

(2013) 03 GUJ CK 0063

In the Gujarat High Court

Case No : Special Civil Application No. 2149 of 2003

Shaileshbhai N. Goswami

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) LabIC 2904

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : N.V. Solanki, for the Appellant; Neeraj Soni AGP, for the Respondent

Judgement

Paresh Upadhyay, J.—Challenge in this petition is made to the order of the Gujarat Civil Services Tribunal dated 02.11.2002 in Appeal No. 278 of 2001, whereby, the challenge made by the present petitioner to the removal order dated 10.8.2001 was dismissed. Heard Mr. N.V. Solanki learned advocate for the petitioner and Mr. Neeraj Soni learned Assistant Government Pleader for the respondent authority.

2. The date of birth of the petitioner is 22.9.1961. He had joined the service on 13.5.1985 as Craft Instructor (Wireman) at] Ahwa, District Dangs, under the administrative [control of the Director of Employment and Training, Gujarat State and subsequently, in the year 1988, he was posted at Gorva, Baroda.

3. The case of the authorities of the respondent department is that, on 23.12.1998 and 24.12.1998, the petitioner committed serious misconduct by misbehaving with the staff members, threatening, abusing them, etc. In this regard, charge-sheet was issued to the petitioner on 14.10.1999 and the defence of the petitioner having not been accepted, after holding departmental inquiry, ultimately, the order of removal came to be passed on 10.08.2001. Since the order of removal was passed by the Disciplinary Authority, which is subordinate to the Government, the said order was appealable before the Gujarat Civil

Services Tribunal, and therefore, the present petitioner had challenged the said removal order before the Gujarat Civil Services Tribunal by filing Appeal No. 278 of 2001. The Gujarat Civil Services Tribunal rejected the appeal and therefore this petition.

4. Learned advocate for the petitioner vehemently contended that though allegations levelled against the petitioner were serious, only on the basis of the tenor of the allegations, punishment cannot be imposed. It is contended that, it is on the basis of the proved misconduct, that any punishment can be imposed. The procedure for proving the charge in departmental inquiry is provided in Gujarat Civil Services (Discipline & Appeal) Rules, 1970. Rule 9 and 10 of the said Rules are relevant for this purpose. It is contended that, in the entire record, no evidence much less any legally acceptable evidence is found, since the same was not led on behalf of the Disciplinary Authority. It is contended that the Disciplinary Authority swayed away, with only the nature of the allegations which were made against the petitioner. The petitioner has, right from the beginning contended that, the charge against him was false and it was his case that, he had not committed any misconduct. Under these circumstances, it was for the Disciplinary Authority to lead the evidence to substantiate the charge against the petitioner, which is not done and therefore proceedings are vitiated. It is contended that this aspect is not taken into consideration by the Gujarat Civil Services Tribunal and therefore the Tribunal has erred in rejecting the appeal and therefore, the indulgence of this Court is prayed for.

5. On the other hand, learned Assistant Government Pleader Mr. Neeraj Soni has supported the order of the Gujarat Civil Services Tribunal dated 02.11.2002 as well as the removal order passed by the Disciplinary Authority dated 10.08.2001. It is contended that the petitioner had committed misconduct and the nature of charge against him was so serious that, no leniency could have been shown by the authorities and this Court may also not interfere with the same.

6. Having heard both the learned advocates and having gone through the record, I find substantial force in the argument of learned advocate for the petitioner that, though the charge against the petitioner was very serious, no evidence worth the name was led by the Disciplinary Authority in the departmental inquiry. I find that, no evidence against the petitioner was led in the departmental inquiry, and therefore, the charge cannot be said to have been legally proved. The statements of the co-employees of the petitioner were referred to and relied upon in the inquiry proceedings, however, it is undisputed that none of such employees was presented in the inquiry, to prove the contents of the said statements, which they had given against the petitioner. Under these circumstances, those statements cannot be treated as evidence against the petitioner. It is undisputed that other than those statements, there is no other material against the petitioner. Thus, the present one becomes a case of No Evidence.

