

(2014) 01 GUJ CK 0114

In the Gujarat High Court

Case No : Special Civil Application No. 15745 of 2012

Managing Trustee Navchetan Education Trust and Another	APPELLANT
Vs	
Laljibhai Jivabhai Desai and Others	RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227

Gujarat Secondary Education Act, 1972 — Section 36 36(1) 36(1)(b) 36(5) 38

Citation : (2014) 01 GUJ CK 0114

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

Bench : Single Bench

Advocate : N.V. Gandhi, for the Petitioners No. 1 - 2, for the Appellant; S.N. Shelat , Mr. Jayraj Chauhan, Advocate for Mr. Mukund M. Desai, Advocate for the Respondent(s) No. 1 and Mr. D.M. Devnani, AGP for the State Authorities, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Chhaya, J.—By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the order dated 4/5/6.9.2012 passed by the Gujarat Secondary Education Tribunal in Application No. 74 of 2010 as well as the order dated 19.10.2012 passed in Review Application No. 6 of 2012. The facts which can be culled out from the memo of the petition are as under:-

1.1 That petitioner No. 1 is a registered trust and runs a secondary school in the name of Ranjan Madhyamik Shala in Bapunagar area of Ahmedabad city and the school is recognized as a linguistic minority institution imparting education in Marathi language. Respondent No. 1 came to be appointed as Assistant Teacher in the school run by the petitioner trust in the year 1974 and thereafter, by an order dated 28.11.1994, he was appointed as Head Master of the said school. On the allegation of certain irregularities and misconduct by an order dated 29.9.1998, respondent No. 1 was placed under suspension. It appears from the

record that the management of the school filed a Civil Suit being Regular Civil Suit No. 5158 of 1998 in the City Civil Court at Ahmedabad seeking injunction against respondent No. 1 from attending the school and interfering with the administration of the management. The City Civil Judge granted an interim injunction vide order dated 28.4.2000 as prayed for. The record further reveals that respondent No. 1 approached this Court by way of an appeal being Appeal from Order No. 217 of 2000 which came to be dismissed by this Court vide order dated 15.3.2001. However, the record reveals that the said Suit came to be subsequently withdrawn. The record further reveals that one Narayan Shivram Gosalker filed a writ petition before this Court being Special Civil Application No. 2054 of 1998 claiming to be managing trustee and challenged the action of the District Education Officer of withholding the maintenance grant of the trust and this Court by an order dated 6.9.1999 was pleased to allow the petition.

1.2 The record reveals that respondent No. 1 filed an application before the Gujarat Secondary Education Tribunal being Application No. 157 of 2001 challenging the order of suspension dated 29.9.1998. The record further reveals that respondent No. 1 also filed further application being Application No. 108 of 2002 before the Gujarat Secondary Education Tribunal challenging the action of District Education Officer of stopping the salaries from March, 2002. As District Education Officer started paying salaries, the said application came to be disposed of.

1.3 The record further reveals that the petitioners thereafter issued a show cause notice to respondent No. 1 on 17.1.2003 followed by a charge-sheet dated 7.5.2003 alleging about 55 charges such as misconduct, misbehavior, misappropriation of funds, opening of Bank account without any authority, misappropriation of grant, etc. It is the case of the petitioners that by an order dated 31.5.2003, the services of respondent No. 1 came to be terminated. It is the case of the petitioners that by a further order dated 31.1.2004, the District Education Officer passed an order and stopped paying salary to respondent No. 1 from February, 2004 and also further ordered to recover salary from the grant of the school, which was considered to be admissible. The record further reveals that the said order of District Education Officer came to be challenged by respondent No. 1 by Application No. 53 of 2004 before the Gujarat Secondary Education Tribunal and by an order dated 1.6.2004, the Tribunal directed the District Education Officer to release salary for the months May and June, 2004.

1.4 The record reveals that while these proceedings were going on, the Commissioner of Midday Meals, Gujarat State kept the hearing on account of illegal act of respondent No. 1 on 7.8.2003 and passed an order dated 5.7.2004 directing District Education Officer to recover the amount of salary paid to respondent No. 1 during his suspension. It is the case of the petitioners that because of the said order, substantial amount of grant was recovered from the grant payable to the petitioner trust.

