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(2011) 11 GUJ CK 0082

In the Gujarat High Court

Case No : Special Civil Application No. 3880 of 2008

Jasubhai Rupabhai Chauhan — APPELLANT

Vs

State of Gujarat and 5 — RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:
Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 — Rule 5, 6, 6, 6(3), 6(4)
Gujarat Panchayat Services Discipline and Appeals Regulations, 1997 — Regulation 6

Citation : (2011) 11 GUJ CK 0082

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : Yatin N Oza, for Mr Rajesh K Savjani for Petitioners, for the Appellant; Manish J Patel for Respondent(s) : 3, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice G.B. Shah

1. This Special Civil Application is preferred by the petitioner challenging the legality and validity of the order dated 27.5.2006 passed by the District Primary Education Officer, Himatnagar, District Sabarkantha and confirmed by the District Education Officer by order dated 13.7.2007 by which the petitioner was removed from the service as Primary School Teacher, Prantvel by imposing punishment under sub-Rule 5 of Rule 6 of Panchayat Services (Discipline & Appeal) Rules, 1977 in violation of Rule 8 of the Gujarat Panchayat Service (Discipline & Appeal) Rules, 1997. The prayer sought for by the petitioner in paragraph No.32 (A) reads as under:

32 (A) Hon''ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus declaring the action of removal of service of the petitioner as a Primary School Teacher under sub Rule 5 of Rule 6 of Gujarat Panchayat Sevice (Disciplinary & Appeal) Rules, 1997 without following procedure under Rule 8 as arbitrary, discriminatory, illegal

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and be further pleased to quash and set aside the order dated 13.7.2007 (Annex.''M'') passed by the District Education Officer, Himatnagar, District Sabarkantha and order dated 27.6.2006 - Annex.''J'' passed by the District Primary Education Officer, Himatnagar, District Sabarkantha by directing the respondents to treat the petitioner as continue in service and to pay the petitioner all consequential benefits.

(B) Pending hearing and final disposal of this Special Civil Application Hon''ble Court be pleased to stay the execution, implementation and operation of the order dated 13.7.2007 passed by District Education Officer, Himatnagar district, Sabarkantha and order dated 27.6.2006 passed by District Primary Education Officer, Himatnagar, district Sabarkantha.

(C) Be pleased to grant any other and further relief as think fit and proper in the facts and circumstances of the case and in the interest of justice.

2. The undisputed facts of the case narrated in the list of events of the petition are as under:

The petitioner was discharging his duties as Primary School Teacher since last 18 years. On 19.9.1998 the petitioner joined the services as Primary School Teacher run and managed by Prantvel village Panchayat village Prantvel Taluka Bayad, District Sabarkantha. On 3.3.2005, the Deputy Sarpanch Prantvel village, submitted an application to Taluka Panchayat and District Social Welfare Officer that by telephonic information (2/3/05), he had made complaint to District Primary Education Officer that the petitioner has not disbursed the amount meant for Shisyavruti i.e. for student activity and student dress for the year 2003-2004 to the concerned students. On 16.4.2005, on the basis of telephonic instructions from District Primary Education Officer dated 18.3.2005 and pursuant to the aforesaid complaints, Taluka Panchayat office, Bayad, through Taluka Kelavni Nirikshak (TKN) submitted a report favouring District Primary Education Officer and informed that;

- By Panchayat letter dated 3.3.2005 Juth Mantri Gabat was directed to remain present with all the documents and details showing the disbursement of amount for student activities and student dress for the year 2003-04, at the office of District Social Welfare Officer, Bahumali Bhavan, Himatnagar.

- As no report was submitted by Panchayat letter dated 18.3.05 it was brought to the notice of Juth Mantri Gabat that though there is no Harijan student in Prantvel School, it has come to the knowledge that amount for such student activities has been obtained by showing false names and directed to produce record before District Social Welfare Officer.

- By communication dated 30.3.05 through Juth Mantri Gabat, Principal Prantvel primary school Shri Jasubhai R Chauhan (petitioner) was directed to produce Darkhast papers for the year 2003-04 seeking amount for student activities and student dress. Demand record has not been submitted by him.

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- On 13.4.05, Taluka Kelavni Nirikshak personally visited Prantvel primary school and examined the record and found that;

- On 29.3.04 Taluka Office had received cheque for Vanjara caste, socially and educationally backward class.

- On 23.4.04 said amount has been disbursed in favour of concerned group for which necessary orders/bills and procedure has been submitted in the department of Bayad Taluka Panchayat.

