

(2009) 05 GUJ CK 0044
In the Gujarat High Court

Case No : Special Civil Application No's. 9286 of 1993 and 13060 of 2008

Narayansingh Karansingh

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Gujarat Civil Services (Conduct) Rules, 1971 — Rule 3, 4(1)

Citation : (2009) 05 GUJ CK 0044

Hon'ble Judges : K.S. Radhakrishnan, C.J.; Akil Kureshi, J

Bench : Division Bench

Advocate : Hitesh N. Acharya, for the Appellant; Devant Vyas, for Respondent
Nos. 1 - 2, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Petitioner challenges his dismissal order imposed by the Disciplinary Authority as upheld by the Appellate and the Revisional Authorities.

2. Briefly stated, facts of the petition are as follows:

2.1 The petitioner was employed as Head Constable (Armed) in Police Force. A chargesheet dated 2.2.83 came to be issued against him mainly alleging that he was married to one Navnitkumari on 5.7.72. He stayed with his wife for about three months after which she was residing with the parents of the petitioner at Jaipur while the petitioner was posted at Ahmedabad. At that time, the petitioner falsely representing that he is unmarried and giving false promises, developed illicit relation with one Ratanben who herself was married and is the cousin sister of the petitioner. Through this cohabitation, a girl child was also borne. Upon his transfer from Ahmedabad to Surat on 29.6.78, he went to Surat with Ratanben and kept her as his wife. On 7.7.82, his wife Navnitkumari reached Surat, upon which he drove away Ratanben with her three sons and daughter Umadevi. He had thus committed acts of moral turpitude and exhibited conduct unbecoming of a police official.

2.2 A departmental inquiry was conducted against the petitioner. The Inquiry Officer upon conclusion of the oral inquiry submitted his report holding that the charges have been proved. This report was supplied to the petitioner along with show cause notice dated 22/26th March 1984 calling upon him to show cause why penalty of dismissal should not be imposed upon him.

2.3 After taking into consideration the representation of the petitioner to the said show cause notice, the Disciplinary Authority i.e. Deputy Commissioner of Police, Surat passed order dated 30th May 1984 dismissing the petitioner from service.

2.4 The petitioner's appeal came to be rejected by the Police Commissioner, Surat on 4.5.86 and his further revision to the State Government also came to be dismissed by the order dated 23.5.87.

3. It may be noted that the Government passed order in revision application way back in the year 1987. The petition was filed in the year 1993. Substantial delay was sought to be explained on the ground that the petitioner had initially desired to challenge the order of punishment by filing a civil suit. The advocate to whom papers were entrusted did not file suit for a long time and therefore, finally in the year 1993, the petitioner took away the papers and filed this petition. We are afraid, the explanation for filing the petition 6 years after the last order was passed is not satisfactory. However, since the petition has already been admitted, we have also examined the same on merits.

4. The petitioner sought to challenge his order of dismissal on various grounds. We have heard the learned advocates appearing for the parties.

5. It was contended that the charges were not proved as there was no reliable evidence on record.

6. We have perused the material on record. The Inquiry Officer took into account various statements and documents for holding that the charges were proved, in particular, Ratanben was examined by the Inquiry Officer. She stated in clear terms that the petitioner had developed illicit relation with her and kept her as his wife and out of such cohabitation, she had given birth to one girl child. She had also followed him at Surat upon his transfer and stayed with him in the police lines. Since the petitioner was previously married and he brought his wife to Surat, she was thrown out from the house. She was beaten up and driven out without giving her any of her belongings. He has refused to pay her maintenance and has also refused to maintain his daughter. She further stated that she was married to one Amarsinh and the marriage was subsisting.

The Inquiry Officer also took into account the school certificate of daughter of Ratanben one Umadevi wherein her father is shown to be Naransinh, i.e. the petitioner. These findings were upheld by the Disciplinary Authority. We do not find that this is a case of no evidence. It is, by now, well settled that the nature of proof required in departmental inquiry is one of preponderance of possibilities and not proof beyond doubt as in criminal trial. Since we find that this is not a

case of no evidence, despite the wife of the petitioner i.e. Navnitkumari not entirely supporting the Department in the inquiry, we do not find that the findings are perverse so as to call for interference in exercise of writ jurisdiction. We may also notice that though reliance was sought to be placed on the record of the Municipal Corporation showing Amarsinh as father of Umadevi, as also Ratanben withdrawing her maintenance application from the criminal court, these documents were apparently not before the authorities when the inquiry was being conducted. No reliance, therefore, can be placed on such documents.

7. It was next contended that in any case, the allegations even if proved would not amount to misconduct which could be punished under the Service Rules. It was contended that the charges do not fall under any of the misconducts specified under the Service Rules and in any case, the acts of the petitioner were committed in his personal capacity and had no nexus with the discharge of his official duties. He, therefore, could not have been proceeded departmentally.

