
(1983) 12 GUJ CK 0012
In the Gujarat High Court

M.L. Makwana

APPELLANT

Vs

The District Judge and Another

RESPONDENT

Date of Decision : 21-12-1983

Acts Referred:

Constitution of India, 1950 — Article 235

Gujarat Civil Services (Discipline and Appeal) Rules, 1971 — Rule 22, 23

Citation : (1984) GLH 294 : (1984) 1 GLR 315

Hon'ble Judges : P.S. Poti, C.J;S.B. Majmudar, J

Bench : Division Bench

Judgement

P.S. Poti, C.J.—This appeal is against an order of the learned Single Judge of this Court dismissing the petitioner's application challenging the penalty of removal from service passed by the High Court in exercise of its power under Rule 22 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (hereinafter referred to as "the Rules"). The petitioner was a Junior Clerk in the Court of the Civil Judge (Junior Division), Khambhaliya. While so, on 30-8-1976, he is said to have obtained the signatures of three persons-Osman Ali, Gani Mussa and Noormamad Umar in the Muddamal Register in token of their receipt of muddamal articles of Criminal Case No. 596 of 1975, but he is said to have failed to actually hand over the muddamal articles to them. A charge was framed against him by the District and Sessions Judge, Jamnagar. An inquiry was held into the charge but the disciplinary authority did not find him guilty on the materials before him. No further action was taken against him. The matter was closed by the disciplinary authority by the order dated 18-8-77. But the High Court in exercise of its power under Rule 22 issued a notice on 27-9-78 calling upon the appellant-petitioner to show cause why the order exonerating him, passed by the disciplinary authority should not be set aside and why he should not be removed from service. He was given an opportunity to be heard and ultimately, by the order dated 30-7-80, the High Court held him guilty of the charges. Challenge was made before the learned single Judge to that order but that challenge did not succeed and hence this appeal.

2. Before us, the learned Counsel for the appellant contended that there has been misreading of evidence on vital points by the High Court in passing the order of removal; that the finding by the High Court was not on the charge; that on the charge there was no finding; extraneous matters had influenced the decision to impose the penalty of removal and that the order of the High Court was passed on surmises and conjectures. It was the further contention of the learned Advocate for the appellant that even if the action was taken under Rule 22 of the Rules, it should be taken within a reasonable time and that is not the case here. It is also said that there is no reason to hold that Rule 22 was invoked when Rule 23 could also have been invoked equally effectively on the same facts.

3. In dealing with the contentions relating to merits, we must reiterate what has been said by Courts time and again that it is not the function of the Court to sit in judgment over the order of the authority imposing the penalty as if this Court is sitting in appeal. The appreciation of evidence by the inquiring authority or the disciplinary authority does not call for interference by the Court in proceedings under Article 226 of the Constitution here and merely on the premise that if this Court had been called upon to appreciate such evidence, a different view could reasonably have been taken and that should be taken, this Court cannot be called upon to review the evidence.

4. This is not a case where there is no evidence in support of the charge against the Junior Clerk - the petitioner. The case appears to be that the muddamal articles in the case in question were the subject -matter of some customs offence so much so the Customs Department was interested in proceeding against the persons to whom such muddamals were to be returned. Consequently, an officer of the Customs Department seemed to have approached the Magistrate requesting that he may be informed of the time the muddamal was to be released to the accused in the case. The Magistrate seems to have communicated this to the petitioner-clerk. The case is that the Customs Officer, on information that the muddamal would be released on 30-8-76, was present on the table of the petitioner on that day but the muddamal was not released then and the officer was told that the articles will not be released that day without informing him before such release. It is the case against the petitioner that thereafter the accused turned up, and their signatures were obtained in the Muddamal Register in token of having released the muddamal articles to them but actually the muddamal articles were not released. There were some developments in the evening to which it will not be necessary to refer here for the purpose of this appeal. Suffice to say that the charge of failure to release muddamal articles despite the entry in the register was sought to be proved at the inquiry by examination of witnesses, including the three persons who are said to have acknowledged receipt in the Muddamal Register. Taking an overall view of the circumstances, the disciplinary authority did not choose to act upon their evidence and did not find that the case against the Junior Clerk had been proved. That was why he was exonerated.

