

A VINOD RAVJIBHAI RAJPUT

v.

STATE OF GUJARAT & ORS.

(Civil Appeal No. 1601 of 2020)

B FEBRUARY 14, 2020

[INDIRA BANERJEE AND A. S. BOPANNA, JJ.]

- Service Law: Fresh appointment – Appellant was appointed part time Gallery Attendant in 1995 and in 2002 was appointed as a full time Gallery Attendant against a sanctioned post – He served as a full time Gallery Attendant for almost 2 years after which his services were abruptly terminated on 1.7.2004 on the ground that his appointment as a full time Gallery Attendant was against the policy of the State Government of not making any fresh recruitment due to financial constraints – Appellant filed writ petition in High Court – Single judge passed interim order restraining respondent authorities from terminating the services of the appellant subject to result of pending writ petition and clarified that the appellant could if necessary be reverted as a part time employee – Pursuant thereto, respondent authorities reverted the appellant to the position of part time employee – Appellant made representations and thereafter aggrieved by inaction of concerned authorities to act on his representations, filed writ petition which were disposed of by directing the appellant to make representation to the concerned authorities and directing authorities to decide his representation – On 18.12.2012, his services were terminated on the ground that it was impermissible to regularise him to the post of Gallery Attendant as he had not fulfilled certain conditions prescribed in Government Resolution dtd. 1.5.2007 – Appellant filed writ petition which was dismissed observing that the appropriate remedy of appellant was to initiate proceedings in accordance with 1947 Act – Division Bench allowed LPA no.635 of 2013 filed by appellant and directed respondents to reinstate the appellant to the post of full time attendant – However since appellant had not worked since 18.12.2012, he was not granted back wages – Thereafter, he was duly appointed and he resumed his duties on 14.12.2013 – Appellant filed writ petition questioning the action of authorities in not granting the*

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appellant the benefit of continuity of service from 25.07.2002 – Single judge allowed the writ petition holding that reinstatement includes continuity of service – LPA – Division Bench set aside order of single judge – In the instant appeal, the question for consideration was whether the action of the Respondents in granting fresh appointment to the Appellant with effect from 14.10.2013, in violation of the judgment dated 22.08.2013 of the Division Bench in LPA No. 635 of 2013 directing the Respondents to reinstate him, is sustainable in law – Held: When the earlier Division bench clearly directed reinstatement of the Appellant, but without back wages and the said judgment has assumed finality and is binding on the Respondents, it was not open to the concerned authorities to give fresh appointment to the Appellant with effect from 14.10.2013 – Appellant has to be reinstated with continuity of service from the date of his initial appointment as full-time Gallery Attendant in July 2002, but without back wages for the period between 18.12.2012 to 22.08.2013, when the Appellant did not work – Appellant shall, however, be entitled to differential salary, if any, between the post of full-time Gallery Attendant and part-time Gallery Attendant from 25.07.2002 onwards, but not for the period between 18.12.2012 to 22.08.2013, in view of the judgment and order of the Division Bench dated 22.08.2013 in LPA No. 635 of 2013 – Industrial Disputes Act, 1947.

Allowing the appeal, the Court

HELD: 1. By the judgment and order of 22nd August 2013 in Letters Patent Appeal No. 635 of 2013, the earlier Division bench had clearly directed reinstatement of the Appellant, but without back wages. The said judgment and order has assumed finality and is binding on the Respondents. It was not open to the concerned authorities to give fresh appointment to the Appellant with effect from 14th October 2013. The Single Bench very rightly allowed the writ petition. However, the only error that the Single Bench made, was in directing reinstatement of the Appellant with consequential benefits, without clarifying that the reinstatement would be with consequential benefits except back wages for the period from 18.12.2012 to 22.08.2013 when the Appellant had not worked. The Division Bench had decided Letters Patent No.635 of 2016, after considering the Government Resolution

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- A dated 1st May 2007 of the Finance Department, which had been issued in the wake of the directions of the Supreme Court in the case of Secretary, State of Karnataka & Ors. vs. Umadevi & Ors. The judgment and order in Uma Devi or the resolution dated 1st May 2007 adopted pursuant to the said judgment and order cannot be retrospectively applied to the Appellant, who had duly been appointed full-time Gallery Attendant way back in 2002. The Rules framed in 2005 cannot also have retrospective operation. [Paras 28-30][673-B-H; C-H; 674-A]

