

(1993) 02 GUJ CK 0005
In the Gujarat High Court

Principal, Sardar Patel High School and Another	APPELLANT
Vs	
Chunibhai Nathubhai Raval and Another	RESPONDENT

Date of Decision : 08-02-1993

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 73
Gujarat Secondary Education Act, 1972 — Section 36(1)

Citation : (1993) 1 GLR 642

Hon'ble Judges : C.K. Thakker, J

Bench : Single Bench

Judgement

C.K. Thakker, J.—This petition is filed by the management through Principal and Manager of Shri Sardar Patel High School, Deesa against an order passed by the Tribunal constituted under the Gujarat Secondary Education Act, 1972 (hereinafter referred to as "the Act") on September 24, 1982, by which the Tribunal was pleased to allow the application filed by the first respondent-Teacher and to direct the management to reinstate the first respondent in service by declaring the order of removal passed against him as illegal, unlawful and violative of the principles of natural justice. The Tribunal, however, did not grant backwages to the respondent-Teacher.

2. To appreciate the controversy in question, few facts may now be stated:

The respondent-Teacher was appointed as a part-time teacher in the School run by Gram Panchayat, Malan, in the year 1975. After the Higher Secondary Education Scheme came into force in the year 1976, he was declared supernumerary in the School in which he was serving and pursuant to an order passed by the District Education Officer, he was absorbed in the School run by the petitioner-Management with effect from July 2, 1976. It was the allegation of the petitioners that one Kumari Bharatiben who was serving as teacher-cum-clerk in Primary Section, gave an application to the Managing Trustee of the School complaining about the conduct of the first respondent in making improper

over tunes to her which was apparently vulgar in nature. One such letter said to have been written by the first respondent to Bharatiben is produced on record of the petition at Annexure "A" and looking to the contents of the letter, it is clear that it is highly objectionable. It is averred in the petition that the first respondent had admitted his guilt vide a writing dated 16th January, 1980 Annexure "B" to the petition and confessed that he had committed a mistake and tendered his apology. He also stated that considering his financial position as also the interest of his family, he might be pardoned. He assured the management that in future, such incident will not be repeated. The management, however, did not think it proper to condone the act said to have been committed by respondent-Teacher and issued show cause notice on April 14, 1980 Annexure "C" to the petition. Said notice was received by the respondent-Teacher through the Principal of the School on May 2, 1980. Immediately, he replied to the said notice vide a reply dated May 7, 1980 wherein he denied the allegation levelled against him. He stated that before about six months prior to the reply, the Principal of the School by calling the first respondent in his office had taken some writing under duress and coercion. However, it was not true and therefore, was not admitted by him. He also stated that the facts stated in the said writing were not correct. It would be highly improper if such writing will be considered for the purpose of terminating his services. Another writing was also sent by the first respondent on November 14, 1980 which is at Annexure "E" to the petition wherein he reiterated his contentions. It appears that the management was not satisfied with the replies and the inquiry was proceeded further. Another writing also came to be executed by the first respondent on December 16, 1980 Annexure "G" to the effect that he was in search of another job and as soon as he would get alternative job, he would leave the School. He further stated that financial condition of his family compelled him to continue with the institution and prayed for one more opportunity so that he could get alternative job. Moreover, he stated that he had committed a mistake and assured the management that it would not be repeated in future.

3. In view of the above incident, the services of the first respondent came to be terminated by removing him from service. The order passed by the District Education Officer is at Annexure "H" dated March 26, 1981. After approaching the facts and circumstances of the case as also the evidence on record, a finding came to be recorded by the District Education Officer that the first respondent had written the said letter and pleaded guilty. The District Education Officer also relied upon the writing said to have been executed by the teacher and held that the defence of the teacher that the writing was taken from him under duress and/or coercion was afterthought. Similarly, the contention of the first respondent was negated that since Kumari Bharatiben had some relations with a friend of the first respondent and as the first respondent saw both of them in a public garden, Bharatiben was afraid that she might have to lose her services and, therefore, with a view to save her skin, she made false allegations against him. Looking to the facts and circumstances as also the reply of the first respondent,

the District Education Officer did not accept the defence of the first respondent and passed the order that the first respondent was liable to be removed from service. Said order was challenged by the first respondent by filing application before the Tribunal and Tribunal allowed that application by granting reinstatement. It is this order which is under challenge in the present petition.

