

(2004) 03 GUJ CK 0083

In the Gujarat High Court

Case No : Special Civil Application No. 11076 of 1994

Tushar C. Shah

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Citation : (2004) 03 GUJ CK 0083

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : M.R. Anand, Anand L. Sharma and Deepak P. Sanchela, for the Appellant; M. S. Rao, AGP for Respondent Nos. 1-3, for the Respondent

Judgement

Ravi R. Tripathi, J.—The present petition is filed for the relief directing the respondents:

"(A) to quash and set aside the order of dismissal dated 31st March, 1994 at Annexure `R",

(B) to quash and set aside the finding of the Enquiry Officer and his report dated 16th August, 1993 at Annexure `P",

(B)(i) to pay all consequential benefit including salary as if order dt. 31.3.94 at Annexure `R" is not passed at all,

(C) to declare that the penalty of dismissal is excessive,

(D) to quash and set aside the charges levelled against the petitioner at Annexure `A",

(E) to declare that the enquiry which is completed after 14 years of issuance of charge sheet is in violation of principles of natural justice."

2. This Court (Coram: M.R. Calla, J.) passed the first order on 20th September, 1994 as under:

Rule returnable on 25th October, 1994. Direct Service is permitted."

From the order sheet, it transpires that thereafter, the matter was listed on 1st December, 1998, and on that day, it was adjourned to 1st February, 1999. Thereafter, it came to be listed only on 24th November, 2000 when the Court passed the order that, 'the matter be listed before appropriate Court for final hearing'. Thereafter, the matter was listed and adjourned on various dates. Finally, it was taken up for final hearing since 25th February, 2004. On 25th February, 2004, this Court granted time to the learned AGP, Mr. M.S. Rao, to call for the file and explain as to why the Director, Technical Education denied supply of the report of the Anti Corruption Bureau ("ACB" for short) and likewise, the Under Secretary, Education Department turned down a similar request by his letter dated 18th November, 1991, though there was an order dated 30th December, 1983 passed by the Joint Secretary (Education) that, 'Mr. Shah be supplied the report of the Police Inspector (ACB) and the copies of the statements of the witnesses examined by the Police Inspector (ACB) and an opportunity be also given to Mr. Shah to cross examine them'.

Mr. Rao, learned AGP, has not filed any affidavit explaining the aforesaid act of the Director, Technical Education or the Under Secretary, Education Department. He submitted that he will make his submissions when he replies to other averments and contentions raised in the petition.

3. The facts giving rise to the present petition are that the petitioner joined the services with respondent no.3, R.C. Technical Institute, in the year 1969 as Assistant Lecturer in Weaving. Thereafter, in the year 1970, the petitioner was promoted to the post of Assistant Lecturer in Weaving. He was then selected by the Public Service Commission for the post of Lecturer in Textile Technology in the year 1974. For some time, the petitioner was serving in Dr. S & S Gandhi College of Engineering and Technology at Surat from where he was transferred to R.C. Technical Institute, Ahmedabad, where he continued to serve.

3.1 In the year 1979, the petitioner was served with a chargesheet dated 2nd March, 1979, a copy of which is produced at Annexure-A to the petition, wherein the following charges were levelled against the petitioner.

1. In connection with the Higher Spinning Certificate Course, final year examination held in April, 1977 by the Technical Examination Board, he has committed the following mal-practices:

(i) He has assessed the answer scripts of Section II of Spinning Lecture Paper without prior permission of the Technical Examinations Board even though his appointment was for examiner in Section I only.

(ii) He had crossed out certain answers in the answer scripts of Sarvashri K.P. Patel, Shri M.I. Patel and Shri R.K. Patel.

2. He had deliberately crossed out the answers from the answer book of Shri K.P. Patel with the intention that the student may fail in the examination."

Mr. A.L. Sharma, learned Advocate for the petitioner, submitted that the said chargesheet was replied by a letter dated 16th March, 1979. After which, an Inquiry Officer was appointed and a departmental inquiry was held wherein the petitioner was held guilty. The Inquiry Officer, in his report dated 30th September, 1991, a copy of which was forwarded to the petitioner with a forwarding letter dated 16th August, 1993, a copy of which is produced at Annexure-P to the petition, was pleased to hold that Charge No.1(i) 'proved', Charge No.1(ii) 'partly proved', Charge No.2 also 'partly proved'. The Department, after considering the Inquiry Officer's report, recorded its conclusions ('taran'), a copy of which was supplied to the petitioner along with the Inquiry Officer's report.

