

(2002) 02 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 8248 of 1990

Baldevbhai B. Patel

APPELLANT

Vs

Amrutlal M. Nayak and Another

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Gujarat Secondary Education Act, 1972 — Section 38

Citation : (2002) 3 GLR 321

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Bipin P. Jasani, for the Appellant; Notice Served for Respondent No. 1 and R.M. Desai, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—Heard Mr. B.P. Jasani, learned Advocate appearing on behalf of the petitioner. No one appears on behalf of the respondent

Nos. 1 and 2.

The petitioner, in this petition, had challenged the order and judgment passed by the Gujarat Secondary Education Tribunal at Ahmedabad on 11-

10-1990 in Application No. 704 of 1987 and has also prayed for quashing and setting aside the said judgment.

By way of an interim relief, the petitioner has prayed for stay against the operation and effect of the said judgment.

2. At the time of admitting this petition on 30-11-1990, this Court (Coram ; R.K. Abichandani, J.), has passed the following order :

Rule. Ad interim relief in terms of Para 27(C).

From the record, it prima facie appears that, criminal offences, including the offence u/s 409 of the Indian Penal Code, have been committed in this

matter and no F.I.R. is lodged, and therefore, no investigation has taken place. In a matter of this type where there are grave allegations to the

effect that the amount of scholarship, examination fees etc. including those meant for backward class students, have been misappropriated from the

school accounts, it would be appropriate that the respondent No. 2-District Education Officer is by way of interim direction, directed to examine

this aspect and proceed in accordance with law. Directions to issue accordingly.

3. Thereafter, the respondent No. 1 has moved Civil Application No. 1493 of 1991, seeking vacation of the interim relief and or modification

thereof and this Court (Coram : N.J. Pandya, J.), while disposing of the same (Civil Application No. 1493 of 1991) has passed the following order

:

The applicant i.e., the original respondent shall be paid his salary of a Senior Clerk to be fixed as directed by the Tribunal in its order dated 1-10-

1990 with effect from 1st September, 1991 and shall continue to pay salary every month regularly till the Special Civil Application is disposed of.

In the meanwhile, the applicant shall present himself before the Management of School for attending to his job on 18th September, 1991 on which

day, if the Management so chooses may allow him work or else, the management is left with the option of claiming the benefit of the said interim

relief except for the payment of salary as modified and in that event the said interim relief shall continue to operate with the modification of payment

of salary. However, if the services of this applicant are availed of on his presenting himself for the job, the said ad interim relief granted on 30-11-

1990 shall stand modified. Rule is made absolute.

4. At the time of hearing of this petition, Mr. Jasani, learned Advocate for the petitioner has submitted that pursuant to the order passed by this

Court on 10-9-1991 in Civil Application No. 1493 of 1991, the respondent No. 1 has presented himself before the Management of School and

attended to his job on and from 18-9-1991. Since then, the respondent No. 1 has been working as a Senior Clerk and he has been paid the salary

as that of Senior Clerk by the School Management. This arrangement is ordered to be made subject to the final outcome of the petition.

5. The petitioner before this Court is Joint Secretary of Shri Adaraj Kelavani Mandal - a public Trust registered under the provisions of the

Bombay Public Trust Act and the said Trust is running a school, namely, Sheth R.M. High School, Meda Adaraj, Taluka Kadi. The said school is

also registered as a school under the provisions contained in Section 31 of the Gujarat Secondary Education Act, 1972.

6. It is the case of the petitioner that the respondent No. 1 was appointed as a Junior Clerk in the school run by the petitioner on 14-9-1981, and

thereafter, he was promoted as a Senior Clerk and Head Clerk in due course. It is stated in the petition that the respondent No. 1 had

misappropriated from the school account, the amounts of backward class scholarship and examination fees of backward class and also the

scholarship of the students belonging to Baxi Panch and economically backward class community. The amount misappropriated was to the tune of

Rs. 11,543/-. It is further stated in the petition that the respondent No. 1 has admitted the fact of misappropriation and on 22-10-1986 passed a

writing to that effect and along with that writing a list was attached wherein the amount and the names of the students to whom the amount was

payable were mentioned. It is also stated in the petition that the respondent No. 1 has agreed to pay the amount misappropriated by 17-11-1986,

and in view thereof, no immediate action was taken by the School Management. However, since the amount was not returned by the respondent

No. 1, the School Management decided to proceed against the respondent No. 1 in accordance with law and on 4-5-1987, a show-cause notice

along with charge-sheet was served upon him. In the said charge-sheet two charges were levelled against the respondent No. 1, namely, the first

charge was regarding misappropriation of Rs. 11,543/- and the second charge was to the effect that in order to misappropriate the amount, the

respondent No. 1 had made false signatures of the students in the voucher register of the school.

7. It is further averred in the petition that the respondent No. 1 has given a reply to show-cause notice on 12-5-1987 where contention was raised

by him that the writing dated 22-10-1986 was obtained under pressure and on the basis of that writing, the Principal of the school has blackmailed

the respondent No. 1 and had recovered the amount of Rs. 15,000/-.