8. Under substantially similar circumstances, we have considered these issues at length in another decision in Special Civil Application No. 2829 of 1988 in following manner:

Re: Not a misconduct under the Rules:

It was contended that the Services Rules or Police Manual do not recognize such a conduct as misconduct and unless and until there is specific rule prescribing such a conduct of an employee as misconduct, no punishment can be imposed for such conduct. Reliance was placed on the decision of the Apex Court in the case of Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, wherein it was observed in para 23 that question of misconduct cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. The decision in the case of Glaxo Laboratories (supra) was followed by the Apex Court in the case of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.,

We, however, find that Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971 is very wide. Sub-rule (1) thereof reads as under:

3. General:

(1) Every Government servant shall at all times -

(i) maintain absolute integrity,

(ii) maintain devotion to duty, and

(iii) do nothing which is unbecoming of a Government servant.

Explanation :- A Government servant, who habitually fails to perform a task

assigned to him within the time set for the purpose and with the quality of performance expected of him, shall be deemed to be lacking in devotion to duty within the meaning of Clause (ii)"

The expression, "do nothing which is unbecoming of a Government servant" has wide amplitude and large number of actions of the Government servant would be covered under the said expression. In the present case, it has been held against the petitioner that despite subsisting marriage, out of which wedlock, he had five children, he first had illicit relation with another lady with whom he cohabited for several years giving birth to two children. Thereafter, once again, while investigating into a complaint, he came in contact with one Dhuliben, a married woman. He developed illicit relations with Dhuliben and eloped with her and they started staying together as husband and wife. Such a conduct of a police official who has been employed in a disciplined force carrying out important functions of maintaining law and order and investigating crimes would certainly amount to acts unbecoming of a Government servant and therefore misconduct.

In the case of *Chairman and M.D., Bharat Pet. Corpn. Ltd. and Others Vs. T.K. Raju*, the decisions of the Apex Court in the case of *Kalra and Glaxo* (Supra) came to be considered in following manner:

10. In *Kalra* the misconduct alleged against the delinquent was trivial. Report against him was found to be on ipse dixit. It was held that Rule 4(1)(i) did not specify that its violation will constitute misconduct. It was opined that the delinquent did not commit any misconduct by violating "Advance Rules". In that situation, it was observed that - how did the question of integrity arise passes (our) comprehension". It was held (SCC p.338 para 31)

31. To sum up the order of removal passed by Disciplinary Authority is illegal and invalid for the reasons: (i) that the action is thoroughly arbitrary and is violative of Article 14, (ii) that the alleged misconduct does not constitute misconduct within the 1975 Rules; (iii) that the inquiry officer himself found that punishment was already imposed for the alleged misconduct by withholding the salary and the appellant could not be exposed to double jeopardy; and (iv) that the findings of the inquiry officer are unsupported by reasons and the order of the Disciplinary Authority as well as the Appellate Authority suffer from the same vice. Therefore, the order of removal from service as well as the appellate order are quashed and set aside.

11. In *State of Punjab v. Ram Singh Ex-Copnstable* it was stated : (SCC pp.57-58 para 5)

5. Misconduct has been defined in Black's Law Dictionary, 6th Edn. at p.999 thus:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or

carelessness."

Misconduct in office has been defined as:

"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

12. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn. at p.3026, the term "misconduct" has been defined as under:

The term "misconduct" implies a wrongful intention, and not a mere error of judgment ... Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word "misconduct" is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. "Misconduct" literally means wrong conduct or improper conduct.

13. On more than one occasion, different courts have taken pains to explain that Kalra does not lay down any inflexible rule. (See *Probadh Kumar Bhowmick v. University of Calcutta*, *Tara Chand v. Union of India*, *Secy. to Govt. v. A.C.J. Britto and Norattanmal Chourasia v. M.R. Murli*.)

14. In the aforementioned situation, the High Court in our opinion committed a manifest error in relying upon Kalra and Glaxo as we have noticed herein-above, that the respondent was not charged in terms of (Rule 4 of Part II of) the Rules alone. He was charged for violation of several other clauses of the Rules. The High Court, therefore, was not correct in coming to the conclusion that as some of the charges were vague and indefinite, thus, no punishment could have been imposed on the basis thereof.

In the result, we find that the conduct of the petitioner is sufficiently covered under Rule 3(1) of the Gujarat Civil Services (Conduct) Rules.

Re: Not connected with discharge of his duty:

Counsel for the petitioner submitted that the alleged acts attributed to the petitioner had no connection with the discharge of his official duties and therefore, even if the allegations are established, the petitioner cannot be punished for misconduct. It was contended that the acts committed by the petitioner in his personal life had no connection with his duties and no punishment therefore can be awarded for such actions.

We may at this stage notice the judicial trend on the issue:

Learned single Judge in the case of *Karsanbhai D. Parmar v. State of Gujarat and Ors.* 1986 (23) G.L.T. 87 set aside the punishment awarded to the petitioner observing that the Police Manual did not specify that to have a mistress is a misconduct.

