

(2013) 01 GUJ CK 0093

In the Gujarat High Court

Case No : Special Civil Application No. 11720 of 2000

Ramjaysinh Parasnathsingh Since Decd. Thro His Heirs

APPELLANT

Vs

State of Gujarat and 1

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 26, 311

Citation : (2013) 01 GUJ CK 0093

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : A.S. Supehia, for the Petitioners No. 1-1.1, for the Appellant; Rakesh Patel, Asstt. Government Pleader for the Respondent(s) No. 1 - 2, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J.—This petition under Articles 14, 16 and 26 of the Constitution of India has been filed by the petitioner Ramjaysinh Parasnathsingh challenging the order of dismissal dated 6.9.1986 which was confirmed by the appellate and revisional authorities. The said petitioner has expired on 25/2/2006. Vide order dated 31.7.2006 passed in Civil Application for bringing legal heirs being No. 8234 of 2006 his legal heir Santoshben, widow of Ramjaysinh Parasnathsingh was brought on record. The facts of the case in brief are as under:

The petitioner-deceased Ramjaysinh was appointed as Armed Police Constable by order dated 3.7.1973. While he was working as Constable, a charge sheet dated 4.10.1978 was served upon the petitioner for misconduct. Thereafter departmental enquiry was initiated wherein he was found guilty and a show cause notice dated 5.11.1980 was issued and subsequently he was dismissed from service vide order dated 29.11.1980. Being aggrieved by the aforesaid order, the petitioner filed Special Civil Application No. 2909 of 1983 which came to be allowed vide order dated 10.4.1986 and order of dismissal was quashed and the petitioner was reinstated in service. Since the order of dismissal was

quashed on technical ground of non-supply of enquiry report, the enquiry proceedings were proceeded further and enquiry report was made on 2.8.1986 calling upon the petitioner to give reply within three days. Before the petitioner could give reply to the show cause, respondent No. 2 vide order dated 6.9.1986 dismissed the petitioner from service. The petitioner preferred appeal before the Commissioner City and the same also was rejected by order dated 13.4.1987. Special Civil Application No. 3237 of 1987 was filed challenging those orders. The said petition was disposed of by order dated 13.12.1999 by directing the State Government to decide the Revision Application on merits. The State Government rejected the Revision Application by order dated 17.10.2000. This petition is filed challenging the order of dismissal which was confirmed by the appellate and revisional authorities.

2. I have heard learned Advocate Mr. Supehia and the learned AGP Mr. Rakesh Patel for the respondents. Learned Advocate Mr. Supehia submitted that the respondent authorities have committed breach of para 454 (2) of the Bombay Police Manual as well as denial of reasonable opportunity under Article 311 of the Constitution of India inasmuch as "friend" of choice of the delinquent was not allowed at the departmental enquiry. Thus the petitioner is denied reasonable opportunity and therefore, the order of dismissal is liable to be quashed. He has further submitted that the petitioner was given 3 days time to give reply to the show cause notice as against one month provided in the Bombay Police Manual. No intimation was given regarding extension of time and hence he could not file reply. Moreover no reason is given for imposing the maximum penalty. Penalty is required to be increased gradually and the factors which were required to be considered while imposing the penalty had not been considered. He has further contended that in spite of giving clear and specific direction by the learned Single Judge by order dated 13.12.1999 passed in Special Civil Application No. 3237 of 1987, the State Government rejected the claim of the petitioner by order dated 17.10.2000. The learned counsel finally submitted that the impugned order dated 6.9.1986 as confirmed by the appellate and revisional authorities may be quashed and set aside and the petitioner be reinstated in service with all consequential benefits including back wages with 12% interest.

3. Learned AGP Mr. Rakesh Patel submitted that while proceeding with the departmental enquiry, the procedure prescribed in the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (hereinafter referred to as "the Rules") was taken into consideration and no breach was made by the respondents while carrying out the said enquiry. He further submitted that if documents at Annexures I, K, L, M, N, O, P, Q and R, are perused minutely, it can easily be culled out by any common man that the sole goal of the petitioner was to prolong the enquiry, to find out irrelevant technical lapses which prima facie appears attractive then file litigation taking extra care to see that the said enquiry be proceeded ex-parte so that he could take the plea of conducting the enquiry in his absence. Had the petitioner adopted proper procedure in the enquiry and requested for "friend" at the right time, his request would have been

considered according to the rules and regulations of the department. Moreover, the submission relating to non-supply of the documents is in fact misconceived. So far as the imposition of punishment/dismissal is concerned, unless the said punishment suffers from illegal material/procedural irregularity or that would shock the conscience of the Court, the same should not be interfered with.

