

(2012) 07 GUJ CK 0017
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1367 of 2008 In Special Civil Application
No. 6346 of 2006

Bhartiya Seva Samaj Trust and Another	APPELLANT
Vs	
Yogeshbhai Ambalal Patel and Others	RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 07 GUJ CK 0017

Hon'ble Judges : R.R. Tripathi, J; Paresh Upadhyay, J

Bench : Division Bench

Advocate : P.C. Kavina, with Ms Mamta R Vyas, for the Appellant; L.R. Pujari AGP and Mr. Nilesh Pandya for Respondent authorities, for the Respondent

Final Decision : Dismissed

Judgement

Paresh Upadhyay, J.

1.1 This appeal is directed against the judgment and order passed by learned Single Judge in Special Civil Application No. 6346 of 2006 dated 13.11.2008, whereby the order passed by the Gujarat Primary Education Tribunal dated 21.1.2006 in Application No. 69 of 1998 is confirmed.

1.2 The present appeal is at the instance of the appellant-School Management, whose action of terminating the service of respondent-Teacher was challenged before the Tribunal and after considering the totality of the facts and evidence on record, the Tribunal, the fact finding forum, reached to the conclusion that the action of the school management was illegal and consequently, allowed the application filed by the teacher vide order dated 21.1.2006 and directed reinstatement of the teacher with back wages.

1.3 The said order of the Tribunal was challenged by the school management, before this court by preferring a petition under Article 226 of the Constitution of India, being Special Civil Application No. 6346 of 2006, which is dismissed by

learned Single Judge vide judgment and order dated 13.11.2008, which has given rise to this appeal. Heard Mr. P.C. Kavina, learned senior counsel with Ms. Mamta Vyas, learned advocate for the appellant-School Management. The respondent-Teacher, Mr. Yogesh Patel has appeared in person. Mr. L.R. Pujari learned AGP has appeared on behalf of state authorities and Mr. Nilesh Pandya has appeared on behalf of the Administrative Officer of Municipal School Board of Baroda Municipal Corporation.

2. This appeal is considered and decided by this court, in the following factual background, which emerges from record.

2.1 The appellant-School Management invited applications for recruitment of teachers by public advertisement dated 22.12.1992. The said advertisement prescribed educational qualification of B.Sc./B.A. with B.Ed. The respondent-teacher, who was possessing educational qualification of B.Sc. with B.Ed., and was thus meeting with the criteria prescribed in the public advertisement, made an application, along with other candidates who were also possessing similar educational qualification.

2.2 The School Management sent call letters to respective candidates, including the respondent teacher for appearing in personal interview, accordingly the respondent appeared before the Selection Committee constituted by the school management and after due process of selection, the respondent was selected and was asked to report for duties with effect from 1.7.1993, which he did.

2.3 The respondent teacher was paid Rs. 1,000/- per month, which according to him was less than his entitlement and therefore, he had demanded full salary from the School Management. On this, the school management started creating hurdles, by not permitting the teacher to come to duty and continued to pay salary less than his entitlement. Under these circumstances, the present respondent-Teacher moved the machinery under the statute i.e. the Gujarat Primary Education Tribunal by filing Application No. 258 of 1994. The said litigation was contested by the Management and ultimately, the Primary Education Tribunal allowed the application, and vide order dated 21.12.1995 directed that the Teacher is required to be paid as per his entitlement, which was more than what was being paid to him. The difficulties of the teacher started after the said order of the Tribunal, which the management never implemented. It is noted that the said litigation is not the subject matter of present appeal. After the said direction of the Tribunal, the teacher went on making representations to the authorities of the Government and in turn, the authorities like District Education Officer, Baroda and Administrative Officer of the Municipal School Board, Baroda took up the issue with the School Management for implementation of the order of the tribunal regarding payment of salary to the teacher as per his entitlement, in accordance with rules. Considering the policy of the Government prevailing then and after prolonged correspondence, ultimately, District Education Officer, Baroda vide letter dated 6.3.1998 directed the School Management to make payment to the teacher in accordance with rules and also

directed payment of arrears of pay and asked for compliance.

