
(2009) 10 GUJ CK 0132

In the Gujarat High Court

Case No : Special Civil Application No. 5512 of 2009

Kusumben

APPELLANT

Vs

Secretary and Others

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Gujarat Civil Services (Discipline and Appeal) Rules, 1971 — Rule 77, 78

Citation : (2010) 1 GLH 136

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Dipak R. Dave for Petitioner 1, for the Appellant; Niraj Soni, Assistant Government Pleader for Respondents 1, 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Soni, learned Assistant Government Pleader waives notice of Rule for respondents No. 1 to 3. With the consent of the learned Counsel appearing for both the parties, the matter is finally heard today. The petitioner by this petition has challenged the order passed by the Disciplinary Authority of imposing punishment of removal from the service and its confirmation by the Revisional Authority. The petitioner has also prayed to direct the respondents to consider the case of the petitioner for compassionate pension, gratuity and other retirement benefits.

2. Heard Mr. Dave, learned Counsel for the petitioner and Mr. Soni. learned Assistant Government Pleader for the State Authorities.

3. It appears that the husband of petitioner was working as Police Constable and he remained constantly absent during the period of 1995-96. As per the Department, he remained absent from 4.2.1995 to 6.6.1996, 186 days, in spite of specific intimation given to him to resume the duties when the election of Parliament was to be held. Since husband of the petitioner did not join the duties, criminal complaint was also filed against him. Thereafter, the chargesheet

was issued and the inquiry was held. After holding inquiry, the petitioner was found guilty and after opportunity of hearing, the Disciplinary Authority has imposed punishment of removal from the service upon husband of the petitioner.

4. The contention of the learned Counsel of the petitioner is that husband of the petitioner was sick and Doctor's certificates were also produced, but such were not considered properly by the Authorities. He submitted that pending the proceedings before the Revisional Authority, after hearing but before the order was communicated, husband of the petitioner succumbed to the sickness and he has expired. He submitted that this Court may take sympathetic view. It was also contended that in a similar case, the Authorities had imposed lesser punishment, which has not been done in the present case and, therefore, this Court may consider.

5. The perusal of the order passed by the Disciplinary Authority shows that it is not a case of single absenteeism and imposition of the punishment of the removal by the Department. The order shows that earlier 12 times, the punishment for various misconducts were imposed upon husband of the petitioner and for discharging of the duties, the intimations were given to him for 10 times and he remained absent. Under these circumstances, keeping in view the service record and reasons recorded by the Disciplinary Authority, as such it cannot be said that there is any error apparent, which may call for interference by this Court to the order passed for imposition of the punishment of removal from service. Learned Counsel for the petitioner has not able to show any valid ground for breach of principle of natural justice during the course of inquiry. Further, even if the medical certificates are taken into consideration, which have been shown by the learned Counsel during the course of hearing, they were at the most for total 60 days, whereas the absenteeism of husband of the petitioner was for 186 days. The absenteeism of the member of Police force cannot be leniently viewed and the same may attract serious consequences, more particularly, because the member of Police force is required to discharge the duties by way of not only maintenance of discipline, but non performance of the duties or remaining absent from the duties may result into adversely affecting public at large, at a place where he has assigned with the duties. In the present case, he was assigned with the responsible duties at the time of election for which also he has remained absent. Further, after intimation, he has not resumed the duties. Under these circumstances, when the charges are proved in inquiry proceedings and found as proved even by the Disciplinary Authority, this Court would not seat in appeal over such decision.

6. Even if the case is considered on the aspect of gravity of the charges and proportionality of the punishment, it appear that husband of the petitioner was imposed punishment earlier for 12 times. Therefore, keeping in view said aspect, punishment cannot be said to be wholly disproportionate, which may shake conscience of the Court.

7. In view of the aforesaid, I find that the order passed by the Disciplinary

Authority and its confirmation thereof by the higher Authority of the State Government, for removal of husband of the petitioner from the service, do not call interference. Hence, petition deserves to be dismissed on the said aspect.

8. The contention that the petitioner would be entitled to compassionate pension deserves consideration. It appears that the petitioner did apply for compassionate pension, however. Authority has declined on the ground that the same was not applied or fixed during life time of husband of the petitioner and, therefore, the petitioner being widow or family member would not be entitled for compassionate pension.

9. Whether to award pension to the Government servant, who has been removed from the service is an aspect of discretion to be exercised by the State Government or the Competent Authority for valid reasons, however. Rule 77 read with 78 of Gujarat Civil Services (Discipline and Appeal) Rules 2002, if considered, it appears that when the Government employee is removed from service on account of misconduct prior to his reaching to the age of superannuation and if case is considered deserving for special treatment, the sanction can be granted for compassionate pension. It appears that husband of the petitioner was removed from service, therefore, husband of the petitioner after the order of removal from service could apply for compassionate pension. However, it is also a fact that before final outcome of revision proceedings communicated to the husband of the petitioner, he has expired. Therefore, when the Government servant was litigating against the order of removal, it is possible that he may not have applied for that compassionate pension, but if the question of removal is finalized, the matter can be considered by the Government for grant of compassionate pension, if such case is found deserving by the State Government.

10. If the facts of the present case are examined in light of the aforesaid legal position, it appears that application for compassionate pension has been dismissed on the ground that during the life time of husband of the petitioner, such compassionate pension was not applied and, therefore, family pension cannot be fixed. Hence, keeping in view the peculiar circumstances that pending the litigation of revision proceedings, husband of the petitioner had expired, it could not be said that he was prevented from applying for compassionate pension and, therefore, such should not operate as a bar to the petitioner to apply for compassionate pension to the Government. However, aforesaid is only for maintaining application for compassionate pension and thereby it cannot be said that the case of husband of the petitioner was deserving case for special treatment to grant sanction for compassionate pension. It will be for the Competent Authority of the Government to examine the matter and to find out as to whether it is deserving the case for special treatment to be extended for compassionate pension to the family members of the Government servant or not and thereafter to take appropriate decision. At that stage competent Authority of the Government may examine all the relevant aspects germane to the exercise

of the powers for sanctioning compassionate pension and whether this is a case for deserving special treatment or whether sanctioning of such compassionate pension will have adversely affected on the administration of the police force or not. It is not necessary for this Court to record any final conclusion on the aspect of deserving case of the petitioner or otherwise, more particularly, when the said aspect has not been considered by the Competent Authority for such purpose.

11. In view of the aforesaid, the petition falls, so far as challenging the order of removal from the service. However, it is directed that application of the petitioner for consideration of the case for compassionate pension shall be considered by the Competent Authority keeping in view the observation made hereinabove and in accordance with law and decision shall be communicated to the petitioner preferably within a period of three months from the receipt of the order of this Court. The petition is partly allowed to the aforesaid extent. Rule is made partly absolute considering the facts and circumstances of the case.