4. I have carefully considered the above referred submissions made by the learned Advocate for the petitioner and the learned AGP for the State. Both have submitted their written submissions which are ordered to be taken on record. Annexure "J" pages No. 71 to 75 is the typed copy of a circular memo dated 16.1.1976 related to appointment of a "friend" in connection with the departmental enquiry produced and relied upon by the petitioner. Instruction (a) on page No. 72 reads as under:

(a) In the case of Government Servants of the Departmental (sic) who are governed by the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, the general instructions regulating matters pertaining to an "assisting Government servant" selected by the defaulting Government servant (delinquent) for assisting him in presenting his defence, as provided for under sub-rule (5), clause (c) of Rule 9 of the said Rules read with Government Circular GAD No. CDR-1071/4596-G, dated 24.5.1972 may be observed scrupulous

5. For ready reference, clause (a), (b) and (c) of sub-Rule 5 of Rule 9 of the "Rules" is reproduced hereunder:

5(a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charges as are not admitted or if considers it necessary, to do so appoint, under sub-rule (2) an Inquiry Authority for the purpose and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 10.

(b) If no written statement of defence is submitted by the Government servant, the Disciplinary Authority may itself inquire into such articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2), an Inquiry Authority for the purpose.

(c) The Disciplinary Authority may nominate any person hereinafter referred to as the Presenting Officer to present the case in support of the Charge before itself if it is to inquire into the charges or before the Inquiry Authority. *[The Government servant may present his case with the assistance of any other Government approved by the Inquiry Authority, but may not engage a legal practitioner for the purpose unless the Disciplinary Authority having regard to the circumstances of the case so permits.] *[The portion [] substituted vide GN/GAD/ No. GS/77-97/CDR/1277/1478-G. dt. 01.07.1977]

6. It is not in dispute that Articles of charges, the statement of imputations of

misconduct or misbehaviour, list of documents and witnesses at Annexure "A" pages No. 20 to 25 have been duly served. Learned Advocate for the appellant has drawn my attention to the documents at Annexure "I" page No. 70 dated 20.10.1978 and submitted that as mentioned therein the Articles of charges Annexure "A" dated 4.10.1978 was received by the petitioner on 7.10.1978 and thereafter by way of first communication dated 20.10.1978 the petitioner requested to allow him to take defence by engaging an Advocate or alternatively the petitioner had given two names -(1) T.H. Pathan, Police Inspector and (2) Z.S. Kazi who may be allowed to act as "friend" in the departmental enquiry. However, no reply was given to this letter and no "friend" was nominated. Learned AGP has submitted that more than 12 adjournments have been given but the petitioner had deliberately remained absent so that he could take the plea of conducting enquiry in his absence. Learned AGP also submitted that after forming the opinion by the Disciplinary Authority that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour, it is proposed to hold an enquiry and delivered the Government servant copy of the Article of Charges, statement of imputations, list of documents and witnesses by which each article of charges was proposed to be sustained, shall require the Government servant to supply within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person as laid down in clause (a) of Sub-Rule 5 of Rule 9 of the Rules. Annexure "A" dated 4.10.1978 was received by the petitioner on 7.10.1978. Thus, after 7.10.1978, the petitioner was required to submit written statement of his defence and further to state whether he desired to be heard in person. The petitioner has admittedly failed to comply with this provision of sub-rule 5 of the Rules. For preparing the written statement, none has restrained the petitioner from taking the help of Advocate or the two friends referred above and for taking such help no permission was ever required. Instead of filing written statement of defence and stating whether he desired to be heard in person, the petitioner had submitted document at Annexure A-I dated 20.10.1978 with a request to allow him to take help of an Advocate or alternatively the two friends mentioned in the said letter and as such the said action of the petitioner to submit Annexure-I prior to filing of written statement of defence is contrary to the prescribed Rules referred above and that position will be more clear by referring clause (a) and (b) of sub-rule 5 of Rule 9 of the Rules in which it is prescribed that after receipt of the written statement of defence or in case no written statement of defence is submitted by the Government servant, the disciplinary authority would enquire further. It is submitted by the learned AGP that procedures under clause (a) and (b) of sub-rule 5 of Rule 9 should be completed first and after following the said procedure, clause (c) of sub-rule 5 of Rule 9 would play its part.