7.1 It is settled position of law that the Court, while exercising the jurisdiction

under Article 226 of the Constitution of India can neither re-appreciate the evidence, nor can interfere in the disciplinary proceedings lightly, unless there is violation of principles of natural justice, or the punishment order is based on No Evidence or the finding arrived at by the Inquiry Officer is perverse to the record. Further, in the quantum of punishment also interference is made only if it is found to be shockingly disproportionate. It is also true that standard of proof in departmental inquiry is different than that of criminal proceedings. In criminal proceedings the charges are required to be proved beyond reasonable doubt, however, that strict standard is not expected in disciplinary proceedings. In disciplinary proceedings, charge, if proved, even with the standard of preponderance of probability, it should suffice. However, it should not mean that even in absence of any evidence, charge can be held to be proved. In the facts of this case, as found and recorded hereinabove, inspite of best efforts, learned A.G.P. has not been able to point out from the record, as to on the basis of which evidence, the Enquiry Officer came to the conclusion that the charge against the petitioner is proved. I find that the Disciplinary Authority was in error in accepting the said inquiry report, as well as rejecting the case of the petitioner that there is no evidence on record, which led to the impugned removal order. I find that the impugned removal order, suffers from vice of being based on the case of No Evidence and the same cannot be sustained in the eyes of law and the same needs to be quashed and set aside.

7.2 The petitioner had, before the Gujarat Civil Services Tribunal also, taken this specific point. The Gujarat Civil Services Tribunal in the entire order has nowhere recorded its satisfaction that it is on the basis of which evidence, that the charge is held to be proved. In my view, thus, the Tribunal has also erred in not appreciating the basic requirement that the charge, at least, needs to be proved legally, may be, in a given case, on a weak piece of evidence. Under these circumstances, even the order of the Gujarat Civil Services Tribunal cannot be sustained in the eyes of law and the same needs to be quashed and set aside.

8.1 There is one more dimension in the matter. This Court (Coram: Hon"ble Miss Justice R.M. Doshit, as Her Lordship then was), while recording the order dated 04.12.2003, had observed as under:

Heard the learned advocates.

Without entering into the merits of the matter the learned advocate Mr. Solanki appearing for the petitioner states that the petitioner is ready and willing to give an unconditional apology for the conduct which has led to his removal from service. The petitioner shall also give an undertaking to behave properly in future if the respondent-authority shall reconsider the case and impose a minor penalty upon the petitioner for the conduct in question instead of punishment of removal from service.

The learned AGP Mr. Pancholi is instructed to put the proposal to the concerned authority whether the concerned authority shall be agreeable to accept

unconditional apology from the petitioner and an undertaking as aforesaid and to impose a minor penalty upon the petitioner for the conduct in question. Stand over to 24th December, 2003.

8.2 If the above order is kept in view, in spirit, this Court had thought the misconduct, even if held to be proved, to be worth imposing minor punishment. Nothing has come on record as to what has happened after the above order dated 04.12.2003. Under these circumstances, the question of going into merits had become necessary and this Court has gone into it, as recorded above. Considering the totality of the facts, the petition needs to be allowed and the petitioner needs to be reinstated in service with continuity of service and other consequential benefits.

9. At this stage, Mr. N.V. Solanki learned advocate for the petitioner, as well as the petitioner Mr. Shaileshgiri N. Goswami, who is present in the Court, have urged that the petitioner is out of job since years and his entire family is ruined and he intends to put the present litigation at rest, at least from his side. This Court can not indicate that there shall not be any further litigation in the matter. It is the right of the party to the litigation, to take further course available in law. However, learned advocate for the petitioner, as well as petitioner who is present in the Court states that, from his side, he intends to give concession that, in the event the petitioner is reinstated in service on or before 30.4.2013, without dragging the petitioner into any further litigation, the petitioner shall forgo back-wages to the extent of 80% and the petitioner shall be satisfied with the remaining back-wages to the extent of 20%. The aforesaid concession given by the petitioner before this Court is recorded.

10. In the facts and circumstances and for the reasons recorded above, this Court arrives at the judgment and passes the order as under:

(1) The removal order passed by the Disciplinary Authority dated 10.8.2001 is quashed and set aside. The order of the Gujarat Civil Services Tribunal dated 02.11.2002 in Appeal No. 278 of 2001 is quashed and set aside. The petitioner is treated to be in service and it is ordered that a formal order to that effect, reinstating the petitioner in service, shall be passed by the respondent authorities, on or before 31.5.2013. The petitioner shall be entitled to all consequential benefits.

(2) Since the petitioner has given concession, which is recorded in para: 10 above, it is directed that, in the event the reinstatement order is passed on or before 30.4.2013, without dragging the petitioner into any further litigation, the petitioner shall abide by the concession given by him with regard to back-wages, as recorded above.

(3) The arrears of back-wages, 100% as per (1) above, or 20% as per (2) above, shall be paid to the petitioner within a period of four months from today.

Rule made absolute. No order as to costs.