

Principal, Rajni Parekh Arts, K.B. Commerce and B.C.J. Science College, Khambhat and Another

Vs

Mahendra Ambalal Shah

Criminal Miscellaneous Petition No. 824 of 1986

(D. P. Madon, K. N. Singh JJ)

04.04.1986

JUDGMENT

MADON, J. -

1. The above application, namely, Criminal Miscellaneous Petition 824 of 1986, has been filed by the respondent in Criminal Appeal 50 of 1985, Mahendra Ambalal Shah, seeking certain directions. The directions sought are that the above criminal appeal should be dismissed and the appellants should be directed to reinstate the respondent forthwith in service and to issue a non-bailable warrant against the first appellant and to detain him in jail until the respondent is reinstated and the amount of back wages is deposited in the High Court and paid to the respondent. A direction was also sought in the said application to issue a notice of contempt to the trustees of the Khambhat Taluka Sarvanjanik Kelavani Mandal, Khambhat. The names of the said trustees were given in Annexure A to the said application. A prayer is also made in the said application to pass such other orders and directions, as may be necessary in the circumstances of the case. By its order dated March 5, 1986, this Court issued a notice of the said application to the said trustees.

2. The facts which have given rise to the said criminal appeal require to be briefly stated. The respondent Shah was working in the Rajni Parekh Arts, K.B. Commerce and B.C.J. Science College, Khambhat, as a non-academic employee. The said college is owned and run by said Mandal. The said Shah was suspended on August 9, 1978, without assigning any reason. Under the relevant statutory provisions the order of suspension automatically came to an end on the expiry of six months from its date. On the expiry of this period, Shah approached the University of Gujarat and the University Syndicate directed the said Mandal to take him back into service. The management, however, not only refused to take Shah back but did not pay him the subsistence allowance prescribed by the rules. Shah thereupon filed a writ petition, being Civil Miscellaneous Application 2424 of 1980, in the Gujarat High Court and as per the interim order passed in the said writ petition, the said Mandal paid to Shah the arrears of subsistence allowance and further agreed to pay to him the same until the said writ petition was finally disposed of. By its resolution dated April 5, 1980, the Syndicate of the University directed the Mandal to take the respondent back in service. The said Mandal, however, refused to obey the said directions and instead on October 8, 1980, started disciplinary proceedings against Shah. According to Shah, he was not given an opportunity to defend himself. On the report submitted by the Inquiry Officer, the said Mandal passed a resolution to terminate the respondent's services. It also approached the Vice-Chancellor of the University for his permission to terminate Shah's services. By an order dated January 22, 1982, the Vice-Chancellor refused to grant sanction to the termination of Shah's services. In spite of the refusal by the Vice-Chancellor to accord his sanction, the said Mandal by its letter dated February 26, 1982, informed Shah that his services were terminated with effect from that date and stopped

paying him any subsistence allowance even though by the aforesaid order of the High Court it was to continue to pay the same until the final disposal of the said writ petition Civil Miscellaneous Application 2424 of 1982. By his letter dated April 18, 1982, addressed to Ranjitbhai Shastri, the Secretary of the said Mandal, the Vice-Chancellor called upon the said Mandal to take back the respondent forthwith in service and further intimated to him that if the said directions were not complied with within a week, he would be compelled to make a report to the Executive Council of the University. Neither was any reply sent to the said letter nor was Shah taken back in service. Instead on April 15, 1982, a complaint was filed before the Magistrate, First Class, Khambhat, under Sections 408, 477-A and 467 of the Indian Penal Code, charging Shah with misappropriation of a sum of Rs 3399.40 by wrongly making credit and debit entries in the accounts and using the said sum for his benefit. The said complaint was registered as First Information Report No. M case No. 21 of 1982 and the charge-sheet which was thereafter filed is registered as Police Station, Khambhat City, District Khera South, Charge Sheet No. MK No. -/82 dated November 11, 1982. Shah thereafter filed an application before the Gujarat Affiliated Colleges Services Tribunal, Ahmedabad, challenging the said order of termination. By its order dated August 17, 1983, the Tribunal held that the order of termination was null and void and Shah had continued in service and would be entitled to receive full back wages. The Tribunal also directed the management of the said college to reinstate Shah in service forthwith and to pay him full back wages from the date of suspension.

