
(2016) 06 GUJ CK 0018
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2783 of 2010 in Special Civil Application No. 10238 of 1998

Dahyabhai Nathubhai Patel

APPELLANT

Vs

Director of Primary Education

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 152
Constitution of India, 1950 — Article 309

Citation : (2016) LIC 3231

Hon'ble Judges : Mr. Anant S. Dave and Mr. A.S. Supehia, JJ.

Bench : Division Bench

Advocate : Mr. N.M. Kapadia, Advocate, for the Appellant; Ms. Vacha Desai, AGP, for the Respondent No. 1; Mr. Rutvij M. Bhatt, Advocate, for the Respondent No. 2; Rule Served, for the Respondent No. 3; Mr. H.S. Munshaw, Advocate, for the Respondent No. 4

Final Decision : Dismissed

Judgement

Mr. A.S. Supehia, J.—By way this appeal under Clause 15 of the Letters Patent, the appellant (since deceased through his heirs and legal representatives) seeks to challenge judgment and order dated 04.05.2010 passed in Special Civil Application No. 10238 of 1998 whereby dismissing the said petition. However, the subsistence allowance granted to the petitioner was ordered not to be recovered.

2. Brief facts relevant for the purpose of deciding this appeal are that the petitioner was serving as Primary Teacher at Dhamdachha Primary School, Taluka Gandevi, District Valsad. He came to be arrested on 01.01.1998 along with other 15 accused for the offences punishable under Sections 147, 148, 149, 302 and 323 of the Indian Penal Code. He came to be detained in custody for more than 48 hrs. and thus, was suspended vide order dated 17.12.1988 in view of invoking the Gujarat Panchayats Service (Disciplinary and Appeal) Rules, 1964. Petitioner was convicted vide judgment and order dated 21.01.1990 passed by

District and Sessions Judge, Valsad. He preferred Criminal Appeal No. 72 of 1990 against the order of conviction and sentence before this Court. In view of the conviction the petitioner was dismissed from service vide order dated 30.05.1990. In view of the dismissal payment of subsistence amount was stopped.

3. Thereafter this Court vide judgment and order dated 11.10.1993 passed in Criminal Appeal No. 72 of 1990 acquitted the petitioner. Resultant of that the petitioner came to be reinstated in service vide order dated 14.07.1995.

4. The question about regularising the period of suspension of the petitioner between 01.01.1988 till 30.07.1995 was not decided. Petitioner thereafter filed Special Civil Application No. 2879 of 1995 challenging his termination/dismissal. By order dated 30.10.96, order dated 30.05.90 terminating/dismissing his service was set aside. It was further observed that necessary orders regulating the period spent under suspension as well as the period during the petitioner's services was terminated shall be passed within a period of four months.

5. Pursuant to the aforesaid direction of this Court, vide order dated 10.02.1997 period of suspension of the petitioner from 01.01.1988 to 13.05.1998 i.e. 134 days was treated as Half Pay Leave (HPL), whereas the period from 14.05.1988 to 13.07.1995 i.e. 2616 days was treated as extraordinary leave. The petitioner challenged the said order dated 10.02.1997 with a prayer to make payment of full back wages with all consequential benefits. Further prayer for restraining the respondents from recovering the amount of subsistence allowance was made. Learned Single Judge dismissed the said petition relying upon the decision in the case of K.D.Desai v. High Court of Gujarat, 2009 (3) G.L.H. 631.

