

Shriji Vidyalaya and Another

Vs

Patel Anil Kumar Lallubhai and Another

Civil Appeal No. 6724 of 1983

(K. Venkataswami, V. N. Khare JJ)

20.08.1997

ORDER

1. This appeal is filed against the order of the Tribunal constituted under the Gujarat Secondary Education Act, 1972. The appellants after initiating disciplinary proceedings and after holding a regular inquiry found that the charges framed against the first respondent were proved and consequently dismissed him from service. Before passing the order of dismissal, as required by law, the approval of the District Educational Officer was also obtained.
2. Aggrieved by that, the first respondent has filed an application before the Tribunal challenging the order of dismissal.
3. The Tribunal while deciding the issue found that some of the charges were proved. However, it went further and reappreciated the evidence as if it was sitting in appeal and reversed the findings given on other charges. Ultimately, the Tribunal substituted the punishment of dismissal by reducing two increments for a period of one year. The High Court also declined to interfere with the order of the Tribunal. Under these circumstances, the present appeal has been filed by special leave.
4. Learned Senior Counsel appearing for the appellants submitted that the Tribunal exceeded its review jurisdiction and the power to award appropriate punishment vests normally with the management and the Tribunal cannot exercise that power. According to him the High Court failed to appreciate. He further contended that the Tribunal has no jurisdiction to reduce or award lesser punishment substituting its own punishment in the place of punishment given by the disciplinary authority.
5. Learned counsel for the first respondent while inviting our attention to the provisions of Sections 36, 38 and 39 of the Act, submitted that the Tribunal has power to go into the matter and give its own finding as well as to substitute the punishment.
6. We do not think that the abovesaid sections enable the Tribunal to exercise such power.
7. This Court has consistently held that the tribunal/court normally cannot substitute its punishment in the place of punishment given by the disciplinary authority vide *Union of India v. Parmal Nanda* ((1989) 2 SCC 177 : 1989 SCC (L&S) 303 : 1989 10 ATC 30) and *B. C. Chaturvedi v. Union of India* ((1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 44 JT (1995) 8 SC 65). Applying the said principle, we allow the appeal and set aside the order of the High Court which confirmed the order of the Tribunal. No costs.

8. While issuing notice on the SLP this Court on 16-6-1983 passed the following order :

"Issue notice both on SLP as well as on the stay application. Pending notice, Respondent 1 will not be permitted to join his duties as Teacher on the basis of the order passed by the Tribunal. The petitioner will pay him half the salary of arrears and current salary month by month."

9. Likewise, on 8-9-1983 while granting leave the following order was passed :

"Special leave to appeal is granted. Preparation of record dispensed with. Hearing of the appeal is expedited. Pending the appeal interim order passed on 16-6-1983 will continue with this modification that half the amount of arrears of salary which has not been disbursed to Respondent 1 will be invested by the petitioners in a short-term fixed deposit (for six months) in the name of the Registrar of the High Court in a nationalised bank within one month from today. Whatever amounts are being paid to Respondent 1 and the amount which is being invested by the petitioner in pursuance of order of this Court, the petitioner will be entitled to get it reimbursed from Government under the grants-in-aid code, if otherwise admissible.

No order on the contempt petition."

10. In view of the disposal of this appeal as above, we make the following order :

The appellants are entitled to withdraw the amount now in deposit with the Registrar of the High Court with interest accrued, if any.