

# State Of Gujarat Through Principal ... vs M K Gajera, Chief District Health ... on 5 February, 2019

**Author: Biren Vaishnav**

**Bench: Anant S. Dave, Biren Vaishnav**

C/LPA/790/2018

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 790 of 2018  
In R/SPECIAL CIVIL APPLICATION NO. 2502 of 2011  
With  
CIVIL APPLICATION NO. 2 of 2018

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STATE OF GUJARAT THROUGH PRINCIPAL SECRETARY, HEALTH AND  
FAMILY WELFARE DEPARTMENT

Versus

M K GAJERA, CHIEF DISTRICT HEALTH OFFICER

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Appearance:

MR CHINTAN DAVE, AGP(1) for the PETITIONER(s) No. 1,2,3,4,5  
for the RESPONDENT(s) No. 2  
MR NK MAJMUDAR(430) for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE  
and  
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 05/02/2019  
ORAL ORDER

(PER : HONOURABLE MR.JUSTICE BIREN VAISHNAV)

1. The respondent herein is the original petitioner who filed writ petition before the learned Single Judge being Special Civil Application No. 2502 of 2011.

2. The facts not in dispute are that the respondent was initially appointed in the year 1982 on a Class-II post. He was subsequently promoted as Chief District Health Officer on which post he worked till 31.12.2002. The respondent petitioner was thereafter selected as Joint Director by way of direct selection and he joined the said post on 04.01.2003. The appointment of the petitioner as Joint Director was in pursuance of the rules of Health and Family Welfare Department dated 01.09.1981. Rule 3 of the aforementioned rules deals with the probation period in case of direct

selection of the candidate. As per these rules, a candidate selected by way of direct selection was required to undergo probation period of two years.

2.1 It was the case of the petitioner before the learned Single Judge that in accordance with the rules he would complete the probation period of two years on 03.01.2005. The petitioner continued in service and by an order dated 21.01.2006, his services came to be terminated finding that his work was unsatisfactory. The learned Single Judge accepted the contention of the petitioner that since the maximum period of probation in accordance with the rules was for two years, he was deemed to be confirmed and therefore the services could not have been terminated under the pretext of unsatisfactory work beyond such period on the ground that he was still a probationer.

2.2 In short, the controversy in the present appeal is whether the learned Single Judge's finding that on completion of probation of two years, without any decision on extension of probation period, the petitioner was deemed to have been confirmed, was correct or not. The State would contend otherwise.

3. As a result of hearing learned advocates for the respective parties, appeal is admitted. To be heard with Letters Patent Appeal No. 106 of 2015.

4. So far as the application for stay is concerned, in addition to the facts noted hereinabove, on termination of his services as Joint Director, the respondent was reverted to his original post of Chief District Health Officer. Pursuant to a disciplinary proceeding, his services came to be terminated in the year 2011. Such termination was a subject matter of petition being Special Civil Application No. 6701 of 2012. By a judgement dated 19.06.2014, the learned Single Judge allowed the petition setting aside his termination from the lower post of the Chief District Health Officer. Since the order of the learned Single Judge was not being complied with, the respondent herein was constrained to move a contempt application. During the course of the hearing of the contempt application, it appears from the order dated 18.11.2014 which is reproduced herein that the respondent was reinstated on the lower post of Chief District Health Officer.

"Leave to replace Annexure R-5 to the further affidavit in reply.

Present application has been preferred by the applicant herein-original petitioner making a grievance with respect to deliberate and willful non compliance of the judgment and order passed by the learned Single Judge of this Court dated

19.6.2014 passed in Special Civil Application No.6701 of 2012.

In response to the notice issued by this Court, earlier Shri Vishrut Jani, learned AGP has appeared on behalf of the respondent. On 17.10.2014 an affidavit in reply on behalf of respondent was tendered submitting that the petitioner has been reinstated in service and has been posted at Divisional Training Centre, Bavla, Dist. Ahmeabad as Assistant Professor. It is reported that towards arrears of back wages, Rs. 1,00,000/- on account has been paid to the petitioner on or before 29.10.2014. The order passed by the Division Bench of this Court dated 17.10.2004 reads as under:

Pursuant to the earlier order passed by this Court, Mr. Prakash Jani, learned Additional Advocate General has tendered the affidavit with the order dated 17.10.2014 passed by the Under Secretary of the State Government, whereby, the petitioner is reinstated in service and is posted at Divisional Training Center, Bavda, District: Ahmedabad as Assistant Professor. It has been further stated that the post at which reinstatement is made is a Class-I post. Mr. Jani, learned Additional Advocate General states that the reinstatement is to be treated as with continuity in service. All arrears of back-wages shall be paid within six weeks. Considering the facts and circumstances, we find that towards arrears of back-wages, the petitioner will be paid One Lakh Rupees on account on or before 29.10.2014 and the remaining amount of back-wages shall be paid within six weeks therefrom. The calculation of arrears shall be placed on next date. Stand over to 10.11.2014.

The petitioner shall be permitted to resume the duty at the place where he is posted.

Today, when the present application is taken up for further hearing, the concerned respondents have placed on record along with further affidavit on behalf of respondent no.2 dated 7.11.2014 calculation of the arrears (Annexure R-5). Shri Jani, learned AGP has stated at the bar that remaining amount of back wages as per calculation at Annexure R 5 to the further affidavit in reply shall be paid to the petitioner within a period of six weeks from 29.10.2014. At this stage, Shri Majmudar, learned advocate for the applicant has submitted that there is some mistake in the calculation. It will be open for the applicant to make representation to the concerned respondent pointing out the mistake in calculation of the back wages, if any and as and when such application is made, same be considered in accordance with law at the earliest but before the actual payment of remaining amount of back wages, same is paid, he is now required to be paid within a period of six weeks from 29.10.2014.

In view of the above and when now judgment and order passed by the learned Single Judge has been complied with except the back wages which is now assured to be paid within the period of six weeks from 29.10.2014 and the contempt has been purged considering the explanation in the affidavit in reply, we accept the unconditional apology and disposed of the present proceedings by directing the concerned respondent as stated herein above. With this, present application is disposed of."

5. Mr. Majmudar states that after reinstatement of the respondent - original petitioner on such post, the respondent has retired on superannuation with effect from 31.05.2016.

Looking to the subsequent findings, as narrated hereinabove, it is not necessary for us to suspend the implementation and execution of the order of learned Single Judge pending this appeal. Interim relief, as prayed for, therefore in view of the superannuation of the respondent herein, is refused. Civil Application is rejected accordingly.

Appeal to be listed for final hearing on 08.04.2019.

(ANANT S. DAVE, ACJ) (BIREN VAISHNAV, J) DIVYA