

(2000) 07 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 3307 of 2000

Krupaben B. Trivedi

APPELLANT

Vs

Government of Gujarat and Another

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Gujarat Affiliated Colleges Services Tribunal (Terms and Conditions of Services of
Persons Constituting the Tribunal) Rules, 1982 — Rule 2
Gujarat Affiliated Colleges Services Tribunal Act, 1982 — Section 17, 3, 3(1), 4

Citation : (2001) 1 GLR 153

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : S.B. Vakil and Aspi M. Kapadia, for the Appellant; S.K. Jhaveri and K.N. Patel, for the Respondent

Final Decision : Dismissed

Judgement

Miss R. M. Doshit, J.—Heard the learned Advocates.

By order dated 12th May, 1997, made by the Government of Gujarat, the petitioner herein was appointed to be the Tribunal under the Gujarat Affiliated Colleges Services Tribunal Act, 1982 (hereinafter referred to as "the Act"). The terms and conditions of her appointment as Tribunal under the Act were determined under the Resolution dated 29th December, 1997 (Annexure-G to the petition). The term relevant for the purposes of this petition was the condition No. 3, which stipulated that the said appointment shall be operative till the Tribunal attains the age of 58 years. However, on 16th April, 1999, the Government issued a notice to the petitioner informing her that Rule 2 of the Gujarat Affiliated Colleges Services Tribunal (Terms and Conditions of Service of a person constituting the Tribunal) Rules, 1982 (hereinafter referred to as "the Rules of 1982") provides that the person constituting the Tribunal shall hold office for a period of two years on and with effect from which he takes over the charge of the office. The condition No. 3 of the appointment of the petitioner

stipulated in the Resolution dated 29th December, 1997, was contrary to the aforesaid statutory provision. The terms and conditions of the appointment of the petitioner were, therefore, required to be modified to bring them in consonance with the said Rule. The petitioner was called upon to show cause against the proposed action. Feeling aggrieved, the petitioner preferred Special Civil Application No. 3569 of 1999 before this Court, under Article 226 of the Constitution. The learned single Judge (Coram : Mr. Justice S. K. Keshote) on 11th May, 1999, held that the said petition was premature and dismissed the same. Feeling aggrieved, the petitioner preferred Letters Patent Appeal No. 1393 of 1999. Pending the said Letters Patent Appeal, by order dated 13th April, 2000, the petitioner's service was terminated. In view of the order dated 13th April, 2000, the Letters Patent Appeal has been disposed of (?). Feeling aggrieved by the order dated 13th April, 2000, the petitioner has preferred the present petition.

2. It is not disputed that pursuant to the impugned order, the petitioner's service has been terminated and by Notification dated 13th April, 2000, the respondent No. 2 has been appointed to be the Tribunal. It is also not disputed that in view of the interim order made by this Court and the status quo ordered to be maintained by the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 8403 of 2000, the respondent No. 2 is prevented from functioning as the Tribunal. Hence, at present, neither the petitioner nor the respondent No. 2 has been functioning as the Tribunal.

3. Mr. Vakil has submitted that Rule 2 of the Rules of 1982 is ultra vires the Act and also the Arts. 14 and 16 of the Constitution and is, therefore, void. In the alternative, he has submitted that Rule 2 of the Rules of 1982 requires to be read down to mean that it shall apply only in case where a District Judge or a person who has been the High Court Judge has been appointed to be the Tribunal under sub-section (1) of Section 3 of the Act, and the same shall not apply to a person appointed to be the Tribunal who is qualified to be a Judge of a High Court or a District Court, and who is neither a District Judge nor has been a High Court Judge as stipulated in the said sub-section. He next contended that the impugned order dated 13th April, 2000, is inconsistent with Rule 2 of the Rules of 1982 and is, therefore, vitiated. Besides, the appointing authority (the State Government) did not afford an opportunity of hearing to the petitioner. Moreover, by the impugned order, neither the terms of the appointment of the petitioner are modified, nor the same are set aside. Further, the impugned order is not a speaking order. The impugned order, therefore, is violative of principles of natural justice. He has strenuously urged that the impugned order has been made while the Letters Patent Appeal No. 1393 of 1999 preferred by the petitioner was pending and has been made with a view to over-reaching the process of the Court. The order is, therefore, vitiated on mala fide also. In support of these contentions, Mr. Vakil has relied upon the judgments of the Supreme Court in the matters of *S. Sampath Kumar v. Union of India* AIR 1987 SC 386 ; *Ajit Singh and Others Vs. State of Punjab and Another*, ; *K. Nagaraj and Others Vs. State of*

Andhra Pradesh and Another, ; Laghu Udyog Bharati and Another Vs. Union of India and Others, ; Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ; Prem Chand Somchand Shah and Another Vs. Union of India (UOI) and Another, ; Ashok Kumar Gupta and Another Vs. State of U.P. and Others, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; Kishan Lal Vs. Union of India and Another, ; Bhupatlal Govindji Vs. Bhanumati Dayalal, , Smt. Indrawati Devi Vs. Bulu Ghosh and Others, ; Smt. Charanjit Kaur Vs. Union of India and others, and The State of Maharashtra Vs. Labour Law Practitioners" Association and Others, .