3. Meanwhile, the said Mandal through its Secretary, Ranjitbhai Shastri, filed a writ petition in the Gujarat High Court, being Special Civil Application 3786 of 1983, for a declaration that the termination of Shah's services by the said Mandal was valid and for setting aside the said order dated January 22, 1982, passed by the Vice-Chancellor. After the said order was passed by the Tribunal, the said Mandal amended its said writ petition to challenge also the said order of the Tribunal. The said Mandal also applied for an interim stay of the operation of the Tribunal's order. The High Court by its order dated August 9, 1984, refused to grant any interim stay except with respect to fifty per cent of the wages. Meanwhile, Shah had filed a contempt petition in the Gujarat High Court, being Miscellaneous Civil Application 156 of 1984, praying for appropriate action to be taken against the Principal of the said college and the President and Secretary of the said Mandal for having committed contempt of the Tribunal by wilfully committing a breach of the said order of the Tribunal. By its order dated December 31, 1984, the High Court held that it was a clear case of contempt and sentenced the Principal of the said college and the Secretary of the said Mandal to simple imprisonment for two months. The High Court further directed non-bailable warrants for the arrest of the Principal and the Secretary to issue after a fortnight in order to give an opportunity to the said contemnors to comply with the order of the Tribunal and to report compliance of the said order. The High Court further observed that in case this was done, it would be inclined to remit the sentence of imprisonment or substitute it by a sentence of fine and drop proceedings. Thereafter, an application was made to the High Court for suspending the sentence for six weeks in order to enable the contemnors to obtain a stay order from this Court. By its order dated January 4, 1985, the High Court ordered the sentence to remain suspended for a period of six weeks. On that date, he advocate for the contemnors stated to the court that the said Mandal was going to reinstate Shah within one week and that Shah could report for duty on January 7, 1985. On the very same day, the advocate for the contemnors requested the High Court to review the above order because according to the advocate, the statement about reinstatement was made by him without contacting the President of the said Mandal who was in Bombay and who when contacted stated that he would not authorize the said advocate to make such a statement. Accordingly, the High Court revoked its order passed earlier and passed a fresh order suspending the operation of its order dated December 31, 1984, for

a period of six weeks on condition that within two weeks from January 4, 1985, reinstatement of Shah was effected with the right of the management to suspend Shah if it could legally do so.

4. The above Criminal Appeal 50 of 1985 is filed against the said order dated December 31, 1985, passed by the Gujarat High Court in the said Miscellaneous Civil Application 156 of 1984. In the petition of appeal it was stated that Haribabu Chaturvedi who was the Principal of the said college had resigned as Principal in the last week of November 1984, prior to the impugned order of the High Court and that he was on leave from October 5, 1984 to January 3, 1985, and while on leave he had resigned by a registered letter sent from Mathura. In the said criminal appeal, an application namely, Criminal Miscellaneous Petition 298 of 1985, was made for interim stay of the impugned order of the High Court. On April 16, 1985, the following order was made by this Court on the said application :

Mr. Seth on behalf of the appellants stated that the appellants will deposit in the High Court within two months the amount ordered to be paid to the respondent by the High Court of Gujarat. The respondent will be at liberty to withdraw the amount so deposited without prejudice to the rights and contentions of the parties and subject to the final orders that may be passed with regard thereto in this appeal. Conditional upon such deposit being made, the operation of the High Court's order appealed against is stayed pending the hearing and final disposal of this appeal. In case the amount is not deposited within the above specified period, the stay will stand vacated.

Thereafter, on May 13, 1985, another application was made in this appeal, namely, Criminal Miscellaneous Petition 2885 of 1985, stating that the said Chaturvedi was at the relevant time only the Acting Principal of the said college and that he was at no time the Principal and that he was not the Acting Principal when the said Tribunal passed its order dated August 17, 1983. It was further stated in the said application that the Principal had no power to reinstate Shah in service or to pay him any back wages and that the authority to pay back wages rested with the Board of Trustees and the Secretary of the Board. In the said application, it was prayed that the condition of depositing the back wages contained in the said order dated August 16, 1985, should be confined only to the second appellant, namely, the Secretary of the Board of Trustees, and that the said order of interim stay should be made absolute so far as the Principal was concerned. A further prayer was made that an affidavit in support of the said application should be dispensed with as facts mentioned in the said application were on the record. After arguments were heard, this Court by its order dated June 11, 1985, permitted the said application to be withdrawn. It may be mentioned that eleven days prior to the making of the said application, the then Secretary of the said Trust, the second appellant, had died. This fact was concealed from this Court and did not come out except during the course of the hearing of the present criminal miscellaneous petition. The object of praying for exemption from filing an affidavit in support of the said Criminal Miscellaneous Petition 2885 of 1985 obviously was that no one would dare to put his oath on an application made to this Court whereby the order made by it was sought to be confined to a dead person only.

5. In September 1985 one B.M. Pathak was appointed Joint Secretary of the Board of Trustees. The present criminal miscellaneous petition was filed on February 6, 1986, and this Court issued a notice of it to the trustees by its order dated March 5, 1986. By the said order, it vacated the interim stay granted on April 16, 1985, as the condition upon which it was granted had not been complied with and it further pointed out that the impugned order of the Gujarat High Court dated December 31, 1985, had become immediately executable and expressed a hope that the said order would be

executed forthwith.

