

(2004) 12 GUJ CK 0053
In the Gujarat High Court

Case No : Letters Patent Appeal No. 215 of 2002 in Special Civil Application No. 5412 of 2000

Ram Mangaram Mirchandani

APPELLANT

Vs

Maharaja Sayajirao University

RESPONDENT

Date of Decision : 30-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 12 GUJ CK 0053

Hon'ble Judges : Sharad D. Dave, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Shukla, for Nanavati and Nanavati in Letters Patent Appeal No. 215 of 2002, for the Appellant; N.V. Anjaria, in Letters Patent Appeal No. 215 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—This appeal is listed today for the 42nd time after issuance of notice at the first instance. Thereafter, it was adjourned and today it is finally heard and disposed of. In between, there were attempts to settle the matter outside the court. Representation was made by the appellant to the University for reconsidering its decision of terminating him from service while on probation. Finally, by fax message dated 16.12.2004 learned Advocate General, Mr. Shelat was informed by the Registrar of university that in principle it was decided by the Syndicate to accept the resignation of the appellant from the date he was discharged from service as probationer. However, it is not acceptable to the appellant, therefore, the matter is now required to be decided on merits. Be that as it may.

2. The appellant has challenged in this appeal the judgment and order dated 7/8.8.2001 passed by P.M.Majmudar, J. allowing Special Civil Application No. 5412/00 filed by the respondent-University whereby the learned Single Judge accepted the writ petition filed by the respondent-university and quashed and set

aside the impugned judgment and order dated 28.12.1999 passed by the Gujarat Universities Service Tribunal at Ahmedabad (for short "the Tribunal")

3. The appellant was initially appointed as a Lecturer in Archaeology Faculty of Arts in respondent-The Maharaja Sayajirao University of Baroda on probation. His performance during the period of probation was not satisfactory, therefore, by a letter dated 20.3.1983 (Annexure-C to the main petition), his explanation was called for, on the following seven points :-

"1. In the teaching time-table of the Department of Archaeology and Ancient History, for the year 1982-83, you are assigned four periods per week at Third Year B.A., for presenting before the students visual aids like antiquities, Photographs and slides in the classroom and also to take the students to the departmental museum to show them sequential evidence of artifacts of man as exhibited in the museum. In your letter dated 12 Feb. 1983 you accept the fact that you were assigned the visual aids classes not only for 1982-83 but also for 1981-82. But in both the years you have thoroughly neglected this assignments. You are never known to have taken the students to the museum or taken any antiquity to show in the class room. IN the two years you have not taken a total of 8 classes. This is gross dereliction of duty. This was brought to your notice through letters, No.ARC/362 dated 17.1.1983 and ARC/394 dated 1.2.1983. Your reply dated 7.3.1983 stating, "I have been taken visual aids classes whenever required", is bad in grammar and amounts to a refusal to do the duties assigned to you in the required manner as scheduled in the departmental time-table.

2. You were asked on 1.2.1983 to give three lectures on simple topics which form the beginning part of paper 1 at M.A. Part 1 : Lower Palaeolithic period and Upper Palaeolithic Period, on 17, 19 and 19 Feb. 1983. Even though you had 16 days to read and prepare for these three lectures, through your letter dated 12.2.1983 you refused to give the lectures on the dates fixed for them, stating that you needed more than two months to prepare for them. Even if you had elementary knowledge of the subject you could have easily prepared the above topics in 16 days. Your refusal to give the lectures shows your incompetence lack of will and interest in the subject.

3. On 9.3.1983, in the presence of teachers and graduate students of the department you accepted that you were unable to lecture, you said that you could only read notes.

4. You were asked to give three lectures on 9, 10 and 11 March 1983 on the significance of the Excavations at Vagad, Excavations at Jokha and Excavations at Champaner, respectively. On 9 and 10 March you read notes on the Excavations at Vagad and Excavations at Champaner. But you did not know what you were reading. This was brought out clearly when a few simple questions were put to you. The notes read by you contained terms like : artary, traverso, faience, mesolithic. When asked what these terms meant you were not able to explain any of them. You did not know the location of Harappa. You did not know

the location of Mohenjodaro. You did not know what latitudes and longitudes were.

5. On your own, unilaterally, you announced in the class on 10.3.1983 that you was not going to give the lecture on the Excavations at Jokha. This was most improper.

6. It is clear, from your complete negative response to the simple questions that were put to you on 9 and 10 March 1983, that you have completely neglected the subject of Archaeology and Ancient History. Many teachers in the department had found this out much earlier while talking to you. It was for this reason you were asked on 17.1.1983 to give a list of books on Archaeology and Ancient History, studies by you during your probation period. In your reply dated 22.1.1983 you have given a vague answer without specifying a single book as studied by you. It appears that you have not studied any book and wasted the opportunity given to you during your probation period.

7. It has come to the notice of the authorities that you have instigate students to go against a particular teacher, with a promise that if you were put in the place of that teacher, you would give those students very high internal text marks. This is a serious charge."

He was also asked to personally remain present before the Committee on 2.4.1983 at 2.30 p.m.

