

(2006) 09 GUJ CK 0023
In the Gujarat High Court

Case No : Special Civil Application No's. 19333, 19335 and 19336 of 2006

Vithal Harjivandas Patel

APPELLANT

Vs

Satyam Edu. Trust and Others

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 09 GUJ CK 0023

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Chetan K. Pandya, for the Appellant; None for Respondents 1 - 3, for the Respondent

Judgement

H.K. Rathod, J.—Heard the learned Advocate, Mr. C.K.Pandya, appearing on behalf of petitioner.

2. In these petitions, the petitioner has challenged the common order passed by Gujarat Secondary Education Tribunal, Ahmedabad dated 16.8.2004 in Application Nos. 527/1994, 471 of 1997 and 327 of 2001.

3. Learned Advocate, Mr. C.K.Pandya, submitted that petitioner was working as Junior Clerk with the respondent. Three separate applications were filed by petitioner before the Tribunal. Application No. 527 of 1994 was filed against the action of the Management promoting respondent No. 4 to the post of Senior Clerk by superseding the petitioner. Application No. 471 of 1997 is filed with a grievance that respondent School has once again prevented him from attending the duties and non-payment of salary. Application No. 327 of 2001 was filed challenging the order of dismissal. Since all the three applications were between the same parties and interconnected, therefore, the Tribunal has passed common order rejecting all the three applications by an order dated 16.8.2004.

4. The order of Tribunal is dated 16.8.2004. The petitions are filed after a period of one year only in the Registry of this Court and moved after another one year

i.e. in the month of September, 2006. Meaning thereby that two years have been taken by petitioner to challenge the order of Tribunal dated 16.8.2004. Therefore, petitioner has to explain the delay by showing sufficient cause to entertain the petitions on merits. Learned Advocate, Mr. Pandya, has made clear that there is no averment made in the petitions that on what ground the delay occurred and there is no explanation given in the petitions that why more than 2 years' period taken by the petitioner to challenge the order dated 16.8.2004. The writ of certiorari / mandamus are discretionary relief being an extraordinary jurisdiction to be exercised by this Court under Articles 226/227 of the Constitution of India. Therefore, when petitions are filed after a period of 2 years, question arises whether discretionary powers should have to be exercised in favour of the petitioner or not. Even excluding the period of pendency of petitions, then also, more than 1 year period is remained to be explained by petitioner. For that, no explanation is given by petitioner in the petitions. Therefore, due to unexplained delay, these petitions are not entertained by this Court. (See : 2006 II LLJ 421 and 2006 CLR 535).

5. Learned Advocate, Mr. Pandya, submitted that Management has made the proposal on 27.6.2001 for dismissing the petitioner. The DEO concerned by an order dated 13.8.2001 fixed the further hearing on 24.8.2001. But before that, on 18.8.2001, the punishment of dismissal has been passed against the petitioner. Therefore, according to Mr. Pandya, the Management has relied upon the deeming fiction but cannot because of the hearing fixed by DEO. However, no such contention was raised by petitioner before the Tribunal though written arguments were placed on record by petitioner which is about 15 pages. The contention which has not been raised before the Tribunal, first time it cannot be permitted to raise before this Court in the present petitions. (see : 2003 I LLJ SC 507).

6. From perusal of record, it is revealed that petitioner is in service with Bhavana Vidhyalaya as Junior Clerk. He is running primary school called Gita Primary School where he is also serving as head master and teaching the subjects of English and Maths to the students. Therefore, it amounts to committing serious misconduct while remaining employee of respondent, petitioner was continued with other school as head master and also performing the duties as teacher and that is how he was not interested to join respondent w.e.f. 4.11.1996. The charge levelled against the petitioner has been found to be proved on the basis of records of inquiry committee. The Tribunal has considered as many as 16 school leaving certificates brought on record by the management, all of which bears the signatures of present petitioner as a Managing Trustee and most of them are in the hand writing of the petitioner. From the statements of witnesses examined by the management, it becomes clear that petitioner was also doing the teaching work and also managing the entire school. Therefore, the inquiry committee has come to conclusion that petitioner was devoting his full day in his school and, therefore, he was not attending to his duties before respondent. According to petitioner, while denying the fact submitted that he will produce the