Learned single Judge of this Court in the case of Bodu Tarmamad Vs. Dt. Supdt. of Police, Jamnagar and Another, examined the allegations against a Government employee that though he was a married man he allowed a Hindu girl to stay with him in police quarters without marriage ceremony. The learned Judge found that acts of the employee did not amount to misconduct. It was observed that there was no charge against the employee that he had allowed or had permitted a concubine to stay in the police quarter. The charge was simple enough that the petitioner though a married man had allowed a Hindu girl to stay with him without performing any marriage ceremony. It was on this background that the learned Judge found that the allegations did not amount to misconduct which can be visited with penalty under the Service Rules.

In the case of Rabindra Nath Ghose (In re), 1985(1) SLR 598, learned single Judge of Calcutta High Court held that a Head Constable leading an immoral life with another woman would not amount to misconduct in performance of duties and his dismissal was therefore set aside.

On the other hand, learned single Judge of this Court in the case of Thakore Chandrasingh Taktsingh Vs. State of Gujarat and Another, was examining a case where a police constable was acquitted for criminal prosecution for kidnapping a minor girl. He was, however, proceeded departmentally on the said allegations and was eventually dismissed from service. The learned Judge found that the allegations against police constable who is a married man having eloped with a minor girl would amount to conduct "unbecoming of a Government servant" and therefore it was open for the Department to inquire into the charges.

In the case of Bhikhudan A. Gadhavi v. District Panchayat 2002(4) GCD 83 (Guj), learned single Judge of this Court upheld the order of dismissal of an employee of Panchayat on the charge of living with another lady though the first marriage was subsisting.

In the case of K.V. Bhundias v. State 2003(3) GCD 2118(Guj), learned single Judge upheld the order of removal of an employee on the charge of his having illicit relation with another lady from whom a daughter was born to him though his lawfully wedded wife was still alive.

In the case of State of Punjab and Others Vs. Ram Singh Ex. Constable, the Apex Court was considering a case where an employee working as Gunman in the office of the Deputy Commissioner of Police was found heavily drunk and roaming at a bus stand with his service revolver. In that context, it was observed that though taking drink by itself may not be a misconduct, and out of office hours one may take drink and remain in the house, but being on duty, disciplined service like police service personnel shall maintain discipline and shall not resort to drink or be in a drunken state while on duty. The Apex Court upheld the punishment making following observations:

5. Thus it could be seen that the word "misconduct" though not capable of precise definition, its reflection receive its connotation from the context, the

delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

In the case of *Chairman and M.D., Bharat Pet. Corpn. Ltd. and Others Vs. T.K. Raju*, the Apex Court was considering a case where a Senior Sales Officer of Bharat Petroleum Corporation was proceeded departmentally on the ground that he had taken short term loans from various distributors, but not returned the same as per the promise. The Apex Court restored the punishment imposed by the employer and set aside the order passed by the High Court.

In the case of *M.M. Malhotra Vs. Union of India (UOI) and Others*, the Apex Court was examining the legality of penal order of compulsory retirement passed by the Competent Authority on the petitioner. The petitioner was engaged as a Pilot in the Indian Air Force. He was married to one Roopa Malhotra as per Hindu rites. He, however, developed illicit relation with one Ms. Anna Suja John. He was charged with misconduct for having illicit relation with Ms. Anna Suja John and for having contracted plural marriage with her. The Apex Court though found that the second marriage was a nullity and therefore did not require formal declaration of decree of nullity by the Court and that therefore, charge of plural marriage would not stand, nevertheless, found the employee guilty under the Service Rules for misconduct for cohabiting with a married woman. The Court found that the conduct of the employee was unbecoming of an Officer and eventually order of punishment was upheld.

From the above decisions, it can be seen that the concept of "unbecoming of a Government servant" is sufficiently wide so as to cover variety of actions of an employee. It is not possible to lay down any rigid principles nor is it possible to enumerate exhaustively all such actions which would be covered under the said expression. It must depend on the facts and circumstances of each case particularly nature of allegations and duties being performed by the employee. However, no proposition of universal application can be laid down that every act of an employee in his private life must be excluded from the expression "misconduct". It must be judged on facts of each case."

In the present case also, we find that the conduct of the petitioner was such as would render him unsuitable for service as Head Constable in Police Department. As already noted, the petitioner though already married and his wife was residing at his native place, developed illicit relation with his own cousin sister who was

already married. This he did by falsely representing that he was unmarried and also giving false promise that he would help her secure job for her sons. Out of this illicit relationship, the petitioner became father of one girl child. Upon his transfer to Surat, he took Ratanben along with her children to Surat. When his wife arrived at Surat, he unceremoniously threw Ratanben and her children out on the street. Considering the fact that the petitioner was employed as Head Constable in Police Department, his conduct cannot be segregated from his duties. As per Hindu law bigamy is prohibited. Under Indian Penal Code bigamy as well as adultery are punishable offences. Ordinarily, a person having more than one wife is disqualified from securing Government service. The conduct of the petitioner was thus clearly unbecoming of a Government servant particularly for an official discharging duties in disciplined force like police force. The authorities, therefore, committed no error in passing the order of dismissal.

9. In the result, the petition fails and is hereby dismissed. Consequently, the Civil Application is also disposed of.