
(2004) 04 GUJ CK 0093

In the Gujarat High Court

Case No : Special Civil Application No. 4004 of 1998

Maheshchandra N. Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Citation : (2004) 04 GUJ CK 0093

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : D.N. Pandya, for the Appellant; Patel Advocates for Respondent No. 1, Falguni Patel, AGP for Respondent Nos. 1, 1/1-1/3-2 and Adil Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—This petition is a third round of litigation by the petitioner. The petitioner, who was serving with respondent no. 2, Vikas Education Trust, Bharuch, had number of litigations with the management such as Special Civil Application No. 871/1981, which was decided by this Court (Coram: P.D. Desai, J.) on 30th March, 1981; Special Civil Application No. 3269 of 1981, which was decided by this Court (Coram: B.K. Mehta, J. [as he then was]) on 22nd December, 1982; and Special Civil Application No. 1743 of 1983, which was disposed of by this Court (Coram: S.K. Keshote, J.) by an order dated 10th July, 1997. This order dated 10th July, 1997 has relevance to the controversy involved in this matter because the present petition is filed for the same earlier grievances, which the Court directed respondent no. 2 to decide.

2. This Court, after hearing the learned Advocates for both the sides, disposed of Special Civil Application No. 1743 of 1983 wherein the issue of `non-payment of 27 months" salary" was also agitated, as is clear from the following observations:

"Learned counsel for the petitioner submitted that the respondent has given to the petitioner all benefits of the post of Principal in the institution except the

salary, etc., for the period 27 months, and only that dispute now survives in this special civil application. ..."

The Court has further observed that:

"In view of these contentions raised by the counsel for the parties, there appears to be dispute regarding claim of the petitioner for salary and other allowances of the post of Principal for the period of 27 months. These are disputed questions of fact and I consider it proper to direct respondent No. 2 to decide these disputes after hearing both the petitioner and respondent No. 3."

Thereafter, the Court has observed that:

"... .. This matter is pending for last 14 years. Therefore it is expected of respondent No. 2 to decide these disputes between the petitioner and respondent No. 3 within a period of four months from the date of receipt of certified copy of this order. It shall be open to both the petitioner and respondent No. 3 to produce all documentary evidence in the form of affidavit in support of their respective claims and defence before respondent No. 2. Respondent No. 2 shall consider all the material produced by both the parties. Petitioner and respondent No. 3 shall produce whatever evidence in the form of documents they want to produce within a period of one month from the date of receipt of certified copy of this order. In case ultimately the claim of the petitioner for the aforesaid period is accepted by respondent No. 2, then the amount payable to him shall be determined and paid within two months from the date of order."

3. Pursuant to the aforesaid directions, the respondent-authorities did consider the case of both the sides and decided the matter by order dated 21st February, 1998. The matter was heard by the Additional Secretary, Education Department, who has recorded that after the order of termination of the petitioner was quashed and set aside and order dated 6th February, 1981 was passed, the management informed the petitioner (Mr. Patel) to resume duties on 1st February, 1983, but then, the petitioner did not resume duty, as directed, but, resumed only on 1st July, 1985. It is recorded in terms by the authority that between 1st February, 1983 to 30th June, 1985, the petitioner was informed by the management by letters dated 29th January, 1983, 2nd February, 1983, 21st March, 1983 and 27th June, 1985. But, despite these communications, the petitioner did not resume duty. It is required to be noted that the Commissioner, Higher Education also informed the petitioner by his letter dated 9th March, 1983, mentioning that, 'if the petitioner does not take charge, it will be his responsibility'. Despite that, the petitioner (Mr. Patel) did not resume duty. Taking into consideration the factum of non-resumption of duties by the petitioner, the Commissioner-Higher Education, wrote to the respondent No. 2- President, Vikas Education Trust, Bharuch on 14th October, 1985 that 'as the petitioner (Mr. Patel) has not resumed duties from 1st February, 1983 till 30th June, 1985, he is not entitled to receive salaries and, therefore, the amount paid to Mr. Patel towards salary is to be recovered and the same be deposited with the

Government Treasury". The authority has also recorded that, 'from the representations made by the petitioner from time to time, it is borne out that the petitioner did not make any satisfactory attempt to resume duty from 1st February, 1983 till 30th June, 1985 and did not discharge duties as Principal". The management had also represented that the institution had never obstructed the petitioner (Mr. Patel) from discharging his duties. On the contrary, the institution wrote numerous letters asking the petitioner to resume and discharge his duties.

4. The authorities have passed the final order to the effect that, 'as Mr. Patel did not make satisfactory attempts to resume duty from 1st February, 1983 to 30th June, 1985, he is not entitled to receive any salaries, including allowances, etc. for this period. As Mr. Patel resumed duties only from 1.7.1985, he is entitled to receive the salaries and allowances only from that date. The authorities have directed the Commissioner-Higher Education to proceed further in the matter.

5. After the aforesaid order was passed by the authorities, the present petition was filed on 8th May, 1998, but then, the matter was filed with objections and the same was placed before the Joint Registrar, who granted time to remove office objections by 14th July, 1998. But then, as the objections were not removed, the matter was placed before the Court and the Court passed the following order:

"Petitioner may remove the office objection by 24/7/98. If the objection is not removed, the matter shall stand dismissed without reference to the Court. After the objection is removed, the matter shall be placed on admission board on 28/8/1998."

It is not on record as to what steps were taken by the learned Advocate to get the matter heard after the objections were removed and the matter was not placed on 28th August, 1998. It transpires from the record that the matter was placed for admission hearing only on 16th August, 1999 and on that day, the Court was pleased to pass the following order:

"Shri D.N.Pandya of the petitioner.

Heard the learned counsel for the petitioner.

Rule."

Thereafter the matter was ordered to be listed for final hearing on 26th March, 2004. That is how, the matter is on Board for final hearing.

6. Interestingly, what is prayed in this petition is:

"Quash and set aside the impugned order Annexure-B dtd. 21.2.1998 passed by the resp.no. 1/1 and further implemented so as to cause refixation of salary and remittance of various salaries for the period 1.2.1983 to 30.6.1985 by order Annex-P dtd. 2.4.1998 passed by resp.no. 1/2, and further implemented by order Annex-'R' dtd. 22.4.1998 passed by resp. no. 1/3, which has now resulted

into non-payment of salaries in present working conditions under resp. no. 2".

The prayer, as it stands, is too vague to be understood. It is difficult to understand as to what the prayer is, except quashing and setting aside of the impugned order dated 21st February, 1998. The order dated 21st February, 1998 is passed pursuant to judgement and order dated 10th July, 1997 wherein, as mentioned hereinabove, this Court recorded, in clear terms, that "these are the disputed questions of fact". The Court then directed respondent no. 2 to consider all material produced by both the parties and to decide the controversy. The Court did not grant any leave or reserve any liberty to the petitioner to revive the petition.

7. In view of the above discussion, the findings recorded by the authority in its order dated 21st February, 1998, are on pure questions of fact. On perusal of the same, this Court does not find any reason to interfere with the same. In view of that, the present petition fails and the same is dismissed. Rule is discharged. No order as to costs.