4. Learned Advocate Mr. Jhaveri has appeared for the State, and has supported the impugned order. He has submitted that what is sought to be done by the Government is implementation of the statutory provisions contained in Rule 2 of the Rules of 1982, for which no opportunity of hearing was required to be given to the petitioner. In support of his contention, he has relied upon the judgment of the Allahabad High Court in the matter of Dr. L.P. Agrawal Vs. Union of India and others, ; Santosh Kumar Singh Vs. State of U.P. and Others, ; M. Venkateswarlu and Others Vs. Govt. of A.P. and Others, ; K. Kuppusamy and Another Vs. State of T.N. and Others, ; and D.N.V. Chellam and Others Vs. The Railway Board and Others, .

5. Mr. Patel has appeared for the respondent No. 2 and has urged that the respondent No. 2 has been appointed by the competent authority i.e., the State Government in accordance with Section 3 of the Act. The respondent No. 2 is qualified to be so appointed. No writ of quo-warranto, therefore, could be issued against the respondent No. 2. Mr. Patel has, therefore, relied upon the judgment of the Supreme Court in the matter of A.N. Shashtri Vs. State of Punjab and Others, .

26. In the matter of Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, , the Court was considering the claim for parity of pay made by the employees in various cadres in Bengal Registration Service with that of the officers of the State services. The Hon"ble Supreme Court held that "One of the basic principles for pay fixation is that the salary must reflect the nature of duties and responsibilities attached to the post, meaning thereby that the pay scale must be commensurate with the task to be performed and the responsibility to be undertaken by the holder of the post". The Court also held that ".....the determination of pay scales is the primary function of the executive and not the judiciary, and therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc."

27. The contentions raised by the parties hereto have been examined in light of the law laid down in the above judgments.

28. Mr. Vakil has relied upon Sees. 3 and 4 of the Act and Rule 2 of the Rules of

1982. It is contended that the Gujarat Affiliated Colleges Services Tribunal (hereinafter referred to as "the Tribunal") has been constituted u/s 3 of the Act. Section 3(2) of the Act provides that "The State Government shall appoint a District Judge or a person who has been or is qualified to be a Judge of a High Court or a District Court to be the Tribunal". Section 4 of the Act provides that "Term for which the person constituting the Tribunal shall hold the office and his conditions of service shall be such as may be prescribed". Section 17 of the Act empowers the Government to make Rules, for which a person constituting the Tribunal shall hold office and his conditions of service u/s 4 of the Act. It is submitted that in exercise of the said powers, the Government has framed Rules of 1982. Rule 2 thereof provides that "The person constituting the Tribunal shall hold office for a period of two years on and with effect from the date on which he takes over the charge of the office". It is submitted that the term of two years provided under the Rules is too short a period and such a short term cannot be said to be a valid one. He has submitted that any person who is appointed as Tribunal before he gets acquainted with the complexity of the issues involved for consideration by such Tribunal and trains himself to be a competent judicial officer, his term gets over. Such short term, therefore, cannot be said to be conducive to the interest of the litigating public, nor the purpose of the Act can be achieved. Such a short term of appointment should be considered to be detrimental to the purposes of the Act. Besides, it shall act as a deterrent to competent young persons in accepting the position as a Tribunal. Mr. Vakil has also submitted that in any view of the matter, limiting the tenure of appointment of the Tribunal under the Act is arbitrary inasmuch as the appointment of other Education Tribunals performing similar functions, no provision is made as regards the tenure of the persons who are to be appointed as the Tribunal. Moreover, such tenure also affects the independence of judiciary. The person who is appointed to be the Tribunal will have to look upon the Government for re-appointment as Tribunal on completion of the tenure. This may necessarily affect the approach of the Tribunal and ultimately the independence of the judiciary. In the alternative, he has submitted that Rule should be read down so as to apply to the appointment of a District Judge or a High Court Judge as a Tribunal, since a District Judge or a High Court Judge or a retired High Court Judge for that matter has a judicial training and has a long experience. However, as the persons who are selected as direct recruit meaning thereby who have neither been a District Judge or High Court Judge earlier cannot be said to have judicial training and such persons cannot acquire sufficient experience within two years. The limitation of term of appointment prescribed in Rule 2, therefore, shall not apply to such direct recruit. In support of this contention. Mr. Vakil has relied upon the judgment of the Supreme Court in the matter of S. Sampath Kumar (supra) more particularly paragraph 21 of the said judgment, which is reproduced hereinabove. I am afraid, I am unable to accept these contentions. What should be the term of appointment of an office is primarily an executive function which is generally aided by the experts and relevant data. The Court of Law without the aid of the expert or the relevant data cannot decide what should be the proper

