
(2008) 12 GUJ CK 0079

In the Gujarat High Court

Case No : Letters Patent Appeal No. 799 of 2008 in Special Civil Application No. 23303 of 2007 with Civil application No. 9299 of 2008 in Letters patent appeal No. 799 of 2008 in Special civil application No. 23303 of 2007

Baranda Kalabhai Kavaji

APPELLANT

Vs

Prantij Kelvani Mandal and Others

RESPONDENT

Date of Decision : 26-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 1 GLH 290

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M. Doshit, J.

Heard the learned advocates.

1. The appellant, a primary school teacher, has preferred the present Appeal under Clause 15 of the Letters Patent against the judgment and order dated 5th December, 2007 passed by the learned Single Judge in above Special Civil Application No. 23303 of 2007. The respondent No. 1 is the Prantij Kelvani Mandal, an educational trust, [hereinafter referred to as "the trust"]. The respondent No. 2 is the school run and managed by the trust. The respondent No. 3 is the District Primary Education Officer [hereinafter referred to as "the Education Officer"]. On 5th March, 1987 (Page 137 of the record) the trust gave public notice inviting applications from the scheduled tribe persons possessing SSC, PTC qualification for immediate appointment in the respondent No. 2 school. On 12th March, 1987 (Page 138 of the record), the Education Officer issued no objection certificate for appointment of two primary school teachers, one scheduled tribe and one unreserved category, possessing SSC, PTC qualification. Pursuant to the said advertisement, interviews were held on 31st

March, 1987. On 31st March, 1987, the headmaster of the respondent No. 2 school sought approval for appointment of three selected candidates including one Baranda K.K., a scheduled tribe candidate. On the same day, the appellant Baranda Kalabhai Kavaji was appointed as primary school teacher in respondent No. 2 school. Pursuant to the said appointment order, the appellant reported for duty on 1st April, 1987. The said appointment was temporary and on probation. The approval for appointment of the selected candidates was accorded by the Education Officer on 26th June, 1987 (Page 142 of the record). It is undisputed that the appellant did not possess the required qualification of SSC, PTC. He possessed the qualification of SSC, TCWCG (Tailoring Course in Women & Children Garments). Since his appointment, in the year 1993 an inspection was carried out by the Education Officer. Upon such inspection, it was found that the petitioner was qualified as a special subject teacher (tailoring). The total number of special subject teachers in the respondent No. 2 school had exceeded the specified quota of 15% of total number of teachers. For that reason the appointment of the petitioner as a primary school teacher was not approved by the Education Officer for the purpose of grant. In absence of the approval by the Education Officer, by order dated 2nd August, 1993 made by the trust, the appellant's service was terminated effective from 2nd September, 1993 after office hours.

2. Feeling aggrieved, the petitioner approached the Gujarat Primary Education Tribunal, Ahmedabad [hereinafter referred to as "the Tribunal"] in application No. 268 of 1993. Pending the application, the service of the appellant was protected. By judgment and order dated 11th June, 2007 passed by the Tribunal, the said application came to be rejected.

3. Feeling aggrieved, the appellant preferred above Special Civil Application No. 23303 of 2007 before this Court under Articles 226 and 227 of the Constitution of India. The learned Single Judge was pleased to dismiss the said petition by impugned judgment and order dated 5th December, 2007. Therefore, the present Appeal.

4. On perusal of the record, the Tribunal found that, at the relevant time, the Education Officer had granted no objection certificate to the trust to appoint primary school teachers possessing qualification of PTC. The selection of one Baranda Kailashben K., possessing PTC qualification, was approved on 26th June, 1987. However, the name of the said Baranda Kailashben K., PTC teacher was replaced by the name of Baranda Kalabhai K. possessing TWCG (tailoring). The Tribunal also had occasion to peruse photocopy of the interview call letter dated 22nd May, 1987 produced by the appellant. The Tribunal noted that the said interview call letter was addressed to Baranda Kailash K., Vaghpur that too was interpolated to read as Baranda K.K. (Damuni), Bhiloda. Thus, the Tribunal found that the appellant did not possess the required qualification of PTC nor was his name approved for appointment as primary school teacher. He had secured or was offered employment illegally by tampering the record. In the year 1993, at

the time of inspection, the Education Officer noticed that the appointment of the appellant as a teacher in tailoring was in the excess of quota specified for special subject teachers. After perusing the record, the above referred illegalities were noticed by the Education Officer. Consequently, the appellant's appointment was not approved for the purpose of grant. In view of the objection raised by the Education Officer, the trust gave notice of termination on 2nd August, 1993 as aforesaid. The Tribunal upheld the termination of service on the ground that the appointment of the appellant was illegal. The judgment of the Tribunal has been upheld by the learned Single Judge.