4. Mr. C.C. Trivedi, learned Advocate appearing for Mr. S.N. Shelat, learned Advocate for the petitioner submitted that the Tribunal has committed an error of law apparent on the face of the record in allowing the application filed by the first respondent. He submitted that the Tribunal was not right in granting reinstatement inasmuch as when the first respondent had admitted his guilt, it was not necessary for the management to hold regular inquiry as contemplated u/s 36(1) of the Act. He also submitted that reasonable opportunity was afforded to the first respondent regarding writing Annexure "A". The Principal of the School was also examined at the regular inquiry and he was allowed to be cross-examined by the first respondent. He submitted that as Bhartiben was not available at the time of inquiry since she had left for U.K., she could not be examined but the letter said to have been written to her by the first respondent was produced at the regular inquiry by the Principal and was thus duly proved through his evidence. He also submitted that the finding of guilt against the first respondent came to be believed by the District Education Officer as well as by the Tribunal. The Tribunal, however, set aside the order passed by the District Education Officer and accorded reinstatement on the ground that the procedure as contemplated in Section 36(1) of the Act was not followed and the principles of natural justice were not observed. He submitted that as per settled law, if there is an admission of guilt by the delinquent, it was not necessary to hold regular enquiry by examining and cross-examining witnesses and thus, the Tribunal has committed an error of jurisdiction which is required to be corrected in the exercise of the power under Article 227 of the Constitution of India.

5. On the other hand, Mr. Rao, learned Advocate for the respondent-Teacher supported the order passed by the Tribunal. He submitted that after appreciating the evidence on record, the Tribunal granted reinstatement and even if the order is not in accordance with law, it cannot be said that the Tribunal had no jurisdiction to interfere with the order passed by the District Education Officer and if the action of the Tribunal is within jurisdiction, it cannot be interfered with on the ground that the Tribunal ought to have taken a different view or should not have granted reinstatement. He further submitted that the order passed by the District Education Officer was only of a prima facie nature and it is always open to the Tribunal to decide as to whether or not the order passed by the District Education Officer is in accordance with law. Since the order passed by respondent No. 2 was contrary to law as inquiry contemplated u/s 36(1) of the Act was not held and the principles of natural justice were not observed, the order was rightly set aside by the Tribunal by granting reinstatement. According to Mr. Rao, sufficiency or otherwise of the material cannot be a ground to interfere with the action of the Tribunal and the petition requires to be dismissed.

6. Ms. Doshit, learned Counsel for the respondent No. 3-District Education Officer supported the order passed by the District Education Officer and submitted that after taking into account the facts placed before the District Education Officer, he had passed the order which was clearly legal and valid. The Tribunal can undoubtedly exercise the power under the Act but if the order of the District Education Officer is in accordance with law, the Tribunal has no jurisdiction to interfere with the order. In the instant case, the order passed by the respondent was in conformity with law and, therefore, it could not have been interfered with by the Tribunal. The action of the Tribunal is thus in excess of the jurisdiction vested in it and requires to be corrected by this Court under Article 227 of the Constitution.

7. Having heard the learned Counsel for the respective parties, I am of the opinion that the Tribunal has committed an error of law apparent on the face of record and the decision of the Tribunal is tainted with illegality and judicial error which requires to be quashed and set aside.

8. To recall the facts, pursuant to an application made by Bharatiben, the Management called upon the first respondent and as early as on January 16, 1980, he admitted his guilt vide writing Annexure "B". It is pertinent to note that after the said writing, first respondent did not do anything. He also did not make any complaint that such writing was obtained from him by the Principal under duress and/or coercion. In my judgment, no reasonable and prudent man would sit silent if writing of such a nature was obtained from him under duress or coercion. It seems to me, therefore, that the defence was afterthought and put forward by the first respondent only to avoid disciplinary proceedings initiated by the Management. For the first time in reply to the show cause notice, the first respondent made a complaint that some writing was taken from him about six months back. From the reply of May 7, 1980, it also becomes clear that the first respondent was aware of the fact that the writing was taken from him before about six months. Now, it cannot be gainsaid that the writing is of a serious nature. In my opinion, therefore, the District Education Officer was right in observing that the defence put forward by the first respondent was afterthought. No reasonable man in these circumstance would have acted in the manner in which the first respondent acted. Looking to the writing, it is clear that the first respondent pleaded guilty and, therefore, it was not necessary to hold regular inquiry as held by the Tribunal. A number of judgments have been cited before me but it is not necessary to deal with all those decisions; but as observed by the Hon''ble Supreme Court in the case of Central Bank of India Ltd. Vs. Karunamoy Banerjee, and in the case of Channabasappa Basappa Happali Vs. The State of Mysore, if the delinquent admits his guilt, it is not necessary thereafter to hold departmental inquiry against him. In my opinion, the District Education Officer was also right in observing that the contention of the first respondent that since he saw Bharatiben with some other person in a public place, with a view to save her skin, serious allegations have been levelled against him cannot be said to be well founded. That stand was not taken even in the

reply to the show cause notice and was taken for the first time when the matter was placed for approval before the District Education Officer.

9. There is one more circumstance also. During the pendency of the proceedings, another writing came to be executed by the first respondent on December 16, 1980 that due to financial difficulties, he was compelled to continue with the school and as soon as he would get alternative job he would leave the institution. He had also stated that he had committed a mistake and expressed his apology and assured the management that such a mistake would not be repeated in future.