6. The aforesaid order of this Court was passed on March 5, 1986. Immediately thereafter on March 7, 1986, the Board of Trustees passed a resolution reinstating Shah and further resolved that the writ petition filed by the said Mandal would be proceeded with and that the final settlement of accounts in respect of Shah's salary should be made within fifteen days and that pending the making of final settlement of accounts, Shah should be paid a sum of Rs 50,000. The said sum of Rs 50,000 was thereafter paid to Shah. A counter-affidavit was filed in the present criminal miscellaneous petition by the said Haribabu Chaturvedi. In the said affidavit he has described himself as the ex-Principal of the said college. He has nowhere set out in the said affidavit how he had ceased to be the Principal nor has he mentioned that he tendered any resignation. The said affidavit was filed on February 25, 1986. After this Court passed its order dated March 5, 1986 on the said petition, the said Chaturvedi filed another affidavit, affirmed on March 10, 1986, stating that Shah had been reinstated and had been paid a sum of Rs. 50,000 towards the back wages pending final settlement of accounts. In the said affidavit, the said Chaturvedi tendered an unconditional apology for the delay which had taken place in reinstating Shah and paying him his back wages. The said Pathak, who is the Joint Secretary of the Board of Trustees, has also filed a counter-affidavit which was affirmed on March 10, 1986, tendering an unconditional apology. He has stated in the said affidavit that he was present in court on March 5, 1986, and thus came to learn about the matter and be thereupon convened a meeting of the Board of Trustees at which the resolution relating to the reinstatement of Shah and payment of back wages to him was passed. It was for the first time stated in this affidavit that the said Shastri, the former Secretary of the Board of Trustees, had died suddenly on May 2, 1985. The said affidavit was filed on behalf of all the trustees of the said Mandal and the unconditional apology which was tendered therein was on behalf of the said Pathak as also of all the trustees.

7. The apology tendered by the said Chaturvedi and the said Pathak on behalf of himself and the trustees of the said Mandal comes at too late a stage. The said Mandal, the said Chaturvedi and the said Shastri as also the said Pathak who, it is stated, is also a trustee and a member of the Board of Trustees, have acted most contumaciously. They have flouted the directions given by the Syndicate of the Gujarat University; they have flouted the order of the Vice-Chancellor of the University; they have flouted the order of the Gujarat Affiliated Colleges Services Tribunal; they have flouted the order of the Gujarat High Court; they obtained from this Court a conditional order of stay of the order of the Gujarat High Court appealed against by making a statement that the amount directed to be paid to Shah will be deposited in the High Court within two months when they had no intention whatever of doing so; and they have trifled with this Court by filing the said Criminal Miscellaneous Petition 2885 of 1985 to confine this Court's order passed on April 16, 1985 to the second appellant when they knew full well that the second appellant, the said Shastri, had died eleven days prior to the filing of the said criminal miscellaneous petition. Their desire to make amends by passing the said resolution dated March 7, 1986, was merely the result of the notice issued by this Court on March 5, 1986, on which occasion, on his own showing the said Pathak was present and obviously communicated to the other trustees that this Court had issued notice to them on the present petition. If any court were to accept an apology of a contemnor in such circumstances, it would encourage litigants to flout the orders of courts with impunity. We accordingly refuse to accept the apology tendered by the said Chaturvedi as also by the said Pathak on behalf of himself and the other trustees.

8. The above facts leave no doubt that the High Court was right in convicting the said Chaturvedi and the said Shastri of contempt of court and in sentencing them to imprisonment. Nothing, however, remains to be done so far as the said Shastri is concerned as he is dead. The facts set out

above leave no doubt that the trustees of the said Mandal were throughout aware of the proceedings and had wilfully disobeyed various orders. The question is what sentence should be imposed upon them. When this matter was heard on March 20, 1986, we had clearly expressed our opinion that the only proper sentence would be that of imprisonment and that as this was a case of contempt of a civil nature, we would direct the respondents to this criminal miscellaneous petition to pay costs to Shah in the sum of Rs. 3000. After a lengthy plea for mercy, and an assurance given by learned counsel for the trustees that the full amount due to Shah will be paid to him and after an undertaking was given on behalf of trustees by learned counsel who appeared for them to withdraw the Special Civil Application 3786 of 1983 filed in the Gujarat High Court and to treat the reinstatement of Shah as unconditional, we reserved our orders to be pronounced on April 2, 1986, to give time to see whether the above assurance and undertaking would be carried out and in what fashion. We, however, made it clear that even if full amends were made and the said special civil application was withdrawn, we would sentence each of the trustees to pay a fine of Rs 1500 and so far as the said Chaturvedi was concerned, we would substitute a sentence of fine of Rs. 2000 for the sentence of imprisonment imposed by the High Court.

