

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 540 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 5327 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/LETTERS PATENT APPEAL NO. 540 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA **Sd/-**
and
HONOURABLE MS. JUSTICE GITA GOPI **Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

CHARU NARENDRABHAI BHATT
 Versus
THE STATE OF GUJARAT

Appearance:

MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1
 MR SAHIL B. TRIVEDI, AGP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE GITA GOPI

Date : 28/10/2024

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. **ADMIT.** Learned Assistant Government Pleader waives service of notice of admission on behalf of the respondent-authority.

2. The present appeal filed under Clause 15 of the Letters Patent, 1865, is directed against the order dated 02.05.2024 passed by the learned Single Judge rejecting the captioned writ petition filed by the appellant - original petitioner challenging the charge-sheet dated 24.05.2021. The learned Single Judge, while placing reliance on the judgment of the Supreme Court in the case of ***Union of India and another Vs. Kunisetty Satyanarayana, 2006 (12) SSC 28***, has rejected the captioned writ petition.

3. Learned advocate Mr.Vaibhav Vyas, appearing for the appellant, at the outset, has submitted that in fact, the case of the present appellant will fall in rare and exceptional cases, as observed by the Supreme Court in the very same judgment since the appellant, who was to retire on reaching the age of superannuation on 30.09.2022, is issued the charge-sheet dated 24.05.2021 containing three charges. He has submitted that so far as the charge Nos.1 and 3 are concerned, the same are dropped by the State Government however, the charge No.2, which pertains to the year 2013, contains the charge that before renewing the passport No.L-1877142, no "No Objection Certificate" (NOC) has been obtained by the appellant. He has referred to the Rule 3(1) of the Gujarat Civil Services (Conduct) Rules, 1971 and has submitted that a bare reading of the said Rule will establish that the charge No.2 will not fall under the definition of misconduct.

4. Learned advocate Mr.Vyas, appearing for the appellant, has also submitted that the respondent - authority has placed reliance on the Office Memorandum dated 05.10.2009 issued

by the Ministry of External Affairs, Government of India however, it is submitted by him that the same also does not refer that not obtaining of NOC for renewal of passport would amount to misconduct.

5. Thus, it is submitted by the learned advocate Mr.Vyas, that the passport of the appellant was renewed by her in the year 2013 and on the verge of her retirement, a charge-sheet has been issued on 24.05.2021, and on the ground of delay also, such charge is required to be quashed and set aside. Reliance is placed by him on the judgment of the Supreme Court in the case of State of A.P. Vs. N. Radhakishan, (1998) 4 SCC 154. He has further placed reliance on the judgment of the Supreme Court in the case of UCO Bank and others vs. Rajendra Shankar Shukla, (2018) 14 SCC 92.

6. In response to the aforesaid submissions, learned Assistant Government Pleader Mr.Trivedi, has submitted that in fact, the impugned order passed by the learned Single Judge does not require interference, as the same is appropriately passed looking to the charge No.2, which specifically mentions that the appellant while renewing her passport being Passport No.L-1877142 in the year 2013 did not obtain any NOC from the State Government. He has placed reliance on the Office Memorandum dated 05.10.2009 issued by the Central Government. So far as the aspect of delay is concerned, it is submitted that the Supreme Court in the case of State of Madhya Pradesh and another Vs. Akhilesh Jha and another, 2021 (12) SCC 460, has held that the charge-sheet cannot be quashed on the ground of delay, ambiguity and prejudice

having being caused to the delinquent. Thus, it is urged that the present appeal may not be entertained.

7. We have heard the learned advocates appearing for the respective parties.

8. The appellant, who was serving as a Director of Accountants and Treasury (Class-I), who was to retire on attaining the age of superannuation on 30.09.2022, is issued a charge-sheet dated 24.05.2021 containing three charges. The charge No.1 pertains to procuring the passport No.E-6739953 without obtaining NOC in the year 2003. However, the said charge has been dropped since it was subsequently found that the appellant had obtained the NOC from the State Government. The charge No.2 refers to renewal of the passport in the year 2013 being Passport No.1877142. The charge No.3 refers to that foreign travels to Australia and Nepal without intimation and prior permission of the State Government. So far as the Charge Nos.1 and 3 are concerned, they are dropped. Thus, the issue which falls for deliberation pertains to charge No.2.

9. A bare perusal of the charge No.2 manifests that the appellant has been charged with a misconduct of renewing her passport without obtaining the NOC in the year 2013. The entire charge-sheet is blissfully silent, so far the aspect of delay is concerned, and even the affidavit-in-reply does not mention any reason as to why for a renewal of a passport in the year 2013, for which it is alleged that the appellant has not obtained the NOC, the charge-sheet has been issued on 24.05.2021 at the fag end of retirement. Hence, on this sole

ground, the charge No.2 or the charge-sheet is required to be quashed and set aside.

10. At this stage, it would be apposite to refer to the observations made by the Supreme Court in the case of **Rajendra Shankar Shukla (supra)**. The same reads as under : -

"12 We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submissions made by learned counsel. The first issue of concern is the enormous delay of about 7 years in issuing a charge sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance."

11. The Supreme Court has quashed and set aside the charge sheet on the ground of inordinate and unexplained delay. In the present case also, there is 8 years' unexplained delay in issuing the charge sheet. Hence, on the ground of nature of charge and delay the charge No.2 is required to be quashed.

