

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 3631 of 2024**

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HITESHKUMAR LAKSHMANDAN GADHAVI

Versus

STATE OF GUJARAT &amp; ORS.

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Appearance:

MR ZUBIN F BHARDA(159) for the Petitioner(s) No. 1

MR SAHIL TRIVEDI, AGP for Respondent State

for the Respondent(s) No. 2,3,4

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the  
Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Date : 05/03/2024****ORAL ORDER**

1. Heard learned Advocate Mr.Zubin Bharda for the petitioner and learned AGP Mr.Sahil Trivedi for the respondent State.
2. By way of this petition, the petitioner challenges orders dated 15.12.2021 passed by the disciplinary authority and dated 19.5.2023 passed by the appellate authority and order dated 10.11.2023 passed by the revisional authority, more particularly whereby the petitioner has been dismissed from service and order of dismissal has been upheld by the appellate authority as well as the revisional authority.
3. Considering the submissions made by learned Advocate Mr.Bharda for the petitioner, *prima facie* it appears to this Court that the present may not be a case of unauthorized absence, since it appears that the petitioner, more or less on all occasions when he had gone on leave, had

submitted his application for grant of leave. It also appears that the appellate authority had rejected the appeal preferred by the present petitioner without any specific reasons whatsoever. It also appears that the application for grant of leave under different heads, which is now termed to be unauthorized absence does not seem to be rejected specifically at the relevant point of time by the competent authority.

4. It also requires to be mentioned here that one of the aspects, which weighed with the authority concerned is absence of the petitioner from the year 2006 onwards for a total of 593 days and whereas it also appears that for such absence, in some of the instances, the petitioner had been punished. Thus, it would probably appear that the present is a case of double jeopardy more particularly when a person is punished for unauthorized absence at one stage, the same unauthorized absence cannot weigh with the Disciplinary Authority as well as the Appellate and Revisional Authority while passing the order of dismissal and consequent Appellate and Revisional Orders, pursuant to the departmental inquiry.
5. Attention of this Court is also drawn to an order passed by the reviewing authority dated 11.3.2020, whereby the reviewing authority, in case of absence of a similarly situated co-employee for around 2017 days, had reviewed the order of termination and had directed reinstatement of the employee concerned. While it is true that in departmental proceedings, no two cases are alike, yet this Court may not lose sight of the fact that the petitioner has been terminated from service for remaining unauthorizedly absent for a period of approximately 593 days in total and whereas in case of co-employee, who remained absent for more than 2017 days, the order of termination had been reviewed and the employee is back in service.

6. Considering such *prima facie* observations, issue notice to the respondents returnable on 24.6.2024. Learned AGP waives service of notice for respondent State. Direct service for rest of the respondents is permitted. State to file its reply by the returnable date.

V.V.P. PODUVAL

**(NIKHIL S. KARIEL,J)**