
(1998) 01 GUJ CK 0006
In the Gujarat High Court

Arvindkumar Chandulal Pathak

APPELLANT

Vs

Mahajan Kelavani Mandal and Another

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 226, 227, 32
Gujarat Secondary Education Act, 1972 — Section 36, 37, 39(9)
Penal Code, 1860 (IPC) — Section 168, 420

Citation : (1998) 3 GLR 2224

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Judgement

M.R. Calla, J.—This Review Application dated 27-3-1989 is directed against the order dated 17-4-1980 passed by This Court in Special Civil Application No. 1923 of 1979 and the facts of this case illumine litigious perseverance of the litigating party as petitioner. It is unfortunate that the original petitioner, viz., Arvindkumar Chandulal Pathak expired on 20-6-1994 during the pendency of this Misc. Civil Application (application for review of the order dated 17-4-1980). This Review Application is being pursued by his legal representatives.

2. Said Shri Arvindkumar Chandulal Pathak was appointed as Head Master in the High School run by Mahajan Kelavani Mandal, Nandisar on probation for one year on 9-11-1970. An objection was raised by the District Education Officer against his appointment that he did not possess requisite experience to be appointed as Head Master and it was pointed out that school management would not get grant for the pay of the Head Master because the original petitioner appointed as Head Master did not possess the requisite experience. The management, therefore, passed a resolution on 3-9-1971 to terminate his services and, therefore, the original petitioner who was continuing on probation since 9-11-1970 was terminated at the end of the period of probation on 9-11-1971 after informing him through letter dated 16-10-1971 with regard to the objection raised against him by the District Education Officer.

3. The original petitioner Shri Arvindkumar Pathak filed a Civil Suit in the Court of Civil Judge (J.D.), Godhra on 15-6-1972 challenging the action of the school management and prayed for reinstatement and recovery of the dues of his salary. Thereafter, with the coming into force of Gujarat Secondary Education Act, 1972 with effect from 13-12-1973 the suit was transferred to the Tribunal constituted under the said Act and it was numbered as Application No. 794 of 1976. The Education Tribunal by its judgment and order dated 21-2-1977 refused the relief of reinstatement and directed the payment of dues of salary on and from 1-9-1971 to 7-11-1971 plus one month's notice pay and the amount was directed to be paid to the petitioner on production of Carpenter's receipt for the amount said to have been paid to the Carpenter, which, Shri Pathak had drawn from the account of the school management to be paid to the Carpenter.

4. Aggrieved from the aforesaid order dated 21-2-1977 passed by the Education Tribunal, Shri Pathak preferred Special Civil Application No. 768 of 1977 before This Court and This Court by its judgment and order dated 13/16-10-1978 remanded the case for considering the question of reinstatement. The Tribunal again passed an order on 25-6-1979 in the remanded case and refused the relief of reinstatement. Shri Pathak had also filed application being Application No. 179 of 1979 before the Tribunal praying that he should be paid his dues as if he was on duty all throughout right from September, 1971. This application was also rejected by the Tribunal.

5. Aggrieved from the judgment and order passed by the Tribunal on 25-6-1979 in Application No. 794 of 1976 refusing the relief of reinstatement and back wages Shri Pathak, the original petitioner again approached This Court for the relief of reinstatement with full back wages through Special Civil Application No. 1923 of 1979 and This Court (Coram: Hon'ble Mr. Justice N.H. Bhatt) passed an order dated 17-4-1980 refusing the relief of reinstatement but at the same time granting wages till 25-6-1979 (i.e., the date of the order on which the Tribunal decided the remanded matter) by way of compensation in lieu of reinstatement. Thus, This Court while deciding the Special Civil Application granted the relief with regard to the payment of wages for a period of nearly eight years, i.e., for the period 1-9-1971 to 20-6-1979 with the condition that the amount earned by him in Mehmabad High School and earnings made from any other source during this period were to be deducted.

