

(2015) 08 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 4406 of 2014

Shabbir Taher Ali Vadharia

APPELLANT

Vs

Commissioner of Schools and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 08 GUJ CK 0029

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : R.R. Vakil, for the Appellant

Final Decision : Allowed

Judgement

J.B. Pardiwala, J—By this writ-application under Article 226 of the Constitution of India, the petitioner, a suspended Assistant Teacher, has prayed for the following reliefs:

"(A) Be pleased to admit this petition.

(B) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction by directing respondents not to proceed further and/or to drop the inquiry against the petitioner in view of the report at Annexure : L.

(C) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction by directing respondents to allow the petitioner to resume duty as assistant teacher in respondent No. 4 - school and further be pleased to direct the respondents to pay the petitioner his unpaid subsistence allowance from August 2003 till he remained under suspension.

(D) Pending admission, hearing and final disposal of this petition, be pleased to direct respondents to allow the petitioner to resume his duty as assistant teacher with immediate effect in respondent No. 4 - school and further be pleased to direct respondents to start paying salary regularly to the petitioner every month.

(E) Be pleased to pass such other and further orders as may be deemed just and proper looking to the facts and circumstances of the case and in the interest of justice."

2. To put it briefly, the case of the petitioner is that he was appointed as an Assistant Teacher with effect from 1st July 1992 in the higher secondary section of the respondent No. 4 - School. The petitioner possesses the educational qualifications of M.Com., B.Ed. The District Education Officer, Jamnagar, informed the school in writing vide letter dated 5th July 2003 that the petitioner was giving private tuitions and, therefore, the school should initiate appropriate departmental proceedings against him in that regard. The District Education Officer also directed the school to place the petitioner under suspension.

3. On the strength of the instructions issued by the District Education Officer, the petitioner was placed under suspension vide letter dated 5th July 2003.

4. The petitioner was thereafter served with a show-cause notice dated 14th July 2003 by the school, calling upon him to show-cause as to why he should not be dismissed from the service for giving private tuitions. The petitioner replied to the said show-cause notice on 21st July 2003.

5. The school authorities informed the District Education Officer that the petitioner had been placed under suspension and the District Education Officer, vide his order dated 30th/31st July 2003, ratified the order of suspension passed against the petitioner. A three-member committee was constituted to inquire into the charge framed against the petitioner that he was conducting private tuition classes. One of the members of the inquiry committee was an officer of the Gujarat Secondary and Higher Secondary Education Board. The inquiry committee exonerated the petitioner from the charge.

6. After the petitioner was exonerated in the departmental inquiry, the school forwarded the report in that regard with all the relevant papers to the respondent No. 1 i.e. the Commissioner of Schools. The respondent No. 1 directed the school to once again inquire into the allegations levelled against the petitioner. The salary of the petitioner was also ordered to be considered as inadmissible for the purpose of grant and the school was directed to pay the salary to the petitioner.

7. In the wake of such developments, the school passed an order dated 13th December 2005 removing the petitioner from the service with effect from 14th December 2005.

8. The petitioner, being dissatisfied, challenged the order of his removal from service before the Gujarat Higher Secondary Education Tribunal by filing the Application No. 202 of 2005. The Tribunal, vide order dated 14th June 2011, quashed and set-aside the order of the Commissioner dated 17th October 2005 ordering re-inquiry and also the order passed by the School Management dated 13th December 2005 removing the petitioner from service. The operative part of the order reads as under:

"The order of the Commissioner and consequent order of removal by the management both are set aside and the applicant is placed in the position which was prevailing before 13.12.2005. He will be paid subsistence allowance in accordance with law. The school will send all the relevant papers to the Commissioner and the Commissioner after hearing of the concerned parties passed necessary order within 45 days thereafter. The salary paid to the applicant will not be recovered from the management. With this observation, the application is allowed to that extent."

9. After the order was passed by the Tribunal, the petitioner requested the school authorities to allow him to resume the duty, but he was not permitted to resume the duty. He was not allowed to even sign the muster-roll.

10. The school, thereafter, sent a proposal to the respondent No. 1 dated 14th June 2011 having regard to the order which was passed by the Tribunal. In the meant time, the petitioner filed Application No. 67 of 2011 before the Tribunal for arrears of the subsistence allowance.

11. During the pendency of the Application No. 67 of 2011, the Commissioner of Schools passed an order dated 1st December 2011 directing re-inquiry into the allegations against the petitioner.

12. The school authorities wrote two letters to the District Education Officer dated 19th December 2011 and 13th January 2012 respectively requesting the District Education Officer to supply the necessary documents and names of the witnesses for the fresh inquiry as ordered by the Commissioner of Schools.

13. In response to the said letters, the District Education Officer directed the Educational Inspector, Jamnagar, to look into the same and file a report. The Educational Inspector, Jamnagar, vide his report dated 21st April 2012, informed the District Education Officer that the petitioner had been exonerated by the inquiry committee and it was not possible to conduct any further inquiry into the matter.

14. In such circumstances referred to above, the petitioner has prayed that on a very trivial matter he has been made to suffer past couple of years and the inquiry should be dropped.

