
(2010) 05 GUJ CK 0043
In the Gujarat High Court

Case No : Special Civil Application No's. 1831 of 2007 and 10671 of 1998

Anjumane Islam

APPELLANT

Vs

Administrative Officer and Another

RESPONDENT

Date of Decision : 15-05-2010

Acts Referred:

Citation : (2010) 05 GUJ CK 0043

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : J.A. Adeshra, for the Appellant; A.D. Oza and Sonal D. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of the above Special Civil Application No. 1831 of 2007 the petitioner has prayed to quash and set aside the order passed by the Gujarat State Primary Education Tribunal in Application No. 71 of 1999 dated 10.11.2006 further to direct the respondent No. 1 to reinstate the petitioner from his services on his original post with all consequential and incidental benefits.

2. The brief facts of the case are as under:

2.1 As per the say of the petitioner he was appointed as an Assistant Teacher with the respondent No. 1 school. In the year of 1991, the petitioner suffered a massive heart attack. A chargesheet came to be issued against the petitioner and inquiry was conducted in the year of 1994. After the completion of inquiry, the Management inflicted punishment upon the petitioner whereby three yearly increments were stopped and fine of Rs. 900/- was inflicted upon the petitioner.

2.2 The petitioner was issued show cause notice and thereafter he was suspended from the services. On 13.4.1995, the chargesheet came to be issued. on the request made by the petitioner, the inquiry which as initiated against the petitioner was suspended.

2.3 On 13.9.1996 the petitioner was issued with additional chargesheet. Inquiry was conducted and on the basis of the inquiry report, the School Management decided to dismiss the petitioner from the service.

2.4 The respondent No. 1 prepared proposal for inflicting the punishment of dismissing the petitioner and the same was forwarded on 22.12.1997.

2.5 The respondent No. 2 by order dated 23.10.1998 disapproved the proposal made by the School Management. Being aggrieved by the same, the respondent No. 1 filed a Special Civil Application bearing No. 10671 of 1998 challenging the order passed by the respondent No. 2. this Court has granted stay in favour of Respondent No. 1. Being dissatisfied with the said order, the petitioner filed a Letters Patent Appeal No. 270 of 1999. The said Appeal came to be disposed of as it was against an interim order.

2.6 The respondent No. 1 passed an order whereby the petitioner came to be dismissed. Therefore the petitioner filed an application No. 71 of 1999, before the Primary Education Tribunal. The said application came to be rejected. Hence this petition.

3. Heard learned advocates for the respective parties and perused the documents on record.

4. From the record it revealed that Tribunal while dealing with the said issue has observed in para 6 as under:

Referring to the fact that the applicant has been in service since about 3 decades and is having heart disease and the family liability, it is submitted that the penalty of dismissal is much harsh and is disproportionate to the guilt. On behalf of the management, it is submitted that the charges against the applicant are of very serious nature which include the charge of misappropriation of fees and the applicant has admitted the same and they are also independently proved and hence the punishment is not disproportionate. Having regard to the fact that the charges against the delinquent employee are really of very serious nature and over and above clearest admissions of the delinquent employee, they have also been proved with the help of legal evidence, the order of dismissal in the fact situation is a just retribution and cannot be considered to be disproportionate to the guilt. Moreover, in view of the judgment of Hon''ble Supreme Court in the case of The Government of Andhra Pradesh Vs. B. Ashok Kumar, it is not open for this forum to reduce the penalty. In this connection, it may be noted that parties have made attempts to settle the matter amicably. The management was ready and willing to convert the order of dismissal into the order of compulsory retirement by way of settlement so that the delinquent employee would get some post retrial benefits. The matter was adjourned several times for giving an opportunity to the delinquent employee to take a decision on this point. The delinquent employee has ultimately not accepted this proposal. In this view of the matter though applicant is not entitled for any relief from this forum, as the management was at one point of time ready and willing to convert the order of

dismissal to the order of compulsory retirement, if the applicant desires it is open for him to apply to the management within one month from today requesting them to convert the punishment to compulsory retirement. If such an application is received it is hoped that the management would take sympathetic view and render its decision at the earliest as they were ready to do so at one point of time. It is clarified that in that event this judgment should not be considered as impediment in any way of the management

In view of the discussion made hereinabove, I do not find any substance in the challenge to the order of dismissal and therefore, this application is dismissed. No order as to costs.

5. Thus, stated in the above order, the petitioner was given an opportunity to convert the dismissal into compulsory retirement. At this stage the petitioner is ready and willing to accept this proposal.

6. In view of the above, the order of Tribunal is modified and the order of dismissal is converted into compulsory retirement. The government will release the dues to the petitioner within four months from the date of receipt of this order. It is made clear that while dealing with the retrial benefits, the government will extend the benefits. Rule is made absolute to the aforesaid extent with no order as to costs.

7. In view of the above order Special Civil Application No. 10671 of 1998, would not survive and is accordingly disposed of. Rule is discharged with no order as to costs.