

(2007) 12 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 14045 of 2007

Ratanben I. Parmar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-12-2007

Acts Referred:

Gujarat Civil Services (Discipline and Appeal) Rules, 1971 — Rule 5(2)

Citation : (2008) 1 GLH 128

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : H.L. Patel, for the Appellant; Dabhi, AGP for Respondent 1 and H.S. Munshaw, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Dabhi, learned AGP waives service of notice of Rule for respondent No. 1 and Mr. Munshaw for respondent Nos. 2 & 3.

2. With the consent of the learned advocates appearing for both the sides, the matter is finally heard today.

3. The short facts of the case appears to be that the petitioner was appointed as a primary teacher in the school run by the District Panchayat, Vadodara since 1974. On 25.04.1995, FIR was filed against the petitioner and two other persons for the offences punishable u/s 498A, 206 & 114 of the IPC pertaining to the cruelty etc. to the wife of the son of the petitioner.

4. On 13.08.1999, the learned Sessions Judge, Vadodara, in the said case, convicted the petitioner with the Simple Imprisonment of 2 years. The petitioner carried the matter before this Court and on 31.08.1999, in Criminal Appeal No. 895/99, this Court admitted the appeal and stayed the conviction and the petitioner has been released on bail. It appears that in the meantime, as the petitioner remained in jail pursuant to the aforesaid criminal case for the period exceeding 48 hours, the charge-sheet was issued to the petitioner on 15.01.1999

on the said ground which was replied by the petitioner on 22.02.1999. However, thereafter the petitioner submitted the defence statement and the inquiry officer submitted the report, whereby the charges were found proved. But the pertinent aspect is that, the basis of the inquiry officer's report was that the petitioner has been convicted by the Sessions Court u/s 498A, 306 & 114 of the IPC. Therefore, the show-cause notice was issued on 14.10.2004 before imposing punishment. It appears that thereafter, the disciplinary authority considered the matter and dismissed the petitioner from service. The petitioner also preferred an appeal before the Gujarat Civil Service Tribunal and the said Appeal has been rejected and it is under these circumstances, the present petition.

5. Heard Mr. Hardik P. Dave with Mr.Pandya for H.L. Patel Advocates for the petitioner and Mr. Dabhi, learned AGP for the State and Mr. Munshaw for respondent Nos 2 & 3 District Panchayat and its officers.

6. It appears that the order of the disciplinary authority is only based on conviction by the Sessions Court in Criminal Case No. 141/98. In the impugned order of the disciplinary authority, there is reference to the resolution of the Government dated 05.08.2003, wherein it has been stated that even if the appeal against the conviction is pending the further action may be taken in the disciplinary proceedings. However, it appears that the position of law as laid down by the Hon'ble Supreme Court in case of Ravikant S. Patil v. Sarvabhuma S. Bagali reported at 2007(1) SCC 673 read with another decision of the Apex Court in case of Navjot Singh Sidhu Vs. State of Punjab and Another, is not considered. It may also be recorded that in the said decision, the view expressed by the Apex Court is that after conviction, if the appeal is preferred and conviction is suspended, the effect of conviction can be said as not in operation. Therefore, it would be incorrect to state that if the conviction is by the criminal Court and appeal is pending and the conviction is stayed, the disciplinary authority can ignore the factum of pendency of the appeal and the suspension of conviction by the appellate Court in the said appeal against conviction. At the same time it will be for the respondent authority to consider the matter regarding the gravity of the criminal offence, in which there was conviction, and as to whether such conviction against which the appeal is pending has any nexus with the discharge of the duty by the employee concerned or not. If the nexus is direct to the discharge of the duty, keeping in view the larger interest of the administration, the disciplinary authority may take decision to keep such person away from actual discharge of the duty, but in such circumstances, the position as prevailing prior to conviction may be maintained, like that of suspension or otherwise. However, in cases where the gravity of the offence in which the conviction has taken place and for which the appeal is pending has no direct nexus to the actual discharge of duty by the employee concerned, the authority may take different view. Further, it may also be depends upon the quantum of the subsistence allowance, even if the position is restored prior to the conviction. To say in other word if the subsistence allowance is like payment equivalent to the full salary, and the gravity of the offence in which the conviction has taken

place has no direct nexus to the discharge of the actual duty, the authority may take decision to permit employee to discharge the duty actually and to pay full salary inspite of paying salary by way of subsistence allowance without taking any work. Such circumstances and other relevant circumstances, which may be germane to the exercise of the power, keeping in view largest interest of the administration are to be examined and the appropriate decision is to be taken by the authority concerned. At this stage it may be profitable to extract certain observations of this Court in case of Kanjibhai Godadbhai Chaudhary v. The State of Gujarat and 2 Ors. in SCA No. 12682 of 2006 and others decided on 26.11.2007. The said case was of a conviction by the trial Court for the offences of irregularity and misappropriation, and appellate Court allowed the appeal and conviction was set aside. At that stage the petitioner had approached this Court for reinstatement in service on account of setting aside the conviction by the Sessions Court. However, in that case, the disciplinary proceedings were simultaneously conducted, and the charges were proved, but the disciplinary proceedings were not concluded by the disciplinary authority. In the said decision this Court observed at para 9,10,11,12 and 13 as under:

9. It is by now well settled that even if the criminal proceedings are initiated in connection with any offence concerning to the discharge of duty by a Government Employee, it is open to the Department to initiate disciplinary proceedings and the same was undertaken in the present case. It is also well settled that if the requirement of Rule 5(2) of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971 (hereinafter referred to as "the Rules") are satisfied due to the arrest of such Government Employee in connection with the criminal offence and he is in police custody, he can be suspended from service. It is also well settled that considering the gravity of the charges in the disciplinary proceedings, the competent authority may exercise discretion to suspend the employee concerned, either pending the contemplated inquiry or pending the inquiry.