3.2 The Department agreed with the Inquiry Officer's report so far as Charge No.1(i) is concerned. So far as Charge No.1(ii) and Charge No.2 are concerned, the Department did not fully concur with the Inquiry Officer's report.

3.3 The petitioner was asked to file representation, if any, against the report of the Inquiry Officer and the remarks ('taran') of the Department within 15 days. The petitioner filed a detailed representation dated 13th/16th September, 1993. The Department then passed an order of punishment dated 31st March, 1994, a copy of which is produced at Annexure-R, whereby the petitioner was dismissed from service. The said order of punishment was communicated to the petitioner by a forwarding letter dated 31st March, 1994.

3.4 Earlier, the Department had passed an order of termination dated 24th March, 1983, against which the petitioner had approached this Court by filing Special Civil Application No.1658 of 1983. But then, the Department withdrew the order of termination and made a statement before this Court that the inquiry against the petitioner will be reopened and continued. On that statement, the petition was withdrawn with the permission of this Court. It is thereafter that by an order dated 31st August, 1983, the Department ordered 'fresh inquiry'.

3.5 In the present petition, the order dated 31st March, 1994 (Annexure-R), the Inquiry Officer's report dated 16th August, 1993 (Annexure-P) and Chargesheet dated 2nd March, 1979 are challenged and it is prayed that the same may be quashed and set aside by this Court, mainly on the ground that the inquiry is vitiated on account of non-supply of the documents asked for by the petitioner.

4. Mr. A.L. Sharma, learned Advocate appearing for the petitioner, emphatically submitted that this is a case of non-application of mind on the part of the authorities inasmuch as in the earlier proceedings i.e. in Special Civil Application No.1658 of 1983, a statement was made by late Shri M.A. Panchal, learned AGP appearing for the respondents, on instructions from the Joint Secretary, Education Department, that, 'the impugned order removing the petitioner from service will be withdrawn and the inquiry against the petitioner will be reopened and continued'. It is on this statement being made, the learned Advocate, late Shri N.J. Mehta, appearing for the petitioner, had withdrawn the petition without

prejudice to the contentions raised in the petition with the permission of the Court. It is after the withdrawal of the aforesaid petition on 1st July, 1983 that the Secretary, Education Department, by an order dated 30th December, 1983, directed the Director, Technical Education, Gujarat State, to supply copies of the documents asked for by the petitioner by his letters dated 20th August, 1979 and 2nd November, 1979. Besides that, it was also directed that, 'a copy of the report produced by the Police Inspector (ACB) be also supplied to him'. The order also mentioned that, 'Mr. Shah, the petitioner, be given an opportunity to cross examine the witnesses, who were interrogated by the Police Inspector (ACB) during the investigation' and as if this was not enough, the order instructed the Director, Technical Education, to supply, 'any other relevant documents asked for by Mr. Shah during the inquiry'.

Despite the fact that this order dated 30th December, 1983 is very much on the record of the case, the Director of Technical Education, by his subsequent communication dated 1st February, 1991, which is signed for and on behalf of the Director, Technical Education (signature illegible), informed the petitioner that:

"In reply to your application dated 5th January, 1991, copies of the statements recorded before the ACB on 6th March, 1978 and the statements recorded before the Technical Examination Board on 3rd August, 1977, are hereby supplied."

But then, it is further stated that, 'as informed by the Government in its letter dated 20th May, 1989, the copy of the ACB report which you have demanded cannot be supplied to you, which please note'.

5. A similar communication is written by the Education Department to the petitioner by letter dated 18th November, 1991. It is mentioned therein that, 'in reply to your communication dated 5th January, 1991 and in reply to the demand made by you at the time of departmental inquiry on 21st January, 1991, the inquiry report produced by the Police Inspector (ACB) and copies of the statements made before the ACB cannot be supplied to you in public interest."