2. In Letters Patent Appeal No. 635 of 2013, the Division

- C Bench held that the view taken by the Respondent Authorities was unreasonable for reasons :- (i) It was not in dispute that the appellant was appointed as a part-time Gallery Attendant on 14th March, 1995; (ii) at that time post of full-time Gallery Attendant was vacant; (iii) the name of the appellant had been forwarded by the Employment Exchange and he had been interviewed; (iv) D the appellant held a certificate of the Museum certifying his sincerity and honesty as Gallery Attendant; (v) on 25th July, 2002, the appellant had been appointed as a full-time Gallery Attendant with the prior permission and sanction of the Director, Sangrahalaya Department, State of Gujarat. (vi) The order of termination dated 1st July, 2004 was issued after permitting the E appellant to work as full-time regular Gallery Attendant for almost a period of two years. (vii) By the time the order of termination had been issued, the appellant had put in nine years and four months of combined service as part-time employee and as full-time Gallery Attendant. (viii) The Single Judge had passed an F interim order on being prima facie satisfied of the merits of the case of the appellant. [Para 31][674-A-F]

3. After considering all the factors surrounding the initial appointment of the Appellant as part-time Gallery Attendant, his services as full-time Gallery Attendant, the interim order of the

- G Single Bench and considering that the Appellant had rendered almost seventeen years of service as a Gallery Attendant, Bhuj Museum, the Division Bench had allowed the appeal of the Appellant, set aside the judgment and order of the Single Bench dated 2nd April 2013 and directed the Respondent Authorities to

reinstate the Appellant to the post of full-time Gallery Attendant of Bhuj Museum forthwith, but without back wages, since the Appellant had not worked from 18th December 2012 till the date of the judgment of the Division Bench. The Appellant has to be reinstated with continuity of service from the date of his initial appointment as full-time Gallery Attendant in July 2002, but without back wages for the period between 18.12.2012 to 22.08.2013, when the Appellant did not work. [Paras 32-33] [674-E-H; 675-A]

Secretary, State of Karnataka & Ors. v. Umadevi & Ors. (2006) 4 SCC 1 : [2006] 3 SCR 953 – referred to.

Case Law Reference

[2006] 3 SCR 953 referred to Para 29

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1601 of 2020.

From the Judgment and Order dated 24.06.2016 of the High Court of Gujarat at Ahmedabad in LPA No. 195 of 2016 in Special Civil Application No. 5108 of 2014.

Bhargav Hasurhar, Anshul Narayan, Prem Prakash, Advs. for the Appellant.

Aniruddha P. Mayee, A. Rajarajan, Ms. Hemantika Wahi, Advs. for the Respondents.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

1. Leave granted.

2. This appeal is against a judgment and order dated 24th June 2016 passed by a Division Bench of the Gujarat High Court allowing Letters Patent Appeal No.195 of 2016 and setting aside an order dated 14th September 2015 of the Single Bench allowing the Writ Petition being Special Civil Application No.5108 of 2014 filed by the Appellant, holding that the Appellant was entitled to reinstatement including continuity of service and the benefits flowing from continuity of service.

3. The Appellant was appointed part-time Gallery Attendant of Bhuj Museum on 14th March 1995. His name had been forwarded for

A consideration by the concerned Employment Exchange.

4. On 25th July, 2002, the Respondent No.2 passed an order appointing the Appellant as a full-time Gallery Attendant in the pay-scale of Rs.2550-55-2660-60-3200, against a sanctioned Class IV vacant post, after obtaining the sanction of the Director of the Sangrahalaya

B Department, State of Gujarat.

5. The Appellant served as a full-time Gallery Attendant of Bhuj Museum for almost two years, after which his services were abruptly terminated by an order dated 1st July 2004, passed by the Respondent No.3.

C 6. It appears that the order dated 1st July 2004, of termination of the services of the Appellant, was passed on the ground that the Appellant had been appointed as full-time Gallery Attendant of Bhuj Museum, notwithstanding the policy of the State Government, of not making any fresh recruitment, due to financial constraints.