9. The learned advocate on record for the said Board of Trustees has on March 29, 1986 filed in the Registry of this Court a letter of the same date stating that he has received a letter from Mr Bhagat B. Nayak, advocate for the said Mandal in the said Civil Application 3786 of 1983, that the said special civil application has been withdrawn on March 24, 1986. The said letter further states that the said Shah, has now been paid in all Rs 90,291.60, towards his arrears of pay up to date after accounting in full satisfaction and that Shah has issued a stamped receipt dated March 24, 1986, acknowledging receipt of the said sum. It is further stated in the said letter that on March 22, 1986, a sum of Rs 3000 has also been paid to Shah. Though it is not stated in the said letter for what purpose the sum of Rs 3000 was paid, it was presumably paid in respect of the amount of costs which we had stated we would direct the contemnors to pay to Shah. In the said letter directions have been sought from this Court as to where the amount of fine is to be deposited by the trustees and that directions be given separately in respect of the said Chaturvedi.

10. In view of what has been stated in the said letter dated March 29, 1986, we are now not inclined to send any one of the contemnors to prison and we would have proceeded to impose upon them a sentence of fine as indicated earlier by us. The trustees of the said Mandal, however, are acting in an honorary capacity. The said Chaturvedi is after all an employee of the said Mandal. Though their conduct has been contumacious, we take mercy upon them and do not desire to attach to them the social stigma of a sentence of fine. We also feel that it would be far better if the moneys which would be paid by way of fine were utilized for a worthy and laudable cause. Accordingly, we direct each of the trustees of the said Khambhat Taluka Sarvanjanik Kelavani Mandal, Khambhat, whose name is mentioned in Annexure A to the above Criminal Miscellaneous Petition 824 of 1986 and to whom a notice was ordered to issue by this Court on March 5, 1986, to pay within a period of six weeks from today a sum of Rs 1500 to the Supreme Court Legal Aid Committee of which a judge of this Court is the Chairman. In case any of the said trustees fails to pay the said sum of Rs 1500 to the said Committee within the period specified above, the above direction for payment will, in his case, automatically stand converted into a sentence to pay a fine of Rs 1500 by depositing it in the Registry of the Gujarat High Court for being forwarded to the proper authorities and in default of payment of such fine within two weeks, to suffer simple imprisonment for a term of four weeks. So far as the said Haribabu Chaturvedi is concerned, we substitute for the sentence of imprisonment passed upon him by the Gujarat High Court by its impugned order dated December 31, 1984, passed in Miscellaneous Civil Application 156 of 1984, a direction ordering him to pay a sum of Rs 2000 to the Supreme Court Legal Aid Committee within a period of six weeks from today. In default of

payment of the aforesaid sum of Rs 2000 within the period specified above, this direction for payment to the said Committee will stand automatically substituted by a sentence to pay a fine of Rs 2000 by depositing it in the Registry of the Gujarat High Court for being forwarded to the proper authorities and in default of payment of such fine within two weeks, to suffer simple imprisonment for a period of six weeks.

11. The respondent, Mahendra Ambalal Shah, has now been unconditionally reinstated in service and the said Civil Miscellaneous Application 3786 of 1983 filed by the said Mandal challenging the Tribunal's said order dated August 17, 1983, stands withdrawn. As stated in the said letter dated March 29, 1986, accounts have been finally made up and the said Mahendra Shah has received a sum of Rs 90,291.60. No purpose will, therefore, be served in leaving the criminal proceedings initiated by the said Mandal against the said Mahendra Shah pending on the file. We accordingly quash the criminal proceedings initiated against the said Mahendra Ambalal Shah in pursuance of the complaint registered on April 15, 1982, as First Information Report No. M. Case No. 21 of 1982, dated April 15, 1982 - Police Station, Khambhat City, District Khera South, Charge Sheet No. MK No. -/82 dated November 15, 1982.

12. As this was a case of contempt of a civil nature, we direct the respondents to this criminal miscellaneous petition to pay to the said Mahendra Ambalal Shah a sum of Rs 3000 by way of costs. From this we should not be understood to say that according to us this Court has no power to award costs where the contempt is of a criminal nature but as we are not called upon to decide this point we leave it open. If the additional sum of Rs 3000 stated in the said letter dated March 29, 1986, written by the advocate on record for the trustees to the Registry of this Court to have been paid to the said Mahendra Ambalal Shah was paid in anticipation of this order of costs, such sum would be set off against the amount of costs awarded by us.

13. The above Criminal Appeal 50 of 1985 and Criminal Miscellaneous Petition 824 of 1986 will stand disposed of in the above terms.

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