
(1995) 04 GUJ CK 0034

In the Gujarat High Court

Case No : Civil Revision Application No. 876 of 1994

State of Gujarat and Another

APPELLANT

Vs

Dariyasing Tarachand Jhat

RESPONDENT

Date of Decision : 01-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1996) 1 GLR 171

Hon'ble Judges : D.G. Karia, J

Bench : Single Bench

Judgement

D.G. Karia, J.—The State of Gujarat has challenged the legality and validity of the judgment and order dated July 5, 1994, passed by the

learned Extra Assistant Judge, Junagadh, in Civil Misc. Appeal No. 70 of 1994, and confirming the judgment and order of the trial Court whereby

implementation of the order of suspension in respect of the respondent-Armed Police Sub-Inspector was stayed till disposal of the suit.

2. The respondent, who was discharging his duties as the Armed Police Sub-Inspector under Principal of Police Training College at Junagadh, was

placed under suspension with effect from March 7, 1982 on the charge of misappropriation of Rs. 5,800/-. The respondent was assigned the duty

of payment of Rs. 500/- each to 73 trainees, being remuneration for the month of November, 1992 and while disbursing the said sum on

December 11, 1992 and December 12, 1992 the respondent-plaintiff illegally paid Rs. 100/- less to each of the 58 trainees thereby pocketed and

misappropriated Rs. 5,800/-. The trainees lodged grievance and complained about such less payment to the higher authorities. On preliminary

inquiry and considering the report alongwith the relevant documents, the

concerned authority was prima facie satisfied about the misconduct of the respondent and decided to institute disciplinary inquiry against him. In doing so, the plaintiff was placed under suspension as aforesaid.

3. The plaintiff, by instituting Civil Suit No. 429 of 1993 in the Court of the Civil Judge (S.D.), Junagadh, challenged his suspension order. He

submitted an application, purporting to be under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 praying for stay of the

implementation of the impugned suspension order. The learned Civil Judge (S.D.), Junagadh, by this judgment and order dated March 7, 1994

granted the injunction as prayed for and suspended the implementation of the suspension order till disposal of the suit, holding that several Circulars

and guidelines issued by the Government in respect of suspension of the Government employee have not been followed by the concerned

authority. The petitioner-State, being aggrieved by the said judgment and order, preferred Civil Misc. Appeal No. 70 of 1994 in the District Court

at Junagadh. The learned Extra Assistant Judge, Junagadh, who heard the said appeal, by the impugned order dated July 5, 1994, dismissed the

appeal confirming the order of the trial Court as aforesaid. It is against this judgment and order of the Court below that the State has preferred the

present Revision Application.

4. The learned Extra Assistant Judge, though held that the charges as to misappropriation against the plaintiff are serious and grave, and if such

charge is proved, the plaintiff may be dismissed, removed or compulsorily retired from the service. Strangely, the learned Judge confirmed the

order of the trial Court holding that the respondent-plaintiff is not in the clerical post and so there is no chance of repeating such misconduct of

misappropriating the amount and thus, there was no justification in continuation of the suspension order, of the respondent. The learned Judge did

not accept the reasoning of the trial Court about not placing the evidence of the complaint by the new recruits and about filing of the affidavit of one

Assistant Inspector Shri Natwarsinh Udesinh as such an inquiry for appreciation of the evidence before the authority passing the order of

suspension was not at all within the competence of the trial Court. In this connection, the learned Judge placed reliance upon the decision in the

case of P.K. Bansal, Commissioner of Police, Surat City & Anr. v. R.G. Jadeja,

reported in 1993 (2) GLR 983. It is observed in the said

judgment that while examining an order of suspension, the Court are not concerned with the sufficiency of satisfaction. These matters are left to the

subjective satisfaction of the authority. Such matters are not automatically and as a matter of course justifiable. Sufficiency of ground cannot be

enquired into; but as to whether opinion was formed at all can be examined. This Court cannot substitute its own satisfaction. The learned Judge

concluded that there was evidence before the authority passing the order of suspension and that it was for the authority to have subjective

satisfaction to hold whether there is a sufficient ground for suspending the respondent or otherwise.

5. The learned Judge appears to be confused about certain directions and guidelines about transfer and suspension and committed an error in

ignoring the fact that the Competent Authority was competent and empowered to pass the order of suspension and having attained the subjective

satisfaction, in view of the facts and circumstances, the suspension order was properly passed, and the learned Judge ordered to stay

implementation of such order till disposal of the suit. In my view, having regard to the facts and circumstances of the case, the Courts below should

not have interfered with the powers exercised by the Competent Authority in passing the suspension order on subjective satisfaction derived from

the facts of the case. The respondent has not been transferred on account of the misconduct alleged against him. There is, therefore, no question of

considering the transfer or suspension. The Courts below also ignored that the respondent-plaintiff, though was suspended on March 17, 1992,

had filed a suit after about three months, i.e., on June 25, 1993. The suspension order is thus already enforced and made operative. In this view of

the fact on record, the learned Judge failed to appreciate that the trial Court acted illegally in exercise of its jurisdiction in granting the injunction

order as prayed for by the plaintiff, inasmuch as when the impugned suspension order was already enforced at the time when the suit and the

injunction application came to be filed, no prima facie case or balance of convenience can be said to have been made out by the plaintiff.

6. The learned Judge appears to have committed material irregularity inasmuch as he has concluded that the order suspending the respondent must

state reasons in detail. There is no such law providing to state reasons for suspension. The subjective satisfaction of the concerned authority is

enough to pass the order of suspension. The suspension order as an administrative order simplicitor in a way. In this view of the matter, the

impugned judgment by the Courts below cannot be sustained.

7. It further appears that the Courts below proceeded on the footing that the order was bad and illegal on account of the mala fides. There are no

necessary details and particulars about the mala fides alleged by the plaintiff. What is averred by him is that the suspension order was passed

because of some strained relationship between the respondent and the Vice Principal of the Police Training College. Apart from that, there being

no prima facie material to come to the conclusion that the suspension order is passed on account of mala fides, the Courts below ignored the fact

that the serious allegations of misconduct and misappropriation were alleged and the enquiry with regard thereto was initiated and as such the

plaintiff was placed under suspension. In the facts of the case and on the material placed on record, it cannot be concluded that the suspension

order suffers from the vice of non-application of mind, or it cannot be said to be perverse in any way. I cannot see any reason or justification for

the Courts below to come to such conclusion. Suffice it to state that the Courts below, in facts and circumstances of the case, ignored the relevant

facts of the case as well as legal provision relating to placing the Govt. employee under suspension pending departmental inquiry. Therefore, the

impugned judgments are liable to be set aside.

8. In the result, the Revision Application is allowed. The impugned judgments and orders passed by both the Courts below are quashed and set

aside. The application, Exh. 5, of the plaintiff-respondent stands dismissed. Rule is accordingly made absolute with no order as to costs.