1.5 The record further reveals that the Education Tribunal by an order dated

6.5.2008 dismissed Application Nos. 157 of 2001 and 53 of 2004. It appears from the record that respondent No. 1 challenged the said order dated 6.5.2008 by way of filing a writ petition being Special Civil Application No. 9721 of 2001 before this Court. The record further reveals that notice came to be issued by this Court vide order dated 17.9.2008. However, as no one appeared, the matter came to be admitted and interim relief as prayed for was granted. It appears that thereafter respondent No. 5 herein appeared before this Court. Relying upon respondent No. 5, this Court was pleased to pass an order dated 5.12.2008. It appears that as the interim relief was granted, respondent No. 1 approached the petitioner trust for reinstatement. The present petitioners thereafter appeared before this Court in the said writ petition and filed a detailed reply and also filed a Civil Application for vacating the interim relief. The record further reveals that respondent No. 1 also filed a Civil Application being Civil Application No. 2450 of 2010 to the said writ petition seeking direction directing the original respondents therein to pay salary and further to implement the order of this Court which came to be disposed of by this Court vide order dated 9.4.2010 and ultimately, by an order dated 30.4.2010, this Court (K.S. Jhaver, J.) disposed of the writ petition as well as Civil Application, whereby respondent No. 1 was relegated to the alternative remedy i.e. to file an application before the Gujarat Secondary Education Tribunal. The said order dated 30.4.2010 reads as under:-

Heard learned advocates for the respective parties.

The appropriate remedy for the petitioner is to approach before the Tribunal within a period of one week. The Tribunal will consider the same and decide the question of dismissal order and will ascertain the rights of petitioner qua the Trust.

The protection granted by this Court is extended for 8 days from today. With the above observations, petition stands disposed of accordingly.

Since petition stands disposed of, Civil Application does not survive and the same is disposed of accordingly.

1.6 It appears that pursuant to the said order, respondent No. 1 herein filed an application before the Gujarat Secondary Education Tribunal which came to be registered as Application No. 74 of 2010 and the Tribunal by the impugned order dated 10.5.2010 quashed and set aside the order of dismissal dated 31.5.2003 as it came to the conclusion that the same is passed in breach of the principles of natural justice and remanded the matter to the disciplinary authority to conduct inquiry afresh within 15 days from the receipt of the order and to complete the same within six months as respondent No. 1 ? applicant therein was to attain the age of superannuation on 31.10.2013. Being aggrieved by the same, the petitioners approached the Tribunal by way of filing a Review Application which came to be registered as Review Application No. 6 of 2012 which also came to be dismissed vide order dated 19.10.2012 and both the orders are impugned before this Court.

2. Heard Mr. N.V. Gandhi, learned advocate for the petitioner and Mr. S.N. Shelat, learned Senior Advocate with Mr. Jayraj Chauhan for Mr. Mukund Desai for respondent No. 1 and Mr. D.M. Devnani, learned AGP for the State Government authorities. Though served, no one appeared for other respondents.

3. Mr. N.V. Gandhi, learned advocate for the petitioner has raised the following contentions:-

[a] That the Tribunal has not properly considered the delay.

[b] That the application was not maintainable u/s 38 of the Gujarat Secondary Education Act.

[c] It is submitted that respondent No. 1 acquired knowledge about the order of termination dated 31.5.2003 in the year 2004 and therefore, the application was time barred.

[d] Even according to Article 311 of the Limitation Act, the period of limitation would be 3 years and therefore, the Tribunal has wrongly entertained the application and has wrongly considered the aspect of limitation.

[e] Show cause notice was received by respondent No. 1; however, he refused and did not think it fit to reply and therefore, the findings arrived at by the Tribunal are erroneous.

