
(2010) 06 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 4357 of 2000

Nutan Bharti Gram Vidyapith

APPELLANT

Vs

Government of Gujarat and Another

RESPONDENT

Date of Decision : 30-06-2010

Acts Referred:

Citation : (2010) 06 GUJ CK 0014

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : J.D. Ajmera, for the Appellant; Krina Calla, AGP for Respondent 1, B.P. Tanna and Nikhil Karial, for Tanna Associates for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—When this matter was being heard, in order to resolve the dispute amicably, a suggestion was put to learned Advocate for the petitioner to put an end to the matter by paying 50% of backwages from the date of order of dismissal till the date of superannuation. This suggestion was not accepted. Learned Advocate for the petitioner stated that the respondent No. 2 may join without backwages, which was not accepted by respondent No. 2 and respondent No. 2 stated that the Court may decide about the backwages at any percentage which will be acceptable to him. Therefore the matter was proceeded on merits.

2. The petitioner herein challenged the validity of order dated 2nd March 2000 whereby the respondent No. 1 has allowed the appeal filed by respondent No. 2 and ordered reinstatement of respondent No. 2 in petitioner's institution.

2.1 The petitioner is a public trust which runs and manages Nutan Bharti Gram Vidyapith. The petitioner conducts three years Degree course known as Bachelor of Rural Studies. The respondent No. 2 was appointed as Lecturer on 15th September 1989. According to the petitioner the conduct of the respondent No. 2 was not proper and therefore the petitioner issued a chargesheet to the

respondent No. 2 along with relevant materials and documents. The petitioner submitted reply and further reply to the said chargesheet. However, the petitioner decided to hold inquiry against respondent No. 2. Initially one Dr. Ravjibhai Patel was appointed as an Inquiry Officer and in view of the objection raised by respondent No. 2, in his place one Mr. Jayantibhai N. Jaganiya was appointed as Inquiry officer. The inquiry was commenced and according to the petitioner the respondent No. 2 took various adjournments. The Inquiry Officer after considering the materials placed on record held that all the charges are proved except the charge leveled by chargehseet Nos. 816 and 818 of 1993-94 and he submitted his report to the petitioner. The petitioner accepted the findings of the Inquiry Officer and issued show cause notice dated 13th April 1994 as to why he should not be dismissed from service. The petitioner submitted his reply and a personal hearing also took place. Thereafter the petitioner passed order on 6th June 1994 dismissing the petitioner from service.

2.2 The respondent No. 2 preferred an appeal before the Commissioner of Higher Education, who dismissed the appeal on the ground that there was no provision for appeal. The respondent No. 2 therefore filed Special Civil Application No. 12822 of 1994 before this Court wherein the respondent No. 1 was directed to hear the appeal of respondent No. 2. In pursuance of the same the appeal was allowed. The said decision was challenged by the petitioner by way of Special Civil Application No. 7111 of 1996 before this Court. This Court set aside the order passed in appeal and directed the Appellate Authority to decide the same in accordance with law after affording opportunity to both the parties. After hearing the parties the respondent No. 1 allowed the same vide order dated 2nd March 2000 and directed the petitioner to reinstate the respondent No. 2. The said order is challenged in the present petition.

3. Learned Advocate for the petitioner averred that there was no provision of appeal at the time when the respondent No. 2 filed appeal before respondent No. 1; that the respondent No. 1 did not consider the charges of second chargesheet which were proved; that once the charges are proved, it was not open to respondent No. 1 to quash and set aside the impugned order of dismissal; that the allegations leveled against the respondent No. 2 were of serious nature; that the presence of the respondent No. 2 was not in the interest of the institution; that the respondent No. 1 was lacking inherent jurisdiction to pass the impugned order; that the so called reasons given by respondent No. 1 in the impugned order are not germane; that the respondent No. 2 is not entitled to backwages and that there is no order of continuity of service and that even if continuity is given, no increments nor promotion can be granted.

3.1 In support of his contentions he has relied the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, wherein the Apex Court has laid down guidelines for grant of reinstatement, continuity of service and backwages. He has also relied upon the decision of the Apex Court in the case of Chief Engineer, Hydel Project and Others Vs. Ravinder Nath and Others, in respect of his contention that the

respondent No. 1 has no jurisdiction to hear the appeal.