- Accordingly on 28.6.2004 proportionate amount has been paid to concerned Juth Mantri for disbursement of said amount to the concerned primary school under his group. Said amount was required to be disbursed in favour of student in presence of Sarpanch and village representative within period of two days.

- In the present case, on 7.7.2004 Juth Mantri Gabat has paid the amount to Principal for its disbursement in favour of students/parents.

- On 3.5.2005 Principal, Prantvel Primary School has disbursed the amount in presence of Sarpanch.

- Thus, there is delay of 10 months in disbursement of amount which he was not authorized to keep it on hand.

- With effect from 13.4.05 necessary record to that effect has been kept with this office custody after obtaining the same from Principal Prantvel Primary School.

On 26.5.2005, District Primary Education Officer (DPEO), (District Primary Education Committee), byits letter dated 26.5.05 sought approval to place the petitioner under suspension from Director Primary Education, Gandhinagar, because of late disbursement of amount and for keeping the amount in his custody for a period of 10 moths. Charge sheet came to be issued on 26.5.2005 on the petitioner and called for necessary reply to the charges levelled against the petitioner. On 1.8.2005, the District Primary Education Officer issued show cause notice to the petitioner calling for explanation and to remain personally present before him on 8.8.2005 and to show cause why action under provisions of Gujarat Panchayat Services Discipline & Appeals Regulations, 1997 shall not be taken against the petitioner. The petitioner submitted his explanation on 8.8.2005 and admitted his mistake and requested for pardon. The District Primary Education Officer, Himmatnagar passed suspension order on 15.12.2005. On 17.4.2006, the District Primary Education Officer issued show cause notice seeking explanation and reply as to why the proceedings under Gujarat Panchayat Services Discipline & Appeals Regulations, 1998 under sub rule 1, 2, 3 of Rule 3 shall not be initiated and why should not he be punished under Regulation No.6 of Gujarat Panchayat Services Discipline & Appeals Regulations, 1997. The petitioner submitted his representation on 1.5.2006. On 27.5.2006 the District Primary Education Officer, Himmatnagar passed order removing the petitioner from service under sub clause 5 of Rule 6 of Gujarat Panchayat Services (Discipline & Appeal) Rules, 1997 without following the procedure as

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contemplated under Rule 8 of Gujarat Panchayat Services (Discipline & Appeal) Rules, 1997.

3. Learned Senior Advocate Mr Y N Oza has vehemently submitted that the impugned order is arbitrary, discriminatory and contrary to the principles of natural justice and, therefore, requires to be quashed and set aside. He has submitted that without holding departmental inquiry, and without considering the averments made in the appeal memo and without any evidence, major punishment is imposed on the petitioner. In fact, the respondent authorities have relied on the report Annexure ''A'' and issued charge sheet to the petitioner. He has further submitted that the impugned order is in complete breach of Rule 8 of the Gujarat Panchayat Services (Discipline & Appeal) Rules, 1997 (for short, "the Rules") and the impugned order is passed at the behest of political vengeance as narrated in para 7 of the petition with a view to take undue advantage by extending assurances and promises to the petitioner and persuade the petitioner to plead guilt. He has then submitted that the respondent authorities ought to have supplied copy of the statement on the basis of which the impugned order has been passed in violation of natural justice and, therefore, the same is required to be quashed. It is the further submission of the learned Senior Advocate that the impugned orders suffers from patent error inasmuch as the punishment was based upon the assurances and promises extended to the petitioner by the District Primary Education Officer and that major penalty cannot be imposed on the basis of acceptance of guilt by the delinquent. Admission of guilt alone should not be regarded as sufficient proof of misconduct and thus, it is submitted by the learned Senior Advocate that the impugned order is required to be quashed and set aside.

4. Learned Advocate Mr M.J. Patel appearing for the respondents has drawn my attention to the affidavit-in-reply filed by respondent No.3 dated 1.4.2008 at pages No.73 to 77. He has submitted that the petitioner was serving as main Teacher in Prantvel Primary School. The respondents have received complaint regarding non-disbursement of the amount of Shisyavruti Rs. 49,350/- which was received by the petitioner on 7.7.2004 for the year 2003-2004 and another allegation is that for the year 2001-2002 no scheduled caste student was studying in his school though he has prepared darkhast and received an amount of Rs.4500/-. He has further submitted that the respondent has made inquiry and seized all the relevant records and it has come to the notice that the amount for which allegations were made was used by the petitioner for his personal use and after the complaint was made, he had redeposited the same in the Government Treasury which indicates that if the complaint was not made, the petitioner would not have deposited the amount. He has submitted that after receipt of report from the Taluka Kedvani Nirikshak, the respondent had issued show cause notice upon the petitioner and called for explanation. In reply to the show cause notice, the petitioner did confess that for the first time that he had committed such mistake and that in future such mistakes will not be repeated. According to the learned Advocate for the respondent, the action of the petitioner