[f] The Tribunal has wrongly appreciated Order 2 Rule 2. The Tribunal has wrongly appreciated the facts of the case and has wrongly come to the conclusion that before passing the order of termination dated 31.5.2003, the petitioners have committed breach of the principles of natural justice and thus, the Tribunal has committed an error apparent on the face of the record. Mr. Gandhi has relied upon the judgment of the Hon'ble Supreme Court in the case of Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) Vs. Ramesh Chander and Others,

4. Per contra, Mr. S.N. Shelat, learned Senior Advocate for respondent No. 1 has raised the following contentions:-

[a] That the application is maintainable u/s 38 of the Act after the teacher is terminated relying upon the judgment of the Division Bench in the case of Satsangi Shishuvihar Kelavani Trust and Others Vs. P.N. Patel and Others, Relying upon the findings of the Tribunal and more particularly the order passed by this Court dated 30.4.2010, it is contended that the Tribunal has rightly appreciated the point of limitation and there is no delay on the part of the petitioner as the petitioner is never served upon the copy of the order.

[b] Since the copy is not served, the limitation would not come in way of respondent No. 1 and the contentions which are now raised by the petitioner is not supported by any material or case law.

[c] It is also pointed out that in the earlier proceedings before this Court also,

different stand is taken by the petitioner wherein the Deponent is petitioner No. 2 herein.

[d] In view of the fact that the delay does not apply, provisions of Order 2 Rule 2 would not apply. It is pointed out that unless and until a copy of the impugned order of termination is served, the petitioner cannot challenge the same.

[e] In view of the findings given by the Tribunal, it is contended that the Tribunal is right in coming to conclusion that the principles of natural justice is breached more particularly the observations made by the Tribunal in Para 9.

5. Mr. Gandhi, learned advocate for the petitioner has contended in rejoinder that the stand taken by the respondents is not supported by any material or case law as far as delay is concerned. Relying upon the pleadings of the earlier proceedings, it is contended by Mr. Gandhi that the applicant before the Tribunal is the trustee of the petitioner trust and it was pointed out that petitioner No. 2 is discharging his duties as managing trustee of the trust. It is contended by Mr. Gandhi that the correspondence between the management of the school and the State Government authorities clearly borne out the fact that respondent No. 1 was aware about the order of dismissal and therefore, the limitation would start run from the date of the knowledge and therefore, the Tribunal has committed an error apparent on the face of the record as far as the aspect of limitation.

6. No other of further submissions are made by the learned advocates appearing for the respective parties.

7. Considering the record of this petition, impugned order and the submissions made by the learned advocates appearing for the respective parties, it appears that the Tribunal has come to the conclusion that the order of dismissal dated 31.5.2003 is violative of principles of natural justice as well as violative of provisions of Section 36(1) of the Act and has thereby remanded the matter to the disciplinary authority keeping it open for the authorities to inquire afresh by initiating the inquiry within a period of 15 days with a further direction to complete the same within six months.

8. In view of the order passed by this Court in Special Civil Application No. 9721 of 2008, as the petitioner was permitted to approach the Tribunal within a period of one week, the present application came to be filed. Considering the facts of the case, the Tribunal has recorded that though the order of dismissal is dated 31.5.2003, respondent No. 1 came to know about the said order only on 6.5.2008, which was directly challenged by way of filing the aforesaid petition by respondent No. 1. It is a matter of record that this Court admitted the said petition i.e. Special Civil Application No. 9721 of 2008 and granted ad-interim relief in terms of Para 7(e) and had also granted interim relief in terms of para 7(f) and (g) vide order dated 14.11.2008. Such a finding arrived at is based on the facts of the record which are rightly appreciated by the Tribunal and therefore, this Court finds that there is no error apparent on the face of the record committed by the Tribunal in coming to such a conclusion. Similarly, the

second argument which is raised by respondent No. 1 and which has been upheld by it is on the aspect of non-observance of principles of natural justice. Considering the material on record, the Tribunal has rightly come to conclusion that respondent No. 1 working as a Principal was employee of a private secondary school aided by the Government and considering the provisions of Section 36, it has rightly come to conclusion that the principles of natural justice are to be followed and after examining it in detail, has committed no error in coming to conclusion that the principles of natural justice are not followed in the present case and that the same requires to be *denovo* inquire into by the Disciplinary Committee.