term of an office. To some, two years may appear to be just, to some others, five years may appear to be just, while some others may be of the opinion that the term of five years would be too long. Therefore, these matters are best left to be decided by the Executive. Whether a specified term of office should be a deterrent or not also depends upon the person electing to accept such appointment. It is quite possible that such tenure appointment may also act as an incentive to some. In the matter of S. Sampath Kumar (supra) the Hon"ble Court specifically referred to the persons leaving their existing job and accepting the appointment as Chairman, Vice-Chairman or a Member of the Tribunal who may, after the expiry of their term, not have a possibility to return to their original occupation. In the present case, so far as the direct recruit, as referred to by Mr. Vakil, are concerned surely that cannot be the case. Those persons who are already not the District Judge or the High Court Judge or a retired High Court Judge, have to be qualified to be a Judge of a High Court or a District Court, This necessarily means that a person eligible for appointment as the Tribunal has to be an Advocate for not less than 7 years. The question of there being no possibility of going back to their original occupation would not arise. Neither the Act nor the Rules made thereunder prohibit a person appointed to be the Tribunal under the Act from practising law after completion of the term of his office. Besides, in the matter of S. Sampath Kumar (supra), having held that the five years" term is too short, the Hon"ble Court has not invalidated the provision providing for such term. Hence, it cannot be said that Rule 2 of the Rules of 1982 does not serve the purpose of the Act nor it can be said to be ultra vires the Act. In my view, the Rule does not require to be read down either as submitted by Mr. Vakil.

29. It is true that by statutory Rules framed u/s 17 of the Act, the term of appointment of the person appointed to be the Tribunal is restricted to two years. It is also true that though the other Education Tribunals perform similar functions, the tenure of the appointment of the persons to be appointed as Tribunal has not been determined, leaving the executives to decide the tenure of appointment of each of such persons. It, therefore, does appear that the persons appointed to be the Education Tribunals though are performing similar functions, the terms of their appointments are at variance. However, in my view, this variance alone would not invalidate Rule 2 of the Rules of 1982. Besides, it is also not true that the tenure of appointment shall affect the independence of the judiciary. In the matter of S. Sampath Kumar (supra), the Court was dealing with the Administrative Tribunal which is constituted to resolve disputes between the Government employees and the Government. The Government, therefore, would be a litigating party in almost all cases. That being not the case here, the said observations shall not apply to the facts of the case. The Tribunal has been established to resolve the disputes between the employees of the colleges affiliated to the Universities and the management of such colleges. The Government may be a party to the litigation, but the lis essentially remains a private dispute.

30. Mr. Vakil has submitted that earlier a notice was issued upon the petitioner on 16th April, 1999 calling upon her to show cause why paragraph 3 of the terms and conditions of her appointment should not be modified so as to make it consistent with Rule 2 of the Rules of 1982. The said notice was duly replied to by the petitioner on 10th May, 1999. In her reply dated 10th May, 1999 the petitioner had categorically demanded a personal hearing. However, the petitioner has not been afforded personal hearing before the impugned order was made on 13th April, 2000. The order is, therefore, made in violation of the principles of natural justice and stands vitiated. In answer, Mr. Jhaveri has submitted that the petitioner had filed a detailed reply to the show cause notice on 25th October, 1999, but had not demanded personal hearing. In view of the said reply, no personal hearing was required to be offered to the petitioner. It is true that in her reply dated 13th April, 1999 the petitioner had specifically demanded an opportunity of personal hearing, however, the petitioner appears to have submitted a further reply on 25th October, 1999. In the said reply, the petitioner had not demanded personal hearing.

