
(2004) 02 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No. 4689 of 1994

Secretary

APPELLANT

Vs

Varsha Devendraprasad Purohit

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Affiliated Colleges Services Tribunal Act, 1982 — Section 14, 14(1), 2, 4, 40B(1)

Gujarat Secondary Education Act, 1972 — Section 36(1)

Citation : (2004) 02 GUJ CK 0042

Hon'ble Judges : K.A. Puj, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : Jivanlal G. Shah, for the Appellant; Vijay H. Patel and Harsha Devani, AGP, for the Respondent

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order passed by the Gujarat Affiliated Colleges Services Tribunal, Ahmedabad in Application No. 79 of 1993 whereby the petitioners were restrained from discharging respondent No.1 from the post of a Librarian in S.M. Patel College of Home Science at Vallabh Vidyanagar and further directing the present petitioners to pay to her the pay scale of Librarian as per University and Govt. Rules.

2. It is the case of the petitioner that Charutar Vidya Mandal runs and manages several educational institutions including S.M. Patel of Home Science at Vallabh Vidyanagar. The present respondent No.1 was appointed on temporary and adhoc basis. It was also the case of the present petitioner that the respondent No.1 was appointed on casual vacancy of a Librarian. Since the post on which present respondent No.1 was appointed was a reserved category post, the respondent No.1 was discharged from service. The respondent No.1 thereafter filed an application before the Gujarat Affiliated Colleges Services Tribunal at Ahmedabad in which it was alleged that respondent No.1 was paid salary lesser than the

prescribed salary for the post of Librarian for which she had been working and that without following the due procedure prescribed in Section 14(1) of the Act, she was discharged from service. In support of her contention, she has averred in the application that respondent No.1 was appointed as Librarian with effect from 03.04.1991 in S.M. Patel College of Home Science at Vallabh Vidyanagar and that she possesses necessary qualifications for being appointed on the said post. She has also worked as Library Clerk in Sardar Patel University and as Librarian in Dhansura Arts & Commerce College. Though she has joined as Librarian with effect from 03.04.1991, she was not given any appointment letter. It was also averred that the respondent No.1 was appointed as Librarian on the post of leave vacancy as the incumbent of the post of Librarian proceeded on leave in April 1991 for one year and that the said incumbent tendered her resignation on 13.02.1992 and, therefore, the post of Librarian fell vacant from that date and, therefore, the respondent No.1 was allowed to continue on the said post. It was further averred that though she was entitled to the scale of Rs. 2200 - 4000, she was paid an amount of Rs.25/- per day as if she was a daily wager and she was paid the said salary at the end of every month after deducting the days of holidays and Sundays.

3. The present petitioners have appeared before the Tribunal and filed their written statement, inter alia, contending that the State Government has framed the policy to fill the reserved post by candidates belonging to reserved category and the said policy was applicable to non-teaching staff as well and since the respondent No.1 was not a candidate belonging to reserved category, she could not be appointed on that post and no grant could be allowed to the College for meeting the expenses of her salary. The present petitioners have also raised the contention before the Tribunal that the respondent No.1 was not appointed as a Librarian on the permanent post and it was purely a temporary and adhoc and that too on a casual vacancy and hence there was no question of following the procedure laid down u/s 14 (1) of the Act.

4. The Tribunal, vide its order dated 24.01.1994 directed the present petitioners to pay the respondent the prescribed pay scale for the post of Librarian with effect from the date of inception of services of the respondent No.1 with all difference and the present petitioners were prevented from discharging respondent No.1 from the post of Librarian in the College on the ground that respondent No.1 has worked as Librarian for more than 2 years with some breaks in the intervening period and since the said breaks in service were not in good taste and the said breaks were given only with a view to come out from the mandatory provisions of the Act.

5. It is this order of the Tribunal which is under challenge in the present petition.

6. The petition was admitted on 30.03.1994 and while dealing with the petitioner's prayer for interim relief, this Court (Coram :- S.M. Soni, J.) passed the following order :-

"RULE. Heard Mr. H.J. Nanavati for respondent No.1, who appears on Caveat, regarding interim relief. It is contended by the learned advocate for the petitioners that the post on which respondent No.1 was appointed on leave vacancy which ultimately became vacant, is a post for a candidate of reserved category. Petitioners apprehend that they are not likely to get grant for the post, as it is not filled in either regularly or by the reserved candidate. However, the petitioners shall prepare the bills for the salary of the respondent No.1 and forward to the concerned Department.If the concerned Departments release the grant for the salary of the respondent No.1, in that case respondent No.1 shall pay. If no grant is released, respondent No.1 need not be paid. With this understanding as to the pay, respondent No.1 shall continue to serve till regularly selected person and that of a reserved category is appointed. With this observation, interim relief is refused."