2.4 The school management sent a letter to the teacher on 26.3.1998, by registered post, enclosing therewith a cheque of Rs. 880/- (Rs. 1000 pay, less Rs. 120 deduction towards Provident Fund). The said letter dated 26.3.1998, which is on record, does not speak of anything else, except sending cheque of Rs. 880 towards salary of March, 1998, as aforesaid.

2.5 In this background, the School Management passed an order on 30.4.1998 terminating the service of the respondent-Teacher. The said termination gave rise to the second round of litigation, which is the present one. The respondent teacher challenged the said termination order by filing Application No. 69 of 1998, before the Gujarat Primary Education Tribunal. Before the Tribunal, the Teacher contended that, apart from the fact that the termination is mala-fide and is a fall out of the earlier round of litigation being Application No. 258 of 1994, it is bad in eyes of law on more than one counts. Not only the notice, which is required under the Bombay Primary Education Act was not given to the teacher but even the approval from the Competent Authority was not taken.

Section 40B of the said Act, needs to be recorded here, which reads as under:

Section 40B: Dismissal removal or reduction in rank of teachers:- (1) (a) No teacher of a recognized private primary school shall be dismissed or removed or reduced in rank nor service be otherwise terminated until -

(i) he has been given by the manager an opportunity of showing cause against the action proposed to be taken in regard to him; and

(ii) the action proposed to be taken in regard to him has been approved in writing by the administrative officer of the school board in the jurisdiction of which the private primary school is situated:

Provided that nothing in this clause shall apply to a teacher who is appointed temporarily for a period less than a year or a teacher appointed temporarily on a leave vacancy for a period less than a year.

Explanation: A teacher who is appointed temporarily for a period of less than a year or a teacher who is appointed temporarily on a leave vacancy for a period of such vacancy shall not be deemed to be a teacher appointed temporarily for such period, if he has at any time prior to such appointment served as a teacher either in the same private primary school or in another private primary school under the same management and the aggregate of the period of such past service and the period of service for which he is appointed exceeds one year.

(b) The administrative officer shall communicate to the manager of the school in writing his approval of the action proposed, within a period of forty five days from the date of receipt by the administrative officer of such proposal.

(2) Where the administrative officer fails to communicate either approval or disapproval within a period of forty five days specified in clause (b) of sub-

section (1), the proposed action shall be deemed to have been approved by the administrative officer on the expiry of the said period.

(3) xxxx

(4) xxxx

(5) xxxx.

The teacher entered the witness box, before the tribunal. His evidence is recorded by the tribunal. He was extensively cross examined on behalf of the school management.

2.6 The said application came to be contested by the School Management by filing reply, wherein, a specific stand was taken that so far issuance of notice was concerned, the same was given to the teacher on 26.3.1998 and since he did not respond to the same, it was treated that he has nothing to say in the matter and therefore, the termination order was passed. So far taking approval of the Competent Authority is concerned, stand was taken that letter in this regard was already sent to the Authority, however, nothing was heard from the said authority within stipulated time of 45 days and therefore by deeming fiction, which is provided in the Act itself, it was deemed that the approval is granted by the authority. The school management could not even point out to the tribunal, on which date the approval of the competent authority was asked for, and rightly so, because the said defense was self destructive, inasmuch as considering 30.4.1998, which is the date of termination, the approval ought to have been at least before 45 days i.e. before 15.3.1998. This was not possible because the so called notice issued to the teacher was claimed to be of 26.3.1998. The said notice was not received by the teacher, was already deposed before the tribunal, which the tribunal has, considering the totality, accepted to be factually true.