4. Mr. B.P. Tanna, Senior Advocate appearing along with Mr. Nikhil Kariel learned Advocate appearing for the respondent No. 2 submitted that in the earlier round of litigation in Special Civil Application No. 12822/1994 the petitioner had voluntarily requested this Court to relegate the petitioner and respondent No. 2 to the appellate authority and therefore he has no ground to contend that the appellate authority has no jurisdiction.

4.1 According to learned Advocate even in the second round of litigation the petitioner has not raised the bar of jurisdiction. He submitted that since there was no affiliation, the remedy of the respondent No. 2 against the order of the petitioner was by way of appeal to the respondent No. 1.

4.2 According to him the order of the respondent No. 1 is well reasoned one as is apparent from a reading of the order. The respondent No. 1 found that there were no such serious allegations which would warrant the punishment of dismissal from service which is to be exercised as a last resort.

4.3 He submitted that baseless allegations were made against the respondent No. 2 about misbehaviour with lady librarian and in fact the respondent No. 2 was in South India on that day and therefore the said allegation was withdrawn. He submitted that the respondent No. 1 has considered all the aspects of the matter and therefore this petition be dismissed.

5. As a result of hearing and perusal of the record, certain aspects are not disputed. As regards the contention that there is lack of jurisdiction in the appellate authority is concerned, when Special Civil Application No. 12822/1994 was being heard, the petitioner had voluntarily requested this Court to relegate the present petitioner and respondent No. 2 to the appellate authority i.e. respondent No. 1 herein. In the said petition the respondent No. 2 had challenged order dated 15th November 1994 whereby the respondent No. 1 had rejected the appeal of the respondent No. 2 against the order of dismissal on the ground of lack of jurisdiction. In the said petition this Court had passed the following order:

The learned Counsel appearing for both the sides submit that the petitioners may be relegated to the appellate authority who is respondent No. 1 in both these petitions, as was done by order dated 25/9/1994 (Coram: M.S.Parikh, J.) in S.C.A. No. 13493/1994 in an identical situation.

5.1 Again the petitioner had challenged the orders passed by respondent No. 1 on the ground that principles of natural justice had not been complied with by the respondent No. 1 and this Court set aside the orders impugned therein and had further directed that the competent authority shall hear the appeal preferred by the present respondent No. 2 in accordance with law after affording fair opportunity to both the parties to the litigation. I am therefore of the view that the present petitioner having acquiesced to the jurisdiction of the respondent No.

1 as a competent authority, cannot now be permitted to turn around and challenge the authority of the respondent No. 1.

5.2 It is required to be noted that even otherwise, from the record it transpires that the appellate authority is competent to hear the appeal. A resolution of the State Government through Education Department dated 21.4.1994 lays down the guidelines with regard to teaching and non-teaching staff of Gram Vidyapith. The said guidelines specifies the guidelines regarding conduct, discipline and appeal of employees including teaching and non-teaching staff of Gram Vidyapith and the said resolution had been amended vide resolution dated 12/4/1994, whereby the employee is provided with an opportunity to file appeal before the Commissioner, Higher Education within a period of 30 days against any major penalty imposed by the Governing Body of the institution. The Commissioner, Higher Education is to take a decision within 45 days after giving an opportunity to the Governing Body and if the decision is not taken within 45 days then the decision of the inquiring authority would be treated as final. This clause again came to be amended vide Government Resolution dated 23.8.1996.

5.3 The objection on the ground of jurisdiction is being raised by the petitioner primarily on the ground that since the petitioner institution was affiliated to North Gujarat University, in case an order of dismissal, the employee is required to approach the Gujarat University Services Tribunal. It was contended that vide notification dated 25.4.1994 the North Gujarat University has been brought under the purview of Gujarat Affiliated Colleges Services Tribunal Act and since the petitioner institution was affiliated to the North Gujarat University, an appeal against the order of the institution would lie to the Gujarat University Services Tribunal. However, it is required to be noted that the affiliation of the petitioner institution between 15.6.1998 and 14.6.2002 had been granted with retrospective effect vide order dated 4.7.2003. Therefore it becomes clear that on the date when the respondent No. 1 took a decision i.e. on 2.3.2000 there was no affiliation in existence and the affiliation was granted with retrospective effect in the year 2003. Thus, since there was no affiliation, even otherwise the remedy of the respondent No. 2 against the order of the petitioner was by way of appeal to the respondent No. 1. Therefore the contention regarding lack of jurisdiction cannot be accepted and is rejected.

