

Sanchalakshri and Another

Vs

Vijayakumar Raghuvirprasad Mehta and Another

Civil Appeal No. 7789 of 1997

(S.P. Bharucha, G.T. Nanavati, B.N. Kirpal JJ)

18.11.1998

JUDGMENT

NANAVATI, J. –

1. This appeal arises out of the judgment and order passed by the High Court of Gujarat in Special Civil Application No. 6671 of 1997. The High Court upheld the order of the Gujarat Secondary Education Tribunal whereby the order of dismissal of Respondent 1 passed by the appellant was set aside, but modified the substituted order of stoppage of one increment with future effect by directing stoppage of two increments with future effect.

2. Respondent 1 was earlier working as a teacher in Pallavi Vidyalaya. He was declared a surplus teacher on closure of that institution in 1988. Under direction of the Director of Education, he was absorbed on 25-11-1988 as a teacher in Durga Vidyalaya run by Appellant 1. While joining this new School, Respondent 1 did not produce his service-book nor was it forwarded by Pallavi Vidyalaya to Durga Vidyalaya. He was, however, paid his salary in the revised pay scale of Rs 1400-2600 as per the last pay certificate submitted by him. Durga Vidyalaya had earlier told him to produce his service-book as it was necessary for it to verify fixation of his pay and obtain grant from the Government. He did not produce it but Pallavi Vidyalaya forwarded it to Durga Vidyalaya on 23-11-1992. On examination, Durga Vidyalaya noticed that there were certain deficiencies and irregularities in it. The endorsement regarding fixation of his salary in the revised pay scale was not signed by the competent authority, namely, the District Education Officer. There was no signature of the Auditor. Durga Vidyalaya, therefore, by its letter dated 31-7-1993 informed him about the said deficiencies and requested him to get it completed. By letter dated 4-8-1993, he requested Durga Vidyalaya to give to him his last pay certificate and the service-book for that purpose. They were given to him. Within three days (Saturday and Sunday intervening), Respondent 1 returned the service-book and informed the School Management that all the deficiencies had been removed. As it was returned within such a short time, Durga Vidyalaya felt some doubt regarding genuineness of the signatures of the authorities concerned. So it called upon him to disclose the names of the persons who had signed the relevant endorsements. On 24-8-1993, he informed Durga Vidyalaya that the District Education Officer, Shri S. N. Parmar had signed the endorsement. Durga Vidyalaya then wrote to Shri Parmar to confirm his signature. He denied that he had signed the service-book. It was found to be a forged signature. Durga Vidyalaya, therefore, held an enquiry after giving a show-cause notice dated 23-9-1993 and as all the charges were proved, with prior approval of the authority concerned, passed an order of termination of his service on 15-3-1994.

3. Respondent 1 challenged that order before the Gujarat Secondary Education Tribunal. The Tribunal held that the charges were duly proved and the acts committed by Respondent 1 did

amount to a serious misconduct; but as Respondent 1 had done so because of the delay of about four years in fixation of his pay in the revised pay scale and because the service-book was given to Respondent 1 instead of sending it directly to the authorities concerned and as he was comparatively of a young age, termination of his service amounting to his economic death was not called for. It was of the view that a lenient view should be taken and, therefore, held that stoppage of one increment with future effect would be the proper punishment. Accordingly, the Tribunal partly allowed the application, set aside the order of termination and modified the penalty by directing stoppage of two increments with future effect.

4. Aggrieved by this order passed by the Tribunal, the appellants preferred a writ petition to the High Court of Gujarat. The High Court agreed with the view of the Tribunal that the penalty imposed was disproportionate but found that the penalty of stoppage of one increment with future effect was rather lenient. It, therefore, modified that order and imposed punishment of stoppage of two increments with future effect.

5. Mr R. P. Bhat, learned Senior Counsel for the appellants, contended that the Tribunal having found that the charges levelled against Respondent 1 were proved and that they constituted serious misconduct ought not to have interfered with the order of dismissal passed by the School Management. He further submitted that the three reasons given by the Tribunal for taking a lenient view and interfering with the order of punishment, namely, (i) delay in forwarding the service-book by Pallavi Vidyalaya to Durga Vidyalaya resulting in non-fixation of pay for a period of four years; (ii) the act of Durga Vidyalaya in giving the service-book to Respondent 1 for getting the necessary endorsements made therein and not sending it directly to the authorities concerned and thereby providing an opportunity to Respondent 1 to commit the act of misconduct; and (iii) the young age of Respondent 1 cannot be regarded as good grounds for substituting the order of dismissal with the order of withholding of one increment only with future effect. He submitted that the Tribunal in doing so clearly exceeded its jurisdiction. He also submitted that the High Court without proper application of mind virtually rejected the writ petition filed by the appellants holding that the reasons given by the Tribunal are cogent and do not call for interference.

