

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.769 of 2025

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DEVALKUMAR JASHUBHAI PATEL

Versus

THE STATE OF GUJARAT & ANR.

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Appearance :

MR HS MUNSHAW for the Petitioner.

RUSHABH H MUNSHAW for the Petitioner.

MR ADITYA DAVDA, AGP for the Respondent Nos.1,2

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CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 27/01/2025

ORAL ORDER

1. It is the case of the petitioner that on earlier occasion, the petitioner's termination was found to be stigmatic termination by this Court when the petitioner filed Special Civil Application No.9991 of 2022 which was allowed by the coordinate Bench of this Court vide oral judgment dated 21.9.2022. Pursuant to the aforesaid order, the petitioner's services were reinstated and thereafter, though the petitioner's services was not regularized by passing any order, the full-fledged inquiry by invoking the provisions of Rules 9 and 10 of GCSR was initiated against the petitioner and at the end of the inquiry, as per the Inquiry Officer's Report, the petitioner was exonerated of Charge No.1 and as far as Charge No.2 is concerned, the same was proved and the Inquiry Officer had suggested to take a lenient view against the present petitioner. However, the Reviewing Officer / Disciplinary Authority did not accept the Inquiry Officer's Report with regard to Charge No.1 whereby the petitioner was exonerated and as far as Charge No.2 is concerned, the Inquiry Officer's Report was accepted by the

Disciplinary Authority, meaning thereby the Disciplinary Authority had accepted the fact that the leniency is required to be shown against the present petitioner even if the Charge No.2 was proved against him. However, for either, while recording the aforesaid disagreement, no reasons were assigned by the Disciplinary Authority and, therefore, according to learned advocate Mr. Munshaw, there is a procedural error and, therefore, the impugned order dated 1.1.2025 whereby the petitioner's services is sought to be terminated after office hours on 31.1.2025 is suffering from the aforesaid procedural error and, therefore, the same is bad and, therefore, is required to be stayed.

2. Mr. Aditya Davda, learned Assistant Government Pleader appearing for the respondents has vehemently opposed this petition and submitted that the petitioner is a probationer and, therefore in fact, all that is required to be considered is that the petitioner's services are governed by Condition No.14 of his appointment order which is already reproduced in the impugned order dated 1.1.2025 and in view of the above fact, when the principles of natural justice is considered by the respondents and the petitioner's services in light of Condition No.10 and 14 A of the appointment order can be terminated by relying upon the said conditions, this Court may not stay the impugned order of termination passed by the respondents as though full-fledged inquiry was conducted against the petitioner, it would also indicate that the principles of natural justice are complied with qua the present petitioner and, therefore, when the petitioner is in contractual employment, the provisions of GCSR would not be applicable to him and, therefore, this Court may not grant any relief to the present petitioner.

3. I have heard learned advocates appearing for the respective parties and perused the record. From perusal of the record, it seems that charge-sheet indicates that charge-sheet was given to the petitioner by invoking the provisions of Rules 9 and 10 of GCSR and pursuant thereto, the full-fledged inquiry was carried out and, therefore, the procedure also would require that in case of disagreement in respect of Inquiry Officer's Report, the Disciplinary Authority is required to assign the reasons for disagreement which has admittedly not done in the present case and the show-cause notice was issued to the petitioner even prior to the disagreement and, therefore, *prima facie*, the order of termination seems to be suffering from procedural error and, therefore, termination based on the same can be said to be bad *prima facie*.

4. Accordingly, **issue notice to the respondents returnable on 24.2.2025**. Learned Assistant Government Pleader waives service of notice on behalf of the respondents.

In the meantime, there shall be ad-interim relief in terms of paragraph 24 (B).

(NIRZAR S. DESAI,J)

SAVARIYA