6. It was, on account of these two communications being pointed out in juxtaposition of the earlier order dated 30th December, 1983, that this Court vide order dated 25th February, 2004, granted time to the learned AGP, Mr. M.S. Rao, to call for and peruse the files to explain as to why the Director of Technical Education and the Under Secretary, Education Department denied to supply the report of Police Inspector (ACB).

7. Mr. M.S. Rao, learned AGP, in response to the order dated 25th February, 2004 did call for the files from the Department and made them available for the perusal of this Court. It is important to note that an officer of the rank of the Deputy Secretary has made a noting in the file that, 'he is aware of the order dated 30th December, 1983 and the contents thereof'. He has also noted that, 'by virtue of that order, the documents, which are referred to in Direction nos. 1, 2, 3 and 4 were required to be supplied', but then, he brushes aside that order

only on the ground that, 'the aforesaid order dated 30th December, 1983 is not available in original, and therefore, he is not able to appreciate as to under what circumstances, the decision to supply all these documents to Mr. Shah was taken". It is also recorded by the said officer that, "it is also not clear as to whether these documents were received by Shri Shah, but, all possible documents referred to in the order dated 30th December 1983 and letter dated 11th November, 1987 of this Department, are supplied to Mr. Shah." Still, Mr. Shah is representing that he has not received anything, which is not proper.

8. By a letter dated 9th May, 1989, the Section Officer of Education Department informed the petitioner that the report of the Police Inspector (ACB) cannot be supplied to you, as ordered.

Mr. M.S. Rao learned AGP, also pointed out that once again the matter was placed before the highest authority i.e. the Secretary of Education Department, with a noting dated 1st June, 1991, which routed through the chain and ultimately, on 11th June, 1991, the Secretary made the following remarks:

"We should claim privilege against production of the documents mentioned at (1) and (2) and allow the document mentioned at (3)."

From these remarks, it is manifest that the Secretary did not peruse the earlier pages of the file, otherwise, he would not have missed the order dated 30th December, 1983.

9. Mr. M.S. Rao, learned AGP, produced on record a copy of the Circular bearing No.LRV/1485/2038/H dated 4th May, 1987 of the Home Department of State of Gujarat and submitted that therein, it is provided that, 'in the cases of departmental inquiries initiated on account of reports of ACB, the report of ACB is to be considered as confidential". But then, the perusal of the circular reveals that this circular was required to be issued because it had come to the notice of the Government that despite the report being confidential, the same was supplied to the delinquent. On reading the entire circular, the submissions of Mr. Rao that 'ACB report is to be considered confidential", does not hold good because in this very circular, it is stated that the Government has decided that, 'the report of ACB or any other preliminary inquiry, on the basis of which the departmental inquiry is initiated, should not be referred to in the chargesheet, statement of imputations or any other subsequent proceedings and its copy should not be given to the delinquent". What follows is important, which is not noticed by either the Director of Technical Education or the Under Secretary, Education Department. It is stated in the circular that, 'in some special circumstances, if this report is required to be referred to in the departmental inquiry and if a copy of such report is to be given to the delinquent, then, the permission of the General Administration Department or the Home Department is to be taken". Thus, this circular does not put a blanket ban on supply of report of ACB or of any other agency, which conducts the preliminary inquiry. The file, which is made available for perusal of this Court, does not reflect at any stage

that this aspect was borne in mind by any of the officers, who took the decision that the copy of the ACB report is not to be supplied.

10. Mr. M.S. Rao, learned AGP relied upon a judgement of the Supreme Court in the matter of Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), to contend that non-supply of copy of document having no bearing on charges or which is not relied on by the Inquiry Officer to hold the charges proved, does not amount to violation of principles of natural justice. The relevant observations of the Supreme Court in the said judgement, which are important and helpful to decide the case on hand are as under:

"10. In the instant case there is no denying the fact that a copy of paper No.5 as mentioned in the charge-sheet was not supplied to the appellant and he was not permitted to inspect the same. It appears that paper No.5 was the report submitted by the Special Police Establishment in respect of the criminal case of theft of coal, in which final report had been submitted. After submission of final report in the criminal case disciplinary enquiry was initiated against the appellant. Paper No.5 (the report) was, however, not considered or relied by the enquiry officer in recording findings against the appellant. We have perused the copy of the report of the enquiry officer furnished to the Court by the appellant but we do not find any reference to paper No.5 therein. The enquiry officer has not either referred to nor relied upon that report in recording findings on the charges framed against the appellant. In this view the report (paper No.5) was not a material or relevant document and denial of copy of that document could not and did not prejudice the appellant and there was no violation of principles of natural justice. The appellant's grievance that in the absence of report he could not effectively cross-examine Shri A.C. Das, Dy. S.P. of Special Police Establishment, the investigating officer is not sustainable. A copy of the statement as recorded by the enquiry officer has been placed before us by the appellant on a perusal of the same we find that Shri A.C. Das, cross-examined at length in detail. His examination-in-chief is confined to one page while his cross-examination runs into six fullscale typed pages. The appellant has failed to point out as to how he was prejudiced. In our opinion the appellant was not handicapped in cross-examining Shri A.C. Das, his grievance that he was not afforded reasonable opportunity of defence is without any merit."

The legal position enunciated by this judgement is well settled. 'Principle of natural justice' is that, 'a delinquent be supplied a document, which is relied upon against him', but if a document is not relied upon, then, there is no question of supplying the same. But then, the facts of the case on hand are that in the earlier round of litigation, the order of termination was withdrawn with the permission to reopen and continue the inquiry with a view to see the interest of the Government (to avoid possible drain of public exchequer), is not adversely affected. The matter did not reach the stage of final adjudication. The only inference which can be drawn from these facts is that, 'taking sufficient hint from what must have transpired before the Court, a responsible officer of the

rank of 'Joint Secretary' asked the Director of Technical Education to supply the document, which is now refused to be supplied in the public interest. This is nothing but a summer salt taken by the authorities. It is not the case of the authorities that this document is not relied upon by the Inquiry Officer and, therefore, not required to be supplied. If little care would have been taken by the authorities, the anxiety entertained by this Court at the time of earlier proceedings, giving an opportunity to the Government to remove the lacunae, by permitting the authorities to reopen and continue, could have bore the fruits and drain of public money could have been avoided.

11. The approach of the responsible officer of the State Government of the rank of the Under Secretary, Education Department, to such a serious matter is painful. The Under Secretary did not take into consideration the earlier record. If he would have taken that little trouble, he would have noticed the order dated 30th December, 1983 and then, he would not have written the letter dated 18th November, 1991. It is equally shocking that another responsible officer of the State, namely, Director of Technical Education, to whom the earlier order dated 30th December, 1983 was addressed did not comply the same and by a subsequent communication dated 1st February, 1991, refused to supply the report of ACB.

12. Mr. M.S. Rao, learned AGP, submitted that along with the chargesheet, a statement of evidence was supplied wherein the report of the Police Inspector (ACB) is not mentioned. TRUE. The report of the Police Inspector (ACB) is as such, not mentioned as the evidence in the statement of evidence, but then, all the statements recorded on 5th March, 1978, 17th March, 1978 and 11th August, 1977 are forming part of evidence used against the petitioner. Many of these statements are recorded by the Police Inspector (ACB), on the basis of which the Police Inspector (ACB) must have prepared his report, which was placed before the Gujarat Public Service Commission for seeking approval. Even then, it is argued that the report of the Police Inspector (ACB) is not relied upon. The argument is not a convincing one, which can be accepted by this Court. On the contrary, this takes out the force from the so-called plea of the officers that, 'the ACB report is not supplied in the public interest'. Both these pleas run counter to each other as on one hand, it is urged that the document is not relied upon, hence, not supplied, and on the other, it is not supplied in the public interest. If all these statements recorded by the ACB, on the basis of which the Police Inspector (ACB) has prepared the report, could be supplied to the petitioner, then, there was no reason for not supplying the report of Police Inspector (ACB). In fact, this attitude of the Government Officers is only because they are not held 'personally responsible' for the consequences of any decision taken by them, which makes it possible for them to decide the matter without applying mind to the facts of the case. In the present case, when an officer of the rank of 'Joint Secretary' orders that the copy of the ACB report is to be supplied without there being any weighty reasons for non-supply of the same, there was no reason for these officers to take the decision that the report is not

required to be supplied in the public interest.