5. Learned advocate Mr. Mehta has appeared for the appellant. He has submitted that the appellant is one Kalabhai Kavaji Baranda, i.e. Baranda K.K. He possesses the qualification of TCWCG, a qualification recognized by the Government for appointment as primary school teacher in special subject. The Government of Gujarat has since 1965 adopted the policy of appointing primary school teachers in special subjects like Hindi, Drawing, Tailoring, etc., to the extent of 15% of the total number of teachers. The appellant was, thus, eligible for appointment as primary school teacher. He was appointed as such after following due procedure. His appointment was cancelled by the trust only on the ground that the education officer did not approve the appointment of the appellant for the purpose of grant. The appellant was discharged from service without following procedure as envisaged by Section 40B of Bombay Primary Education Act, 1949. He has submitted that instead of examining legality of the order of termination of service of the appellant, the Tribunal erred in examining the legality of the appointment of the appellant and thus committed a manifest error. The learned Single Judge has nevertheless upheld the judgment of the Tribunal and has thus, committed a similar error. He has submitted that the appellant was never called upon to defend his appointment as primary school teacher in the respondent No. 2 school. The appointment of the appellant has been held illegal in violation of the principle of natural justice. In support of his submission, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Nagarjuna Construction Co. Ltd. Vs. Govt. of Andhra Pradesh and Others, .

6. For our satisfaction, we had called for the record of the matter and have perused the record. After perusing the record, we are satisfied that the observations made by the Tribunal in respect of the illegal appointment of the appellant are based on the materials on record. We also gave opportunity to the appellant to bring in any material to counter the observations made by the Tribunal. Mr. Mehta has candidly admitted that the appellant does not have any material to controvert the observations made by the Tribunal.

7. It is evident that in the year 1987 the trust was given no objection certificate to appoint primary school teachers possessing PTC qualification. In other words, the recruitment was required to be made from amongst the PTC candidates and not from amongst the candidates possessing qualification in special subjects. In the circumstances, the appellant, who did not possess the PTC qualification,

could not have been interviewed, selected or appointed as a primary school teacher. The interview call letter dated 22nd March, 1987 (Page 173 of the record) was also addressed to "Baranda Kailash K., Vaghpur". From the said call letter the words "Kailash" and "Vaghpur" were scored off and were replaced to read as "Baranda K.K. (Damuni), Bhiloda". The approval letter sent by the Education Officer also referred to "Kailashben K. Baranda, SSC/PTC." From that also the word "Kailashben" was scored off and was replaced to read as "Kalabhai K. Baranda". Evidently, the appointment of the appellant was totally illegal and was made surreptitiously, probably in connivance with the head master of the school and somebody from the office of the District Primary Education Officer. Be that as it may, as the appellant was not entitled to appointment as primary school teacher, he could not have been continued as such even after the aforesaid illegalities were noticed. We do agree with Mr. Mehta that what was under challenge before the Tribunal was the order of termination of service of the appellant. The appellant was not called upon to justify his appointment. Nevertheless, the entire record was before the Tribunal, the appellant also had access to the said record. The appellant could have brought forth any material to defend his appointment. The appellant did produce the photocopy of the interview call letter dated 22nd March, 1987 before the Tribunal. Before us also, we had given enough opportunity to the appellant to bring any material to refute the evidence on record. We are of the opinion that once the Tribunal had noticed illegality, the Tribunal was justified in considering such illegalities and making appropriate order. The Tribunal could not have ignored such illegality on specious ground that the appointment of the appellant was not questioned before it. We are of the opinion that the Tribunal and the learned Single Judge were justified in taking note of illegality committed in appointment of the appellant and in upholding the termination of his service.

For the aforesaid reasons, we dismiss this Appeal in limine. Civil Application stands disposed of.