

(2014) 09 GUJ CK 0076
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1109 of 2007 in Spl. C.A. No. 7452 of 1990

State of Gujarat

APPELLANT

Vs

Bhilalbhai Hemarajbhai Unadkat

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 325

Citation : (2014) 3 GLR 2762

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : P.P. Banaji, A.G.P, Advocate for the Appellant; Anand, Advocate for the Respondent

Judgement

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Jayant M. Patel, J.—Present appeal is directed against the order dated 26-7-2004 passed by the learned Single Judge of this Court in Special Civil Application No. 7452 of 1990 whereby the learned Single Judge has allowed the petition and quashed and set aside the order for imposition of penalty passed by the Disciplinary Authority. Relevant facts are that the respondent-original petitioner was discharging duties as inquiry officer in City Survey Office at Songadh in District Surat. At that time, he decided certain matters wherein a dispute was raised that the properties are private properties and not the properties of the Government. On 12-2-1980, charge-sheet was issued to him on the allegation that he held the properties as private properties against the rules and evidence. An inquiry was conducted and ultimately, charges were found to be proved and the penalty of pension cut of Rs. 250/- on permanent basis was imposed upon him. The respondent-original petitioner challenged the said order by preferring the Special Civil Application. Learned Single Judge found that as it was quasi-judicial function, the action could not be taken. Learned Single Judge also referred to the decision of the Apex Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, and ultimately, learned Single Judge allowed the petition by

quashing and setting aside the order of the disciplinary authority. It is under these circumstances, present appeal is before this Court.

2. We have heard Mr. P.P. Banaji, learned A.G.P. for the appellants and Mr. Party Divyeshwar learned Advocate appearing for the respondent-original petitioner.

3. It is an undisputed position that the original petitioner, at the relevant point of time, was functioning as quasi-judicial authority wherein his duty was to decide the rights of the parties and to render the decision. Pertinent aspect is that the State Government was one of the parties over whose land, the claim was to be decided by the original petitioner in the capacity of quasi-judicial authority. On the aspect of exercise of power by the quasi-judicial authority and to carve out the contingency when can be treated as misconduct, we may refer to the decision of the Apex Court in the case of Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, , more particularly the observations made at Paras 40 to 43 which read as under:

"40. When we talk of negligence in a quasi-judicial adjudication, it is not negligence perceived as carelessness inadvertence or omission but as culpable negligence. This is how this Court in State of Punjab and Others Vs. Ram Singh Ex. Constable, interpreted "misconduct" not coming within the purview of mere error in judgment, carelessness or negligence in performance of the duty. In the case of Union of India and Others Vs. K.K. Dhawan, , the allegation was of conferring undue favour upon the assessee. It was not a case of negligence as such. In Union of India (UOI) and Others Vs. Upendra Singh, , the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. Case of Dy. Inspector General of Police Vs. K.S. Swaminathan, , was not where the respondent was acting in any quasi-judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the Court to see whether they support the charge of the alleged misconduct. In M.S. Bindra Vs. Union of India and Others, where the appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or mala fide or based on no evidence. Again in the case of Madan Mohan Choudhary Vs. The State of Bihar, , which was also a case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In Government of Tamil Nadu Vs. K.N. Ramamurthy, , it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard Government revenue. In Hindustan Steel Ltd. Vs. State of Orissa, , it was said that where proceedings are quasi-judicial, penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty will not also be imposed merely because it is lawful so to do. In the present case, it is not that the appellant did

not impose penalty because of any negligence on his part but be said it was not a case of imposition of penalty. We are, however, of the view that in a case like this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. We have noticed that Patna High Court while interpreting Sec. 325, I.P.C. held that imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground for misconduct. Of course, it is a different matter altogether if it is deliberate and actuated by mala fides.

41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed "favour" to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance, misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since, nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour

because of the constant threat of disciplinary proceedings."

4. If the facts of this case are examined in light of the above referred legal position, the learned A.G.P. is not in a position to show that there was any allegation that the original petitioner exercised the power as quasi-judicial authority with some extraneous consideration or that there was any personal interest or that he had exercised power to favour any party to the proceedings. It appears from the inquiry report which is the basis for exercise of the power by the disciplinary authority that the inquiry officer has reassessed the material on record as if he was a Court of appeal and has found that while exercising the power, the delinquent had not followed the statutory rules or particular course of action was not undertaken.

5. In our view, such cannot be said as sufficient to treat the decision as misconduct by an officer who functioned as quasi-judicial authority at the relevant time. The Apex Court in the above referred observation has elaborately dealt with the aforesaid aspect, and therefore, we need not repeat it but suffice it to observe that if the decisions per se are made as basis for treating the action as misconduct, no quasi-judicial authority will be in a position to independently exercise power in a fair and safe manner. Had it been a case of influence operated upon the quasi-judicial authority not warranted by law, the matter might stand on different footing and different consideration but no such material has come out in the inquiry nor found by the disciplinary authority.

6. Apart from the above, there was more than reasonable delay in concluding the inquiry. More than eight years time was consumed by the department in concluding the inquiry and finalising the departmental proceedings. Such would be one of the factors which may go against the disciplinary authority.

7. Considering the above, we find that the decision taken by the learned Single Judge for allowing of the petition and quashing of the order of penalty would call for no interference. Hence the present appeal being meritless is dismissed. Considering the facts and circumstances, no order as to costs. Since the appeal is dismissed, monetary benefits in accordance with law, if any available, shall be disbursed to the respondent within a period of three months from the receipt of the order of this Court.