12. The judgment, on which the reliance is placed by the learned AGP in case of **Akhilesh Jha and another (supra)**, does not apply to the facts of the case since the facts suggest that there was an ongoing departmental proceeding and the charge-sheet, which was issued to the delinquent, had affected his chances of promotion and the charges, as the departmental inquiry was not concluded.

13. The charge sheet refers to the misconduct as stipulated in Rule 3(1)(2) of the Gujarat Civil Services (Conduct) Rules, 1971, which reads as under : -

"3. General:

(1) *Every Government servant shall at all times -*

(i) maintain absolute integrity.

(ii) maintain devotion to duty, and

(iii) do nothing which is unbecoming of a Government servant.

**Explanation :- A Government servant, who habitually fails to perform a task assigned to him within the time set for the purpose and with the quality of performance expected of him, shall be deemed to be lacking in devotion to duty within the meaning of clause (ii).*

(2) No Government servant shall, in the performance of his official duties or in exercise of the powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

(3) All departmental rules and orders in respect of the subject dealt with in these rules which have been approved or may hereafter be approved by Government shall in so far as they are not inconsistent with any provisions of these rules, apply to Government servants to whom they relate.

Explanation :- Nothing in sub-rule (2) shall be construed as empowering a Government servant to evade his responsibility by seeking instructions from or approval of a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities."

14. Rule 3(1) of the Gujarat Civil Services (Conduct) Rules, 1971, refers to three aspects, which the Government servant has to maintain ; (i) absolute integrity, (ii) devotion to duty, and (iii) do nothing which is unbecoming of a Government

servant. The Explanation to the said Rule refers to clause (ii), which does not get attracted in this case. The appellant had obtained NOC at the time of getting the passport, but she did not obtain the same at the time of renewal. Such an act will not fall in either of the clauses to Sub-Rule (1). It cannot be said that non-obtaining of NOC at the time of renewal of the passport will tantamount to “lack of integrity” or “lack of devotion towards duty”. The act of the appellant can at the most be termed as “lapse” on her part and the same cannot be stretched to an extent to clause(iii), which refers to the act of unbecoming of a Government servant. The act of the appellant is neither gross nor habitual negligence nor can it be said that her conduct was so egregious, which resulted into grave consequences and irreparable damage is caused to the Government.

15. The respondent has placed reliance on the Office Memorandum dated 05.10.2009 issued by the Government of India more particularly paragraph No.3(d), which stipulates that the NOC is required for reissuance of passport to Government employees on expiry of passport or exhaustion of VISA however, no police verification is required at reissue stage. In case, the instructions were brought to her notice, she would have obtained the NOC in the same manner, when she applied for the passport for the first time in the year 2003. The non-observance of the administrative instruction of paragraph No.3(d) by the appellant cannot qualify as misconduct unless she was informed that violation of the instructions will amount to misconduct inviting disciplinary proceedings. It is pertinent to note that after the passport was renewed, the appellant had

visited abroad in the year 2016, for which charge No.3 was framed. However, charge No.3 is dropped from the charge sheet.

16. So far as the Sub-Rule (2) of Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971 is concerned, learned Assistant Government Pleader is unable to satisfy us that the alleged act as mentioned in Charge No.2 will attract the Sub-rule (2) of Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971.

17. Thus, on the overall analysis of the facts and the manner in which the charge-sheet is issued at the fag end of service of the appellant, indicates that the same is done with a *mala fide* intention. The appellant in her writ petition in paragraph No.(f) has made a categorical statement against the officer-Mr.Umesh M Oza, who has issued the charge sheet. She has mentioned that he was having personal grudge against her since when he was working as a Deputy Director, the appellant filed various complaints/FIR's against him. Three of such FIR's are produced on record. We have noticed that the paragraph No.4 of the charge-sheet, mentions that in case, the charges are proved, she would be imposed any of punishment mentioned in Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 or cut-in pension. Rule 24 of the Gujarat Civil Services (Pension) Rules, 2002 empowers the Government to withhold or withdraw pension only when the pensioner is found guilty of "grave misconduct or negligence" during the period of service. The Charge No.2 of the charge-sheet will not in any manner satisfy the expression "grave misconduct or negligence". Thus, the intention of issuing the

charge-sheet by the Officer by exhuming stale lapse appears to jeopardize the retirement benefits of the appellant by continuing the departmental proceedings beyond her retirement benefits. The appellant has already retired from service on reaching the age of superannuation.

18. The learned Single Judge has failed to appreciate the aforesaid vital aspects, while rejecting the writ petition by placing reliance on the judgment of the Supreme Court in the case of ***Kunisetty Satyanarayana (supra)***. In fact, the judgment does not completely bar the High Court from quashing the charge-sheet or show-cause notice and it can be done in rare and exceptional cases. The appellant has carved out such exception and her case will fall under rare and exceptional case. Thus, on the ground of unexplained delay of 8 years, and looking to the nature of alleged misconduct, the charge-sheet is required to be quashed and set aside.

19. On the overall substratum and analysis of the facts and circumstances of the case, the present appeal is allowed with cost of Rs.10,000/-. The same shall be paid to the appellant within a period of four (04) weeks from the date of receipt of writ of this Order. It will be open for the State Government to recover the cost amount of Rs.10,000/- from the erring Officer, who has issued the charge-sheet. The impugned order dated 02.05.2024 passed by the learned Single Judge in the captioned writ petition is quashed and set aside. The charge No.2 of the charge-sheet dated 24.05.2021 is also quashed and set aside.

20. As a sequel, the connected civil application stands disposed of accordingly.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(GITA GOPI,J)

MAHESH/20