6. Against the order dated 17-4-1980 passed by This Court in Special Civil Application No. 1923 of 1979 out of which the present review application arises the respondent Mahajan Kelavani Mandal as well as original petitioner Shri Arvindkumar Chandulal Pathak had preferred Letters Patent Appeals before the Division Bench of This Court. The Letters Patent Appeal No. 193 of 1980 filed by the original petitioner Arvindkumar Chandulal Pathak was dismissed by the Division Bench on 17-11-1980 while the Letters Patent Appeal No. 140 of 1980 filed by respondent Mahajan Kelavani Mandal had already been dismissed on 1-9-1980.

7. The original petitioner Mr. Arvindkumar Chandulal Pathak did not challenge the order passed by the Division Bench on 17-11-1980 in Letters Patent Appeal No. 193 of 1980 (arising out of Special Civil Application No. 1923 of 1979) before the Supreme Court and it is given out that no SLP was preferred by him before the Supreme Court. Of course the Mahajan Kelavani Mandal had carried the matter to the Supreme Court and it is given out by Mr. Mehta appearing on behalf of Mahajan Kelavani Mandal that the Supreme Court had dismissed the matter on 2-7-1983. Thus, the order dated 17-4-1980 passed by This Court in Special Civil Application No. 1923 of 1979 which is sought to be reviewed through this Misc. Civil Application of 1989 attained finality.

8. It is given out by Mr. Jhaveri that in the year 1987 the original petitioner Arvindkumar Chandulal Pathak had preferred writ petition under Article 32 of the Constitution in the very same subject-matter and cause being Writ Petition (Civil) No. 636 of 1987 before the Supreme Court and this writ petition filed by the petitioner was allowed to be withdrawn by the Supreme Court with the liberty to approach the High Court under Article 226 of the Constitution of India, if so advised on 2-11-1987 when the matter was listed before the Supreme Court for preliminary hearing.

9. Thereafter, the petitioner did not file any writ petition under Article 226 of the Constitution of India as the liberty was sought from the Supreme Court on 2-11-1987. Instead he chose to file the present Miscellaneous Civil Application in the nature of review application on 27-3-1989 for review of the order dated 17-4-1980 passed by This Court. It is, therefore, clear that the present review application has been filed after a period of nearly 9 years. It was not at all necessary for This Court to have passed such a detailed order while deciding this review application but the Learned Counsel for the applicant chose to argue the matter in great detail with full vehemence and tenacity and therefore, the Court considered it appropriate to give the narration in detail so that the factual position and long drawn history of this litigation is readily available in this order with dates. It may also be pointed out that notice of this review application was issued on 26-4-1989 and Rule was issued on 28-8-1997. During this period, i.e., after 26-4-1989 and before the Rule could be issued on 28-8-1997, as has been stated earlier the original petitioner Shri Arvindkumar Chandulal Pathak expired on 20-6-1994. It further appears that Civil Application No. 9420 of 1996 was then moved to bring the legal representatives on record and this application for bringing the legal representatives on record was allowed on 29-7-1997. An affidavit-in-reply dated 27-9-1997 has been filed on behalf of Mahajan Kelavani Mandal, Nandisar along with certain documents and the copy of the same had been made available to Mr. S.K. Jhaveri, appearing on behalf of the legal representatives on 22-9-1997.

10. Mr. Jhaveri has made following submissions:

(1) There was no plea of loss of confidence and the Court while passing the order dated 17-4-1980 could not invoke doctrine of loss of confidence against the

petitioner so as to deny him the relief of reinstatement.

(2) That the doctrine of loss of confidence is in conflict with the statutory provisions of Sections 36 and 37 of Gujarat Secondary Education Act, 1972. That in view of the provision of Section 39(9) the relief of reinstatement should have been granted.

(3) That even if the review application has been filed after a period of nearly 9 years it cannot be rejected on the ground of limitation as the order sought to be reviewed is null and void.

11. In support of his submissions Mr. Jhaveri placed reliance on the following decisions:

(i) L. Michael and Another Vs. Johnson Pumps Ltd., .

