. 841 of 1996 in Special Civil Application No. 4337 of 1995

A.S. Brahmbhatt

APPELLANT

Vs

Chairman and Another

RESPONDENT

Date of Decision: Feb. 21, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: R.M. Doshit, J; K.M. Thaker, J

Bench: Division Bench

Advocate: Bharat T. Rao, for the Appellant; M.L. Shah, AGP for Respondents 1 - 2, for the Respondent

Final Decision: Dismissed

Judgement

R.M. Doshit, J.

This Appeal preferred under Clause 15 of the Letters Patent arises from the common judgment and order dated 31st July, 1996 passed by the learned Single Judge in so far as the Special Civil Application No. 4337/1995 is rejected. The appellant is the writ petitioner.

2. The appellant was employed by the respondent-Gujarat Subordinate Services Selection Board (hereinafter referred to as, the Board) as Clerk-cum-Typist on adhoc and temporary basis. Feeling apprehensive that his service may be terminated, the appellant preferred the above Special Civil Application No. 4337/1995 under Article 226 of the Constitution of India before this Court. The appellant prayed that the Board be directed to consider the case of the appellant for appointment on regular basis.

3. The petition was contested by the Board. According to the Board, the Chairman of the Board had no power to make regular appointment. The only power that was conferred upon the Chairman of the Board was to make temporary appointment to meet the administrative exigency. The appointment of the appellant was made in exercise of the

said power to make temporary appointment. The appellant's appointment was not made after following the due procedure nor was he subjected to the competitive test.

4. The learned Single Judge has considered the rival contentions. It is observed that the service of the appellant was terminated on 22nd May, 1995. Nevertheless, there was no challenge to the order of termination of service. The claim for regularisation in service made by the appellant, if accepted, would amount to perpetuating the illegal appointment of the appellant.

5. It is indisputable that the appointment of the appellant made on adhoc and temporary basis was not made in accordance with the relevant recruitment rules or after following the due procedure. In our opinion, the learned Single Judge has rightly held that the continuation of such adhoc employment or regularisation in service would amount to perpetuating illegality. Besides, as recorded hereinabove, the appellant's service was terminated on 22nd May, 1995. Nevertheless, there was no challenge to the order of termination of service in the writ petition. In absence of challenge to the order of termination of service, the prayer for regularisation in service would not survive.

6. We are in agreement with the learned Single Judge. No case for interference is made out. The Appeal is dismissed. The parties will bear their own cost.