

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 1351 of 2017****In****R/SPECIAL CIVIL APPLICATION NO. 976 of 2010****FOR APPROVAL AND SIGNATURE:**

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No
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BHAVNAGAR MUNICIPAL CORPORATION
Versus
RAJENDRAKUMAR C VASAVA

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Appearance:
 MR HS MUNSHAW(495) for the Appellant(s) No. 1
 MS BHAVIKA H KOTTECHA(2942) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE L. S. PIRZADA

Date : 19/11/2025
ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. H.S.Munshaw
 for the appellant and learned advocate
 Ms. Bhavika Kotecha for the respondent.
2. By this appeal under clause 15 of the
 Letters Patent Act, the appellant-

original petitioner has challenged the Judgement and Order dated 18.11.2016 passed by the learned Single Judge in Special Civil Application No. 976 of 2010.

3. Brief facts of the case are that:

3.1 The respondent-workman was appointed as Keyman as per the order of appointment dated 15.10.1997 after following the due process and his probation period was fixed for one year as per the terms and conditions stated in the order of appointment.

3.2 The appellant thereafter, on completion of one year, passed a common order dated 14.10.1998 for 10 similarly

situated employees including the respondent-workman extending the period of probation upto 31.10.1999.

3.3 Service of the respondent was terminated by order dated 30.10.1999 whereas, the service of remaining 09 similarly situated employees was made permanent by order dated 11.11.1999.

3.4 Being aggrieved, the respondent preferred Reference [LCB] No. 81/2000 in the Labour Court at Bhavnagar for reinstatement with backwages and continuity of service.

3.5 The Labour Court by the Judgement and Award dated 07.11.2009 partly allowed the reference by

directing the appellant to reinstate the respondent-workman with continuity of service and 20% back wages.

3.6 Being aggrieved, the appellant preferred Special Civil Application No. 976/2010. The learned Single Judge by the impugned Judgement and Award partly allowed the Special Civil Application by upholding the Judgement and Award of the Labour Court so far as direction to reinstate the respondent-workman was concerned. However, the order directing and granting continuity of service and order directing 20% of backwages was set aside.

Being aggrieved, the appellant-original petitioner Bhavnagar Municipal

Corporation has preferred this Appeal which is admitted by order dated 16.04.2018.

4. Learned advocate Mr. H.S.Munshaw for the appellant-original petitioner submitted that by administrative order, the probation period of 10 persons was extended for one year and as the work of the respondent-workman was not found satisfactory, his service was terminated without conducting any inquiry as he was on probation and therefore, there is no violation of the provisions of section 25F, 25G and 25H of the Industrial Disputes Act, 1947 ['I.D.Act' for short]. It was further submitted that the respondent-workman at the best can be given lump-sum

compensation as learned Single Judge has failed to appreciate that by administrative order, the appellant-Bhavnagar Municipal Corporation has treated all the 10 similarly situated persons for extension of probation period and even after completion of extended one year, the service of respondent-workman was not found satisfactory and therefore except respondent, the service of nine other similarly situated employees was regularized and were appointed on permanent basis whereas, the respondent-workman who was on probation during the extended period of probation, his service was terminated by order dated 30.10.1999 and

therefore, there is no violation of any of the provision of the I.D.Act.

4.1 With regard to reasons assigned by the learned Single Judge for confirming the order of reinstatement, learned advocate Mr. Munshaw submitted that the appellant-Corporation has by the order dated 14.10.1998 extended the probation of all the 10 employees for one year as their work was not satisfactory so as to give further chance to all the 10 workmen to prove their efficiency and accordingly, out of 10 workmen, 09 workmen have been found suitable and efficient and therefore, they were appointed on regular basis by order dated

11.11.1999. So far as the respondent-workman was concerned, his services were not found regular and therefore, his service was terminated.

4.2 It was further submitted that both the Labour Court and learned Single Judge has failed to take into consideration that the appellant-Corporation has extended the period of probation of all the 10 workmen and the respondent-workman was not singled out and as such, no interference could have been made in the termination of the respondent-workman, by the Labour Court and ought not to have been confirmed by the learned Single Judge.

4.3 It was further pointed out that the learned Single Judge has considered that the respondent-workman was not entitled to continuity of service and 20% back-wages as awarded by the Labour Court which goes to show that the respondent-workman was on probation during the extended period and only because there is no rules and regulation for extension of the probation period, it cannot be said that the appellant-Corporation could not have extended the period of probation.

5. On the other hand, learned advocate Ms. Bhavika Kotecha referred to and relied upon the reasons assigned by the learned Single Judge for upholding the

order of the Labour Court regarding the reinstatement of the respondent workman.

5.1 As it is emerging from the record that the respondent-workman was appointed by regular selection process by order dated 15.10.1997 along with 03 other persons wherein, the appointment was made in pay scale of 800-15-1010-EB-20-1150 having basic pay of Rs. 800/- with a period of probation on the terms and conditions mentioned in appointment letter. On perusal of the appointment letter dated 15.10.1997, there is no term or condition which stipulates that the period of probation can be extended for further period of one year.

6. Thus, the learned Single Judge has rightly come to the conclusion that the appellant-Corporation could not have extended the probation period for further period of one year on completion of probation on 31.10.1998.