7. Now perusal of the said clause (a) and (b) of sub-rule 5 of Rule 9 of the Rules would show that after filing of the written statement of defence within the specified time and on receipt of the written statement of defence, the disciplinary authority shall itself inquire into such articles of charges as are not admitted or if

considered it necessary to do so, appoint an Inquiring Authority under sub-rule (2) of Rule 9 of the Rules for the said purpose. If all the articles of charges have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge and shall proceed further. As laid down in clause (b), if no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into such articles of charges. In the present case, in guise of document Annexure-I dated 20.10.1978, a request was made to allow him to take help of an Advocate or alternatively to take help of any of the two "friends" whose names were mentioned in the said letter but the petitioner has not filed the written statement of defence and so no choice remained with the respondents though under the circumstances the respondents were bound to follow the procedure laid down in clause (b) of sub-rule 5 of Rule 9 of the Rules in absence of the written statement of defence. The submissions made by the learned AGP, *prima facie* sounds too technical to follow but the conduct of the petitioner is clear if the documents which are forthcoming on the record are carefully perused, it appears that right from the beginning of submitting the documents at Annexure "A" dated 20.10.1978, the petitioner had decided anyhow to prolong the matter without proper appearance and later on find fault with the disciplinary authority or the inquiring authority taking the plea that natural justice had not been followed by the respondents.

8. It has also been argued by the learned Advocate for the petitioner that copies of relevant and important documents were not supplied and so the entire departmental proceedings stood vitiated. In paras 11 and 12 of the petition the said contentions have been narrated at length. Relevant documents produced are at Annexure "K" dated 27.11.1979 at page 76, Annexure "M" dated 30.4.1980 at page 80. Referring to the letter dated 27.11.1979 at Annexure "K", it is averred by the petitioner that copies of six documents recorded in preliminary inquiry detailed in the said letter had not been received and requested to supply the same so that he will submit his written statement of defence. Vide documents Annexure "L" dated 20.2.1980 the respondents had given detailed reply relating to each documents sought for by the petitioner vide his letter dated 27.11.1979 referred above. It has been replied that the statement of persons shown at sr. nos. 1, 2, 3 and 6 were not recorded while the statement of persons shown at sr. nos. 4 and 5 were incorporated vide Exh. 25. In spite of the above referred reply at Annexure "L" dated 20.2.1980, it has been averred and vehemently submitted by the learned Advocate for the petitioner that copies of the relevant and important documents were not supplied. Learned AGP has argued that *prima facie* the said argument appears attractive but if we consider the entire circumstances and conduct of the petitioner, it appears that the petitioner has created artificial requirement by seeking documents at Annexure "K" dated 27.11.1979 referred above. It is important to note that the articles of charges etc. dated 4.10.1978 was received by the petitioner on 7.10.1979. Almost after more than a year the petitioner had asked for certain documents i.e. statements

recorded during the preliminary inquiry vide letter at Annexure "K" dated 27.11.1979. The learned AGP submitted that the documents sought for are not recorded and those are not in existence though the petitioner demanded vide letter Annexure "A" with a deliberate motive to create a ground later on that copies of relevant and important documents were not supplied. I find force in the said submission made by the learned AGP because referring to the last portion of the letter at Annexure "K" dated 27.11.1979 it appears that after due knowledge that the entire proceedings were conducted by way of preliminary enquiry, the said letter Annexure "K" was created. The petitioner was quite aware of the fact that his own statement was not recorded though vide sr. no. 6 he had asked for a copy of his own statement. In the last portion of the said letter he has further mentioned that the copies sought be supplied at the earliest and till then the proceedings be stayed/suspended; that he has objection to proceed further with the enquiry against him. Interestingly in the last, the petitioner has averred that if the documents sought for were not on record, he has objection against any decision taken by the respondents. As referred above, the reply at Annexure "K" dated 27.11.1979 was given vide document at Annexure "L" dated 20.2.1980. Prior to the said reply, the petitioner was bold enough to state that if the documents sought by him were not on record, he had objection to any decision taken by the respondents. The said conduct of the petitioner appears to have been continued later on also. In the letter at Annexure "M" dated 14.4.1980 at pages 80 and 81, the petitioner had reiterated the same. After narrating many things on page No. 81 of the said letter, he has specifically declared that he is not ready to file his reply in a false inquiry and further averred that after supply of copies of all the documents, the enquiry should be proceeded further and in absence of the same, the respondent cannot proceed further under any circumstance. The petitioner has then crossed all the levels and boundaries and gone to the height of stating that he has strong objections to each and every order that may be passed by the respondent and that he will challenge the same in the court of law. Vide letter Annexure "N" dated 30.4.1980 again the petitioner sought for documents which have already been demanded by him vide letter dated 27.11.1979 at Annexure "K" and which was also replied on 20.2.1980 at Annexure "L" by the respondents.

9. In the affidavit-in-rejoinder the petitioner has clearly admitted that for the reasons mentioned in para 3 thereon he had boycotted the departmental proceedings. This admission on the part of the petitioner gives full support to the submissions made by the learned AGP that the sole aim of the petitioner was not participate in the departmental proceedings at all at any cost and by writing letters he wanted to highlight the irrelevant things and later on make good grounds for his benefits by showing unfounded technical lapses. Said para 3 referred above is reproduced hereunder:

3. With further reference to the contents of para 8 of the Affidavit-in-reply I reiterate that since I was not supplied copies of the documents as requested by my application dated 27.11.1979 (Annexure K) and the denial of engaging a

"friend" of my choice I had no option but to boycott the departmental proceedings.

