

(1988) 03 GUJ CK 0031
In the Gujarat High Court

Vijay J. Gadhvi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 28-03-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16, 226

Citation : (1988) 2 GLR 902

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—There is material suppression and deliberate distortion of facts. Even when this is found as a matter of fact and the explanation given by the learned Counsel for the petitioner leads to no other inference but to deliberate distortion of facts and intentional suppression of relevant and important material, would it be proper for the High Court to ignore and/or to condone the same? Or is it incumbent upon the High Court to discharge its duty and pass an order which may appear to be unpleasant to the petitioner, to the petitioner's Advocates and perhaps to many others? In short, there are two alternatives: Pragmatism leading to the glamorous goal of popularity. Or Devotion to duty coupled with allegiance to the oath of office.

2. The petitioner is serving as English Section Writer in the Court of Civil Judge (J.D.) and J.M.F.C., Visavadar, district Junagadh. He was appointed on November 28, 1983. He alleged in the petition that his services have been terminated with effect from May 4, 1986. Intimation to this effect has been given to him by order dated May 12, 1986. It is contended in the petition that similarly situated employees are continued and therefore the order is not justified. In paras 4 and 6 of the petition the allegations have been made to the following effect:

The petitioner submits that the respondents ought to have followed the well settled principles of natural justice especially when the respondents are discharging the function of rendering justice to the society. That the order is arbitrary, illegal, unjustified and in violation of the provisions of Articles 14 and

16 of the Constitution of India.

In para 6 of the petition the same allegation is reiterated by stating that:

The respondents who are discharging the functions of advancement of cause of justice themselves have passed the impugned order without giving any show-cause notice to the petitioner and without giving any opportunity of hearing, in utter disregard of the principles of natural justice.

3. It is further submitted that the petitioner is discharging his duties over a period of about 2 1/2 years continuously and therefore he has acquired quasi-permanent status and his services could not have been put an end to in the manner alleged.

4. The aforesaid allegations, if true, would and should shock the conscience of any judicial officer. Naturally, therefore, at the initial stage itself when the matter came up for preliminary hearing this Court issued notice and granted interim relief directing that the petitioner be permitted to discharge his duties and draw the salary as if the impugned order of termination is not passed at all. The aforesaid order of ad-interim relief was passed on May 14, 1986. Till now under the protection of the order of the Court the petitioner has continued in service.

5. On record of the petition the learned Counsel for the respondents has produced parawise comments received from respondent No. 2 (District Judge, Junagadh). It is disclosed therein that the petitioner was appointed purely on ad hoc and temporary basis on a temporary post. The petitioner had accepted the service on condition that his services would be liable to be terminated without any prior notice and without assigning any reason. The petitioner had accepted the appointment by giving undertaking to, that effect. The petitioner was discharged from service with effect from June 15, 1985 on account of abolition of the post, but he was continued in service on leave vacancy posts till the impugned order was passed.

6. In view of the aforesaid position the learned Counsel for the petitioner was requested to explain as to why he has not stated in the petition that the petitioner was appointed on purely ad hoc and temporary basis on temporary post. He boldly replied, as if he was exhibiting the skill of drafting petition under Article 226 of the Constitution, that nowhere in the petition he has stated that he was appointed on permanent basis nor has he stated that he was appointed on temporary basis. He was also requested to explain as to why he has not clarified the position with regard to the continuous service for a period of about 2 1/2 years. He was pointedly asked the question as regards his appointment on leave vacancy. In reply to these questions also the submission made by the learned Counsel for the petitioner is that he was merely stated in the petition that he was in service continuously and it was not necessary for him to disclose that he was continued on leave vacancy basis. As if this was not enough, he further stated with decision that he will have to learn how to draft a petition.