6. Mr.Kapadia, learned advocate appearing for the appellant, has contended that period of suspension is to be treated as on duty since the appellant was acquitted vide judgment and order dated 11.10.1993. Hence, in view of the acquittal it cannot be said that the suspension of the petitioner was justified. He has also stated that the authority concerned has not recorded any finding as stipulated under Rule 152 of the Bombay Civil Services Rules (BCSR) that whether the suspension was wholly unjustified or not. He has also relied upon the order dated 11.10.1993 passed in Criminal Appeal No. 72 of 1990 acquitting him. Various judgments were relied upon by him, mainly on the issue that in the event of reinstatement order of full back wages should follow. He has relied upon the following judgments to substantiate his case:

1. Brahma Chandra Gupta v. Union of India AIR 1984 SC 380;
2. State of Punjab v. Shambhu Nath Singla. (1996)1 SCC 296;
3. S.M. Saiyad v. B.M.C., AIR 1984 SC 1829;
4. M. Gopalkrishna Naidu v. State of Madhya Pradesh, AIR 1968 SC 240;
5. Babulal v. State of Haryana, AIR 1991(1) SC 1310;

6. Correspondent v. V. N. Karpagu 2008(4) SLR (SC) 794;
7. Shantiniketan Hindi Primary School v. Pal Hariram, 2010(2) SLR 189;
8. Union of India v. Amritlal Manchanda and another (2004) 3 SCC 75.

7. Learned advocate Mr.Kapadia has also relied on the Circular dated 13.04.1970 wherein he had relied on Clause 2(b). He has stated that in view of the said clause, any Government servant who is placed under suspension with the specific object or prosecution or pending prosecution in the court of law, is reinstated in service upon acquittal of a charge the entire period from the date of suspension to the date of reinstatement in service should be treated as duty for all purposes.

8. Short question which falls under consideration before us is that whether the suspension of the petitioner was justified at the relevant time. Perusal of the impugned order dated 10.02.1997 clarifies that the authority concerned has taken into consideration all the aspects about his involvement in the criminal case. It is specifically stated that the petitioner was acquitted on technical grounds due to lack of evidence. The aspect of suspension during the departmental inquiry or contemplation of departmental inquiry or initiation of criminal case was extensively dealt with in the Division Bench judgment in the case of K.D.Desai (supra). Division Bench has observed as under:

"While deciding the question under sub rules (2) and (4) of Rule 152, whether the delinquent should be given full pay and allowances for the period of suspension, the Competent authority will have to consider both the questions whether delinquent was fully exonerated in the Departmental inquiry or whether suspension was wholly justified in light of the findings given at the conclusion of the Departmental Inquiry. Even where the charges are not proved, the Competent Authority would be justified in considering whether the charges were not proved on account of insufficiency of evidence or benefit of doubt having been given to the delinquent. Disciplinary authority has discretion under the Rules to decide whether the period of suspension should be treated as period spent on duty or not spent on duty. On facts, upon perusal of Inquiry report accepted by Competent authority, it was found that charge Nos. 2 and 3 were not proved on account of lack of sufficient legal evidence and therefore it cannot be said that suspension of petitioner was wholly unjustified merely because all the charges levelled were not proved."

9. The suspension order dated 17.12.1988 is passed in view of involvement of the appellant in the criminal case. Petitioner was also convicted in the said offences by the lower court, though subsequently he was acquitted by this Court. The petitioner also remained in custody for more than 48 hrs., which is undisputed. Hence, it cannot be said that the suspension of the petitioner at the relevant point of time i.e. due to his arrest on his involvement in the criminal case was "unjustified". Petitioner is also acquitted by this Court in appeal on technical ground due to lack of evidence. In such circumstances, it cannot be said that the order dated 10.02.1997 passed by the authority is unjustified or

illegal.

10. Reliance placed by the learned advocate for the petitioner on circular dated 13.04.1970 will not salvage the situation for him. Said circular does not state about deemed suspension of a Government servant for remaining in custody for 48 hrs. Moreover, in view of the aforesaid Division Bench judgment dealing with Rule 152 of the BCSR, we hold not the suspension of the petitioner was justified.

11. In view of what is stated above, judgment and order passed by learned Single Judge does not require any interference. However, as observed in Paragraph No. 15 of the order of learned Single Judge, no subsistence allowance granted to the appellant petitioner shall be recovered. Appeal stands dismissed. No costs.