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leads to misappropriation of government fund. Moreover, in reply to the show cause notice, the petitioner had never asked for any documents in support of his say or any list of witnesses and the respondent authorities were justified in their action by passing order of removal from service. The petitioner never stated that he had not misappropriated the amount. On the contrary, he has stated that since he had redeposited the amount, he may be awarded minimum punishment. The petitioner, being a main Teacher who is supposed to guide the students by teaching manners, culture and should be a good preacher, had indulged in such type of criminal offence of misappropriation of funds which was meant for poor and backward class students for their future, he does not deserve any sympathy or leniency. The learned Advocate for the respondents has finally submitted that in view of the above submissions, the punishment awarded upon the petitioner is legal and it does not require any interference by the court.

5. Rule 8 of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 where, procedure for imposing major penalties is prescribed. Sub Rule(1) provides that; ''No order, imposing on a member of the Panchayat Service any of the penalties specified in clauses (3) to (6) of Rule 6, shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided''. The detail procedure is prescribed under Rule 8(1) to 8(14) which are quoted as under :

8. Procedure for imposing major penalties. - (1) No order, imposing on a member of the Panchayat Service any of the penalties specified in clauses (3) to (6) of rule 6, shall be passed except after a formal inquiry is held as far as may be in the manner hereinafter provided.

(2) In case where the allegations against a member of the Panchayat Services are grave or are such as would entail a major punishment such as reduction in rank, compulsory retirement, removal or dismissal from service, a preliminary inquiry shall, as far as possible, be held by an officer superior to the person against whom the allegations are to be inquired into;

Provided that, if there has been an investigation or inquiry by police in the matter and a report has been received thereon, the same may be considered an equivalent to a preliminary inquiry and no further preliminary inquiry shall be necessary.

Provided further that where, however, the disciplinary authority thinks that any matter needs to be clarified further it shall refer the matter to the police for such further clarification and shall not entrust it to the departmental officers.

(3) On receipt of the report of the preliminary inquiry or the police report, the disciplinary authority shall determine -

whether there is a prima facie case for a formal inquiry;

whether the member of the Panchayat Service should be prosecuted in a court of law;

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(4) When an order for formal inquiry has been made, the disciplinary authority shall frame definite charges on the basis of allegations and shall communicate such charges along with the statement of the allegations to the member of the Panchayat Service and also require him to submit within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(5) The person against whom inquiry is to be held shall for the purpose of preparing the defence, be permitted to inspect and take extracts from such records as he may specify;

Provided that such permission may be refused if for reasons to be recorded in writing in the opinion of the inquiry officer such records are not relevant for the purpose or it is against the public interest to allow his success thereto.

(6) On receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation along with all inquiry papers.

(7) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. A member of the Panchayat Service may present his case with the

assistance of any other panchayat servant approved by the Enquiry Officer, but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(8) If the member of the panchayat service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charges shall be entitled to cross examine the witnesses, to give evidence in person, to produce documentary evidence, if any, and to have such witnesses called as he may with :

Provided that the Enquiry Officer, may, for reasons to be recorded in writing, refuse to call a witness.

(9) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefore. If in the opinion of the Enquiry Officer, the proceedings of the inquiry establish charges different from those originally framed, he may record findings on such charges :

Provided that findings on such charges shall not be recorded unless the

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Panchayat Servant has admitted the facts constituting such charges or has had an opportunity of defending himself against such charges.

(10) The proceedings conducted against the person charged shall contain sufficient record of -

the charges framed against such person and the statement of allegations;

the written statement of defence, if any;

the oral evidence taken in the course of the inquiry;

the documentary evidence considered in the course of the inquiry;

the orders, if any, made by the Enquiry Officer or the disciplinary authority as the case may be, with regard to the inquiry;

a report setting out the findings on each charge and the reasons therefore.

(11) The Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the

proceedings mentioned in clause (10) above to the disciplinary authority without recommendation relating to the penalty to be imposed, unless the disciplinary authority has specifically called for such recommendation. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record of the proceedings, he is of the opinion that any of the penalties specified in clauses (3) to (6) of rule 6 should be imposed, be shall

(a) furnish to the person charged a copy of the report of the Enquiry Officer and, where the disciplinary authority is not the Enquiry Officer, a Statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer, and

(b) give a notice to the person charged stating the penalty proposed to be imposed on him and calling upon him to show-cause, within a specified time, why the proposed penalty should not be imposed on him.