D 7. The Appellant filed a writ petition under Article 226 of the Constitution of India, being SCA No.7943 of 2004, in the High Court, whereupon a learned Single Judge passed an interim order dated 7th July 2004, restraining the Respondent Authorities from terminating the services of the Appellant, pursuant to the notice dated 1st July 2004. This interim

E order was subject to the result of the pending writ petition and clarified that the Appellant could, if necessary, be reverted as a part-time employee.

F 8. Pursuant to the interim order of the learned Single Judge dated 7th July 2004, the Respondent Authorities passed an order dated 10th August 2004, reverting the Appellant to the position of a part-time employee.

G 9. The Appellant filed an application being Civil Application No.7970 of 2004 in the pending writ petition for suspension of the order dated 10th August 2004 whereby the Appellant had been reverted from the position of ad-hoc full-time employee to that of part-time employee.

H 10. By an order dated 17th March 2008, the learned Single Judge disposed of the aforesaid application, without interfering with the impugned order dated 10th August 2004, holding that the order did not flout the interim order dated 7th July 2004. The learned Judge observed that it would be appropriate if the existing status of the Appellant was maintained, and any representation made by the Appellant to the authorities

concerned, given due consideration.

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11. Pursuant to the aforesaid order dated 17th March 2008, the Appellant made a representation. The Appellant was, however, informed that he could not be made a full-time employee, as he had not cleared his Secondary School Certificate (SSC)/10th standard examination.

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12. The Appellant argued that, at the time of issuance of the order dated 25th July 2002 appointing the Appellant as full-time Gallery Attendant, the requisite educational qualification for appointment to the post of a full-time Gallery Attendant was only 4th Standard Pass, and the Appellant had the aforesaid qualification.

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13. In any case, while continuing to work as part-time employee, the Appellant successfully cleared the SSC examination. Thereafter, he made two representations dated 30th December 2010 and 22nd April 2012 informing the concerned authorities that he had cleared the SSC examination and requesting that he be absorbed as a full-time Gallery Attendant.

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14. Being aggrieved by the inaction of the concerned authorities to act on his representations, the Appellant filed a writ petition under Article 226 of the Constitution of India, being Special Civil Application No.9910 of 2012 in the High Court. The writ petition was disposed of, by directing the Appellant to make a representation to the concerned authorities. The concerned authorities were directed to decide the representation within a period of four months.

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15. Thereafter, by an order dated 18th December 2012, the services of the Appellant were terminated on the ground that it was impermissible to regularize the Appellant to the post of Gallery Attendant, as he had not fulfilled the requisite conditions as prescribed in the Government Resolution issued by the Finance Department on 1st May 2007.

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16. One of the conditions, which according to the Respondent Authorities, the Appellant had not fulfilled, was that he had not completed ten years of service as on 10th February 2006, and even if he had completed ten years of service, this was on the strength of the interim order passed by the High Court.

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17. The Appellant filed a writ petition being Special Civil Application No.16840 of 2012 in the High Court, challenging the order dated 18th December 2012 terminating his services. The learned Single Judge refused to entertain the petition, observing that the appropriate remedy of the

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- A Appellant was to initiate proceedings in accordance with the provisions of the Industrial Disputes Act, 1947.

18. Being aggrieved by the judgment of the Single Bench, the Appellant filed Letters Patent Appeal No.635 of 2013 before the Division Bench. The Division Bench considered the relevant rules and regulations

- B governing recruitment to the post in question, allowed the appeal and directed the Respondents to reinstate the Appellant to the post of full-time Gallery Attendant of Bhuj Museum forthwith. However, since the Appellant had not worked from 18th December 2012 till the date of the judgment and order, the Division Bench refrained from passing orders for back wages.

- C 19. Thereafter, an office order dated 14th October 2013 was issued appointing the Appellant to the post of Gallery Attendant (Class IV) at Kutch Museum, Bhuj in the pay band of Rs.4444-7440, Grade Pay of Rs.1300, with effect from the date of resumption of his duties. The Office Order noted that the Appellant resumed his duties on 14th October 2013.