5. It appears from the records available that on some anonymous application made to the High Court, the High Court looked into the matter and on being satisfied that there was a case to be pursued, the High Court issued a notice under Rule 22 of the Rules to reopen the matter of the proceedings against the appellant. It is this that consequently resulted in the penalty. The High Court, on the same evidence took a different view and found that from the evidence of the witnesses and circumstances, it had to come to a conclusion different from the one reached by the disciplinary authority. Consequently, it imposed the penalty of removal from service. We do not think that there has been any misreading of evidence by the High Court on any point. It is urged that the High Court assumed that the Magistrate had denied the occurrence of hailstorm on the night of 30-8-76 and that is really not the case. That again has been referred to in detail by the learned single Judge. Copy of the deposition of Mr. Rane, the Magistrate, was produced and that did show that a question was put to Mr. Rane by the petitioner-appellant with reference to the occurrence of hailstorm and he denied it. We do not find any substance in the plea that the finding is on a charge different from that on which notice was given. The charge was of non-delivery of muddamal despite obtaining the signatures of the accused and that has been categorically found on evidence. We also see no justification for the plea that there was no finding on the charge. What is referred to us as extraneous ground is the observation in the order of the High Court that the conduct disclosed on the part of the clerk does not befit the servant of a Judicial Department. Evidently, the position occupied by the wrong-doer, the nature of his functions and his responsibility are of consequence in determining the penalty. A Junior Clerk entrusted with the duty of maintenance of Muddamal Register and the release of muddamals is expected to discharge his duties honestly and if that is not done, that will have serious consequences. To a great extent the faith in the proper conduct by the staff of the Judicial Department assures public confidence in that institution. What was observed by the High Court in its order was only that the conduct disclosed in the case, particularly in the background of the facts and circumstances, was not such as to befit a servant of the Judicial Department. We see no reason why this should be said to be any extraneous consideration. Nor do we find any justification for the plea that the decision is based on surmises and conjectures. We have dealt with the merits so elaborately only to do justice to the Counsel who criticised the order of the Court in very elaborate terms.

6. Now we will come to the plea that Rule 22 of the Rules ought not to have been invoked in this case. As we have pointed out, the power under Rule 22 was invoked after a period of nearly 13 months. It was not the High Court which passed the order exonerating the petitioner. It was the disciplinary authority who passed it and in the normal course, the High Court would not be aware of that order at the time it was passed. In the present case, the High Court became aware of it on receipt of an anonymous application. Thereupon the High Court took notice of it and promptly action has been taken. This is evident from the

counter-affidavit filed by the Registrar of this Court.

7. Rules 22 and 23 of the Rules deal with the power of review. They read as follows:

22. Government's power to review:

Notwithstanding anything contained in these rules, the Government may, on its own motion or otherwise, after calling for the record of the case, review any order passed by any authority which is made or is appealable, or which is deemed to have been made or to be appealable, under these rules and

23 Review of order in disciplinary cases:

The authority to which an appeal against an order imposing any of the penalties specified in Rule 6 lies may, of its own motion or otherwise, call for record of any proceeding under these rules and review any order passed in such a case and may, after consultation with the Commission where such consultation is necessary, pass such orders as it deem fit as if the Government servant had preferred an appeal against such order:

Provided that no action under this rule shall be taken after the expiry of a period of more than six months from the date of such order.

It must be remembered that the Gujarat Civil Service (Discipline and Appeal) Rules, 1971, are rules applicable to the civil servants in general. We were concerned with the application of the rules to a member of the staff of the Judicial Department.

8. Rule 22 deals with the power of review vested in the Government notwithstanding anything contained in the rules. It enables the Government to review any order passed by any authority. Rule 23 deals with the power conferred on the appellate authority. The power of the appellate authority, meaning thereby the authority to which an appeal against the order imposing a penalty would lie, is to call for the record of any proceedings and review such order. But this power under Rule 23 is limited to a period of six months from the date of the order. Thus, while the appellate authority's power is circumscribed by a limitation as to the period within which it could be exercised, there is no such bar on the power of the Government. In the case of the member of the staff belonging to a Judicial Department, Rule 22 will operate to confer the power of review which the Government has on the High Court by virtue of Article 235 of the Constitution of India. Consequently, the power of review under Rule 22 will be exercisable by the High Court. Such power of review may be exercised by the High Court under Rule 23 also but that would be as an appellate authority. If such power is exercised under Rule 23 of the Rules, it will be subject to limitation as to time. Therefore, it is only in a cause where the High Court happens to be the appellate authority also, it may have power under Rule 23 of the Rules as an appellate authority. It will have power under Rule 22 as the Controlling Authority to exercise power of review in any case. If it chooses to exercise the power of

review under Rule 22, no restriction as to time in the exercise of such power is provided under the rule.

