

State of Gujarat

Vs

Sharadchandra Manohar Neve

Civil Appeal No. 763 of 1973

(G. L. Oza, Ranganath Misra JJ)

21.11.1986

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by the State of Gujarat by special leave is against the judgment of the High Court dated November 18, 1971. Respondent, a Sub-Inspector of Police in the service of the appellant, was on probation. Before he was confirmed but after termination of the period of probation his services were terminated by an order simpliciter. The High Court has taken the view that a proceeding was necessary for terminating the services of the probationer relying upon Rule 3 sub-rule (3) of the Rules framed under Bombay Police Act and as no proceedings were taken, the order of termination has been set aside.

2. Admittedly, the impugned order was made in 1967. It is contended by Mr. T. U. Mehta, learned counsel appearing in support of the appeal that the Rules obtaining in the State of Gujarat read very differently from what the High Court has indicated in its order and in fact, the Rules say that an order of termination of services of a probationer would not amount to punishment. He admits the position that for quite some time the Bombay Rules were in force and is unable to tell us when exactly the Gujarat Rules came into force. Since the High Court, which is expected to be in the know of the fact as to the prevalence of particular rules, has relied upon the Bombay Rules, we are not prepared to accept the submission as to the state of the rules without a clear indication regarding the date of enforcement of the Gujarat Rules.

3. We are clear in our mind that but for the rules which equate termination of service during or at the end of probation with removal, no proceeding would have been necessary to terminate the services of a probationer. That has been the pronounced view of the Court.

4. Mr. V. N. Ganpule, learned counsel for the respondent, tells us that after following the judgment of the High Court, the respondent has already been confirmed in service and has obtained promotion. It is not necessary to take into account the present state of the appellant's service. The appeal fails and is dismissed with no order as to costs.

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