

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1941 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEMRAJBHAI K CHAUDHARI

Versus

DIST DEVELOPMENT OFFICER

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Appearance:

MR PK JANI for Petitioner

Mr. H.R.Lathigara, Advocate for the respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/96

ORAL JUDGEMENT

Heard the learned counsel for the parties. The petitioner appointed as Talati in Kuchchha District on 18/10/1961. Subsequently, he was made Talati-cum-Mantri. At the relevant time, he was posted at village Sai, Tal. Rapar. The petitioner was served with the chargesheet vide memorandum dt. 4/8/1983. The charge was levelled against the petitioner that while he was posted at village Vavar, Tal. Mundra as Talati-cum-Mantri, he remained absent without leave from 5/1/1983 and inspite

of written orders, he did not report for work and thereby committed misconduct of disobedience of the orders of his superior officers. Departmental Inquiry has been held for the aforesaid charge. The Inquiry Officer submitted his report on 18/1/1985 to the District Development Officer, Bhuj. On receipt of the inquiry report, respondent no.1, District Development Officer, Bhuj served a show cause notice upon the petitioner calling upon to show cause why he should not be removed from service. After taking advice of the Gujarat Panchayat Service Selection Board, District Development Officer, Bhuj under its order dt. 25th July 1985 which was received by the petitioner on 20th August, 1985, removed the petitioner from service. Feeling aggrieved of the aforesaid order, the petitioner preferred Appeal No. 209 of 1985 before the Gujarat Service Tribunal, Gandhinagar. The same was dismissed by the Tribunal on 23rd November 1985. Hence this special civil application.

The only contention made by the learned counsel for the petitioner that penalty of removal from service is highly excessive or disproportionate to the guilt of the petitioner. Learned counsel for the petitioner contended that the Disciplinary Authority as well as Tribunal have not considered that the penalty of removal from service is harsh and the petitioner, on the date on which he was served with the charge-sheet, had already completed 24 years of service and the charge is of wilful absent from the duty. Looking to the nature of the charge, even if it is considered that the petitioner should not be retained in service, the penalty of removal from service is highly excessive or disproportionate to the guilt. It could have been done by compulsory retiring the petitioner by way of penalty, so that atleast the petitioner would be entitled to the pensionary and other benefits.

On the other hand, the learned counsel for the respondents contended that what punishment should be awarded for proved misconduct is exclusively on the discretionary of the Disciplinary Authority. This court, sitting under Article 226 of the Constitution, has no power of revision on the question of quantum of punishment to be awarded to the delinquent for proved misconduct. The Tribunal is also not in a position to review on the question of excessive or disproportionate punishment.

It has been next contended that the Tribunal is keen on the question of quantum of punishment to the petitioner on proved misconduct but the Tribunal declined to

interfere with the punishment awarded to him.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. So far as the contention of the learned counsel for the respondents, this court has no power of judicial review in the matter of quantum of punishment to be given to the delinquent on proved misconduct. It is suffice to say that this contention is devoid of any substance. Though earlier in the case of ----- vs ----- reported in JT -----, the Supreme court has held that this court, sitting under Art.226 of the Constitution of India, has no power of judicial review on the question of quantum of punishment to be given, upon the delinquent in a Departmental Inquiry for proved misconduct, but the aforesaid decision has been explained by the Hon'ble Supreme Court in later decision in the case of ----- vs. -----reported in -----, and this court considers that the punishment awarded to the delinquent is shaking to the judicial conscious of this court. The court may insist upon such case and may consider the question of quantum of punishment.

I have also gone through the order of the Gujarat Service Tribunal, Ahmedabad and the reasons which have been given by the Tribunal, not to interfere with the quantum of punishment is not justified. It is true that looking to the past conduct of the petitioner of remaining absent as well as the present charge, the petitioner may not be a person to retain in service but the Tribunal has lost sight on two important facts viz. the petitioner has already served for 24 years to the Government and secondly for past, the petitioner has appropriately been punished.

Not only these two important facts but another important fact has to be noticed. The petitioner has been served with the charge-sheet for his absence without leave from 5/1/1983 and he reported on duty on 13/1/1984. The absence is for a period of about more than one year. The petitioner did not hand over charge on 15/3/1983 and as such another charge that he has not hand over charge also does not stand to the extent as alleged. It is true that past record of the petitioner is also blameworthy but the say the petitioner about blameless service for 24 years to the Government seems to be excessive. Apart from that, even if is so, then also the person should have been dealt with by ordering him to compulsory retire from service by way of punishment, so that he may atleast get some retiral benefit. It is significant to mention

that the pension in the employment is not a charity but it is a right which the Government servant acquires on serving the Government. Looking to the fact that there is only charge of wilful absent from duty without leave against the petitioner, coupled with the fact that he has already served for more than 24 years, punishment of removal from service seems to be unreasonable. The Tribunal has certainly given ground that such a person should not be retained in service and to sat him an example for the cause like in the case of the petitioner, so that recurrence of such conduct without leave and/or other important charges as to criminology, could have been achieved by awarding penalty of compulsory retirement. Looking to the facts of the present case and when there is no charge of misconduct or fraud or case for some tampering with the record or for taking of bribe etc. punishment of removal to the petitioner who has already served for 24 years in the service and for his past misconduct, he has already been appropriately punished, seems to be disproportionate to the guilt.

In the result, this special civil application is allowed in part. Though no interference is called for to the finding of the Inquiry Officer under Article 226 of the Constitution of India or under the Service Tribunal Act to the extent as held for the misconduct as alleged against him, but the penalty of removal from service seems to be on a higher side and it is hereby ordered to be substituted by awarding penalty of compulsory retirement from service, from the date of order of removal. The petitioner shall be entitled to all consequential benefits, followed by this order. Rule is made absolute to the aforesaid extent.

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