2.7 In these facts and under these circumstances, the tribunal, considering the material and evidence on record, recorded finding to the effect that there is two fold violation of Sec. 40B of the Bombay Primary Education Act. Firstly no notice was issued to the teacher and secondly, no approval from the competent authority was asked for by the school management. After recording these findings, the Tribunal, allowed the application of the teacher and directed reinstatement of the teacher, with back wages.

2.8 This order of the tribunal is challenged before this court, which, learned single judge by the impugned judgment, has declined to interfere. It is this order of learned single judge, which is challenged in this appeal.

3. Learned counsel for the appellant submitted that a show cause notice, as to why the service be not terminated, was sent to the respondent-Teacher on 26.3.1998 and since the appellant-School Management did not receive any reply, the termination order came to be passed. It is also submitted that the respondent-Teacher is possessing educational qualification of B.Sc., B.Ed. and has not undergone the course of P.T.C. (Primary Teachers Certificate), which is

the requirement under Bombay Primary Education Act and thus the appointment of the respondent teacher itself was not legal and under these circumstances, the action of the appellant-School Management of terminating the service of the respondent was in furtherance of the law. It is contended that the order of the Tribunal, interfering in the order of termination, and in turn, the refusal by learned Single Judge to interfere in the said order passed by the Tribunal, would restore illegality and therefore, the same may be interfered with and the appeal be allowed. Reference is also made to the order of the Division Bench of this Court dated 3.8.2005 in Letters Patent Appeal No. 374 of 1997 in Special Civil Application No. 2463 of 1997 to contend that the appointment of the respondent-Teacher could not be legally continued.

4.1 So far the first contention raised on behalf of appellant that show cause notice was given to the respondent teacher on 26.3.1998 is concerned, it needs to be recorded that the said aspect is a question of fact which the fact finding authority, the Tribunal, has already gone into and has found that such notice was not given and therefore, it may not be necessary for us to consider that aspect in this appeal, however, since the order of the Tribunal is founded on two aspects, that the show cause notice was not given and no permission from the competent authority, as required under the Act was asked for, and thus the issuance of show cause notice or otherwise being one of the two important factors weighing against the appellant, we had permitted the appellant to raise that question and we have considered it. On consideration, we find that the issuance of notice on 26.3.1998 and because of non-receipt of any reply thereto, leading to termination of service on 30.4.1998, is a self-destructive argument raised on behalf of the appellant school management. If the say of the appellant is accepted then the chronology of events should be like this. On 26.3.1998 a show cause notice was issued to the teacher, that he may explain within a period of fifteen days, as to why his services be not terminated. Management claims that no reply was received by it from the teacher. In this eventuality no decision could have been arrived at before expiry of notice period, which was 15 days as claimed by management. Considering 26.3.1998 as the date of notice, no decision could have been taken before 10.4.1998. The question of taking approval, from the competent authority, to implement the said decision would also arise only thereafter i.e. 10.4.1998. Further, the countdown of 45 days with regard to deeming fiction about approval, would also not start before 10.4.1998 and would not be reached before 25.5.1998, while the termination order is dated 30.4.1998. This mathematical calculation itself would negate this argument. Further the competent authority has already made its stand clear that no approval was asked for by the school management in this regard. In these set of circumstances, we find that the Tribunal had rightly come to the conclusion that no notice was issued and no approval was asked for from the competent authority and thus there was two-fold violation of section 40B of the Bombay Primary Education Act and the termination order impugned before it, was required to be set aside. The Tribunal has done that, learned Single Judge has

refused to interfere in that finding and we also see no reason to accept the contention of learned counsel for the appellant in this regard and we negate the same.