time tables, staff list and other documents to establish that he was not doing the teaching work but, no such documents were produced before the inquiry committee and, therefore, in absence of such documents, conclusion of inquiry committee has been found to be correct, based on legal evidence. Therefore, the Tribunal, after re-appreciating the evidence led before inquiry committee, come to conclusion that finding recorded by inquiry committee is legal and valid and it is not perverse finding as well as punishment which has been imposed by Management is also just, proper and reasonable. The punishment is not harsh and disproportionate to the misconduct proved against the petitioner. Therefore, this Court cannot interfere with such finding and reasoning given by Tribunal on the ground that scope of judicial review is also very limited unless and until this Court come to conclusion that punishment imposed by management is shocked the conscience of the Court or looking to gravity of misconduct, punishment of dismissal is harsh, unjust and disproportionate but looking to the misconduct which is found to be proved when petitioner was running primary school called Gita Primary School where he was working as Managing Trustee as well as head master and for entire period (school time) he remained present with Gita Primary School and, therefore, he was not attending the respondent school w.e.f. 4.11.1996. Therefore, naturally, he is not entitled the wages from 4.11.1996. The petitioner has admitted that he is Managing Trustee of Shri Khodiyar Education Trust in the year 1992 and he has opened Primary School called Gita Primary School. From the record, active participation of the petitioner in private school has been clearly established and, therefore, considering the two decisions of Apex Court in case of State Bank of India and Others Vs. Ramesh Dinkar Punde, and Union of India (UOI) and Another Vs. K.G. Soni, the view taken by Tribunal is perfectly justified. For that no interference is required while exercising the power under Article 227 of the Constitution of India.

7. Now, I am considering the merits of the present petitions. The Tribunal has examined the matter in detail and also considered the finding given by competent authority for dismissing the petitioner. The relevant observations made by Tribunal in Para. 6, 7, 8, 9 and 10 are quoted as under:

6. Undisputedly, the main reason which has resulted into passing of dismissal order is the allegation of continuous unauthorized absence of applicant from 04.11.1996. The management has issued the first show cause notice on 14.03.2000 which is in Gujarati indicating the imputations against the applicant. The said show cause notice has been replied by the applicant and thereafter in the first meeting of the department inquiry committee it has been unanimously decided to treat this first show cause notice as the charge sheet. The inquiry has accordingly proceeded considering this show cause notice as charge sheet. There are two charges framed against the applicant both the charges are inter connected arising out of the same incidence of alleged unauthorized absence of applicant. The gist of the charges in short is as under:

That the applicant had joined duties on 26.10.1996 and 2-3 days thereafter

stopped attending the school. The school has issued seven notices on different dates but he has not remained present. In the surprise check carried out by the officers of the DEO's office on 02.01.1998, 24.09.1998 and 1.9.1999 the applicant was found absent and the reports are submitted to that effect.

Though applicant is in the service of Bhavna Vidyalaya as Junior Clerk he is running a Primary School called Geeta Primary School at Kubernagar, Ahmedabad where he is also serving as H.M. And teaching the subjects of English and Maths, to the students. Thus, a serious misconduct is committed by the applicant.

7. As mentioned above, the case of the school management is that the applicant is continuously remaining absent from 04.11.1996 and he is conducting the primary school called Geeta Primary School he is also working as H.M. and doing the teaching work also and thereby getting the financial benefits and for that reason he is continuously remaining absent in the school and has been filing applications in the Court with a view to receive salaries without doing work. The case of the applicant is that the building of the school was earlier in the name of his elder brother. There was a dispute between his brother and the management in connection with rent and civil and criminal cases were also required to be filed ultimately the settlement has taken place between them in the year 1991. Due to this dispute with his brother the school management was harassing the applicant and has prevented him from attending to his duties from 01.11.1990. It is his case that pursuant to the long drawn litigations he is ultimately allowed to join on 26.10.1996 but again from 04.11.1996, he is obstructed from attending to his duties. The H.M. and one Mr. Lakshmanbhai Rabari were physically and by using force preventing him from attending the school.

