

HIGH COURT OF GUJARAT

SURYAKUMAR S THAKER

Versus

DISTRICT DEVELOPMENT OFFICER, MEHSANA

Date of Decision: 08 December 1995

Citation: 1995 LawSuit(Guj) 451

Hon'ble Judges: [C K Thakker](#)

Eq. Citations: 1997 1 CLR 91, 1996 2 GLR 36, **1996 1 GLH 762**, 1996 LabIC 2314, 1996 2 GCD 637

Case Type: Special Civil Application

Case No: 847 of 1995

Editor's Note:

Gujarat Panchayats Act, 1961 - Gujarat Panchayat Service (Discipline & Appeal) Rules, 1964 - Rules 5, 13 - Suspension cannot be termed as penalty & employee can prefer appeal against suspension order as per Rule 13 - Petition allowed

Acts Referred:

[Gujarat Panchayats Service \(Discipline And Appeal\) Rules, 1964 R 5, R 13](#)

Final Decision: Rule made absolute

Advocates: [Rashmin Jani](#), [D A Bambhania](#), [Kamal Mehta](#)

C. K. THAKKER, J.

[1] This petition is filed by the petitioner against an order of suspension. The case of the petitioner is that he is in the employment of the respondents since 1969 as Additional Assistant Engineer. On certain allegations of illegalities and irregularities, alleged to have been committed by him in the year 1983, he was placed under suspension by an order dt. September 19, 1994. That order was passed by the District Development Officer, Mehsana, respondent No. 1 herein. Being aggrieved by the said order, the petitioner approached this Court by filing Special Civil Application No. 11502 of 1994. It came up for hearing before my learned brother M. R. Calla, J. on October 6,

1994. After hearing the learned Counsel for the petitioner, the Court passed the following order :

"Heard the learned Counsel for the petitioner. Special Civil Application is directed against the order of suspension dated 19-9-1994. It is not in dispute that the suspension order is appealable. Learned Counsel for the petitioner submits that the petitioner is now desirous of filing appeal. Should the petitioner file any such appeal within a period of 10 days from to day the appellate authority should hear and decide the appeal within a period of six weeks from the date. Certified copy of this order is produced before the concerned appellate authority. This Special Civil Application is dismissed with observations as aforesaid."

[2] It appears that in pursuance of the above order passed by this Court, an appeal was filed by the petitioners before the Additional Development Commissioner, respondent No. 2 under Rule 13 of the Gujarat Panchayat Service (Discipline & Appeal) Rules, 1964 (hereinafter referred to as "the Rules"). The second respondent, however, vide his communication dt. December 1, 1994 returned the memorandum of appeal to the petitioner, inter alia, observing that as suspension is not penalty, no appeal would lie and the appeal is not maintainable. It is that order passed by the second respondent which is challenged in the present petition by the petitioner.

[3] Now, looking to the relevant provisions of the Rules, it is abundantly clear that suspension is not one of the penalties contemplated by the Rules and suspension cannot be imposed by way of penalty. Penalties have been referred to in Rule 5 of the Rules. Rule 5 reads as under :

"5. Penalties : The following penalties may, for good and sufficient reasons, and as hereinafter provided be imposed on a member of the Panchayat Service, namely :-

(1) Censure, (2), (3) (4) Withholding of increments or promotions, (5) Recovery from pay of the whole or part of any pecuniary loss caused to the Panchayat by negligence or breach of orders, (6) Reduction in rank including reduction to a lower post or time-scale or to a lower stage in a time-scale, (7) Compulsory retirement, (8) Removal from service not disqualifying for future employment, (9) Dismissal from service which shall ordinarily be a disqualification for future employment, xxx xxx xxx xxx"

[4] Reading Rule 5 of the Rules, it is no doubt true that suspension is neither a major nor a minor penalty. It, therefore, follows that if appeal is provided only against an order of penalty, no appeal can be filed against an order of suspension. That is what the second respondent has done. According to him, as suspension is not a penalty, it is

not subject to appeal under the rules. Now, Rule 13 provides for appeal in certain cases. That rule reads thus :

"13. Appeals against order of suspension or orders imposing penalty :-

(i) A member of the Panchayat service may appeal against an order of suspension or an order imposing any penalty on him to the authority, specified as appellate authority in the Appendix appended to these rules within a period of 90 (ninety) days from the date on which he receives the order;

(emphasis supplied)

xxx xxx xxx xxx

Obviously, therefore, an appeal is maintainable not only against an order of imposing penalty on a panchayat employee but also against an order of suspension. Mr. Bambhania and Mr. Mehta, Counsels for respondents contended that the second respondent has not entertained appeal in a number of cases of a similar nature by interpreting Rule 13 that no such appeal would lie. But in my judgment, such wrong interpretation of rules cannot alter the legal position which is clear and unambiguous. In my opinion, therefore, the second respondent has committed an error of law apparent on the face of record in holding that appeal is not maintainable. The said order, therefore, must be quashed and set aside by directing him to entertain the appeal and to decide the same in accordance with law.

[5] The petition is accordingly allowed. Rule is made absolute with no order as to costs. If the petitioner files an appeal on or before January 31, 1996, the second respondent will entertain it and decide the same in accordance with law.

[6] I may, however, clarify that I am not expressing any opinion on merits of the matter. It is for the second respondent to consider the matter on merits and to pass an appropriate order thereon. Since the impugned order is of suspension and the petitioner had to approach this Court twice, the second respondent is ordered to hear and decide the appeal as expeditiously as possible preferably within one month from the date of filing of the appeal.

Order accordingly. Rule made absolute.