(ii) Collector of Customs and Central Excise, Bhubneshwar, District Puri Vs. Paradip Port Trust and Another,

(iii) Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,

(iv) J.G. Sinkar and Others Vs. State of Maharashtra and Others,

12. As against it Mr. Mehta, appearing on behalf of the respondent has submitted that the review application deserves to be dismissed straight-away on the ground of limitation itself and even otherwise there is no ground for review of the order dated 17-4-1980. The order had attained the finality with the decision of the matter by the Division Bench of This Court and by Supreme Court in 1983 and none of the grounds urged by Mr. Jhaveri for review can be said to be the ground for review of the order and further that the petitioner having failed before the Division Bench against this order dated 17-4-1980 did not go to the Supreme Court and the order sought to be reviewed attained the finality long back. Although the petitioner had filed a writ petition under Article 32 of Constitution of India before the Supreme Court in the same subject-matter and in the same cause he had withdrawn such petition with the liberty to approach the High Court under Article 226 of the Constitution of India and yet did not file any such petition under Article 226 after 2-11-1987 and failed to avail the liberty which he himself had sought from the Supreme Court and instead of availing that liberty to file petition under Article 226 he chose to file this review application in March, 1989, i.e., after a period of nearly 1 year and 4 months from the date when he withdrew his petition under Article 32 from the Supreme Court with the liberty to file petition under Article 226. Mr. Mehta pointed out that it appears that liberty to file writ petition under Article 226 was granted to the petitioner by the Supreme Court on 2-11-1987, perhaps keeping in view the fact that the petitioner's Letters Patent Appeal No. 193 of 1980 had been rejected by the Division Bench of This Court on 17-11-1980 on the ground of same being not maintainable because Special Civil Application No. 1923 of 1979 had been filed by the petitioner under Article 227 of the Constitution. In this background even if it is taken that the petitioner could avail the remedy of filing fresh petition under

Article 226 as was granted by the Supreme Court, he failed to file such petition under Article 226 inasmuch as no such petition has been filed by the petitioner till this date i.e., even after expiry of a period of ten years by now. Mr. Mehta has resolutely submitted that this review petition cannot be entertained and while opposing this review application he has also invited the attention of the Court to the pleadings in his affidavit-in-reply dated 22-9-1997 to the effect that:

(i) Shri Pathak had been relieved from Nadiad High School on 16-10-1971.

(ii) Shri Pathak had been employed as Assistant Teacher in Sheth J.H. Sonawala High School, Mehmabad from 11-7-1972 to 13-6-1976.

(iii) Shri Pathak was appointed as Assistant Teacher in Pioneer High School, Bharuch for one year in 1969 and was relieved on 14-6-1970. He brought injunction against his termination and was reinstated by the order of the Education Tribunal dated 17-8-1982 passed in Application No. 255 of 1975. He had also obtained decree of Rs. 53,065.76 and this decretal amount for the period of 14-6-1970 to 17-8-1982 was disbursed to him on 28-2-1985. This period 14-6-1970 to 17-8-1982 also includes the period for which he remained employed as Head Master with the respondent Mahajan Kelavani Mandal. He was also in the service of the Pioneer High School, Bharuch in October, 1985.

(iv) Shri Pathak was convicted by the Court for having committed the offence punishable under Sections 168 and 420 of Indian Penal Code.

(v) In lieu of reinstatement by order dated 17-4-1980 which is sought to be reviewed, the salary was directed to be paid to him for a period of nearly 8 years, i.e., for the period 16-10-1971 to 25-6-1979, although he was gainfully employed from 11-7-1972 to 30-6-1976 in Sonawala High School, Mehmabad and also from 14-6-1970 to 17-8-1982 in Pioneer High School, Bharuch and he continued to work there till October, 1985.

(vi) He also practised as an Advocate for some time.

(vii) He was also to give account of the amount drawn by him for paying to the carpenter.

(viii) It has been then given out that the amounts have been paid to Shri Pathak as under:

Rs. 39,855.00 Paid by Sonawala High School, Mehmabad for the period 11-7-1972 to 13-6-1976. Rs. 15,000.00 Paid from grant of this School during pendency of Special Civil Application No. 6190 of 1985 on his giving undertaking to refund if required to do. Rs. 5,000.00 Paid. Rs. 1,000.00 Paid. Rs. 53,035.00 Paid by Pioneer High School, Bharuch as salary for the period 1971 to 1981 by order of the Court. _____ Rs. 1,13,890.00

According to the management of Mahajan Kelavani Mandal the original petitioner was to refund the amount to the Education Department as under:

Rs. 1,13,890 - 87,903.10 = Rs. 25,987.00.