7. The matter has come up for hearing before the learned Single Judge on 21.02.2003 and after hearing the learned advocates appearing for the respective parties, the learned Single Judge (Coram :- Jayant Patel, J.) has referred the matter to the Division Bench after recording the reasons for the same. The Court has observed that respondent NO.1 was not appointed by way of regular selection and she was only appointed on leave vacancy. When the appointment was on a specific term or for specific period, the relationship of employer and employee automatically comes to an end after the completion of that period and, therefore, it cannot be said that dispute would fall within the meaning of Section 14 of the Gujarat Affiliated College Service Tribunal Act, 1982. Hence, no approval of the Vice Chancellor is required to be obtained for removal of the respondent No.1. The Court has further recorded the submission of respondent No.1 who relied on the judgment of this Court in the case of MAHUVA KELAVANI SAHAYAK SAMAJ & OTHERS V/S. RASIKLAL K. JOSHI AND ANOTHER 1996 (2) G.L.H. 269 wherein it is held that all termination including the question of termination upon the expiry of the period or termination simpliciter would fall within the word "otherwise terminated". It was further contended on behalf of the respondent No.1 that since the approval was not obtained from the Vice Chancellor, the termination was ex-facie, bad in law as the respondent No.1 had completed the period exceeding one year, even on leave vacancy. After recording this rival submission, the Court was of the view that if the appointment is made of any employee with a specific stipulation or for a specific term and upon the contingency of the stipulation or on the expiry of the said period as the case may be, the services are put to an end and the relationship of employer and employee comes to an end and it may not be included in the word "otherwise terminated" keeping in view the language of Section 14 of the Act. However, since there was a judgment of another learned Single Judge of this Court in the case of MAHUVA KELAVANI SAHAYAK SAMAJ & OTHERS V/S. RASIKLAL K. JOSHI AND ANOTHER 1996 G.L.H. 269, the Court has thought it proper to refer the matter to the Division Bench and that is how the matter was placed before us.

8. Mr. Harshad J. Shah, learned advocate appearing for the petitioners submits

that the Tribunal has committed an error in passing the impugned order and directing the reinstatement of the respondent No.1 without taking into consideration at all the undisputed fact that the post in regard to which dispute had arisen was required to be filled in by candidate of reserved category and, therefore, the respondent No.1 could not be appointed on the said post on a regular basis. Mr. Shah has further submitted that the Tribunal has also committed an error in not appreciating the fact that even the State Government had also contended that since the post was required to be filled in by candidate of reserved category, the respondent No.1 could not be appointed on the said post and if she was appointed, the petitioner would not be entitled to receive any grant for meeting with the expenses that the College might be required to incur for payment of salary and other financial benefits to the respondent No.1. Mr. Shah has further submitted that the Tribunal has further committed an error in not appreciating the contention raised by the petitioner that respondent No.1 was allowed to work as a Librarian on day to day basis as the College authorities were trying to secure the service of a reserved category candidate and, therefore, the respondent No.1 could not be appointed on that post. The respondent No.1 wrote a letter to the Principal of the College stating that she has been selected as Librarian in Dhansura Arts & Commerce College and she wanted to join there and hence, she should be relieved immediately after office hours. After tendering the said letter, the respondent No.1 had stopped to come to College with effect from 23.12.1991. She thereafter again requested the Management of the College to allow to work as Librarian and, therefore, she was allowed to work as such on that basis. These facts were not disclosed before the Tribunal and ignoring all these aspects of the matter, the Tribunal has passed the impugned order. The respondent No.1 was not removed from the service as a result of punitive action taken against her since the post was reserved for reserved category, it was not possible for the petitioner to absorb her on that post and again respondent No.1's appointment was adhoc and temporary and just to fill the casual vacancy, no permanent right was created in favour of the respondent No.1 and on that count, the respondent No.1 was discharged from service. Sub-section 4 of Section 14 makes it clear that no penalty (being the penalty other than that referred to in Sub-section (1)) shall be imposed on a College employee unless such employee has been given a reasonable opportunity of being heard. Therefore, dismissal, removal or reduction in rank of College employees including otherwise termination of the service of the employee are of punitive termination and the respondent No.1's case did not fall within the ambit of Section 14 (1) of the Act and hence, procedure laid down therein is not required to be followed.

9. Mr. Vijay H. Patel, learned advocate appearing for respondent No.1 submits that the word "otherwise terminated" used in Section 14 (1) of the Act have come up for consideration before this Court in the context of Section 36(1) of the Gujarat Secondary Education Act and this Court in the case of CHHAGANBHAI P. OZA V/S. THE AHMEDABAD JESUIT SCHOOLS SOCIETY AND OTHERS 19 G.L.R.

347 has held that on a plain reading of Section 36(1) of Gujarat Secondary Education Act, it is clear that the provision is applicable not only in regard to penal action resulting in dismissal or removal or reduction in rank, but also to an action which results in termination of service of a teacher otherwise than by way of a disciplinary action. The expression "termination simpliciter" carries the concept of termination otherwise than for misconduct and otherwise than by way of disciplinary action. The expression "otherwise terminated cannot" be construed as being referable only to termination by way of disciplinary measure by way of penal action." Mr. Patel has further submitted that though the said decision is rendered in the context of a teacher, the same would equally be applicable to non-teaching staff as the definition of College employee contained in clause (d) of Section 2 of the Act says that the College employee means any member of the teaching, other academic and non-teaching staff of a College (whether confirmed or temporary or on probation) in the service of such college and the purpose of any proceeding under this Act in relation to dispute referred to in Section 8 of the Act.