10. In my judgment, therefore, the Tribunal has committed an error of law in holding that the principles of natural justice were required to be complied with by holding regular enquiry u/s 36(1) of the Act and by affording opportunity of cross-examination of Bharatiben. The Tribunal also observed that the statement of Bharatiben was taken behind the back of the first respondent and no opportunity was afforded to the first respondent as to how the said complaint was made. It is true that Bhartiben was not examined at the time of regular enquiry. But it is also true that she was not available since she had left for U.K. The application was brought on record and it came to be exhibited by examining the Principal of the School and he was allowed to be cross-examined by the delinquent. Nothing fruitful came out of the cross-examination of the Principal of the School. The District Education Officer also compared the hand-writing of the first respondent with the alleged writing at Annexure "A" said to have been written to Bharatiben. An objection was raised by Mr. Rao against such an act but I do not find any substance in such grievance raised by Mr. Rao inasmuch as adoption of such course cannot be said to be contrary to law. Even a Court has right to compare hand-writings u/s 73 of the Evidence Act. The proceedings in the instant case were not before a regular Court. As per settled law, strict rules of evidence and procedure do not apply to such inquiry. Therefore, I do not see any objectionable element in comparing the hand-writings by the District Education Officer.

11. The question then remains of opportunity of cross-examination of Bharatiben. It is well settled that cross-examination of a witness cannot be said to be a rule of natural justice in all cases and in all circumstances. It depends upon the facts and circumstances of each case. In an inquiry of the present nature, even in absence of cross-examination of the lady concerned, inquiring authority may hold the delinquent guilty. In the case of Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, even though lady students were available, they were not examined at the regular enquiry and yet Hon"ble the Supreme Court held that the principles of natural justice were not violated. In this case, however, Bharatiben was admittedly not available and, therefore, she could not be brought at the time of regular enquiry and cross-examined. The principles of natural justice were not violated.

12. Mr. Trivedi is also right in submitting that even the Tribunal has held the allegations levelled against the first respondent as well founded and he had

admitted his guilt. The Tribunal in course of judgment observed as under:

From the application of Kumari Bharatiben and her statement, it is clearly established that the applicant was making unseemly over tunes to the said Bharatiben which was not befitting a school teacher.

... .. The applicant admitted his guilt before the Head-master and gave a writing craving for pardon.

... .. Unfortunately, Bharatiben's statement was not recorded in presence of the applicant nor was any opportunity given to him to cross-examine the said Bharatiben.

... .. Under the circumstances, even though there seems to be great truth in the allegations made by the management against the applicant, as the principles of natural justice and law as prescribed u/s 36(1) of the Act have not been followed, this Tribunal is constrained to set aside the order of termination passed by the management pursuant to the permission granted by the D.E.O.

Under the circumstances, even though the applicant on two occasions before the Principal had admitted his guilt and asked for pardon, it would not be proper to hold that no enquiry was necessary.

It seems to me that in view of the settled legal position, the Tribunal has committed an error of jurisdiction apparent on the face of record in ignoring the writings executed by the first respondent. By ignoring those writings, the Tribunal has committed jurisdictional error which is subject to the judicial scrutiny under Article 227 of the Constitution of India and requires to be corrected. The order is, therefore, contrary to law and liable to be quashed and set aside.

13. It was finally submitted by Mr. Rao that the punishment of removal from service imposed on the first respondent is unduly harsh, grossly excessive and highly disproportionate to the charges levelled against the first respondent. He stated that the first respondent himself is no more interested to work with the petitioners and is prepared to go to any school to which he will be sent by the District Education Officer. I am unable to accept the submission. The first respondent is a teacher by profession. A teacher is the "engine" of the educational system. He is the principal instrument in awakening the child to cultural values. His qualities must be such as would inspire and motivate into action the benefiter. He must eliminate fissiparous tendencies and attitudes and infuse nobler ideas in younger minds. (Andhra Kesari Education Society v. Director of School Education AIR 1989 SC 183.

14. Respectfully agreeing with the observations of the Hon"ble Supreme Court in Andhra Kesari Education Society's case (supra), I am of the view that penalty imposed on the first respondent cannot be said to be arbitrary, unreasonable, excessive or disproportionate. In my judgment, once the allegations levelled against the first respondent are proved, he cannot be retained in service any

more in the larger interest of the education. The contention, therefore, cannot be upheld.

15. In the result, the petition is allowed. The order passed by the Tribunal on September 24, 1982 in Application No. 75 of 1981 is hereby quashed and set aside. The action of the petitioner-Management as approved by the District Education Officer-second respondent of removing the first respondent is upheld. The application filed by the first respondent before the Tribunal is ordered to be dismissed. Rule is accordingly made absolute with costs.