

(2016) 06 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 6683 of 2003

Pallaviben Pareshkumar Jaiswal

APPELLANT

Vs

Principal

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GLR 781

Hon'ble Judges : Mr. A.S. Supehia, J.

Bench : Single Bench

Advocate : Mr. Bhargav Hasurkar, Advocate, for the Petitioner No. 1; Mr. Biren A. Vaishnav and Venu H. Nanavaty, Advocates, for the Respondents Nos. 1 and 2; Mr. Bhargav Pandya, AGP, for the Respondent Nos. 3 and 4

Final Decision : Dismissed

Judgement

Mr. A.S. Supehia, J. (CAV) - Being aggrieved and dissatisfied by the judgment dated 28.3.2003 passed by the Gujarat Higher Secondary Schools Services Tribunal at Ahmedabad in Application No.230 of 1994 and Application No.103 of 1995, the petitioner has preferred this writ petition under Article 226 and of the Constitution of India.

2. The petition displays a chequered history of litigations undertaken by the petitioner which are adumbrated as under :-

(a) The petitioner was appointed as Assistant Teacher in June, 1991, after following due procedure. The respondent - school was paying a meagre amount of only Rs. 500/- per month towards her salary de hors the rules prescribed by the Government. It is further submitted that the petitioner had time and again requested the respondent management to pay her regular salary as per the rules instead of paying meagre amount of Rs. 500/-.

(b) Being aggrieved by the said action of the respondent - school management, the petitioner preferred Application no.230/1994 before the Gujarat Higher

Secondary School Services Tribunal. The Tribunal admitted the application and granted ad-interim relief restraining the respondent - school management from preventing the petitioner from entering into the school and discharging her duties and also directed to pay her full receivable salary. Further direction was also issued by the Tribunal restraining the Management in changing the subject of the petitioner and appointing any other person in place of the petitioner, till the final disposal of the application.

(c) The petitioner has further submitted that on 6.6.1995, the respondent-school management passed an order terminating the service of the petitioner. Being aggrieved by the said order, the petitioner preferred Application No.103/1995 before the Tribunal. The Tribunal while admitting the said application on 15.6.1995, granted ad-interim relief restraining the school-management from implementing the termination order and preventing them for refusing entry and discharging her duties in the respondent-school. The Tribunal also directed to pay regular full salary every month to the petitioner.

(d) The petitioner has further submitted that as the subject matter of both the applications were same, the Tribunal clubbed both the applications and passed common CAV order on 30.6.1996, after hearing both the sides, the Tribunal confirmed the ex-parte ad-interim reliefs granted earlier in both the applications and fixed the matter for final hearing. In the said order, the learned Tribunal has, prima-facie held that the order of the school-management terminating the services of the applicant on the ground of deemed approval appears to be erroneous.

(e) Being aggrieved by the aforesaid order dated 30.4.1996, the respondent-school management had filed Special Civil Application No.4351/1996 before the High Court. This Court was pleased to reject the petition summarily by order dated 11.7.1996 and had observed that in view of the order dated 10.10.1994 which was subsisting on 6.6.1995, the petitioner-school (respondent no.1 and 2 herein) ought not have made the order terminating the services of the respondent no.1 (petitioner herein) without first seeking the permission of the learned Tribunal for the same.

(f) The petitioner also issued notice on 03.10.1996 to the respondent - school management calling upon them to comply with the interim order passed by the learned Tribunal. The petitioner also preferred Misc. Applications in the aforesaid Application Nos.230 of 1994 and 103 of 1995 before the learned Tribunal praying for taking necessary action against the respondents for breach of interim order. The petitioner filed Misc. Application for implementation of the interim order on 23.8.2002 and the Tribunal was pleased to dispose of the said application by an order dated 9.9.2002.

(g) Thereafter, the petitioner preferred another Misc. Application on 3.10.2002, praying for the revocation of the suspension order and for receiving salary of the suspension period. In the said application, it has been also prayed to punish the

respondent school management for the breach of the interim order. The learned Tribunal issued notice to the respondents on 7.10.2002 in the said application. However, the service of the same was refused by the respondent/s. Thereafter, the petitioner preferred another Misc. Application on 10.10.2002 praying for making a reference to the Hon''ble High Court so as to punish the respondent no.1 and 2 under the contempt of the Courts Act. On 25.11.2002, the learned Tribunal disposed of both these Misc. Applications without issuing any direction directing the respondents to comply with the interim orders or taking any action against the respondent school management for noncompliance of the interim orders passed by the Tribunal. Further order was passed for placing the main matter for final hearing on merits on 2.12.2002. The petitioner has further submitted that by virtue of the interim order of the learned Tribunal, she was discharging her duties in the respondent-school and petitioner's performance was very satisfactory. Despite the same, the respondent-school management was not paying regular salary to the petitioner.

(h) Hence, with no option left, the petitioner preferred petition No. SCA/11629/2002 before the Hon''ble Court praying for directions to the respondent to comply with the interim orders of the learned Tribunal. The same petition was summarily rejected and the matter was fixed for final hearing before the Tribunal.

(i) The Tribunal finally passed the judgment dated 28.3.2003 in Application No.230 of 1994 and Application No.103 of 1995, which is impugned in the present petition.

