

(1992) 04 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 6258 of 1984

Ashok Kumar Ravjibhai Patel

APPELLANT

Vs

Thakkarbapa Nagar Gram Panchayat and Another

RESPONDENT

Date of Decision : 22-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayats Act, 1961 — Section 323
Penal Code, 1860 (IPC) — Section 161, 34

Citation : (1993) 2 GLR 1605

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

Divecha, J.—Can the services of a Panchayat employee be terminated simply on the ground that a criminal case has been filed against him ? Where specific power of suspension during pendency of a criminal trial is conferred on a Panchayat, is it desirable on its part to resort to termination of service on the ground of pendency of a criminal trial against its servants? These are the main questions arising in this petition under Art. 226 of the Constitution of India.

2. The facts giving rise to this petition move in a narrow compass. The petitioner was appointed as a Clerk in the 1st respondent-Panchayat with effect from 1st July, 1980. It appears that there was a raid by the Anti-Corruption Bureau on 24th May, 1984 in the office of the 1st respondent-Panchayat. The petitioner and one Rasalbhai Nabibhai Momin serving as Talati-cum-Mantri were charged with the offences punishable under Secs. 161 read with Section 34 of the Indian Penal Code, 1860 ("the Code" for brief) and Section 5(2) of the Prevention of Corruption Act, 1947 ("the Act" for brief). Thereupon the 1st respondent-Panchayat served one notice of 19th September, 1984 to the petitioner calling upon him why he should not be suspended or removed from service on the ground of his involvement in the case charging him with the offences punishable under Secs. 161 and 34 of the Code and Section 5 (2) of the Act. It was mentioned therein that such decision was to be taken in the meeting of the

Panchayat to be held on 27th September, 1984 and he was called upon to remain present in the meeting to make his representation against the proposed action. A copy of the show-cause notice of 19th September, 1984 is at Annexure "A" to this petition. It appears that the petitioner thereupon made one written representation on 29 the September, 1984 showing cause why he should not be suspended. Its copy is at Annexure "B" to this petition. It appears that the 1st respondent-Panchayat in its meeting held on 27th September, 1984 passed one resolution deciding to terminate the petitioner's services with effect from 1st October, 1984. Thereupon the necessary communication of 15th October, 1984 came to be served to him. Its copy is at Annexure "C" to this petition. The aggrieved petitioner has thereupon invoked the extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India for questioning the correctness of the impugned order at Annexure "C" to this petition.

3. In this connection reference deserves to be made to the Gujarat Panchayats Service (Discipline and Appeal) Rules, 1964 ("the Rules" for brief) framed by the State Government u/s 323 of the Gujarat Panchayats Act, 1961. Rule 4A of the Rules empowers the appointing authority, or any authority to which it is subordinate, or any disciplinary authority to place a member of Panchayat service under suspension inter alia on the ground that a case against him in respect of any criminal offence involving moral turpitude is under investigation inquiry or trial. It thus becomes clear that pendency of a criminal that may call for suspension of an employee under the relevant provisions contained in Rule 4A of the Rules. Rule 10 of the Rules provides for dispensation of the inquiry for imposition of any kind of penalty on a member of Panchayat Service where a penalty is to be imposed on him on the ground of his conduct which has led to his conviction on a criminal charge. It thus becomes clear that a Panchayat servant may be visited with the extreme penalty of even dismissal from service on the ground of his conviction on a criminal charge. This extreme penalty of dismissal from service can be imposed provided the criminal trial against a Panchayat servant has ended in his conviction. The extreme penalty of dismissal or removal from service cannot be resorted to during the pendency of a criminal trial under Rule 10 of the Rules. If a Panchayat servant is sought to be removed from service, the procedure is prescribed under Rule 7 of the Rules. No Panchayat servant can be removed from service except in accordance with the procedure prescribed under Rules.

4. In the instant case, the petitioner's services have come to be terminated on the ground that a criminal case was instituted against him. That action of his termination of service cannot be said to be termination simpliciter. This would cast a stigma on him. In the guise of termination, in fact he has been removed or dismissed from service. His involvement in the criminal trial could have at the most led to his suspension as provided under Rule 4A of the Rules. It could not have called for his removal or dismissal from service under the guise of termination simpliciter. It is an admitted position on record that no procedure or inquiry as provided under the Rules has been followed or undertaken before

removing or dismissing the petitioner from service under the guise of his termination therefrom. In that view of the matter, the action of the petitioner's termination from service cannot be sustained in law.

5. Even otherwise Shri. Shelat for the petitioner has brought to my notice a certified copy of the judgment of Special Case No. 26 of 1986 decided on 30th September, 1984, whereby the learned Special Judge at Ahmedabad acquitted the present petitioner of the charges levelled against him. Its xerox copy is placed on record by Shri. Shelat for the petitioner. I am told at the Bar that no appeal against this judgment has been preferred. In that view of the matter also, the petitioner would be entitled to be reinstated in service if he was suspended in exercise of the powers under Rule 4A of the Rules.

6. In the result, this petition is accepted. The impugned action of termination of the petitioner's service with effect from 1st October, 1984 as represented by the order at Annexure "C" to this petition is hereby quashed and set aside. The 1st respondent-Panchayat is directed to reinstate the petitioner in service with all consequential benefits of continuous service unaffected by the impugned order at Annexure "C" to this petition. The 1st respondent-Panchayat is directed to reinstate the petitioner in the service within four weeks from the receipt of the writ of the Court or from production of a certified copy of this judgment by or on behalf the petitioner whichever is earlier and to pay to him all benefits of arrears of pay and other available benefits within eight weeks from his reinstatement in service. Rule is accordingly made absolute however with no order as to costs on the facts and in the circumstances of the case.

7. Rule made absolute.