8. I have perused the departmental inquiry proceedings, Management has after obtaining reply to the show cause notices from the applicant constituted a three man inquiry committee as required under the rules. The representatives of applicant was also on the committee. In all about 25 meetings were held. Applicant has actively participated in all the meetings. The school has examined as many as 27 witnesses. The delinquent employees has cross examined school's witnesses. He has however refused to cross examine two witnesses. The applicant has also examined 11 witnesses who were also cross examined by the management. Applicant was cross examined by the Presenting Officer of the management and the Applicant also has cross examined the presenting officer. The proceedings were regularly drawn and signed by all the parties and supplied to the applicant. In the 23rd meeting the proceedings appears to have been closed. In 24th and 25th meeting the members of inquiry committee have after se discussions prepared a common inquiry report and submitted it on 10.06.2001 holding both the charges against the applicant as proved. The officers of D.E.O.'s office and the letters of DEO also becomes clear that the applicant was not inclined to join his duties. In support of his case that the management was forcibly preventing him to join the duties the applicant has examined 11

witnesses. The three witnesses out of 11 turned hostile and have stated that the applicant had given them some allurements to speak in his favour. The statements of no other witnesses would clearly support the case of the applicant that he was being prevented or obstructed by the management. The only witnesses viz. Shilpa D. Patel, ex-student of the respondent school appears to have stated that the applicant was prevented and was forcibly removed from the school by the management. This statement has not been believed by the inquiry committee as it came on record that father of this witness was serving as peon in the school run by the delinquent employee. The three witnesses of the applicant have turned hostile and clearly stated that their statement should not be considered as that was not given with free will but under the pressure of the applicant. The applicant has not been able to establish his case that the management and the Sr. Clerk Shri Lakshmanbhai V. Rabari were doing goondagiri and physically preventing him from attending to his duties as submitted by him. The school management has clearly established through the statements of witnesses and also the record that the applicant was himself not attending the school and nobody from the management side had ever prevented him from attending to his duties in any manner. The applicant seems to have written several letters to the DEO and even O.M. etc. although out stating that he was prevented from attending to his duties. He has not been able to establish this allegations. Mere production of letters or writing letters would not support the case of the applicant as this has not been proved in the inquiry. In the facts of the case, it appears that the applicant has by writing these letter tried to create an evidence in his favour. The inquiry committee has considered all these aspects elaborately and they have all come to the conclusion that the charge is proved.

9. The second charge against the applicant is that he was running a primary school called Geeta Primary School where he was working as Managing Trustee and also the H.M. He was remaining present in the said school full time and therefore, he was not attending to his duties. I have carefully gone through the record. The applicant has admitted that he is a Managing Trustee of Shri Khodiyar Education Trust and in the year 1992 he has opened a primary school called Geeta Primary School. The submission of the Management that he was serving as H.M. And was also teaching English and Maths to the students is denied by him stating that he does not possesses the qualification of P.T.C. As required under the rules. The school Management has examined the parents of some students and some employees of Getta Primary School from whose affidavits and statement, it is clearly brought on record that the applicant was teaching the subjects of English, Maths and drawing to the students of Std.7 and he was also taking their attendance. As many as 16 school leaving certificate brought on record by the management, all of which bear the signature of applicant as Managing Trustee and most of them are in the hand writing of the applicant. From the statements of witnesses examined by the management it becomes clear that the applicant was also doing the teaching work and also

managing the entire school. Having regard to the applicant was putting in the Geeta Primary School, the inquiry committee has come to the conclusion that the applicant was devoting his full day in his school and therefore, he was not attending to his duties. As the applicant has denied the fact of teaching the students and discharging the duties of H.M. He was called upon to produce the time table, staff list and other documents to establish that he was not doing the teaching work, the applicant has failed in producing these documents, the inquiry committee has come to the conclusion that the charge about the applicant being working in the Geeta Primary School is established.