4.2 Much grievance is made on behalf of the appellant that though reliance was placed on the order of the Division Bench of this Court dated 03.08.2005 in Letters Patent Appeal No. 374 of 1997 in Special Civil Application No. 2463 of 1997, no discussion is found in that regard in the impugned judgment recorded by learned Single Judge and on that count also this Court may interfere. It was contended that the matter may be remanded to learned Single Judge for this purpose. Since Learned Single Judge has confirmed the order of the Tribunal on merits, remanding the matter for this purpose may not be proper and we have deemed it proper to examine this contention of the appellant, in this appeal. On plain reading of these orders i.e. the order of learned Single Judge 27.3.1997 and that of Division Bench dated 03.08.2005 we find that even these orders do not take the case of the appellant any further. The Division Bench in its order dated 03.08.2005 was examining the legality and validity of the order passed by learned Single Judge dated 27.03.1997. The learned Single Judge in the said judgment had, in terms recorded, to the effect that, no selection procedure was followed before appointing the teachers who were petitioners before this Court, show cause notices were given to each teacher which they had not replied to, and even the teachers were called for personal hearing and they had not remained present. It was also recorded that the termination was required because of reduction of students and in turn, reduction of classes and to maintain the student-teacher ratio it was thought necessary to discontinue the services of the teachers. The order of the Division Bench also records this factual foundation that the show cause notices were given to the teachers which they had not contested and then the judgment proceeded further. As noted above, in the present case, not only the Tribunal has recorded that no notice was issued to the teacher and no approval was sought for from the competent authority, but this Court, in this appeal also, has examined the said question of fact, at the instance of the appellant and in view of that very factual foundation missing in the present case, which was available to this Court while examining the case of the petitioners of Special Civil Application No. 2463 of 1997 and Letters Appeal No. 374 of 1997, we hold that the said order can not be of any help to the appellant in this appeal.

4.3 Further, in the present case, it is not that the issuance of notice would not have made any difference to the ultimate outcome. There is ample material placed on record of this petition and appeal that possessing PTC is not sine qua non to be appointed and/or to be continued as a Teacher. More than one policy decisions of the Government in the form of Government Resolution and Circular are placed on record to demonstrate that the teachers having educational qualification of B.Ed. were being considered eligible to be appointed as Teachers and also that those who were not possessing the said qualification could be sent for such training while continuing them on job. In the present case, we cannot

loose sight of the glaring fact that not only the respondent teacher but other teachers were also employed by the appellant school with the same or similar qualification in the same recruitment process, in which the present respondent teacher was selected and appointed. Not only that, in subsequent years also the appellant school management had issued advertisement for recruitment of teachers with the same requirement of B.Sc. B.Ed./B.A. B.Ed. Teachers with such qualification are recruited by the appellant management even pursuant to said advertisement i.e. after the appointment of respondent teacher and they all are continued even now by the appellant school management. On being asked by this Court, the state authorities have placed on record the statement showing details of the teachers working with the appellant school at present, which shows that number of teachers with the educational qualification of B.A. B.Ed or B.Sc. B.Ed are working with the appellant school management. Some of the names which can be referred to in this regard are (i) Mrs. Mamtaben Jagrutbbhai Barot, (ii) Mrs. Rekhaben Virabhai Patel, (iii) Mrs. Urmilaben Chandrakantbhai Mistry, (iv) Mr. Rajendrakumar Dahaybhai Vaidh, (v) Mrs. Sangeetaben Narendrabhai Patel (vi) Mr. Dilipbhai Naranbhai Patel, (vii) Mrs. Mayaben Rushikesh Pandya (viii) Mrs. Ritaben Shaileshbhai Joshi, (ix) Mrs. Nilam Babubhai Sinnarkar, (x) Mrs. Priyankaben Nikunj Kumar Panchal. These names are illustrative and not exhaustive.

4.4 If the stand of the appellant school management is examined in this factual background, we find substantial force in the argument of respondent teacher who has appeared in person that the cause for terminating his service was only his insistence that he may be paid his salary as per his entitlement and his raising voice against the exploitation.