8. It is further stated in the petition that the inquiry was conducted against the respondent No. 1 and opportunity was given to him to cross-examine

the witness of the petitioner and also to lead his defence. The Inquiry Officer had submitted his report on 29-7-1987 and held that both the

charges against the respondent No. 1 were duly proved by the Management. It was further held in the inquiry report that undue pressure in

obtaining writing dated 22-10-1986 was not proved and that the respondent No. 1 has misappropriated the amount of Rs. 11,543/- and has also

put false signatures of the students on the vouchers and fabricated false vouchers.

9. The petitioner has further stated in the petition that on the basis of the said inquiry, a further show-cause notice was served on the respondent

No. 1 on 7-8-1987 along with the copy of the inquiry report and after considering the contentions raised by the respondent No. 1, the School

Management decided to dismiss the respondent No. 1 from service and submitted its proposal to the respondent No. 2 for approval of the

decision of the Management u/s 36 of the Gujarat Secondary Education Act, 1972. However, the respondent No. 2 did not take any decision

within 45 days as required under the statute, and hence, treating it as deemed approval, the School Management dismissed the respondent No. 1

from service vide its letter dated 2-11-1987.

10. Being aggrieved by the aforesaid decision, the respondent No. 1 had filed an application No. 704 of 1987 before the Gujarat Secondary

Education Tribunal and raised the dispute u/s 38 of the Gujarat Secondary Education Act, 1972 wherein he has prayed for reinstatement to the

post. After considering all the relevant facts and circumstances of the case as well as the evidence led by the respective parties, the Tribunal vide its

judgment dated 11-10-1990 had held that charges levelled against the respondent No. 1 were duly proved by the School Management, and yet

however, directed the School Management to reinstate the respondent No. 1 on the lower post of Senior Clerk with effect from 1-10-1990

without any back wages for the period between 2-11-1987 to 30-10-1990.

11. The petitioner has challenged the above order and judgment of the Gujarat Secondary Education Tribunal in this petition. The petitioner, in this

petition, has submitted that the Gujarat Secondary Education Tribunal had come to certain definite conclusions and yet, contrary to those definite

conclusions, has given different finding by disturbing the decision taken by the

School Management of dismissing the respondent No. 1 from service and by directing the School Management to reinstate the respondent No. 1 on the lower post of Senior Clerk. The conclusions drawn by the Tribunal were to the effect that the respondent No. 1 had misappropriated an amount of Rs. 11,543/- which was to be paid to backward class students for their scholarship and examination fees etc., and that reasonable opportunity as required under law to show cause was given to the respondent No. 1 and that the case put up by the respondent No. 1 before the Tribunal was a false one and that the documents produced by the respondent No. 1 before the Tribunal were concocted and that the respondent No. 1 has tampered with the outward register of the school.

12. On the basis of the aforesaid definite conclusions, the petitioner has submitted that if an employee cannot be dismissed for committing acts of this nature, then, no employee can ever be dismissed or dispensed with by the employer as no more serious misbehaviour can be thought of. In support of his submission, the petitioner relied on the decision of the Honourable Supreme Court in the case of Union of India (UOI) Vs. Parma Nanda, wherein it was held that when the competent authority has imposed penalty, the Tribunal cannot interfere with it on the ground that it is not commensurate with delinquency of the employee. It is further observed in that judgment that the jurisdiction of the Tribunal to interfere with the disciplinary action of punishment cannot be equated with the appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or the Competent Authority where they are not arbitrary or utterly perverse. On the basis of these observations, the petitioner has submitted that there is no finding given by the Tribunal to the effect that the finding recorded by the Investigating Officer or that the decision of the Management was in any way arbitrary or perverse, and in that view of the matter, the Tribunal would not be justified in reducing the penalty imposed by the Management.

13. The petitioner has further relied on the decision of this Court in the case of Principal, Sardar Patel High School and Another Vs. Chunibhai Nathubhai Raval and Another, delivered on 8th February, 1993 by C.K. Thakker, J. (as he then was) in Special Civil Application No. 4451 of 1982 for the proposition that the penalty imposed on the respondent No. 1

cannot be said to be arbitrary, unreasonable, excessive or disproportionate. Once having held that allegations levelled against the respondent No. 1 are proved and in that view of the matter he could not have been retained in service any more in the larger interest of the educational establishment. While relying on this judgment, the petitioner has submitted that the Tribunal has committed an error of law apparent on the face of the record in reinstating the respondent No. 1 on a lower post as respondent No. 1 had admitted his guilt and also when the charges levelled against him were proved, there is no justification on the part of the Tribunal to disturb the decision taken by the School Management as well as the finding given by the Inquiry Officer. It is further submitted that the Tribunal has committed an error of law apparent on the face of the record and the decision of the Tribunal is tainted with illegality and judicial error which requires to be quashed and set aside. It was further submitted that the respondent No. 1 has admitted his guilt by writing a letter along with the list and after doing it, he has not done anything. The respondent No. 1 has not made any complaint that such writing was obtained from him by the School Management under duress and/or under coercion. It is, therefore, submitted that no reasonable and prudent man would sit silent after writing of such a nature was obtained from him under duress or coercion. It is further submitted that the defence raised by the defendant No. 1 subsequently when the proceedings were initiated against him to the effect that such writing was obtained under duress was only an afterthought, and it was only with a view to avoid disciplinary proceedings initiated against him by the School Management. It is, therefore, submitted that looking to the writing, it was clear that the charges levelled against the respondent No. 1 were not only admitted by him but they were also proved.