10. I have very carefully gone through the inquiry proceedings and the evidence adduced before the inquiry committee and I agree with the findings given by the Inquiry committee that the alleged misconduct is established with the help of legal evidence and by giving reasonable opportunity to the delinquent employee. Taking into consideration the completed. In fact, I am convinced that the applicant was on his own volition not attending to his duties because he is running, his own school called Geeta Primary School where he is remaining present full time. This is a serious misconduct of the part of the applicant. He has remained absent unauthorizedly from 04.11.1996 and for which he can be dismissed from services. It also appears to me that while conducting his own school he also wants to draw his salaries without doing work and therefore, he has filed these proceedings which deserve to be dismissed. The submissions of applicant that the management was harassing him due to the dispute of about the rent with his brother cannot be accepted as that matter appears to have been settled in the year 1991 and the applicant has not been able to establish that fact. The submissions of the applicant that the inquiry committee has not properly appreciated the evidence and has wrongly held the applicant guilty cannot be accepted in view of the discussions made herein above. I am, therefore, of the view that the departmental inquiry committee has rightly held the applicant guilty of the charges framed against him. As the charges against the applicant and of serious nature the school management was justified in passing the order of dismissal. I am, therefore, not inclined to accept the application No. 327 of 2001 wherein order of dismissal is challenged. As the dismissal order is upheld the grievance of the applicant not promoting him to the post of Sr. Clerk as raised in the application No. 527 of 1994 is not required to be considered. Application No. 471 of 1997 is required to be dismissed having become infructuous.

In the result, all the three applications are dismissed. No order as to costs.

7. The above observations made by the Tribunal is based on appreciation of evidence led before Inquiry Committee. Before the Inquiry Committee, 27 witnesses were examined by management and 11 witnesses were examined by petitioner. The petitioner has not made any allegation against the management about denial of reasonable opportunity. But only one allegation is made about bias but, no specific proof has been produced on record about bias. Before the

Tribunal also, such contention was not raised by petitioner about bias of the management or inquiry committee. It is necessary to note that 23 meetings of departmental committee were held and thereafter, decision has been taken by management while issuing second show cause notice along with inquiry report on 12.6.2001. The petitioner has submitted his explanation on 21.6.2001 which runs into 37 pages which was considered and thereafter, punishment order has been passed. Therefore, according to my opinion, the Tribunal has considered each and every contention raised by petitioner and Tribunal has given cogent reasons in support of its conclusion. The Tribunal has also decided the issue in accordance with law. For that, the Tribunal has not committed any error which requires any interference by this Court. This Court having very limited jurisdiction under Article 227 of the Constitution of India, cannot re-appreciate the evidence which was appreciated by the Tribunal and even in case when two views are possible, then also, interference by this Court under Article 227 of the Constitution is unwarranted. Application Nos. 527 of 1994 and 471 of 1997 has been considered to be infructuous, which has been rightly decided by the Tribunal. For that, Tribunal has not committed any error because once the dismissal order has been confirmed and application filed by the petitioner is dismissed and on facts it was proved that petitioner was not attending the school from 4.11.1996 so question of wages for interim period does not arise, then, there is no question of granting any other relief to the petitioner as prayed for in the aforesaid two applications filed before the Tribunal. Therefore, according to my opinion, the Tribunal has rightly dealt with the matters and therefore, interference by this Court is unwarranted. (see : Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, ; Ouseph Mathai and Others Vs. M. Abdul Khadir, ; Roshan Deen Vs. Preeti Lal, and Indian Overseas Bank v. IOB Staff Canteen Workers" Union and Anr. AIR 2000 SC 1508).

8. Hence, there is no substance in the present petitions. Present petitions stand disposed of accordingly. No costs.