9. On examining the question of law which is raised by Mr. Gandhi, learned advocate for the petitioner to the effect that the application filed by respondent No. 1 before the Tribunal u/s 38 is not maintainable, the Division Bench of this Court in the case of Satsangi Shishuvihar Kelavani Trust (*supra*) has observed thus in Para 6:-

6. Now we shall consider the various contentions which have been urged before us. The first contention which was urged was that secs. 36 and 38 operate in two distinct fields as one is confined to matters of discharge, dismissal, removal or reduction in rank, while the other deals with other conditions of service and therefore, even though the jurisdiction of the Tribunal is appellate u/s 36(5) in the matter of approval of action proposed to be taken u/s 36(1)(b), and the jurisdiction is original for determination of dispute u/s 36(1), in both the jurisdictions, the Tribunal would be exercising substantially the same or identical jurisdiction. This contention of Mr. Nanavati is wholly untenable as sec. 40A provides a complete answer. The minority institutions having been excluded from the scope of sec. 36(1)(b) and sec. 36, (2), (3), (4) and (5), there would be no question of this second safeguard in case of those minority institutions, and if the services of the employees in such institutions have been terminated, the aggrieved employees would have the only remedy of raising a dispute u/s 38(1) in the original jurisdiction of the Tribunal. When the Tribunal is conferred specific jurisdiction u/s 39(9) to decide a dispute about dismissal, removal, reduction or discharge, being wrong, unlawful or otherwise unjustified, and of giving relief of reinstatement with all back wages by reviving the terminated contract, it is obvious that sec. 39(1) is a section of wide amplitude. Section 38(1) would cover all disputes between a manager of a registered private secondary school and any person in such service of school as head master, teacher or a member of the non-teaching staff, which are connected with the conditions of service of such a person, and in that context even ex-employee or discharged employee who claims relief of reinstatement would be a person who would be raising a dispute regarding the termination of his employment in violation of the statutory protection granted by this Code. The difference between the two schemes of appellate jurisdiction and the original jurisdiction would have however, to be found out from the fact that the appellate remedy u/s 36(5) is available to a person aggrieved by the order of the authorised officer u/s 36(1)(b), which

would be at the stage, while a person is still in service, because of approval or non-approval being only of the proposed action. Once the services are terminated the concerned employee would have a further cause of action u/s 38(1) to challenge the dismissal, discharge, removal or otherwise termination as wrongful and unjustified by raising a dispute u/s 38(1) which would be decided in this original jurisdiction.

10. In the instant case also, respondent No. 1 - original applicant before the Tribunal filed an application u/s 38(1) of the Act challenging the order of removal. In view of the aforesaid binding decision of the Division Bench of this Court, the said objection raised by the petitioner deserves to be rejected outright and therefore, the application u/s 38 of the Act was maintainable before the Tribunal after the teacher was terminated.

11. The record of this petition indicates that the order dated 31.5.2003 was produced by the District Education Officer for the first time in his affidavit which was filed on 31.3.2010 and therefore, knowledge of the impugned order of dismissal was derived by respondent No. 1 only on the said date. In view of the aforesaid observations, therefore, the provisions of Order 2 Rule 2 would not apply and such a contention, therefore, raised by the petitioner deserves to be rejected.

12. Considering the directions issued by the Tribunal which is based on cogent reasons and on appreciating the evidence, this Court finds that there is no error apparent on the face of the record which requires interference of this Court in its extraordinary jurisdiction under Article 226 or its jurisdiction under Article 227 of the Constitution of India and substitute the findings arrived at by the Tribunal. By the impugned judgment and order, the Tribunal has not given any clean-chit to respondent No. 1. All that has been observed is to follow the principles of natural justice by rightly interpreting the provisions of the Act. In view of the foregoing, therefore, the petition fails and the same is hereby rejected. The directions which are issued by the Tribunal shall be carried out by the petitioner within the same period as provided in Para 15 of the impugned judgment and order of the Tribunal. Notice discharged. In the facts and circumstances of the case, however, there shall be no order as to costs.