10. In the present case, the petitioner came to be placed under suspension vide order dated 2.5.1994 read with order dated 9.9.1994, not because of contemplated disciplinary proceedings, but because of his arrest and he being in police custody. It is true that pending criminal proceedings before the Criminal Court, the disciplinary proceedings are also initiated namely; that he has been charge-sheeted; Inquiry Officer has been appointed; and the proceedings have been conducted by the Inquiry Officer; and the Inquiry Officer has submitted his report, wherein the charges against the petitioner are proved and the disciplinary authority has further concurred with the view of the Inquiry Officer and has called for the reply. But no order of dismissal was passed in such disciplinary proceedings and the order of dismissal dated 18.3.2004 was passed based on the order of conviction dated 31.12.2003 passed by the Criminal Court in Criminal Case No. 13 of 2002. The said order of conviction is set aside by the Sessions Court and, therefore, the basis of the order of dismissal is not in existence as per the order of the Sessions Court, subject to the rider that the appeal against the

acquittal is preferred by the State and the appeal has been admitted. Where either the Criminal Court has acquitted the Government Employee or the appeal is admitted and the warrant has been issued against the employee concerned may be a justifiable ground for the concerned employee to seek reinstatement in service, in normal circumstances, if the order of dismissal is only based on the order of conviction. However, such principle is not a sine qua non. It may vary from facts to facts and the gravity of the criminal case, which is being faced by such employee. To say in other words, if the gravity of the charges in the criminal case is so serious and has direct nexus with the discharge of duty by the concerned employee, the authority may exercise discretion of not to permit such employee to discharge duty to his original post, but in such circumstances, order of dismissal shall be required to be revoked and the employee concerned may be placed under suspension. However, if the charges in the criminal case against the concerned employee are not so serious, which may have direct nexus to the discharge of duty, the competent authority may exercise the discretion of permitting the employee to discharge duty by reinstatement in service. However, it can not be concluded that the criminal proceedings have ended, in a case where the appeal against the acquittal has been admitted by the Court and the warrant has been issued in such criminal appeal.

11. At the same time, pending the aforesaid, if the disciplinary proceedings have commenced and have proceeded further, it is open to the disciplinary authority to proceed, in accordance with law, and to pass final order by concluding the disciplinary proceedings.

12. It appears from the order dated 9.1.2007 passed by the Commissioner, Health, Medical Services that neither the question of reinstatement, nor permitting the petitioner to discharge duty in service; nor the reinstatement and the question of suspension pending the proceedings before the Criminal Court and/or pending the proceedings of appeal before this Court and/or further continuation with the disciplinary proceedings and conclusion thereof is considered, but the reinstatement is denied, without examining the aspect of charges being faced by such employee in the criminal case and that the disciplinary proceedings have not concluded into the order of dismissal or otherwise. Even if it is considered that in the report of the Inquiry officer, the charges are proved, it would be required for the disciplinary authority to follow the procedure in accordance with law from that stage for concluding the matter in the disciplinary proceedings. But until the final order is passed in the disciplinary proceedings in either way or until the criminal appeal is finally decided by this Court, the status of the petitioner as then in existence prior to the order of conviction by the Criminal Court, in any case, is required to be restored and maintained.

13. As observed earlier, after reinstatement in view of the seriousness of the charges or on account of the disciplinary proceedings, the competent authority may exercise discretion to place the employee concerned under suspension or

may permit him to discharge duty to his original post. Such decision is required to be taken objectively, keeping in view the gravity of the charges, the status of the disciplinary proceedings as well as the nature of duty to be discharged by such employee if reinstated and permitted to discharge duty.

7. Therefore, it appears that the authority has not considered the aforesaid aspect and has neither given proper weightage to the factum of admission of appeal by the criminal Court and suspension of the conviction nor has examined the aspect as to whether the conviction having been stayed by the appellate Court has nexus to the discharge of the duty and that keeping in view the gravity of the charges whether the petitioner should be allowed to resume the duty or to be placed under suspension. It is also not examined as to whether it would be just and proper to pay full salary by way of subsistence allowance during the period of suspension, or it would be proper to take work from the petitioner by permitting her to actually discharge the duty and to pay full salary. The other aspect as referred to hereinabove was also be required to be considered before taking appropriate decision.

8. As the aforesaid aspects are not considered which were germane to the exercise of the power, the impugned order passed by the authority and its confirmation thereof by the tribunal cannot be sustained in the eye of law. Hence, they deserve to be quashed and set aside.

9. In view of the above, the impugned order passed by the disciplinary authority and its confirmation thereof by the tribunal for imposition of the punishment of the dismissal are quashed and set aside with the further direction to reconsider the matter afresh in light of the above referred observations made by this Court in the present judgement, and to pass the decision as early as possible, in any case within a period of four months from the receipt of the order of this Court.

10. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances there shall be no order as to cost.