3. Learned Advocate Mr. Hasurker appearing on behalf of the petitioner has vehemently contended that the Tribunal was not justified in dismissing the applications. He has stated that the petitioner was regularly working as Teacher in the School since 1991, and the Management was not paying regular salary as per the Rules and Regulations of the state government. He has further contended that the Management should not have terminated the service of the petitioner in violation of the interim order of the Tribunal, and the service of the petitioner should have been regularized in view of her long service. It is contended that since the procedure for terminating a regular employee was followed in the case of the petitioner by the School, the petitioner can be said to be a regularly appointed employee. Reliance is also placed on the judgement reported in 2002 (2) GLR 2357 in case of Nalinkumar A. Thakker v. State of Gujarat on the issue that if an employee is given employment knowing fully well that it is contrary to the recruitment Rules, the employer is estopped from contending that entry of employee is illegal and contrary to law.

4. Denying the above contentions of the petitioner, the respondent nos.1 and 2 filed Affidavit-in-reply, stating that the petitioner was never appointed as teacher by following due procedure of selection namely no objection certificate was given by the department for the post, the said post was not advertised nor there was an interview by the duly constituted Selection Committee nor the approval was

given by the department, but the petitioner who was known to one of the family friends, wanted to gain some experience of teaching, the petitioner was allowed to do teaching work. It is further stated that at the time when the petitioner started working, there was no surplus teacher allotted by the department to the school but when the District Education Officer directed to absorb the surplus teacher, the petitioner apprehended that the assignment of work which was given to her will be taken away and on that apprehension the petitioner preferred application before Tribunal and obtained ex-parte interim injunction against her termination.

5. Learned Advocate Ms. Venu H. Nanavati has contended that on one pretext or the other, the petitioner did not cooperate with the final hearing of the matter and instead of that the petitioner started filing application one after the another before the Tribunal in order to see that the matter is not heard on merits. In the Order dated 2.12.2002 passed in S.C.A No.11629/2002, this Hon''ble Court has observed that the petitioner is adopting dilatory tactics. Thus, it is clear from the order that till 2003, various attempts were made by the petitioner to see that the matter is not finally heard by the Tribunal as she was in service in view of interim relief. No further contention is raised.

6. The respondent no.2 has stated in the affidavit-in-reply, that the appointment of the petitioner is made by the Principal, Prerna Higher Secondary School, i.e. respondent no.1 without following the due procedure and, therefore, the school is liable to pay the salary and other allowances to the petitioner. The salary of the petitioner cannot be paid by the Government. It is not the liability of the Government. The Tribunal has observed that the liability to pay the salary and allowances is on the school management and not on the Government. Such observations are rightly made by the Tribunal. The appointment of the petitioner is purely on ad-hoc basis. The Government is not liable to pay any grant to the respondent school management for the purpose of giving salary to the petitioner and therefore, the burden of the payment of salary of the petitioner is to be borne by the school management.

7. I have perused the entire record and the judgment rendered by the Tribunal. Having given thoughtful consideration to the rival submissions made by the learned Advocates appearing on behalf of the respective parties, in my opinion the appointment of the petitioner was not a regular appointment followed by proper procedure envisaged under any rules or regulations. At the outset, it is required to be noted that no appointment order is produced by the petitioner either before the Tribunal or before this Court. A specific query was raised by this Court inquiring about the appointment order. Learned advocate Mr. Harsurkar has candidly accepted that no appointment order is issued to the petitioner. In my view, in absence of any appointment order, the prayer of the petitioner for regularization or making her permanent cannot be granted as the same would relate back to the appointment date.

8. The Tribunal in the impugned judgement has elaborately discussed about the

mode and method of appointment of the petitioner. It is stated that the petitioner - applicant was given teaching work in Higher Secondary Section from June 1991 for the purpose of training. The Tribunal has also considered a letter marked as Exh. II, wherein it is observed that Mr. Rameshbhai Pandya has written to the Principal that "Bearer of this Chit Pallaviben (Applicant) is know to my friend. She is M.Com., B.Ed. and do the needful so that she can obtain some experience." Only because the petitioner (Pallaviben) was given chance to teach, and Rs. 500/- per month was given as pocket expenses to her; she cannot be treated as regularly appointed teacher undergoing valid process of law prescribed under the Rules. Before the Tribunal as well as before this Court also, the petitioner was unable to substantiate that initially her appointment was legal, and she was appointed through any procedure prescribed under the Regulations/Circulars/ Rules. It is not the case of the petitioner that she was appointed pursuant to some public advertisement. The only view which can be drawn from these facts is that initially appointment of the petitioner was not in accordance with law and the same was de-hors the procedure prescribed under the Law. It is no more res integra that regularization should be preceded by appointment made through some transparent process or such process which disapproves back door entry. In case of State of Bihar v. Chandreshwar Pathak, reported in 2008 (13) SCC 232, the Apex Court has observed that in absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. In fact the initial entry of the petitioner was as a "Trainee". The petitioner has not produced any confirmation or appointment order authorizing her service as "regular". In my view, the Tribunal has not erred in observing that the procedure adopted by the School by following regular procedure of termination meant for regular employee in case of petitioner will not endorse regularity in her appointment. So far as contention of the petitioner about her non payment of remuneration or salary is concerned, I concur with the observation made by the Tribunal wherein it is held that the school management is liable to pay reasonable remuneration for the period she worked as the petitioner was appointed and continued in service at their own peril.

9. For the aforementioned observations and discussion, the judgment of the Tribunal does not require any interference. The petition is dismissed. Rule is discharged.