9. Evidently, the High Court exercised the power here beyond the period of six months. If it exercised the power which was available under Rule 22, there will be no objection to the exercise of such power reserved in the High Court in regard to a member of the staff of the Judicial Department. But then, what is contended is that, though no period of time is limited in Rule 22 of the Rules, a period of limitation must be read, and, if so read, the exercise in this case must be found to be beyond that period.

10. Wherever power is reserved in any authority, if the Legislature or the rule-making authority, as the case may be, does not choose to impose the limitation of a period of time for the exercise of such power, it cannot be said that a period of limitation should be implied for the exercise of such power. Of course, to exercise that power unreasonably, would not be a genuine exercise. The exercise must necessarily be reasonable and reasonableness would include the time element also. That is not to say that there is a period of limitation for exercise of such power. The time within which such exercise could reasonably be made must depend on the facts and circumstances.

11. The question would be, whether the exercise on the facts and circumstances of this case, could be held to be reasonable, fair and just. If it would be, then, it would be within the scope of the power; but, if it appears, on the facts of the case, that the exercise, because of the undue delay, would be unreasonable as being unfair and unjust, the exercise would not be a genuine exercise of power under the rule. The test of genuineness, the test of reasonableness, the propriety of exercise must depend upon what import it would have on the person against whom the exercise is made. It would depend to some extent upon the circumstances relating to such power. Therefore, it cannot be decided *de hors* such circumstances. May be on the strength of inaction in regard to exercise of power reserved in an authority a person has committed himself. If that is shown to be a reasonable conduct on his part, any exercise thereafter which would necessarily prejudice him may be unreasonable. Of course, that is not to say that merely because any person contends that he has committed himself to a position such exercise would not be possible. The time taken for action, the reason for delay if it is inordinate, the irreparable prejudice that may be caused to the party against whom such exercise is made by reason of such delay are all matters of relevance in determining whether the exercise of power has been within a reasonable time in any given case. Hence, when a plea that the exercise of power is not reasonable is urged, the Court would normally expect the petitioner to show how he has been prejudiced by the alleged delay in the exercise of the power.

12. We may in this context refer to the decisions to which our attention was drawn by the learned Counsel appearing for the appellant: (i) *Sachindra Nath Mahapatra v. The State of West Bengal and Ors.* 1971 (1) S.L.R. 816 and (ii)

State of Gujarat v. Patel Raghav Natha and Ors. 10 G.L.R. 992 were cited before us. Both these cases have no application to the facts of the present case. It was held in Sachindra Nath's case by A.K. Sinha, J. of the Calcutta High Court that the exercise of revisional power under Regulation 884 of the Police Regulations after lapse of two years of the punishment was not reasonable and in the words of the learned Judge, this was so because "It seems, therefore, clear that the proceeding started by the Revisional Authority after the lapse of two years from the date of the imposition of penalty by the disciplinary authority no doubt resulted in breach of its implied obligation to commence the proceeding with diligence under Regulation 884 and this caused serious mischief and injury to the petitioner." The question that arose in Raghav Natha's case was whether the Commissioner under the Bombay Land Revenue Code could revise an order u/s 65 at any time when no period of limitation was prescribed u/s 211. The Supreme Court observed in this context..."but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

13. In the case before us, we should notice that the power of review was not exercised by the authority which passed the order. It was by a different authority, an authority which got information about the order sought to be reopened, not in the usual course, but by reason of certain developments. It is to enable the authority to act under such circumstances that the power of review is conferred. That happened in this case by the High Court being apprised of the need to look into the question. The High Court looked into it and it was satisfied that there was a case for proceeding under Rule 22. Action has thereupon been done diligently. There is no case of any specific prejudice caused to the petitioner. We do not think that the period of 13 months is an unreasonable period. Hence the contention must fail.

14. The plea that it is not evident whether Rule 22 or Rule 23 had been invoked, is also not sustainable. Rule 23 could not be Invoked as action was commenced beyond the period of six months. The power under Rule 22 was available. In the circumstances, we see no reason to interfere with the order of the learned single Judge.

Appeal is dismissed.