31. I am of the view that in the event an officer claims a personal hearing, it is advisable that such officer should be granted personal hearing before any action adverse to such officer is taken. However, it is settled proposition of law that the principles of natural justice do not call for personal hearing. An opportunity to show cause or to make a representation in the subject-matter is sufficient compliance with the principles of natural justice. Reference can be had to the judgment of this Court in the matter of R.M. Bajpae Vs. State of Gujarat and Others, and of the Hon"ble Supreme Court in the matter of Carborundum Universal Ltd. Vs. Central Board of Direct Taxes, New Delhi, . If an opportunity to show cause is granted, the impugned action cannot be held to be violative of principles of natural justice. In the present case also, the petitioner has been given an opportunity to show cause and she has also filed her reply to such show cause notice. The impugned order dated 13th April, 2000, therefore, cannot be said to have been made in violation of the principles of natural justice, nor should it be vitiated on that ground.

32. Mr. Vakil has submitted that the impugned order is not a speaking order, nor does it modify the term of appointment of the petitioner, nor does it set aside the Government Resolution dated 29th December, 1997. Therefore, also the impugned order requires to be quashed and set aside. This argument also does not appear to be well-founded. The impugned order read with the show cause notice dated 16th April, 1999, makes it clear that irrespective of the term of her appointment determined under the Resolution dated 29th December, 1997, the petitioner could not have lawfully held the office for more than two years. Though the term of her appointment has not been expressly modified, or the Resolution dated 29th December, 1997, has not been expressly set aside, the same is mere irregularity which does not go to the root of the matter, nor shall affect the validity of the impugned order.

33. Mr. Vakil has also submitted that the show cause notice issued on 16th April, 1999 was challenged by the petitioner in Special Civil Application No. 3569 of 1999. Pending the said petition the petitioner's service was protected. Though, the said petition was dismissed on 11th May, 1999 and the protection granted earlier was lifted, no action was taken against the petitioner by the State Government for nearly six months. The Letters Patent Appeal against the order dated 11th May, 1999 was preferred in the month of October 1999 and an interim order was made on 1st November, 1999. The said interim order was extended time and again till 15th February, 2000. Thus, since 15th February, 2000, the interim protection granted to the petitioner got vacated. Nonetheless, no action was taken against the petitioner. On 10th April, 2000 objection was raised as to the maintainability of appeal as according to the State Government, the same was delayed and the delay was not condoned by the Court. Since the objection of maintainability of appeal was raised by the respondent-Government and the petitioner could not immediately satisfy the Court that the appeal was preferred within the time-limit prescribed, the Hon'ble Bench did not grant interim relief which had expired earlier on 15th February, 2000. It is the contention of Mr. Vakil that the respondents were aware of the pendency of the appeal and also the fact that the petitioner's service had earlier been protected by the Bench since 1st November, 1999. However, though it was due to an oversight that the said protection could not be extended beyond 15th February, 2000, and after having realised that the interim relief had lapsed, in view of the objection of limitation raised by the respondent-Government, the relief could not be granted by the Court afresh. However, it was incumbent upon the respondent-Government to stay its hands till the petitioner could satisfy the Bench that the appeal was filed within the time prescribed and could move the Court for interim protection afresh. But, the respondent-Government took an undue advantage of the situation and made the impugned order on 13th April, 2000 before the petitioner could satisfy the Bench in respect of maintainability of the appeal and could move the Bench for interim protection afresh. Thus, the impugned order has been made to over-reach the process of the Court and the Court should reconstitute the position as it prevailed prior to 13th April, 2000. Since the petition is finally heard and is being disposed of, this contention need not be dealt with. The question of restitution of position as it prevailed prior to 13th April, 2000, does not arise at this juncture.

34. Next Mr. Vakil has contended that the Government has constituted various other Educational Tribunals i.e. Gujarat Primary Education Tribunal, Gujarat Secondary Education Tribunal, Gujarat Higher Secondary Education Tribunal and the Gujarat Universities Services Tribunal. All these Tribunals have been constituted under the relevant Acts and the functions and duties of these Tribunals are more or less the same. The terms and conditions of service of the Gujarat Higher Secondary Education Tribunal have been determined along with the petitioner i.e. by the Resolution dated 29th December, 1997. The tenure of the said Tribunal, as of the petitioner, was determined to be till the Tribunal