6. As regards the merit is concerned, it would be beneficial to quote some relevant paragraphs of the affidavit filed on behalf of the respondent No. 1 as under:

I say and submit that the Institution has charged Shri Madhabhai S. Patel with 13 charges, and the investigation proceedings were in progress and before the conclusion of the same the Institution has charged 8 more charges. And these could have been improved by issuing oral or written instructions to Shri Madhabhai S. Patel, where the charges are (1) regarding organizing celebrations of Sardar Patel Jayanti, (2) regarding sending applications to Higher Authorities regarding mental torture to the employees of the Institution, (3) managing of

education work, (4) responsibility of implementation of consumers stock, (5) Shri Patel and other employees sending complaints directly to the Director, Higher Education Directorate, Gandhinagar (6) not remaining present in the labour works.

I say and submit that the above allegations by the Institution amongst which the allegation No. 812 to 818, paiki allegation No. 816 relates to the preparing of the answer sheets for the first internal examination for the Graduation years 1/2/3. The allegation No. 818 relates to the report regarding celebrations to be given to the Director, and on the date of hearing on 9 and 10/7/1996 both the parties had remained present and heard, and all the charges were heard in detail, and also at the relevant time both these allegations *816 and 818) were agreed by both the parties to be dropped. Against the other charges as shown at Sr. Nos. 1 to 6 above, the allegations are not of serious nature. And pursuant to the directions issued by the Honourable Court in the Special Civil Application No. 12822/94 on 20/3/1996, this office had heard the parties on 9 and 10/7/96 and the detailed representations were heard, merits of the case were weighed, the facts were taken into consideration and the principle of Natural Justice was taken into consideration and the Judgment was passed on 21/8/96. Accordingly the Judgment dated 2/3/2000 was also passed after taking into consideration all these issues. To terminate the services is the last remedy with the Institution. And instead of resorting to this the Institution could have imposed minor punishments as per the existing provisions. Therefore the natural remedy should be taken into consideration and the steps taken.

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I say and submit that the allegations against Shri Patel by the Institution are not of serious nature. And also the allegations that were proved are such as intimation was not given in time, absence during social gatherings, refuse to take post, leave the head office without prior permission, and actions that cause loss to the Institution and etc. Shri Patel has been discharging his duties in the Institution since 1989. Uptil the year 1992 there was no complaint in college, but after the employees had sent their application to the Higher Authority regarding mental torture by the Director, thereafter the Institution has adopted the attitude of considering small matters as serious and harass the employees, moreover the allegations are not so serious by nature that the services of the employee need to be terminated. Therefore in view of the consideration of the principle of natural justice the decision taken is just and proper.

I say and submit that the allegations as stated above are not so serious by nature, but the employees should endeavour that the atmosphere of the Institution is healthy and congenial. But the step taken by the Institution of dismissal is not at all appropriate in the form of punishment.

6.1 Thus, all the charges were heard in detail. Allegations No. 816 and 818 were agreed to be dropped by both the parties. As regards the charges at serial Nos. 1

to 6 are concerned, the same are not of serious nature. On overall consideration even this Court is of the view that to terminate the services should be the last remedy. It was always open to the authority to impose minor punishment as per the existing provisions.

7. Thus, on a total consideration of the reasoning adopted and findings arrived at by the respondent No. 1 I am of the view that the order of respondent No. 1 is a well reasoned order as is apparent from a reading of the said order. The appellate authority was not required to discuss the merits of the allegations against the present respondent No. 2 threadbare, suffice it to say that the respondent No. 1 had perused the allegations leveled against the respondent No. 2 and come to the conclusion that there were no such serious allegations that would warrant the punishment of dismissal from service which is to be exercised as a last resort. Further, from the record it clearly shows that there were several complaints against the Director of the present petitioner institution by the students and employees regarding mental harassment meted out and due to which 6 to 7 employees had been issued notice and their services were terminated, whereas several others have left the institution due to mental harassment. I am also of view that the respondent No. 1 is justified in his conclusion inasmuch as one of the charges issued to the respondent No. 2 was that he had behaved indecently with a lady librarian. The respondent No. 2 had pointed out that on the day when the alleged incident had taken place the respondent No. 2 was on a tour to South India, which resulted in the said charge being withdrawn. The petitioner has failed to produce any material even on record of this petition justifying termination of the service of the respondent No. 2. It is required to be noted that while concluding the issue the authority has not accepted or has not given any finding to the effect that because of the conduct of the respondent employee the institution has suffered any loss in any manner whatsoever. In view of these facts, I am of the view that the order passed by the respondent No. 1 is unassailable on any ground and there is nothing on record to support or justify the decision to terminate the services of the respondent No. 2.