20. The Appellant filed a writ petition under Article 226 of the Constitution of India in the High Court being Special Civil Application No. 5108 of 2014 questioning the action of the Respondent Authorities in not granting the Appellant the benefit of continuity of service from

- E 25th July 2002. The said writ petition was allowed by the Single Bench, by an order dated 14th September 2015, the operative part whereof is set out hereinbelow:

F *"Thus, in view of the above, reinstatement includes the continuity of service, and accordingly, the petitioner is entitled for the benefits flowing from the continuity of service."*

21. Being aggrieved by the said judgment and order dated 14th September 2015, the Respondents filed an appeal being Letters Patent Appeal No.195 of 2016. The said appeal has been allowed by the Division Bench of the High Court by the judgment and order impugned in this

- G appeal, with the following observation:

H *"In view of the aforesaid discussion, we are of the opinion that learned Single Judge has committed an error while observing that the petitioner is entitled to the benefits flowing from the continuity of service. Hence, the impugned order is*

quashed and set aside. The appeal is allowed. As the appeal is allowed, no orders are passed on civil application.” A

22. The short question in this appeal is, whether the action of the Respondents in granting fresh appointment to the Appellant with effect from 14th October 2013, in violation of the judgment and order dated 22.08.2013 of the Division Bench in Letters Patent Appeal No. 635 of 2013 directing the Respondents to reinstate him, is sustainable in law. B

23. May be, as argued by learned Counsel on behalf of the Respondent Authorities, the order of appointment i.e. 14th October 2013 does not bear any reference to the judgment and order of the Division Bench, dated 22nd August 2013 in Letters Patent Appeal No.635 of 2013. C However, the aforesaid judgment and order, against which there was no appeal, has assumed finality and is binding on the Respondents.

24. In exercise of powers conferred by the proviso to Article 309 of the Constitution of India, and in supersession of all existing Rules regulating recruitment to Class IV posts in the Secretariat and non-Secretariat offices of the Government of Gujarat, the Governor of Gujarat has framed Rules to provide for regulating recruitment to Class IV posts in inferior services, which is called “The Class IV Posts in Inferior Services in the Gujarat Secretariat and Non Secretariat Offices Recruitment Rules, 2005”, hereinafter referred to as “the 2005 Rules” D

25. Relying on the 2005 Rules, and in particular Rules 2 to 7 thereof, the Respondent Authorities have contended that the Appellant did not have the requisite eligibility to be appointed full-time Gallery Attendant in 2002, as he had not passed the Secondary School Certificate Examination then. Rules 2 to 7 of the said Rules provide as under:- E

“2. *Appointment to the posts of Class IV (in inferior service) in Secretariat and non-Secretariat offices of Government of Gujarat shall be made either*

(i) by direct selection; F

(ii) by transfer; or

(iii) by deputation. G

3. To be eligible for appointment by direct selection to the post mentioned in rule 2, a candidate shall:-

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- A *(i) not be less than 18 years and not more than 25 years of age;*
 (ii) have passed Secondary School Certificate Examination;
 (iii) possess skills relevant to the job as may be prescribed by Government from time to time;
- B *Provided that preference may be given to a candidate who possesses the driving licence for light motor vehicles.*
- C *4. The candidate appointed in Class IV posts may be transferred in public interest to any other Class IV post in inferior services in any Secretariat or non-Secretariat office in the State;*
- C *5. A candidate appointed by direct selection shall be on probation for a period of six months;*
- D *6. A selected candidate shall be required to pass the departmental examination and an examination in Gujarati or Hindi or both in accordance with the Rules prescribed by the Government from time to time;*
- E *7. A candidate appointed by direct selection shall have to undergo such training according to his job and to pass such examination as may be prescribed by the Government from time to time.”*
- F 26. On behalf of the Respondents, it was also argued that, the conditions for regularization of Class IV employees have been laid down in a Government Resolution dated 1st May 2007. For regularization, the employees needed to fulfill the following conditions:
- G *(i) On 10th February, 2006, the employees should have completed ten years of service, putting in atleast 6 hours of work per day. The ten year period should not be on the strength of any order of the Court or the Tribunal;*
- G *(ii) The employees who had completed ten years of service should have been appointed in accordance with recruitment procedure prevailing at the relevant point of time. In other words, their names should have been recommended by the Employment Exchange, Social Welfare Authority etc.;*
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(iii) At the time of temporary appointment, the employee should have had the requisite eligibility for being appointed to the particular post of Class IV and; A

(iv) the appointment should have been sanctioned by a competent authority and the appointment should have been against a vacant post. B

27. The Respondent Authorities have been contending that the Appellant had not fulfilled condition No.(i) of the Government Resolution dated 1st May 2007, as he had not completed ten years of service as a temporary employee on 10th February 2006, but put in nine years and four months of service. His continuance thereafter, was on the strength C of the order passed by the High Court.

