

(2019) 01 GUJ CK 0006

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 1172 Of 2012 In Special Civil Application
No. 8546 Of 1995

Bhagabhai Rupabhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Citation : (2019) 01 GUJ CK 0006

Hon'ble Judges : S.R. Brahmbhatt, J;A.G. Uraizee, J

Bench : Division Bench

Advocate : Ramnandan Singh, Dhavan Jaiswal, Dg Shuklai

Final Decision : Dismissed

Judgement

1. The present Letters Patent Appeal is preferred by the appellant to question the correctness of the judgment dated 11.11.2011 passed by the learned Single Judge in Special Civil Application No.8546 of 1995 whereby the petition preferred by the appellant came to be dismissed.

2. The facts in brief giving rise to the present appeal are that the appellant was serving as a Medical Officer at Gothid Primary Health Center, Taluka : Santrampur, District Panchmahals. He remained unauthorizedly absent from his duty from 6.11.1984 to 9.11.1984. The department, therefore, initiated departmental inquiry against the petitioner by issuing charge- sheet dated 20.08.1995 which was in respect of four counts of misconduct committed by the appellant. The appellant submitted his statement of defence and participated in the departmental proceedings. The Inquiry Officer, who was appointed to consider the charges levelled against the appellant submitted his report and found that 3 out of 4 charges levelled against the appellant are proved and vide order dated 26.09.1995 the appellant came to be compulsorily retired from the service. The appellant challenged the punishment inflicted on him by filing Special Civil Application No.8546 of 1995 which came to be dismissed by the judgment dated 11.11.2011. Hence, this appeal.

3. We have heard Mr. Ramnandan Singh, learned advocate for the appellant, Mr. Dhavan Jaiswal, learned AGP for the respondent Nos. 1 and 3, Mr. U.M. Shastri, learned advocate for the respondent No.2 and Mr. D.G. Shukla, learned advocate for the respondent No.4.

4. Mr. Ramnandan Singh, learned advocate for the appellant vehemently submitted that five witnesses were cited in the charge-sheet and out of them four witnesses did not turn up while the remaining witness was examined was the Presiding Officer as has been recorded in order dated 28.10.2015. He further submitted that the respondent No.4 had recommended imposition of minor penalty of stoppage of one increment only but the authorities have ignored the recommendation and the punishment of compulsorily retirement is imposed on the appellant. He relied upon the decision of the Supreme Court in the case of Nand Kumar Verma v. State of Jharkand and Others, (2012) 3 SCC 580 , S.R. Tewari v. Union of India and Another, (2013) 6 SCC 602, Jagdish Singh v. Punjab Engineering College and Others, (2009) 7 SCC 301 and Shri Bhagwan Lal Arya v. Commissioner of Police, Delhi and Others, (2004) 4 SCC 560. He submitted that the punishment inflicted on the appellant is highly disproportionate to the misconduct and therefore he urged that the appeal may be allowed and the punishment imposed on the appellant may be substituted by the stoppage of increment as recommended by the respondent No.4.

5. Mr. Jaiswal, learned AGP has supported the judgment of the learned Single Judge. He submitted that charges levelled against the appellant, who was working as a Medical Officer, were serious and the same are proved during the inquiry. He submitted that the quantum of punishment is within the domain of the discretion of the authorities and this Court cannot substitute the punishment unless it is found to be highly disproportionate to be proved misconduct. He submitted that since the appellant was working as a Medical Officer and he remained unauthorizedly absent from his duty and that he had prepared a false report in respect of WAD and that the charge No.1, 2 and 3 having been proved, the judgment of learned Single Judge does not warrant any interference in this appeal.

6. We have given our thoughtful consideration to the submission canvassed at the par. We have also perused the report of the Inquiry Officer and the judgment of the learned Single Judge.

7. It is not in dispute that the relevant time the appellant was working as Medical Officer. The appellant himself has admitted that he had remained absent without getting his leave sanctioned albeit on account of illness and subsequent death of his aunt. In our considered view it cannot be considered as mitigating circumstance to substitute minor punishment as the appellant could have informed the authorities about his absence from duty. The learned advocate for the appellant has not pointed out any irregularity in conducting the disciplinary proceeding or that the principles of natural justice or statutory regulations are violated.

8. It is now well settled that Courts cannot act as an appellate Court can reassess the evidence led in the domestic inquiry. The Court can also not interfere on the ground that another view is possible on the basis of material on record, if the inquiry is found to have been fairly and properly conducted and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence cannot be the grounds for interfering with the findings in the departmental inquiry and the punishment inflicted on the delinquent. Therefore, the Court cannot interfere with the findings of fact recorded in the departmental inquiry except where such findings are based on no evidence or they are clearly perverse. In our considered view, none of such grounds exists in the appeal and the reasons can be said to be arbitrary, capricious, mala fide based on extraneous consideration. It is trite law that the Court cannot substitute the quantum of punishment unless and until it is found that the punishment inflicted on the delinquent shocks conscience of the Court. We are of the view that the punishment inflicted on the appellant is disproportionate to proved misconduct.

9. The decision of the Supreme Court on which reliance was placed does not help the case of the appellant.

10. As noted by us, the appellant, Medical Officer has shown gross misconduct in performing his duty, and therefore, we are of the considered view that the punishment inflicted on the appellant cannot be said to be disproportionate to the misconduct committed by him. We are in complete agreement with the reasons recorded by the learned Single Judge. We do not find any merits in this appeal.

11. For the foregoing reasons, the appeal fails and is hereby dismissed. No costs.