7. The aforesaid answers given by the learned Counsel for the petitioner clearly indicates that the petitioner as well as the learned Counsel for the petitioner both very well knew that the appointment of the petitioner was on purely ad hoc and on a temporary post. Moreover they also know that the services of the petitioner were continued as he was appointed on leave vacancies from time to time. Despite this knowledge, these facts have not been stated in the petition deliberately. This is the only inference possible from the reply given by the learned Counsel for the petitioner. Once there is deliberate, intentional suppression of facts from the Court, a petition under Article 226 of the Constitution of India is liable to be rejected on this short ground alone.

8. In the instant case it is not a case of accidental and or inadvertant omission of mentioning of certain facts. The nature of appointment and continuation of service on leave vacancy posts are facts which are very material and suppression of the same when found to be intentional and deliberate, cannot be ignored lightly. To indulge in such suppression of facts is not a matter of super-special drafting skill. Such drafting is no advocacy. It is, to say the least, jugglery, which has no place in the art of advocacy. The very basis of writ jurisdiction rests on disclosure of true and complete facts before the Court. If the facts are suppressed and or distorted the writ jurisdiction cannot be exercised at all by the High Court. The very functioning of the High Court for exercise of writ jurisdiction would become impossible.

9. The answers given by the learned Counsel for the petitioner leads to only one and one inference that the petitioner as well as the learned Counsel for the petitioner knew that the appointment of the petitioner was on purely ad hoc and temporary basis, but deliberately these facts are not mentioned in the petition. Now it is sought to be explained away by saying that there is no positive assertion that his appointment was on permanent basis. But it is a matter of elementary understanding that had there been any such positive averment it would have been a case of "suggestio falsi" or "positive falsehood". Positive falsehood and/or falsehood by suppression, both stand on same footing. In the instant case the falsehood is by suppression of facts. A person who comes before the High Court with unclean hands and snatches the order of interim relief on the basis of deliberate suppression of material facts is not entitled to be heard at all. In fact the petitioner is liable to be dealt with for contempt of Court for misusing and/or abusing the process of Court. However, having regard to the crumbling standards of professional ethics and all pervading laxity for maintenance of standards of discipline (which is probably justified in the name of pragmatism an euphemism for "populist stance"). I do not purpose to initiate action for the contempt of Court. But if I do not reject the petition on the ground of material suppression of facts I would be failing in my duty.

10. It is really not a matter of pleasure to reject a petition and tell the litigant that he is not entitled to be heard on merits. But some times certain occasions do arise when one is called upon to perform unpleasant duties. Hence with much

anguish and reluctance I am constrained to hold that the petitioner is liable to be rejected on the short ground of suppression of material facts. In the case of N.D. Patel and Company v. Manubhai Karsanbhai Parmar and Anr.) 25 GLR 386 a Division Bench of this High Court (consisting of R.C. Mankad, J. and myself) had taken the same view. Therein the petitioner had suppressed certain material facts. The Court held that important and material facts was deliberately suppressed from the Court. The Division Bench did not interfere with the award passed by the Labour Court on the ground of suppression of material facts alone. Thus, on the basis of first principles as well as in view of the principles laid down by this High Court in the aforesaid decision the petitioner is not entitled to be heard on merits and I have not permitted the learned Counsel for the petitioner to address the Court on merits of the matter.

11. I have examined the merits of the case. Even on merits I do not find any case inasmuch as the petitioner was appointed to the post of English Section Writer purely on ad hoc basis and thereafter he was continued in service on leave vacancy posts as and when vacancies arose. No junior to the petitioner is retained in service No. stigma is attached to the petitioner. The order of termination is not passed by way of punishment nor the same can be termed arbitrary and unreasonable. Therefore also the petition is liable to be rejected.

12. For the aforesaid reasons the petition is rejected. Notice discharged. Ad-interim relief granted earlier stands vacated.

13. The learned Counsel for the petitioner requests that the ad-interim relief granted earlier may be continued for some time so as to enable him to approach before the superior forum as it may be available to him. The request is granted. Ad-interim relief granted earlier shall continue upto April 6, 1988.