

(2014) 02 GUJ CK 0044

In the Gujarat High Court

Case No : Letters Patent Appeal No. 122 of 2000 in Special Civil Application No. 3869 of 1988

Sureshchandra Hiralal Pandya Since Deceased Through Heirs

APPELLANT

Vs

Gujarat University and 2 and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227

Gujarat Affiliated Colleges Services Tribunal Act, 1982 — Section 14

Citation : (2014) 02 GUJ CK 0044

Hon'ble Judges : Sonia Gokani, J; Akil Kureshi, J

Bench : Division Bench

Advocate : J.F. Mehta, No. 1.1-1.4, for the Appellant; Jaimin Gandhi, AGP for the Respondent No. 2, Mr. Kirit I. Patel, Advocate for the Respondent No. 3, Mr. Mitul K. Shelat, Advocate for the Respondent No. 1 and Mrs. V.D. Nanavati, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—This appeal is directed against the judgment of Learned Single Judge dated 21.1.2000. Even for dealing with preliminary objection of the respondent that the Letters Patent Appeal is not maintainable in view of decision of the full Bench of this Court in case of Gujarat State Road Transport Corporation v. Firoze M Mogal and others dated 26.12.2013, it would be necessary to advert to brief facts. Respondent no. 1 in the writ petition was appointed as a principal in a college run by one Maharshi Dayanand Saraswati Kelavani Mandal the original petitioner. He was placed on probation for a period of one year. He joined his duty on 21.10.1982. During the period of probation, finding that his service was not satisfactory, he was given a notice on 3.10.1983 and after affording an opportunity of hearing by an order dated 17.10.1983, his service came to be terminated. This order of termination, he challenged before the Gujarat Affiliated Colleges Tribunal ("the tribunal" for short) by filing an appeal. The same appeal came to be allowed. The management was directed to

consider the question after holding inquiry. Pursuant to such order, initially a tentative decision was taken and approval of Vice-Chancellor was sought. Such approval was refused by the Vice-Chancellor, upon which, the management approached the tribunal, who allowed the appeal. The proposal of termination of service was approved. The employee thereupon approached the High Court by filing Special Civil Application No. 5255/1984. Pending such petition, pursuant to the order of the tribunal, management passed an order terminating the service of the principal on 18.10.1984 and his services actually came to be terminated with effect from 31.10.1984. This order was challenged by him before the tribunal. The tribunal held that termination was punitive in nature and was made without holding any inquiry as provided u/s 14 of the Gujarat Affiliated Colleges Act, 1982, and therefore, bad in law. The tribunal directed that respondent no. 1 be retained in service as a professor. If he chose not to join as a professor, he would be paid six months salary by way of compensation in lieu of reinstatement. It is this order of the tribunal which was challenged by the college management before the High Court.

2. The High Court held that termination of the principal was not punitive but a simpliciter termination. The order was not stigmatic. No inquiry u/s 14 of the Gujarat Affiliated Colleges Act, 1982, was warranted. It was held that the procedure adopted was not violative of section 14 of the Gujarat Affiliated Colleges Act, 1982. Learned Judge therefore, allowed the petition and set aside the judgment of the tribunal dated 8.4.1988. Termination of respondent no. 1 was upheld.

3. Respondent no. 1 having died during the pendency of the petition, his heirs have filed this Letters Patent Appeal in which the counsel for the management raised preliminary objection of maintainability. He would draw our attention to the decisions of full Bench of this Court in case of Gujarat State Road Transport Corporation (supra) to contend that the writ petition was not filed u/s 226 of the Constitution since the tribunal was not joined as a respondent. The learned Judge has also not exercised writ jurisdiction under Article 226 of the Constitution. The Letters Patent Appeal is therefore, not maintainable.