10. Mr. Patel has further relied on the decision in the case of MAHUVA KELAVANI SAHAYAK SAMAJ & OTHERS V/S. RASIKLAL K. JOSHI AND ANOTHER 1996 (2) G.L.H. 269 wherein it is held that area of operation of Sub-section (3) of Section 40B is entirely different from the area covered by S. 40B (1) (a) of the Act. All that the sub-section (3) enacts is that even in case any penalty other than the one which is already covered under sub-sec. (1) (a) a reasonable opportunity of hearing is required to be given to a teacher. Therefore, in cases, for instance, of imposing penalty of stoppage of increment which will not fall under S. 40B (1) (a), a reasonable opportunity of hearing would nonetheless be necessary. This provision can never be construed so as to lead to any interference that the expression "be otherwise terminated" in S.40B(1)(a) was confined only to penal terminations. The action of termination of service of an employee who is not a temporary employee has very serious consequence and therefore the Legislature thought it wise to include even such cases of termination other than penal termination in the categories for which show-cause notice against the proposed action was required to be given. If the termination is penal it would be covered under the expression "dismissal" or "removal" and in that event it was not necessary to add the words "be otherwise terminated". It necessarily follows that these words were intended to cover even cases of termination simpliciter. It is therefore clear that the procedure under S. 40B (1)(a) (i) and (ii) was required to be followed."

11. Mr. Patel has further submitted that the Tribunal has directed the present petitioner to reinstate the respondent No.1 with back wages right from inception and if amount is calculated as per the direction given by the Tribunal, it would come to Rs. 14,30,523/- as on 30.06.2003 and a statement to this effect is produced by Mr. Patel before this Court.

12. Before we consider the controversy raised before us, an attempt was made

by the learned advocates appearing for the respective parties and the Court has also shown an inclination to have an amicable settlement between the parties and for that purpose, the decision was differed from time to time. The contesting parties have also remained present on different occasions and before we take any final decision in the matter, various proposals for settlement were made on behalf of both the parties. Mr. Harshad J. Shah, learned advocate appearing for the petitioner has placed on record letter dated 24.01.2004 addressed to the respondent No.1 written by Charutar Vidyamandal wherein respondent No.1 was offered service as an Assistant Librarian in Self-Finance College with effect from 01.06.2004 with a consolidated salary of Rs.5,500/- per month for the first year and thereafter, to work as Assistant Librarian in the grade of Rs.5500 175 - 9000. Mr. Patel has raised an objection against this offer as the College is still not recognised and there is no guarantee that it would start from 01.06.2004 and even there is no protection of the respondent No.1's service as after one year, she would again be terminated by the present petitioners. Mr. Patel has further submitted that the Tribunal has directed reinstatement with back wages. There is no reference with regard to the back wages. He, however, left the amount of back wages to the discretion of the Court and said that respondent No.1 would not raise any dispute if any amount is suggested to be fair and reasonable by this Court. He, however, submitted that the respondent No.1's services be protected and it should not be left to the exclusive discretion of the petitioner Management.

13. Having regard to the facts and circumstances of the case and having given our anxious thoughts to the various submissions and proposals for settlement and after taking sense of the parties through their respective advocates and keeping in mind the main controversy between the parties to the effect that respondent No.1 was appointed only on a temporary or adhoc post of Librarian and that too on a casual vacancy and despite the interim order of this Court, the respondent No.1 did not resume and no proper procedure for appointment was followed and that before removing the respondent No.1, no procedure has been followed as laid down u/s 14 of the Act and keeping in mind the two decisions of this Court referred to above by the learned Single Judge and without expressing any opinion on the correctness or otherwise of the said decisions, keeping the said issue open at large, we are of the view that the ends of justice would better be served if the petitioners are directed to absorb the respondent No.1 as Assistant Librarian in the pay scale of Rs. 5500 - 175 9000 with effect from 01.06.2004 in the Self-Financed Pharmacy College and if it has not commenced from 01.06.2004, in any other College run by the Charutar Vidyamandal with effect from that date. We further direct the petitioners to pay respondent No.1 lumpsum amount of Rs.1,50,000/- towards back wages within three months from the date of receipt of the writ of this Court or from the date of receipt of certified copy, whichever is earlier. We also make it clear that respondent No.1's appointment as Assistant Librarian with effect from 01.06.2004 will be treated as the appointment on a confirmed post as the respondent No.1 had worked initially

for the period of more than two years and hence, she would be covered by the service conditions under the Act as well as the Rules framed thereunder.

14. With the above directions and observations, the impugned judgment and order passed by the Tribunal is modified to the above extent. Rule is made absolute to the above extent. There shall be no order as to costs looking to the facts and circumstances of the case.