14. The petitioner has further relied on the decision of the Honourable Supreme Court in the case of Sanchalakshri and Another Vs. Vijayakumar

Raghuvirprasad Mehta and Another, for the proposition that the extenuating factors referred to by the Tribunal for taking a lenient view cannot

reasonably lead to the conclusion that the punishment was highly disproportionate and that there was really no justification for the Tribunal to

interfere with the discretion exercised by the School Management.

15. The petitioner has further submitted that the Honourable Supreme Court has

referred to a decision in the case of B.C. Chaturvedi Vs. Union of India and others, wherein it was held that the High Court/Tribunal while exercising powers of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. The petitioner has further submitted that looking to the present case, the punishment imposed by the School Management cannot be said to be shockingly disproportionate to the gravity of the misconduct, and in that view of the matter, the petitioner has submitted that the order of the Tribunal is required to be quashed and set aside.

16. Now, coming to the facts of the present case, as stated earlier, the respondent No. 1 has admitted the fact of misappropriation and passed a writing on 22-10-1986 to the effect that he has misappropriated the amount. It was for the first time when the charge-sheet was filed against him and in reply to the said charge-sheet, the respondent No. 1 has raised a dispute that the writing dated 22-10-1986 was obtained by the School Management under pressure. However, these facts were not accepted to be true by the Tribunal and charges levelled against him were proved.

Once the charges levelled against the petitioner having been proved, it is not open for the Tribunal to disturb the finding arrived at by the Inquiry

Officer, unless the Tribunal comes to the conclusion that punishment imposed by the disciplinary authority or the appellate authority shocks the

conscience of the High Court/Tribunal. In my view, the present case does not fall within the ratio laid down by the Honourable Supreme Court in

B.C. Chaturvedi's case (supra), and it is not an exceptional or a rare case wherein it can be held that punishment imposed is disproportionate and

some other appropriate punishment with cogent reasons thereof can be substituted. There is nothing on record which persuades this Court to

believe that the punishment imposed on the respondent No. 1 is unduly harsh, grossly excessive and highly disproportionate to the charges levelled

against the respondent No. 1. The honesty and integrity of an employee is the

utmost requirement in every organization. When a person is entrusted with work and confidence is reposed in him by the Management, it is expected of him that he should discharge his duty with honesty and sincerity. If the amount is misappropriated and forged signatures are made by the respondent No. 1 and if such charges are proved against him, over and above, his own admission earlier, he loses all his rights to be retained in that organization and he does not deserve any leniency. In this view of the matter, I am of the view that penalty imposed on the respondent No. 1 cannot be said to be arbitrary, unreasonable, excessive or disproportionate. I, therefore, hold that the present petition is required to be allowed. The order passed by the Tribunal on 11-10-1990 in Application No. 704 of 1987 is hereby quashed and set aside. The action of the petitioner-Management of removing the respondent No. 1 from service is upheld. The application filed by the respondent No. 1 before the Tribunal is ordered to be dismissed.

17. I, however, before parting with this judgment take note of the fact, that the School Management has not initially taken any action against the respondent No. 1 and only after his failure to return the amount misappropriated, the actions were started against him. I further take note of the fact that this Court (Coram : N.J. Pandya, J.), while allowing Civil Application No. 1493 of 1991 on 10-9-1991 has modified the interim relief to the effect that the applicant would present himself before the Management of School for attending to his job on 18th September, 1991 and if the Management so chooses, allow him work or else the Management is left with the option of claiming the benefit of the said interim relief except for the payment of salary. The learned Advocate for the petitioner has submitted before this Court that after the said order is passed, the respondent No. 1 is entrusted the work of Senior Clerk and a regular salary is being paid to him. In this view of the matter, if nothing adverse is found against the respondent No. 1 after attending his duty as Senior Clerk, pursuant to the order passed by this Court in the said Civil Application, the School Management may reconsider the case of the respondent No. 1, and if they deem it fit, they may allow the respondent No. 1 to continue or in the alternative, they may reconsider the case of the respondent No. 1 by allowing him to opt for either voluntary or compulsory retirement instead of

dismissal from service so that future benefits can be saved. However, I make it clear that this is entirely left to the discretion of the School

Management. These observations are made by this Court purely on humanitarian ground and these are not in any way binding on the petitioner.

With the aforesaid observations, the petition is disposed of. Rule is made absolute accordingly with no order as to costs.