

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 1648 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE JAYANT PATEL

and

HONOURABLE MR.JUSTICE MOHINDER PAL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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P G VYAS....Petitioner(s)

Versus

HIGH COURT OF GUJARAT & 1....Respondent(s)

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Appearance:

MR VAIBHAV A VYAS, ADVOCATE for the Petitioner(s) No. 1

MR TANMAY KARIA, AGP for the Respondent(s) No. 2

LAW OFFICER BRANCH, ADVOCATE for the Respondent(s) No. 1

MR SHALIN MEHTA, SR. ADVOCATE WITH MR HEMANG M SHAH,
ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE JAYANT PATEL**
and
HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 04/04/2013

CAV JUDGEMNT

(PER : HONOURABLE MR.JUSTICE MOHINDER PAL)

1. The present petition is directed against the order dated 24.8.2009 passed by the this Court on its administrative side imposing major punishment of compulsory retirement of the petitioner from judicial service.

2. The broad facts are that the petitioner was appointed as Civil Judge (Junior Division) and Judicial Magistrate, First Class in 1981 and thereafter promoted as Civil Judge (Senior Division) in 1990. It can be noticed from the record that the petitioner was served with the chargesheet dated 14.10.2003 while he was working as Chief Judicial Magistrate, Mehsana wherein it was stated that the petitioner passed the order discharging three out of five accused in Criminal Case No.91 of 1996 for the consideration other than the judicial one and thereby indulged in corrupt practice, exhibited an attitude of

distrust in judicial department by the litigants and the lawyers and failed in maintaining dignity of judiciary as a whole and thereby the petitioner was guilty of indulging in corrupt practice, dereliction in discharging judicial functions, misconduct and acted in a manner unbecoming of a judicial officer.

3. It can be further noticed that the petitioner responded and denied the said chargesheet vide his statement of defence dated 19.3.2004. Thereafter, full-fledged departmental inquiry was conducted against the petitioner and ultimately, the Inquiry Officer came to the conclusion that the main charge of corrupt practice against the petitioner is not proved, however, held that consequential charges arising out of the main charge of dereliction in duty and unbecoming of a judicial officer was proved. Thereafter, the petitioner was served with the show cause notice as to why major penalty should not be imposed upon the petitioner. In pursuance of the show cause notice, the petitioner submitted his reply on 15.4.2009, but ultimately, the impugned order dated 24.8.2009 of compulsory retirement of the petitioner from judicial service came to be passed by this Court

on its administrative side. Hence, the present petition.

4. We have heard learned counsel for the parties and perused the papers of the case placed before us.

5. It is mainly contended by the learned counsel for the petitioner that as the charge of corruption levelled against the petitioner is not proved, the very basis of issuance of chargesheet does not survive. The Inquiry Officer ought not to have held that the petitioner is guilty of dereliction in discharge of duty and unbecoming of a judicial officer and consequently, the disciplinary authority ought not to have imposed any punishment much less the major punishment of compulsory retirement. It is further contended that the petitioner, while discharging the accused, took into consideration the documents which were produced by the accused and taking into consideration the overall case of the prosecution in light of the proposition of law holding the field at the relevant point of time, discharged the said accused. It is also contended that there is

unexplained and inordinate delay of about 7 years in initiating the departmental inquiry against the petitioner which has resulted into serious injustice to the petitioner.

6. On the other-hand, Mr.Shalin Mehta, learned senior counsel appearing with Mr.Hemang N.Shah for respondent No.1 has vehemently contended that the discharge order reads as if it is an order of acquittal upon completion of trial and while passing the order of discharge, the petitioner has not referred to the decision of the Apex Court in the case of **Satish Mehra Vs. Delhi Administration and another**, reported in **1996 (3) Crimes 85 (SC)** which permitted taking into account the documents produced by the accused while deciding the discharge application coupled with the fact that whether the delinquent officer was guided by the said decision in Satish Mehra (supra) or not. Mr.Mehta and Mr.Tanmay Karia, learned AGP have supported the impugned order by contending that the impugned order passed by this Court on its administrative side is just, legal and proper which does not require interference by this Court.

7. It can be noticed from the record and also emerges during the course of arguments that the petitioner had discharged the two builders and the Chief Officer of the Nagarpalika out of five accused against whom the chargesheet was filed. He also ordered framing of charge against the two employees of the municipality who were equally involved in the same case.

8. In the facts and circumstances of the case, the High Court on its administrative found that the petitioner passed the order in question in dereliction of the duty and his act amounted to misconduct and one of unbecoming of a judicial officer. It is also required to be noted that for want of direct evidence, the Inquiry Officer did not hold that the petitioner had indulged in corrupt practice. It is hardly required to be noted that when the discharge order came to be passed by the petitioner, the Apex Court has delivered the judgment in the case of Satish Mehra (supra) on 31.7.1996 and the decision in the case of Satish Mehra (supra) came to be overruled much later as the High Court has noticed earlier in the year

2005. At this stage, it is also pertinent to observe that while ordering framing of charge against two employees of the municipality, the petitioner ordered discharge of three accused though in the chargesheet, the police had levelled charges against all the accused under sections 465, 466 and 477 read with section 34 of Indian Penal Code. If the petitioner - delinquent officer found some evidence against the employees of the municipality to proceed against them, he ought to have appreciated that the same set of evidence could be considered for proceeding against the three accused also and there was no earthy reason as to why those three accused should have been discharged without a trial by applying a different yard stick. In our view, the order passed by the petitioner was such that no Judicial Officer with a reasonable prudence would pass such an order. Therefore, we are of the considered opinion that the High Court on its administrative side has rightly viewed the order under consideration passed by the petitioner - delinquent officer and his conduct in doing so in the background of the fact that he was not a novice or a junior judge since he had by then put in nearly 16 years of service.

9. It is by now well settled that judicial service is not a service in the sense of an employment as is commonly understood. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is no manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

10. In this view of the matter, the petition fails and the same deserves to be dismissed. Accordingly, the petition is dismissed. Rule is discharged.

(JAYANT PATEL, J.)

(MOHINDER PAL, J.)

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