7. In that view of the matter, the following reasons assigned by the learned Single Judge are in accordance with law and no interference can be called for while in the impugned order of directing the appellant-Corporation to reinstate the respondent-workman considering the period of probation as per the appointment letter for one year only which could not have been extended in absence any rule or regulation:

"10. Thus, it has emerged that neither there is any term in the appointment order nor there is any provision in the Regulations or under service conditions which authorizes the corporation to extend the period of probation beyond one year or beyond the period mentioned in the appointment order.

11. The Court also considered the submissions by learned advocate for the petitioner that the petitioner's appointment and condition of probation was determined and prescribed by virtue of administrative decision and administrative order.

11.1 For that purpose, the Court examined the appointment order and on examination, it is found that the appointment order does not prescribe any clause / condition with stipulation that the corporation reserves right to extend period of probation beyond one year.

11.2 The appointment order also does not contain any stipulation that the period of probation can be extended beyond the period mentioned in the appointment order, i.e. beyond one year in the event, performance is found unsatisfactory. In fact, it has emerged from the submission by

learned counsel for the corporation that actually, there is no provision in the Regulation which confer power to engage an employee, on probation basis. Thus, it is also not possible to examine present case on the premise that power to appoint an employee on probation would include power to extend period of probation unless barred by any provision.

11.3 There is no material on record to establish that during the period of one year, the claimant was ever informed that his performance is found unsatisfactory.

11.4 Even in the order dated 14.10.1998 whereby the period of probation was extended, such reason is not mentioned.

12. It is quite understandable that so as to ensure that the order extending period of probation is not treated as stigmatic order, the corporation may not have mentioned in the termination order that performance is not found satisfactory. However, there has to be some independent material to support such claim or assertion or allegation of the corporation.

12.1 However, in present case, such material was not placed before the learned Labour Court and it is not placed on record of this petition as well. Under the circumstances, there is nothing on record to support the claim that the respondent's performance was not satisfactory during initial period of probation or even during the extended period of probation.

12.2 Even if the said aspect i.e. lack of material to establish that the claimant's performance was unsatisfactory is not taken into account, then also, absence of provision which would confer power to the competent authority to extend period of probation, hits the corporation's action against the respondent.

13. As mentioned above, the corporation has failed to point out any provision from the Regulations which confers power to the competent authority to extend period of probation beyond one year and/or beyond the period mentioned in the appointment order.

14. In absence of any provision in contract of employment i.e. the appointment order and/or in the service Regulations which prescribe

a condition or a stipulation that the corporation may extend period of probation for any reason or without assigning any reason and/or when the service Regulations/conditions of the corporation do not confer such authority then such power can neither be exercised by nor can be inferred in favour of the corporation.

15. In view of the fact that there is no clause / provision under the appointment order authorizing the corporation to extend period of probation and when corporation has failed to show any provision under the applicable rules and regulations which confers such authority on the corporation, the probation period shall be deemed to have come to end upon expiry of period of one year from the date when the respondent resumed duty.

16. Under the circumstances, on the date when the initial period of probation expired and thereafter when he continued in the service, the respondent cannot be termed as "probationer". Consequently, when the service of the claimant was terminated, i.e. after one more year, the claimant could not have been considered "probationer".

17. Above discussed aspects bring out that after completion of period of probation, the claimant had worked for 12 months with the corporation. It is not the case of the corporation that during the said subsequent period, the claimant had not worked for 240 days.

17.1 Under the circumstances, the termination of service of the claimant after expiry of probation period would fall within purview of Section 2(oo) which takes in its fold "termination for any reason".

18. Foregoing discussion has brought out that the period of probation for the claimant came to an end in October 1998 whereas the claimant's service was terminated one year thereafter, i.e. in 1999.

18.1 During the period from October 1998, the claimant was not on probation and cannot be considered probationer for the period beyond October 1998 and that therefore, the provision under Section 2(oo) and consequently provision under Section 25F would be attracted.

18.2 In this context, it is also relevant to note that about 10 days after the claimant's service was

terminated, the corporation conferred status of permanent workman to other 9 workmen who were working with the claimant.

18.3 When the said material and details are taken into account, it is not possible to hold that the conclusion by the learned Labour Court that the claimant's service was termination in contravention of statutory provision is incorrect or unjustified. The said conclusion by the learned Labour Court cannot be faulted.

19. When it is found that the termination of claimant's service was illegal, the question of appropriate relief would arise.

20. After considering the said issue, the learned Labour Court directed the corporation to reinstate the claimant with 20% backwages and continuity of service.

21. The foregoing discussion has brought out that after expiry of period of probation, the claimant had worked only for one year when his service came to be terminated."

8. In view of the above reasons assigned by the learned Single Judge for directing the appellant-Corporation to reinstate the respondent-workman, the order of learned Single Judge cannot be interfered with as there is no document placed on record on behalf of the appellant-Corporation in support of their exercise of administrative power of extending the probation for one year. Hence, when the respondent-workman is continued in service on completion of probation of one year, the provisions of section 25F, 25G, 25H of the I.D. Act have rightly been invoked by the Labour Court for reinstatement of respondent-workman. The appeal therefore fails and is

accordingly dismissed. No order as to costs.

(BHARGAV D. KARIA, J)

(L. S. PIRZADA, J)

JYOTI V. JANI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: JYOTIBEN VINODKUMAR JANI(HC00213), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 24/11/2025 15:31:38