4. In response to such a petition, learned advocate Shri Mehta for the appellant vehemently contended that even within the confines of the proposition laid down in case of Gujarat State Road Transport Corporation (supra), this Letters Patent Appeal is maintainable. The learned Single Judge has exercised writ jurisdiction under Article 226 of the Constitution. He submitted that when the entire issues were examined threadbare, it cannot be stated that learned Judge was exercising superintending powers under Article 226 of the Constitution.

5. Under what circumstances, a Letters Patent Appeal would be maintainable when a writ petition is filed either under Article 226 or 227 of the Constitution, is a question occupying mind of this Court and other Courts on numerous occasions. Such an issue was referred to the larger Bench comprising of five Judges of this Court, who after detailed deliberation, rendered the said judgment

in case of Gujarat State Road Transport Corporation (supra) and laid down various propositions. Insofar as such propositions which are relevant for our purpose, they read as under:

vi) The learned Single Judge must have exercised original writ jurisdiction as distinguished from appellate jurisdiction, revisional jurisdiction or power of superintendence in order to maintain an appeal under Clause 15 of the Letters Patent.

vii) A writ of certiorari lies in appropriate cases against the order of Tribunal or Court subordinate to the High Court where such a Court, or Tribunal acts not only as an authority of first instance but even if such a Court or Tribunal acts as an appellate or revisional authority provided a case for a writ of certiorari is made out to the satisfaction of the Court concerned. Thus, if an appellate or revisional order of the Court or Tribunal, subordinate to a High Court, suffers from a patent error of law or jurisdiction, the same could be challenged before the High Court with the aid of Article 226 of the Constitution and it could not be said that such an appellate or revisional order of the Court or Tribunal could be challenged with the aid of Article 227 alone.

x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent Appeal will not change the nature and character of the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

xii) If a learned Single Judge, in exercise of a purported power under Article 227 of the Constitution modifies the order of Tribunal/Authority or Court below and thereby partly allows a petition to a certain extent, then in such circumstances, it could not be said that the Court exercised its certiorari jurisdiction and no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself. However, if a learned Single Judge, in purported exercise of power under Article 226 of the Constitution of India, issues a writ of certiorari, although the same is not maintainable, an appeal under Clause 15 of the Letters Patent would nevertheless be maintainable against such order. To put it in other words, take a case where a party on his own invokes supervisory jurisdiction under Article 227 of the Constitution of India, and in such a petition, the Court issues a writ of certiorari, then against such an order an LPA would be maintainable. To put it explicitly clear, take a case where in a petition

neither there is a prayer for issue of a writ of certiorari nor the Tribunal/Authority or Court whose order is impugned is impleaded as a party respondent, and despite such being the position, if the Court proceeds to issue a writ of certiorari, then against such an order an LPA would be maintainable.

xiv) The facts would justify invocation of the original jurisdiction under Article 226 of the Constitution only if all the requisite conditions for issue of a writ of certiorari are made out by the petitioner and the Court concerned is convinced that the petitioner has been able to point out a serious or a palpable error in the order impugned going to the root of the jurisdiction. In the absence of such a glaring infirmity or an error patent on the face of the record, the party would not be justified in invoking original jurisdiction of the High Court under Article 226 of the Constitution of India for issue of a writ of certiorari.

6. In the writ petition, the tribunal was not joined as a party. That itself would be a strong indication that writ petition was filed invoking certiorari writ jurisdiction under Article 226 of the Constitution. Additionally, even the perusal of the judgment of the learned Single Judge would convince us that there was no certiorari writ jurisdiction which was being exercised. The learned Judge did not record that the findings of the tribunal are perverse or that the tribunal lacked inherent jurisdiction or committed a jurisdictional error. The learned Judge upon appreciation of the material on record came to the conclusion that the order of termination was simpliciter and not punitive or stigmatic and, therefore, the procedure followed by the management did not violate the requirement of section 14 of the Gujarat Affiliated Colleges Act, 1982. That being the position, this Letters Patent Appeal is not maintainable. Same is therefore, dismissed.