15. Mr. R.R. Vakil, the learned advocate appearing for the petitioner, submitted that although the teaching staff of the grant-in-aid secondary and higher secondary school is entitled to receive 100% subsistence allowance while they are under suspension, yet the petitioner was paid only 50% of the salary between August 2003 and November 2005, and after December 2005, an amount of Rs. 88,048=00 was paid towards the subsistence allowance.

16. He further submitted that although the Educational Inspector made himself very clear before the District Education Officer that it is not possible to re-inquire into the allegations levelled against the petitioner, yet the District Education Officer is very much adamant about re-inquiring into the allegations.

17. He submitted that once a duly constituted inquiry committee exonerated the petitioner from the charges levelled against him, the school should have allowed the petitioner to resume the duty.

18. He submitted that the Commissioner of Schools passed the order dated 1st December 2011 to re-inquire into the matter in the purported exercise of the powers under Section 14(1)(b) of the Gujarat Higher Secondary Education Tribunal Act. He submitted that the Commissioner of Schools could have passed an order under Section 14(1)(b) of the Act only if a proposal is sent by the school for dismissal, removal or reduction in rank of the employee of the school. Once the inquiry committee exonerates the employee, the Commissioner of Schools has no power to thereafter pass any further order for re-inquiry under Section 14(1)(b) of the Act.

19. In such circumstances referred to above, Mr. Vakil prays that there being merit in this writ-application, the same be allowed and the reliefs as prayed for may be granted.

20. On the other hand, this application has been opposed by Mr. Rohan Yagnik, the learned AGP appearing for the State respondents. He submitted that the petitioner was found giving private tuitions by the District Education Officer Squad on 4th July 2003. He submitted that although the inquiry committee exonerated the petitioner, the Commissioner directed the School Management to inquire further into the charges.

21. He submitted that it is true that the Educational Inspector in his report has clearly stated that no further inquiry is required or possible. In such circumstances, it is now for the School Management to submit a proposal to the District Education Officer seeking approval of the termination of the services of the petitioner, which the School Management has not obtained till this date.

22. Mr. Biren Vaishnav, the learned advocate appearing on behalf of the School Management, submitted that the petitioner was exonerated from the departmental inquiry on account of the total non-cooperation from the District Education Officer. He submitted that the school authorities although were reluctant to conduct any fresh inquiry, however, since the directions were issued by the Commissioner of Schools, the School Management was left with no other option but to initiate a fresh inquiry.

23. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is, whether the petitioner is entitled to the reliefs prayed for in this writ-application.

24. Having regard to the events narrated above, I have no hesitation in coming to the conclusion that the action of each of the respondents could be termed as highhanded and unreasonable. The petitioner seems to have been butchered for some reason or the other. I fail to understand that after being exonerated by the

inquiry committee what was the good ground available with the respondent No. 1 to order re-inquiry into the matter. The Educational Inspector also made himself very clear that it was not possible to conduct any further inquiry into the matter. This drama started from the year 2005 on the premise that the petitioner was caught giving private tuitions. This allegation has not been established by any cogent evidence. From 2005 onwards till this date, the petitioner has not been permitted to resume his duties in the school.

25. I find substance in the submissions of Mr. Vakil that the order passed by the Commissioner of Schools under Section 14(1)(b) of the Act was without jurisdiction. Section 14(1)(b) reads as under:

"14.(1) No employee shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager except after -

(a) an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges, and

(b) the action proposed against him is approved by the Director of Higher Education:

Provided that nothing in this sub-section shall apply to any employee who is appointed temporarily for a period less than a year."

26. Section 14(1)(b) could be invoked only if a proposal is sent by the school for dismissal, removal or reduction in the rank of the employee of the school.

27. The inquiry committee, having exonerated the petitioner from the charge, the Commissioner of Schools could not have passed the order for re-inquiry under Section 14(1)(b) of the Act.

28. Each of the respondents have made a mockery of justice and they should be held responsible in some way or the other.

29. It appears that the Application No. 67 of 2011 filed before the Gujarat Higher Secondary Education Tribunal, seeking 50% of the subsistence allowance from August 2003 to 12th August 2005 and 100% of the subsistence allowance from 13th August 2005 has now been transferred to the newly constituted tribunal, viz. the Gujarat Educational Institutions Services Tribunal, and the same is pending as on date.

30. In the result, this application is allowed. The further inquiry ordered against the petitioner shall be dropped. The respondents are directed not to proceed further with any inquiry. The respondent Nos. 3 and 4 are directed to permit the petitioner to resume his duties forthwith. The respondent Nos. 1 and 2 are also directed to act in accordance with law. The salary of the petitioner shall be paid by the Government since the school is a grant-in-aid school.

31. The petitioner shall be paid his regular salary with the necessary increments he would have earned if he would have been in service as on today, from the

next month onwards. The Tribunal shall proceed further with the hearing of the Application No. 67 of 2011 and pass appropriate orders in accordance with law within a period of three months from the date of receipt of the writ of the order.

32. Rule is made absolute to the aforesaid extent. Direct service is permitted.