(12) (a) In every case in which it is necessary to consult the Board in accordance with the rules framed in that behalf the record of the inquiry, together with the copy of the notice given under sub-clause (b) of clause (11) above and the representation made in response to such notice, if any, shall be forwarded by the disciplinary authority to the Board for its advice. On receipt of the advice, the disciplinary authority shall consider the representation if any, made by the person charged, and the advice given by the Board and determine what penalty should be imposed on the person charged and pass appropriate orders in the case.

(b) In a case in which it is not necessary to consult the Board or the Selection Committee, the disciplinary authority shall consider the representation, if any,

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made by the person charged in response to the notice and determine what penalty, if any, should be imposed and shall pass appropriate order on the case.

(13) If the disciplinary authority, having regard to the findings, is of the opinion that any of the penalties specified in clauses (1) to (3) of rule 6 should be imposed, it shall pass appropriate order in the case subject to the condition that in every case in which it is necessary to consult the Board the record of the inquiry shall be forwarded to the Board for its advice and such advise shall be taken into consideration before passing final orders.

(14) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service who shall also be supplied with a copy of the report of the inquiry officer and where, disciplinary authority is not the Enquiry Officer, a Statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer unless they have already been supplied to the person charges, and also a copy of the advice, if any, given by the Board.

Rule 6(6) provides that ''Dismissal from service which shall ordinarily be a disqualification for future employment.

5.1 Therefore, Rule 8(1) suggests that if punishment of dismissal is to be imposed, then, it can be imposed after formal inquiry is held as far as may be in the manner hereinafter provided in Sub Rule(2) to (14). Undisputedly between the parties, the aforesaid procedure, though mandatory, was not followed otherwise, it amounts to denial of reasonable opportunity of hearing to the petitioners which violates the basic principles of natural justice.

6. That aspect has been considered by the Hon''ble Apex Court in case of Meenglas Tea Estate Vs. Its Workmen, The relevant Para 4 is quoted as under :

4. The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross- examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statements made by any witness tendered in evidence. The enquiry such as it was, made by Mr. Marshall or Mr. Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was

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no opportunity to the persons charged to cross-examine then and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workmen de novo before it.

7. The Hon''ble Apex Court has also considered that aspect in another decision in case of Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, The relevant Para 4 is quoted as under :

4. In support of the appeal against this order Mr. Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the domestic tribunal. He contended that the Tribunal was wrong in thinking that the rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were confronted with the reports of the supervisor and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the enquiring authority they were "unable to explain as to why these persons would be making the reports against them falsely". In our opinion, it would be a misuse of the words to say that this amounted to holding of proper enquiry. It has been laid down by this Court in a series of decisions that if an industrial employee''s services are terminated after a proper domestic enquires held In accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined - ordinarily in the presence of the employee -- in respect of the charges. (iii) the employee is given a fair opportunity to cross examine witnesses, (iv) he is given a fair opportunity to examine witnesses secluding himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer reorders his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross examination but it would appear that they were not present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity so cross examine them, it would have been difficult to say in these circumstances that that was a fair and sufficient opportunity. But in this case it

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appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the domestic Tribunal.

8. The Division Bench of this Hon''ble Court has also considered the said aspect, considering the aforesaid two decisions of Apex Court and other decisions of Apex Court, in case of Gujarat State Road Transport Corporation Vs. Chandulal G. Rasadiya, The relevant Para 13 and 14 are quoted as under :

13. Mr. Rathod, learned advocate for the respondent, for this purpose rightly relied upon the decision of the Supreme Court in the case of Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, In that case, the Court was required to consider a situation where there were no rules framed before termination of the employees'' services and the employees'' services were terminated by the Company for causing willful insubordination or disobedience whether alone or in combination with another or others, of many orders of the superior or of the management. The enquiring authority arrived at the conclusion that workmen were unable to explain as to why these persons (other person who were examined by the management) would be making the reports against them falsely. Thereafter the services of the employees were terminated. In that context, it was observed that it has been laid down by the Court in a series of decisions that if an industrial employee''s services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the Industrial Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. Thereafter, the Court pertinently observed that some employees have misunderstood the decisions of the Court to mean that the mere form of an enquiry would satisfy the requirements of Industrial Law and the Court held as under :

An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined-ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report.