4. In response to the aforesaid letter dated 20.3.1983, the appellant submitted his reply dated 2.4.1983 (Annexure-D to the main petition). Thereafter, question of his confirmation was considered by the Syndicate of the respondent-university in its meeting held on 23.4.1983 and following resolution No. 68 was passed :-

"68. Consideration of the question of Confirmation of Dr. R.Mirchandani, Lecturer in Archeology, Faculty of Arts, Baroda.

RESOLVED that Dr. R.Mirchandani, Lecturer in Archaeology, Faculty of Arts be not confirmed in the university service and that his services be terminated from 23.4.1983 after office hours giving him one months notice pay as per rules".

Thus, a decision was taken by the Syndicate of the university not to confirm the appellant in service and consequence thereof his services were to be terminated with effect from 23.4.1983 by giving one months notice pay as per the rules (Annexure-E to the main petition)

5. The aforesaid decision of the Syndicate was communicated to the appellant by the Registrar of the respondent-university, but not in its letter and spirit. It was not properly worded. The communication dated 23.4.1983 addressed by the Registrar of the university to the appellant is as under :-

THE MAHARAJA SAYAJIRAO UNIVERSITY OF BARODA

Baroda-2

No.ADE/387 Date : 23-4-83

Dr.R.Mirchandani, Lecturer in Archaeology, Faculty of Arts, Baroda.

Sir,

As decided at the Syndicate Meeting held on 23rd April, 1983, you are hereby informed that the charges levelled against you are proved at the inquiry held in the matter and as you are still on probation, you are forthwith relieved from your services in the University. A Cheque for Rs. 15552.90 being your salary for one month as Notice Pay is sent herewith."

The aforesaid communication gives prima facie impression that after holding the inquiry, respondent-university decided to terminate his services as charges levelled against him were found to be proved. However, in reality there was no inquiry and as stated earlier, by a letter dated 20.3.1983 (Annexure-C to the main petition), the appellant was called upon to explain certain things against him, which he had explained by his reply dated 2.4.1983 (Annexure-D to the main petition). Considering the same, the Syndicate took the decision not to confirm him in its meeting held on 23.4.1983. However, harping upon the said communication dated 23.4.1983 addressed by the Registrar of the respondent-university, the appellant moved an application before the Tribunal being Application No. 98 of 1993 with a prayer to declare the impugned decision as an order passed by way of punishment without holding regular inquiry. Without considering the actual decision of the Syndicate, the learned Tribunal by its impugned judgment and order dated 20.12.1999 (Annexure-G to the main petition) allowed his application and quashed and set aside the termination order of the appellant and ordered the respondent-university to reinstate him in service and to pay full back wages with 12% interest on it with heavy costs of Rs. 5,000/=.

6. Aggrieved of the aforesaid judgment and order passed by the learned Tribunal the respondent-university has filed Special Civil application No. 5412/00 before this court, which was allowed by P.B.Majmudar, J. dated 7/8.8.2001 on the ground that the impugned order of termination was an order of termination simplicitor and not passed by way of punishment and it does not cast any stigma on the present appellant.

7. When the learned Single Judge interfered with the order passed by the learned Tribunal, then first question would be whether Letters Patent Appeal against such order passed by the learned Single Judge would be maintainable before this court or not? Learned counsel Mr. Shukla for the appellant submitted that the petition was filed by the respondent-university before this court under Arts. 226 and 227 of the Constitution and in the entire judgment the learned Single Judge has nowhere stated that he was exercising his jurisdiction only under Article 227 of the Constitution and not under Article 226 as well as 227 of the Constitution of India. Therefore, according to Mr. Shukla the present appeal against the judgment and order passed by the learned Single Judge is maintainable. It is

true that the respondent university had also labelled its petition as a petition under Arts. 226 with 227 of the Constitution of India, but considering the prayer made in the writ petition filed by the respondent university and the entire judgment and order passed by the learned Single Judge it was more than clear that the learned Single Judge exercised his jurisdiction under Article 227 and not both under Arts. 226 and 227 of the Constitution of India. Having carefully gone through the entire judgment and order passed by the learned Single Judge of this court, we are of the clear opinion that no Letters Patent Appeal would be maintainable against the impugned order before this court in view of the latest judgment of the Division Bench of this court in case of Ishwarbhai Narottambhai Patel Vs. K.H. Trivedi and Others, Thus, only on this point, the appeal was required to be dismissed.

8. Learned counsel Mr. Shukla for the appellant initially addressed us on merits and had also taken us through the judgment of the learned Tribunal as well as the judgment of the learned Single Judge and submitted that the impugned order passed by the respondent-university was not an order of termination simplicitor, but it was an order passed by way of punishment without holding regular inquiry against him. In fact, he has tried to place reliance on several judgments of the Hon"ble Supreme Court, but in view of the latest judgment of the Hon"ble Supreme Court in case of REGISTRAR, HIGH COURT OF GUJARAT v. C.G.SHARMA reported in AIR 2004 SCW 6687 he requested not to deal with his contentions on merits. Therefore, we are not required to deal with his submissions in detail.

9. In view of the above discussion this appeal fails and is hereby dismissed. However, no order as to costs.