28. By the judgment and order of 22nd August 2013 in Letters Patent Appeal No. 635 of 2013 referred to above, the earlier Division bench had clearly directed reinstatement of the Appellant, but without back wages. As observed above the said judgment and order has assumed finality and is binding on the Respondents. It was not open to the concerned authorities to give fresh appointment to the Appellant with effect from 14th October 2013. The learned Single Bench very rightly allowed the writ petition. However, the only error that the Single Bench made, was in directing reinstatement of the Appellant with consequential benefits, without clarifying that the reinstatement would be with consequential benefits except back wages for the period from 18.12.2012 D to 22.08.2013 when the Appellant had not worked. E

29. The Appellant having been appointed full-time Gally Attendant Group-IV with the approval of the Director, Sangrahalaya, by the order dated 25.7.2002, his services could not have been terminated after almost two years, on the purported ground of a Government policy keeping permanent appointments in abeyance. The Division Bench had decided Letters Patent No.635 of 2016, after considering the Government Resolution dated 1st May 2007 of the Finance Department, which had been issued in the wake of the directions of the Supreme Court in the case of *Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.* reported in (2006) 4 SCC 1. F

30. The judgment and order in *Uma Devi (supra)* or the resolution dated 1st May 2007 adopted pursuant to the said judgment and order cannot be retrospectively applied to the Appellant, who had duly been G H

- A appointed full-time Gallery Attendant way back in 2002. The Rules framed in 2005 referred to above, cannot also have retrospective operation.

31. In Letters Patent Appeal No. 635 of 2013, the Division Bench held that the view taken by the Respondent Authorities was unreasonable

B for the following reasons:-

- (i) *It was not in dispute that the appellant was appointed as a part-time Gallery Attendant on 14th March, 1995;*
- (ii) *at that time post of full-time Gallery Attendant was vacant;*
- C (iii) *the name of the appellant had been forwarded by the Employment Exchange and he had been interviewed;*
- (iv) *the appellant held a certificate of the Museum certifying his sincerity and honesty as Gallery Attendant;*
- (v) *on 25th July, 2002, the appellant had been appointed as a full-time Gallery Attendant with the prior permission and sanction of the Director, Sangrahalaya Department, State of Gujarat.*
- D (vi) *The order of termination dated 1st July, 2004 was issued after permitting the appellant to work as full-time regular Gallery Attendant for almost a period of two years.*
- E (vii) *By the time the order of termination had been issued, the appellant had put in nine years and four months of combined service as part-time employee and as full-time Gallery Attendant.*
- F (viii) *The learned Single Judge had passed an interim order on being prima facie satisfied of the merits of the case of the appellant.*

32. After considering all the factors surrounding the initial appointment of the Appellant as part-time Gallery Attendant, his services as full-time Gallery Attendant, the interim order of the Single Bench and considering that the Appellant had rendered almost seventeen years of G service as a Gallery Attendant, Bhuj Museum, the Division Bench had allowed the appeal of the Appellant, set aside the judgment and order of the Single Bench dated 2nd April 2013 and directed the Respondent Authorities to reinstate the Appellant to the post of full-time Gallery Attendant of Bhuj Museum forthwith, but without back wages, since the H Appellant had not worked from 18th December 2012 till the date of the

judgment of the Division Bench.

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33. In our considered opinion, the Appellant has to be reinstated with continuity of service from the date of his initial appointment as full-time Gallery Attendant in July 2002, but without back wages for the period between 18.12.2012 to 22.08.2013, when the Appellant did not work. The Appellant shall, however, be entitled to differential salary, if any, between the post of full-time Gallery Attendant and part-time Gallery Attendant from 25th July 2002 onwards, but not for the period between 18.12.2012 to 22.08.2013, in view of the judgment and order of the Division Bench dated 22.08.2013 in Letters Patent Appeal No. 635 of 2013.

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34. The appeal is accordingly allowed. The judgment and order of the Division Bench, under appeal, is set aside and the judgment of the Single Bench is restored with the modification that the Appellant shall be reinstated with consequential benefits, except arrears of wages for the period from 18.12.2012 till the date of order of the Division Bench, that is, 22nd August 2013.

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Devika Gujral

Appeal allowed.