13. In view of the fact that earlier, a statement was made before this Court that order of termination will be withdrawn and the inquiry will be reopened and continued, on the basis of which the earlier petition, being Special Civil Application No.1658 of 1983 was withdrawn with the permission of this Court, and in view of the communication dated 30th December, 1983, written by the Joint Secretary, Education Department, Government of Gujarat, it was necessary for the concerned officer to explain as to why the officer of the rank of the Director of Technical Education and the officer of the rank of the Under Secretary, Education Department, refused to supply the documents including a copy of the ACB report, without setting out the reasons in detail, simply mentioning "in public interest", which is as vague as could be. If at all there was any valid reason for the same, the officer/s ought to have explained the same in letters dated 1st February, 1991 and 18th November, 1991. Assuming that it could not be done then it should have been explained before this Court particularly when the Court granted an opportunity for the same on 25th February, 2004. In absence of any explanation, this petition deserves to be allowed on a sole ground that, 'the inquiry held against the petitioner is vitiated on account of non-supply of the documents, which were though ordered to be supplied'.

14. Mr. A.L. Sharma, learned Advocate appearing for the petitioner, did point out that the very document demanded by the petitioner was sent to the Gujarat Public Service Commission along with relevant papers while submitting the matter to the Gujarat Public Service Commission for its approval, which is reflected from the communication dated 18th March, 1994 produced at page-225 of the petition (Annexure-R). The Gujarat Public Service Commission has referred to the said document while granting approval to the dismissal of the petitioner.

15. From the aforesaid discussion, it boils down to that in the case on hand, the Government Officers, referred to herein above, on their own took a decision not to supply a copy of the report of Police Inspector (ACB), which was ordered by the Joint Secretary on 30th December, 1983 to supply. In view of that, only on that short ground of non-supply of the report of the Police Inspector (ACB), about which there is no doubt in the mind of the Court that it was relied upon by the authorities and was placed before the Gujarat Public Service Commission, while seeking approval, this petition deserves to be allowed and the same is accordingly allowed. The order dated 31st March, 1994 and the findings of the Inquiry Officer recorded in his report dated 16th August, 1993 are hereby quashed and set aside. The respondents are directed to pay all consequential benefits, including salary, as if the order dated 31st March, 1984 was not passed at all.

The Chief Secretary of the State of Gujarat is directed to hold an inquiry in the matter to determine the extent of guilt of the concerned officers, referred to hereinabove, and shall also indicate the action to be taken against them and place the same before this Court within four months from the date of receipt of

this order.

16. Mr. A.L. Sharma, learned Advocate pointed out that during the pendency of this petition, the department has passed an order dated 18th November, 1996, which is placed on record by way of amendment. He further pointed out that he has challenged the said order dated 18th November, 1996 by filing Special Civil Application No.7324 of 1997, which came to be disposed of by this Court (Coram: N.N. Mathur, J. [as he then was]) by order dated 7th October, 1997.

"Heard the learned counsel for the petitioner. He has submitted that the petitioner has been denied selection grade by the order dated 18.11.1996. It is not in dispute that the petitioner's services have been terminated by the order dated 21.3.1994. The say of the petitioner is that he has challenged the order of termination by way of filing Special Civil Application No. 11076 of 1994 and the same has been admitted by this Court. Simply because the petition challenging the order of termination has been admitted, it cannot be understood that the same has been wiped off. Since the services of the petitioner have been terminated, the question of giving selection grade in the year 1996 does not arise. In case the petitioner's Sp.C.A. No. 11076 of 1994 is allowed, question of consequential benefits will be considered in the said Spl.C.A. I find no merits in this Sp.C.A. The same is accordingly rejected."

Mr. Sharma submitted that the Department be directed to consider the case of the petitioner now in light of the judgement of this Court in this petition.

17. Taking into consideration the order of this Court, it is deemed fit to direct the respondents to consider the case of the petitioner afresh, treating the order dated 18th November, 1976 nonest. Taking into consideration the fact that the petitioner has already reached the age of superannuation in the month of March-2000 and he has already retired at the age of 58 and is running in 62nd year of his age, it is deemed fit to further direct the respondents to consider his case and decide the same as early as possible, but, not later than four months from the date of receipt of writ of this judgement.

The Office is directed to send a writ of this Court to the Chief Secretary for necessary action.