Same principle has been reiterated in the case of Meenglas Tea Estate Vs. Its Workmen, wherein, it is held as under :

It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the

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evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

In the case of Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, also the Court has held as under :

The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment.

14. In view of the aforesaid decisions, it would be difficult to uphold the contention raised by the learned Advocate for the petitioner that in these cases, the petitioner was not required to hold an elaborate inquiry for the misconduct of the respondent-Conductors. In both the petitions, the Conductors'' names are removed from the waiting list on the alleged ground of misappropriation of bus ticket fare as it is alleged that at the time of checking the buses on the relevant dates, the Conductors had not issued the tickets after recovering fare and on such other grounds. In both the cases, the Conductors have denied the allegations made against them. In spite of this, the petitioner has not held any further inquiry. As both the Conductors have denied the allegations made against them, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross-examination if they desired. They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the barest requirement of holding an inquiry in this type of grave misconduct. In the present cases, Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then in that case, further inquiry is not necessary. In this view of the matter, it cannot be said that the order passed by the Labour Court calls for any interference.

9. The aforesaid observations made by Apex Court are relied by Division Bench of this Hon''ble Court and considering the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 r/w. Rule 8(1) to 8(14) and Rule 6(6), according to my opinion, whatever be the form and nature of procedure followed by respondents before passing the dismissal order, in fact, it is not a departmental inquiry conducted by respondents against the petitioner. The respondents have merely adopted a procedure which amounts to empty formalities because there is no purpose behind to have this kind of procedure before passing the dismissal order. Straightaway issuing show cause notice and coming to conclusion that the misconduct is proved without holding departmental inquiry which amounts to denial of reasonable opportunity of hearing to the petitioner which violates basic principles of natural justice and form of inquiry as disclosed by Apex Court in

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aforesaid two decisions, that detailed inquiry is necessary in such a serious misconduct alleged against the petitioner and the procedure which was adopted by respondents is contrary to the principles of natural justice and also contrary to the provisions of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 and also contrary to the decisions of Apex Court as well as decision of Division Bench of this Hon''ble Court.

10. Learned Advocate for the respondent has mainly submitted that the petitioner has simply given the reply against the charge sheet but nowhere he has asked either any documents or any list of witnesses and after he was punished, he had taken another stand in an appeal on the excuse of non-supply of list of witnesses and documents. From the above referred legal position narrated by the Apex Court as well as this court, it is clear that in any circumstance when the charge sheet is being served on the delinquent, statement of imputation, list of documents and list of witnesses shall be served simultaneously and the said duty is cast upon the head of the department who has taken the decision to serve the charge sheet. It is not for the delinquent to ask for the documents as submitted by the learned Advocate for the respondent. Under the above referred circumstances, in my view, the order of removal passed by the District Primary Education Officer and confirmed by the Director of Primary Education is required to be set aside only on the ground that before passing the order of dismissal, no regular departmental enquiry was conducted against the petitioner by the respondents and as the same was passed in violation of basic principles of natural justice, and therefore, the same is required to be set aside.

11. This court is not required to examine the alleged misconduct against the petitioner but on the grounds referred above, the order dated 27.6.2006 passed by the District Primary Education Officer, Himatnagar, District Sabarkantha and the order dated 13.7.2007 passed by the District Education Officer, Himatnagar, District Sabarkantha are required to be set aside.

12. The result of setting aside the dismissal order is that it is open for the respondents authorities to hold a fresh departmental inquiry against the petitioner in accordance with the provisions of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 and in accordance with the principles of natural justice as decided by the Apex Court as referred above and the respondents shall reinstate the petitioner in service and the petitioner will remain under suspension pending inquiry and the respondents are directed to complete the departmental inquiry as early as possible preferably within a period of six months from the date of receipt of copy of this order. The respondents are directed to reinstate the petitioner in service within a period of 15 days from the date of receipt of this order and pending the fresh departmental inquiry, the petitioner under suspension, shall be entitled to the suspension allowance according to the provisions of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1977 till the outcome of such departmental inquiry declared by

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the respondents.

13. The parties are directed to cooperate in the departmental inquiry to complete the departmental inquiry as early as possible. The wages for interim period from the date of dismissal till the reinstatement as ordered by this Court, shall remain undecided and would depend upon the result of fresh departmental inquiry and respondent authority is directed to pass appropriate orders at the end of departmental inquiry as to whether petitioner is entitled to the wages of aforesaid interim period or not. At this stage, this Court is not passing any order on the amount of wages for the interim period because this Court is keeping open the right of respondents to hold a fresh departmental inquiry against the petitioner.

14. For the foregoing reasons, the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

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