

(2008) 01 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No. 27730 of 2007

District Primary Education Officer

APPELLANT

Vs

Geetaben Ratilal Patel

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2008) 01 GUJ CK 0032

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Sejal K. Mandavia, for the Appellant; R.C. Jani, for Respondent 1, for the Respondent

Judgement

Jayant Patel, J.—Heard Ms. Mandavia, learned Counsel appearing for the petitioner and Mr. Jani, learned Counsel appearing for the respondent.

2. Upon hearing the learned Counsel for both the sides, it prima facie appears that the respondent was engaged as a teacher in the year 1990 and it is an admitted position that she continued in service up to 1999, for a period of about 9 years. In the year 1999, on account of the divorce, she sustained mental disability and as a result thereof, she had undergone a prolonged treatment. Due to mental disability, it appears that she might not have appeared in the inquiry proceedings initiated by the petitioner. As per the petitioner, she remained absent and not even defended the inquiry proceedings and the order of dismissal was passed. It is true that the order of dismissal is not challenged by the respondent before the higher forum, however, she has approached the Commissioner for Physically Handicapped persons and ultimately, the Commissioner has passed the order, setting aside the dismissal and also interim directions.

3. Whether the Commissioner has no power to set aside the order of the dismissal or not deserves consideration, but at the same time, it also appears that it is on account of the mental disability, the respondent could not defend in

the proceedings and as a result thereof, the order of dismissal came to be passed. It is an admitted position that the respondent is mentally disabled and, therefore, had the order of dismissal not been there, the respondent otherwise would have been entitled to the benefits of the Act namely; The Persons with Disabilities (Equal Opportunities, Etc.) Act, 1995 and more particularly, Section 47 of the Act. Section 47 of the Act for ready reference reads as under:

47. Non-discrimination in Government employment.- (1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

4. It may be recorded that the aforesaid provision is to be read in light of the observations made by this Court in case of *SGSRTC v. Gopal Motambhai Patel* reported at 2003(3) GLH, 745.

5. Ms. Mandavia, learned Counsel appearing for the petitioner, however, submitted that it is not a case of dismissal from the service on account of the mental disability or reduction in rank and, therefore, if the dismissal has already taken place, it cannot be set aside by the Commissioner, which may result into consequential reinstatement in service with backwages and other directions. She also submitted that on account of the mental disability of the respondent, she is not at all in a position to discharge any other work also.

6. Whereas, Mr. Jani, learned Counsel appearing for the respondent submitted that as per the medical certificate produced on page 60 of the Chief District Medical Officer and Civil Surgeon, she has mental disability up to 40 to 70% and, therefore, she may be in a position to do minor manual work in the School, if assigned to her.

7. It appears that if the person has sustained physical disability, including that of mental disability while in service, it would be required for the authority to extend benefit of Section 47 of the Act. Keeping in view the peculiar facts and circumstances that when the departmental actions were initiated, she had

already sustained mental disability, a pragmatic approach is required to be taken. Further, it will be for the concerned Doctor to certify regarding the nature of duty, which can safely and conveniently be performed by the respondent after due examination.

8. Since, at this stage, the order of dismissal is yet not finalised by this Court, there may not be any payment of backwages and ultimately whether the Commissioner has power or not is an aspect finally to be decided at the later stage. However, it appears that since the respondent is having mental disability of 40 to 70%, it would be just and proper to allow the operation of the order passed by the Commissioner so as to enable the respondent to get regular salary and after examination by the competent doctor appropriate duty may be assigned to her.

9. In view of the aforesaid, I am inclined to pass the following order:

Rule.

(a) By interim order, there shall be stay against the impugned order of the Commissioner to the extent that the petitioner shall not be required to pay any backwages to the respondent, but the petitioner shall reinstate the respondent in service by paying regular salary to her from 1.2.2008.

(b) It is further observed and directed that the petitioner shall get respondent examined through a Government Doctor of their choice and if it is so opined by the doctor, such duty may be assigned to the respondent at a place or a nearby place, where she can comfortably and conveniently, in a safe atmosphere, discharge duty.