4.5 At this stage learned counsel for the appellant I has relied upon the "SALMOND ON JURISPRUDENCE" with specific reference to "MOTIVE". It is sought to be canvassed that "a wrongful act is seldom intended and desired for its own sake. The wrongdoer has in view some ulterior object which he desires to obtain by means of it. The evil which he does to another, he does and desires only for the sake of some resulting good which he will obtain for himself. The desire for this good is the motive of his act. " We are unable to accept this argument in this fact situation. On considering the totality of the facts and circumstances, some of which are noted and discussed above, we have no hesitation to come to the conclusion that the termination of the present respondent teacher, apart from being illegal as held by the Tribunal, is also a clear case of victimization by the school management for raising his voice against exploitation. The present appeal, which for the reasons recorded above can not be legally accepted, if accepted, would also endorse the victimization by the school management which we are not inclined to do.

4.6 Learned counsel for the appellant has, without prejudice to his above referred contentions, further contended that the respondent teacher is not entitled to any back-wages. It is pointed out that during the period from

1.1.2003 to 8.5.2005 the respondent had worked with one school. The respondent teacher has conceded that in his starvation days he could get some work for some time and he had worked with one school for the period from 1.1.2003 to 08.05.2005 and was getting Rs. 1,000/- per month. So far the teacher getting only Rs. 1,000/- per month is concerned, the appellant school management is in no position to dispute, since even they were also paying Rs. 1,000/- per month. If this period of about 28 months is accepted, the back-wages that may be payable to the respondent teacher pursuant to the order of the Tribunal, can be reduced by about Rs. 28,000/-. At this stage, it would be useful to refer to the observations of Hon'ble the Supreme Court of India in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , particularly para: 39 thereof, which reads to the effect that: "Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs as awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs.....It also leads to taking up of frivolous defences....." We find that these observation of the Hon'ble Supreme Court of India applies with full force in the facts of this case. Considering the totality, present appellant-School Management is required to be saddled with cost, which in our view, should not be not less than Rs. 30,000/- and therefore, back wages, which is sought to be reduced to the extent of Rs. 28,000/- need not be done and at the same time, no separate order may be passed for imposition of cost against the appellant. Thus, non reduction of back wages in the final order of this judgment would be taken care of by the fact that we are not passing any separate order of imposing cost against the present appellant-School Management.

4.7 The respondent-party in person has addressed this court and has relied upon the judgments of the Honourable Supreme Court of India in the case of Anoop Sharma vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana) [Civil Appeal No. 3478 of 2010 dated 09.04.2010] and Shantiniketan Hindi Primary School vs. Pal Hariram Ramavtar [Civil Appeal No. 1095 of 2010 dated 01.02.2010] and has contended that this court may not interfere in the orders of the tribunal and that of learned single judge.

4.8 Considering the totality of the facts and circumstances as discussed above, we are of the view that none of the contentions raised by the appellant-school management can be accepted and no interference is called for in the order passed by the Tribunal or that by learned single judge. For the reasons recorded above, we arrive at the judgment, and pass the order, as under.

(i) The Gujarat Primary Education Tribunal, has not committed any error, in coming to the conclusion that the action of the school management, of terminating the service of the respondent teacher, vide order dated 30.4.1998 was illegal. We find no error in the judgment and consequential order passed by the Tribunal dated 21.1.2006 in Application No: 69 of 1998.

(ii) Learned single judge has also not committed any error, much less any error

apparent on the face of record, by not interfering in the above referred judgment and order dated 21.1.2006 passed by the Tribunal.

(iii) The appeal has no merit and the same is dismissed. I Interim stay granted earlier, stands vacated.

(iv) The appellant school management is directed to implement the order passed by the Gujarat Primary Education Tribunal dated 21.1.2006, in Application No: 69 of 1998.

(v) At this stage, learned counsel for the appellant-school management has requested that the above direction, to implement the order of the tribunal, be suspended for a period of six weeks. The request is accepted and it is ordered that, the direction contained in this order, to implement the order of the Gujarat Primary Education Tribunal dated 21.1.2006, in Application No: 69 of 1998, shall stand suspended for a period of six weeks from today.

Order accordingly.