10. So far as the reply to be given against the show cause notice is concerned it is submitted by learned Advocate for the petitioner that 3 days' time was given and no intimation was given regarding extension of time and so the petitioner could not file reply. In para 5 of the affidavit-in-rejoinder the petitioner has reiterated whatever he has stated in para 14 of the petition. The petitioner has then reiterated that by letter dated 13.8.1986 Annexure "P", he was called upon to give reply to the show cause notice within three days as against one month period provided in the Bombay Police Manual. Learned AGP has submitted that the facts mentioned in the affidavit-in-reply is misleading and misconceived. In fact the petitioner had not produced all the letters issued by the respondent on the said issue. This has also been proved by order dated 13.12.1999 passed in Special Civil Application No. 3237/1987. In para 3 of the said order it has been specifically mentioned that while deciding Special Civil Application No. 2909/1983 vide order dated 10.4.1986, the order of dismissal of the petitioner was quashed and the petitioner came to be reinstated in service. Since the order of dismissal was quashed on a technical ground of non-supply of inquiry report, the inquiry proceedings proceeded further. The inquiry report was made on 2.8.1986 calling upon the petitioner to give reply within 3 days. Thereafter by letter dated 4.8.1986 the petitioner asked for true copy of the inquiry report since the one supplied contained several mistakes. Thereafter the authority by its communication dated 13.8.1986 Annexure "P" informed the petitioner that the copy of the inquiry report was being sent to him and if there is any doubt he should get necessary details from "H" branch within three days and he should also submit reply to the show cause notice within three days failing which final order would be passed. This document Annexure "F", the order dated 13.12.1999 passed in Special Civil Application No. 3237 of 1987 has been relied upon by the petitioner by producing the same with the petition. It appears that prior to 13.8.1986 Annexure "P" the respondents have written letter dated 2.8.1986 and the petitioner had asked for copies vide letter dated 4.8.1986. These important pieces of documents have not come on record and the same had not been mentioned in para 5 of the affidavit-in-rejoinder. After the above referred letter dated 2.8.1986 the Commissioner of Police had passed order dated 6.9.1986 dismissing the petitioner from service. Thus counting the period from 2.8.1986 after a period of one month, the said dismissal order was passed. Annexure "D" is the order dated 14.4.1987 passed in appeal. This issue has been very well dealt with by the Police Commissioner in para 4. The English translation of para 4 reads as under:

4. It is to inform the appellant in respect of this point that in reference of O.N. H/742/H.Q/1243/86 from the office herein on 13.8.1986, in respect of the date 13.8.1986, which he has received on 15.8.1986, as the review (typed) sent vide O.N. H/742/Headquarter/1190/86 in respect of the date 01.8.1986 is not certified as stated in his report dated 4.8.1986. In reference of his representation

of sending the certified copies, if there is a doubt in whichever points of the review, it is stated therein to see them at H Branch of this office within 3 days. In regard of the same, he has demanded for further duration of 15 days in his report dated 16.8.1986 and the final order is passed on 6.9.1986. Considering all the aforesaid facts, if he is really intending to give answer, he could have inquired about the review by coming in H Branch of the office on the days apart from holidays stated in report 16.8.1986. Further the final order has been made after 20 days. Therefore, he could have been able to give reply within fifteen days also as demanded by him. Further he has stated such in this report "You do not have any power to ask for the statement". Therefore, you have denied to give reply by making delay in the departmental inquiry by asking for unnecessary demands for one or the other reasons. Thus, you have been given sufficient opportunity to defend.

11. I have carefully gone through the above findings and also gone through the order dated 17.10.2000 by which the State Government had rejected the Revision Application. In the submission of the learned AGP that considering the misconduct narrated in the articles of charges and considering the conduct of the petitioner during the inquiry, the petitioner is not entitled to get any relief and I find force and merit in it.

12. From the above discussed evidence forthcoming on the record, it is clear that the petitioner was not denied reasonable opportunity for participating in the departmental inquiry but as such, as discussed hereinabove and as admitted by him, the petitioner has in fact boycotted the departmental proceedings on the alleged ground of denial of engaging a friend of his choice and was not supplied copies of documents. These issues have been discussed at length hereinabove. I am of the view that while proceeding with the departmental inquiry, the procedure prescribed in the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 was taken into consideration and in my view as discussed above, no breach was committed by the respondents while conducting the said departmental inquiry. For the foregoing reasons, this petition is dismissed. Rule is discharged.