8. The Legal maxim "*ubi jus ibi remedium*", means wherever there is wrong, there must be a remedy and which is the guiding principle for all the courts of law. Granting of back wages in the orders passed by the courts is based on above principle. It is common prudence that the employer who commits an irregularity or illegality suffers consequences thereof, especially in the cases where the employer terminates an employee under unjustifiable circumstances. It has been the practice of the Labour Courts that if the termination or removal of employee/workman turns out to be illegal, unjust, unfair and opposed to the law, the Labour Courts have been awarding reinstatement along with back wages.

9. The question of entitlement of back wages would depend upon the facts and circumstances of each case. The Court cannot be oblivious to the fact that an employee whose services were terminated wrongly, has not only to fight for his survival by getting such odd jobs as he can, but has also to fight a battle for

getting himself reinstated in service.

10. At this stage this Court may refer to certain decisions of the Apex Court on the subject. In the case of Correspondent, St. Michael's T.T.I. Vs. V.N. Karpaga Mary and Others, wherein the Apex Court, while approving that the termination is illegal, granted back wages to 75% for the total period the respondent therein remained out of service. In the case of Jasbir Singh Vs. Punjab and Sind Bank and Others, while quashing the order of the High Court granted backwages, continuity of service and other consequential benefits. In the case of State of Kerala and Others Vs. E.K. Bhaskaran Pillai, the Apex Court held as under:

4. Learned Counsel for the State has submitted that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from 15-6-1972. In support thereof, the learned Counsel invited our attention to the decisions of this Court in Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another, Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others, State of Haryana and Others Vs. O.P. Gupta, etc., A.K. Soumini Vs. State Bank of Travancore and Another, and Union of India (UOI) and Another Vs. Tarsem Lal and Others, As against this, the learned Counsel for the respondent has invited our attention to the decisions given by this Court in Union of India Vs. K.V. Jankiraman, etc. etc., State of Andhra Pradesh Vs. K.V.L. Narasimha Rao and Others, Vasant Rao Roman Vs. Union of India (UOI) through the Central Railway, Bombay and Others, and State of U.P. v. Vinod Kumar Srivastava (2006) 9 SCC 621. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of the delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.

5. However, so far as present case is concerned, as per direction given by the Court, the petitioner's case was considered and it was found that persons junior

to him were appointed and he was wrongly denied. Therefore, the petitioner was promoted from retrospective effect I.e. 15-9-1961 but he was not paid the benefit of promotion in terms of arrears of salary. Therefore, he approached the Court and learned Single Judge did not give him the monetary benefit of the promotional post from retrospective effect in terms of arrears of salary. In the review application, the benefit was given from the date he filed OP No. 585 of 1975 I.e. 15-6-1972. This appears to be reasonable. The petitioner did not approach the Court for the back wages from 15-9-1961 but he filed a petition dated 15-6-1972 and the Court granted the been fit from the date of filing of the petition before the Court I.e. 15-6-1972. The incumbent in the meanwhile has retired on 31-7-1980. Therefore looking to the facts and circumstances of the case, the view taken by the High Court appears to be justified and there is no ground to interfere in it.

11. The respondent No. 2 was appointed in the year 1989. His services came to be terminated in the year 1994. The petitioner has already reached his age of superannuation. A better part of his life has been consumed in litigations since the litigation continued since the year 1993 onwards. In spite of the favourable orders passed by the respondent No. 1 in his favour in the year 2000 the respondent No. 2 has been bereft of his salary and other benefits. As found by the respondent No. 1 the charges levelled against the respondent No. 2 are not so serious which warrant termination of service, but still the petitioner has terminated the services of the respondent No. 2. In case such a harsh action was not taken the respondent No. 2 would have continued in service. On the facts of the case it also appears that the termination is more in the nature of victimization on the grounds which could not be justified. Therefore, having considered the service actually rendered by the petitioner and the fact that the respondent No. 2 could have been continued in service with a lesser punishment, I am of the view that interest of justice would be met by granting 75% backwages of the total period the respondent No. 2 remained out of service.

12. In the premises aforesaid I do not find any merits in the petition. The same is therefore dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

13. The respondent No. 2 shall be granted 75% backwages of the total period the respondent No. 2 remained out of service and all other consequential benefits as if he continued in service all throughout.