6. After a review of earlier cases, this Court in *B. C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] has held that : (SCC p. 762, para 18)

"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Neither the Tribunal nor the High Court in this case has held that the punishment imposed upon Respondent 1 was shockingly disproportionate. Respondent 1 was a school teacher. A teacher is expected to maintain higher standard of honesty and integrity in view of the position he holds. He committed acts of forgery either himself or with the help of some other person by forging signatures of the District Education Officer, the Auditor and the Sanchalak and Principal of Pallavi Vidyalaya. Even after he was called upon by the School Management to disclose the names of the persons who had put their signatures in the service-book, he had stated that it was signed by the District Education Officer, Mr S. M. Parmar. That statement was false to his knowledge. It was on the basis

of the forged endorsements that he wanted to get payments as per the revised pay scale regularised. Respondent 1 had thus not only committed a serious misconduct but also a serious criminal offence. If under such circumstances, the punishment of dismissal was imposed by the School Management, it cannot be said that it was shockingly disproportionate to the gravity of the misconduct.

7. The extenuating factors referred to by the Tribunal for taking a lenient view cannot reasonably lead to the conclusion that the punishment was highly disproportionate. Respondent 1 after his absorption in Durga Vidyalaya was getting his salary at Rs 1480 in the revised pay scale and thus he was not hurt financially as a result of the delay in forwarding his service-book to Durga Vidyalaya. There was no compelling reason for Respondent 1 to indulge in the acts of forgery as he could have obtained the necessary endorsements by the District Education Officer, the Auditor and the others in due course of time. No regard for truth and the tendency to commit even a criminal act to get one's work done are clearly reflected by the acts done by Respondent 1. Durga Vidyalaya had not told him to get the service-book completed within a few days. If on a request made by Respondent 1, Durga Vidyalaya handed over the service-book to him for getting it completed instead of sending it directly to the authorities concerned, it cannot be said that thereby it committed any fault. It trusted its teacher. It could not have anticipated that he had a dishonest intention at that time. Thus the second reason given by the Tribunal for interfering with the order of punishment was not justified. Assuming that Respondent 1 was comparatively young, he had by then put in 8 years' service as a teacher. He was mature enough to realize the nature of his acts. Thus, there was really no justification for the Tribunal to interfere with the discretion exercised by the School Management. In view of the facts and circumstances, there was no justification for the Tribunal to interfere with the punishment imposed by the School Management.

8. Learned counsel for Respondent 1 relying upon the decision of this Court in *Bhagat Ram v. State of H.P.* (1983) 2 SCC 442 : 1983 SCC (L&S) 342] submitted that penalty not commensurate with the gravity of the misconduct has to be considered as violative of Article 14. He further submitted that dismissal from service being an economic death, such a severe punishment ought not to have been imposed upon Respondent 1 when by his said acts, he was not to gain any additional financial benefit. Whether he was likely to gain anything or not thereby did not have much bearing on the gravity of the misconduct. The acts committed by him constituted not only a serious misconduct but also a serious criminal offence. Learned counsel also relied upon the earlier-quoted observations made by Hansaria, J. in *B. C. Chaturvedi* case. [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44]. Really, they have no relevance to the facts of this case. This is not a case where the High Court tribunal found any difficulty in granting an appropriate relief to Respondent 1 because of some technicality of rules or procedure even though justice demanded it. Moreover, the said observations are no more than an expression of a personal view. What is to be noted is that Hansaria, J. agreed with what the other two learned Judges held as regards the powers of the High Court/Tribunal to interfere with the order of penalty passed by the disciplinary authority. Therefore, it would not be correct to say that this Court in *B. C. Chaturvedi* case [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] has accepted the view that the High Courts/Tribunals possess the same power which this Court has under Article 142 of the Constitution for doing complete justice, even in the absence of such a provision.

9. We therefore allow this appeal, set aside the judgment and order passed by the High Court and also that of the Tribunal and dismiss the OA filed by Respondent 1.