13. Mr. Mehta has also cited K. Ajit Babu and others Vs. Union of India and others,

14. I have considered the Submissions which have been made on behalf of both the sides. This first contention raised by Mr. Jhaveri that while passing the order dated 17-4-1980 the Court could not invoke doctrine of loss of confidence has no merit. The Court was concerned as to whether the relief of reinstatement could be the appropriate relief in the facts of the case or not. The Court has given ample reasons in the order dated 17-4-1980 and has made reference to the position held by the Head Master of the Institution and in the context in which the order was passed and the doctrine of loss of confidence was invoked could neither be said to be irrelevant nor extraneous to the consideration of the question of giving relief of reinstatement when the petitioner was to account even for the carpenter's amount which he had drawn from the management.

15. There is nothing which can be said to be in conflict with the statutory provisions of Sections 36 and 37 of the Gujarat Secondary Education Act and when it comes to the question of giving relief, it is the prerogative of the Court deciding the matter to consider and mould the relief in accordance with the facts and circumstances of each and every case. In the facts of the present case, the Court considered that granting of relief of 8 years' salary to the petitioner who had remained in the service on probation from 9-11-1970 to 9-11-1971, was an adequate relief and it cannot be said that the order suffers from any such error of fact or law so as to warrant review and it cannot be said that the relief of reinstatement had to be granted. No one can dispute the principles laid down by the Supreme Court in the cases which have been cited on behalf of Mr. Jhaveri on the question of relief of reinstatement etc., but such principles are to be applied in the facts and circumstances of each and every case. The cases on which the reinstatement is considered with regard to the workman under industrial law stands entirely on different footing than the case of the present nature and even those cases where permanent employee is sought to be terminated without inquiry by giving simple one month's notice are quite different than the cases in which the services of the probationer is terminated. I, therefore, do not find that three Supreme Court decisions L. Michael and Another Vs. Johnson Pumps Ltd., are of any avail to the petitioner. Besides the fact that grounds which have been urged have no merit as have been discussed above, the Court also does not find that such grounds are even otherwise sufficient for the purpose of review. On such grounds there is no question of reviewing the order. It also goes without saying that the review application has been filed after a period of nearly 9 years and there is no explanation what to talk of plausible explanation for filing this review application after 9 years period, more particularly when even the Letters Patent Appeal against the order which is sought to be reviewed had been rejected by the Division Bench and even when the petitioner chose to file in the very same cause, the petition under Article 32 before the Supreme Court and the

Supreme Court gave liberty of filing the petition under Article 226 and such liberty was not availed, it cannot be said that the delay has been explained. True it is that with regard to petitions under 226 and 227 no period of limitation for the review application as such has been fixed but it goes without saying that settled principles do apply and even if there is no period of limitation the application has to be filed within a reasonable time and by no norms and by no stretch of imagination period which has been taken by the petitioner in the present case for filing review application can be said to be reasonable or explained by any plausible reasons.

16. Simply because of the explanation added u/s 141 of the CPC by the Amending Act 104 of 1976 which became effective from 1-2-1977 the civil proceedings do not include any proceedings under Article 226 of the Constitution it cannot be said that the review application can be filed at any time regardless of the period which in the instant case runs to nearly 9 years. Thus, the Explanation below Section 141 of the CPC excluding the proceedings under Article 226 of the Constitution hardly furnishes any ground to the petitioner for moving the review application after such a long time for which no explanation has been given and the contention of Mr. Jhaveri that this review application cannot be rejected on the ground of delay is without any basis rather it is wholly misconceived and the same is hereby rejected. The authority cited by Mr. Mehta, i.e., K. Ajit Babu and Ors. v. Union of India and Ors. (supra), the Supreme Court has laid down that the right of review is not right of appeal and the Order 47 extends to the power of review. Thus, the review application filed in any nature of proceedings has to conform to the settled principles in the matter of review of an order and it has also to be filed within a reasonable period, even in those cases where no limitation has been prescribed for moving the review application for the reasons aforesaid, I do not find any substance in the present review application, the same is hereby dismissed. Rule is hereby discharged.