reaches the age of 58 years. While the term of the Gujarat Secondary Education Tribunal is determined to be till the Tribunal reaches the age of 62 years. Thus, though all the Tribunals are similarly situated and possess the similar qualifications, they have been meted out differential treatment. The term of the Tribunal has been determined to be of two years by statutory rules. While no such rule has been framed determining the term of the person appointed to the other tribunals referred to hereinabove. The action of the respondent-Government in terminating the service of the petitioner, is therefore, also arbitrary and requires to be quashed and set aside. The petitioner's service, therefore, could not have been terminated until she attains the age of 58 years in consonance with the terms prescribed under the said Resolution. I see no merit in this contention either. It is true that all the above referred Tribunals are similarly situated and the qualifications prescribed for appointment to each of the said Tribunals are also similar. It is also true that there is no uniformity of terms and conditions determined for each of the said Tribunals. However, though it should be noted that under the Act, the tenure of the Tribunal has been confined to two years, while for the other Tribunals, no provision has been made regarding the term of the person to be appointed as the Tribunal. In view of the statutory provision governing the service condition of the petitioner, the Government could not have prescribed the term of appointment which was contrary to the statutory provision. If such a contract has been entered into, the same being contrary to the statutory provisions, shall have no binding effect and the statutory provision shall prevail over the terms and conditions stipulated under the aforesaid Government Resolution.

35. It is contended that after the appointment of persons to various Tribunals as discussed hereinabove, for a long time the service conditions of such persons were not prescribed and the Government moved its machinery only after the Special Civil Application No. 94 of 1997 was preferred in public interest and orders thereon were made on various dates. Since the Government was acting under the orders of the Court, the concerned officer lost sight of the statutory provisions contained in Rule 2 of the Rules of 1982. This infirmity in the Resolution dated 29th December, 1997 was first time noticed by then Hon'ble Governor Shri Anshuman Singh. The infirmity having been brought to the notice of the Government, proper action was initiated to modify the conditions of service of the petitioner and to terminate her service upon expiry of statutory tenure. I believe that this hardly is an excuse coming from the Government. The Resolution dated 29th December, 1997, has been issued by an officer not less than Deputy Secretary to the Government. The officer of this level could not have lost sight of the statutory provision, nor should have been the petitioner given an impression that she had secured an appointment till she attains the age of 58 years. Such negligence hardly befits a Government officer. However, though no relief can be granted to the petitioner on this ground either. There cannot be estoppel against the statutory provision and the contractual terms must give way to the statutory provision.

36. I see no substance in the challenge to the appointment of the respondent No. 2 also. It is not even the case of the petitioner that the respondent No. 2 is not qualified to hold the post to which he is appointed. No writ of quo warranto can be issued against the respondent No. 2.

No other contention is raised before me. In view of the above discussion, the petition is dismissed. Rule is discharged.

37. Mr. Vakil requests that the interim protection granted to the petitioner be continued so as to enable her to prefer an appeal. Mr. Jhaveri strongly objects the proposition. Mr. Jhaveri has submitted that a stalemate has been created since neither the petitioner nor the respondent No. 2 is able to discharge duties as the Tribunal and ultimately the litigants suffer. He has also relied upon the judgment of the Hon''ble Supreme Court in the matter of Dr. L. M. Nath v. H. K. Katara and Ors. AIR 1996 SC 847 and has strongly objected to the interim relief being extended. However, as the petitioner has a right to appeal and whatever limited protection has been granted to her pending this petition, should be extended so as to enable her to pursue the remedy effectively. The interim arrangement prevailing during pendency of this petition shall continue to operate till 1st September, 2000.

38. Before I part, I would like to add a word of caution. While hearing this petition and examining the various orders made by the Government, two disturbing factors have been noticed by me. First, though all the Educational Tribunals have been discharging functions and duties more or less similar and persons appointed to be the Tribunal possess the similar qualifications, there is no uniformity of terms and conditions of their service. Except under the Act, the terms and conditions of service, more particularly the tenure of the office is left to the discretion of the executive without any fetter and for each of the tribunals different terms and conditions are prescribed. It is but advisable that uniform terms and conditions are prescribed for all similarly situated education tribunals. Mr. Jhaveri has, however, submitted that constitution of a composite Education Court is under active consideration by the Government, and it is at the final stage of preparation. In that view of the matter, I do not intend to issue any direction in this regard. Second, though the appointment to various tribunals arc required to be made only from amongst the persons who are qualified to be a Judge of a High Court or a District Court, the selection is entirely left to the executive. As observed in the matter of S. Sampath Kumar (supra), it is but necessary that such appointment shall be made in consultation with the Chief Justice of the High Court or atleast by a High Power Selection Committee of which the Chief Justice of the High Court or a Judge of the High Court nominated by the Chief Justice should be the Chairman. Since the constitution of composite Education Court is under consideration, the State Government shall also take into consideration the observations made by the Hon''ble Supreme Court in the matter of S. Sampath Kumar (supra) reproduced hereinabove.

39. Petition dismissed : Rule discharged.