

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 40 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
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? : NO

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SHANILAL K. BHOJANI

Versus

STATE OF GUJARAT  
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Appearance:

MR TEJAS KARIA for Appellant No. 1

MS SHRADDHA TRIVEDI, AGP for Respondent No. 1  
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 31/01/2002

ORAL JUDGEMENT

This appeal filed under Section 96 of the Code of  
Civil Procedure is directed against the judgement and

decree dated March 18, 1977 recorded in Special Civil Suit No.10 of 1975 by the learned Civil Judge, (S.D.), Rajkot by which suit filed by the appellant came to be dismissed with costs.

2. The suit in question was filed by the appellant against the respondent for a declaration that the order of the disciplinary authorities, dismissing the appellant and ultimate order of High Court of Gujarat reducing the penalty of dismissal to the penalty of compulsory retirement of the appellant is illegal, ineffective, null and void and further declaration that the appellant continue to be in service as a Nazir-cum-clerk of the Court with all the benefits of pay, allowance, security etc. till the date of his reinstatement and to have a money decree of the amount of Rs.5618-55 for the salary due upto the date of filing the suit with interest thereon.

3. The appellant, who was at the relevant time serving as a Nazir-cum-clerk in the Court of Civil Judge (S.D.), Gondal was charge-sheeted for six separate charges at Ex.53 alongwith statement of allegations at Ex.54 which are as under :

- (1) The appellant held auction in contravention of Para 643 of Civil Manual.
- (2) The appellant with mala fide intention showed that all the three cycles were sold in a lot, though they were sold separately.
- (3) The appellant made false entries about the bids offered by one Sambhu Chhagan, though he has not offered any bid at auction for three wooden pieces, five knives and 27 wooden sticks.
- (4) The appellant with dishonest intention and to justify his act and to screen his act, write price of the goods sold at auction sale at much lesser than the original price stated in Summary Forms, in the attachment Panchnama, complaints and muddamal pavaties etc.
- (5) The appellant erased the entries in above stated documents.
- (6) The appellant with an intention to screen his act, secured the record of Criminal Case No.101, 102 and 103 of 1971 from Shri R.C.Chauhan and after making erosions and alterations etc.

returned the record to the Clerk of the Court instead of returning the record from whom he had taken it.

4. The said charge-sheet was given after the preliminary inquiry held by the Civil Judge (S.D.). The Additional Sessions Judge, Gondal was appointed as an inquiry officer in the matter. He, after making inquiry, held that all the charges against the appellant except charge No.1 was proved and accordingly, he submitted his inquiry report to the District Judge, Rajkot, who was the competent authority. The District Judge, Rajkot completely agreed with the findings of the inquiry officer and ordered to issue a notice proposing punishment of dismissal from service. The appellant replied to the said show cause notice. The appellant was personally heard by the competent authority and ultimately ordered to dismiss the appellant from service w.e.f. the date of service of the order. Thereupon, the appellant filed an appeal before the High Court of Gujarat. The High Court of Gujarat held that the allegations with respect to the charges Nos.2 and 3 were not established satisfactorily but held that the allegations with regard to charge Nos.4, 5 and 6 were proved, and therefore, reduced the penalty of dismissal from the service into compulsory retirement from the service. Aggrieved thereby the appellant has filed suit for the reliefs to which reference is made earlier.

5. The suit was contested by the respondent by filing written statement wherein inter alia all the averments made in the suit was denied. It was also asserted that the inquiry was held in accordance with law, opportunity of hearing was given to the appellant and there was no violation of principles of natural justice and, therefore, ultimately prayed to dismiss the suit.

6. On pleadings of the parties, the learned Judge framed as many as 17 issues at Ex.126 and on appreciation and evaluation of the evidence came to the conclusion that the appellant failed to prove that there is no legal evidence to connect him with the charges as mentioned in the charge-sheet. The appellant also failed to prove that the departmental proceedings ultimately resulting in order of his compulsory retirement are illegal, unconstitutional against the principles of natural justice, null and void and ineffective and ultimately held that the departmental inquiry is not vitiated and resultantly dismissed the suit filed by the appellant which has given rise to the appeal at the instance of the

appellant - original plaintiff.

7. Mr. Tejas Karia, learned advocate for the appellant contended that there is no evidence to connect the appellant with the charges levelled against him. There is a violation of principles of natural justice in conducting the departmental inquiry as the copy of the report was not supplied to the present appellant which has resulted into serious miscarriage of justice. He also asserted that looking to the so-called proved charges, the punishment imposed upon him is disproportionate to its proved guilt. He, therefore, urged that considering 22 years of the past service of the appellant, lenient view ought to have been taken by the learned trial Judge and, therefore, in exercise of powers under Section 96 of the Civil Procedure Code, this Court can take lenient view by imposing lesser punishment. He, therefore, urged to allow the appeal.

8. Mr. Shraddha Trivedi, learned A.G.P. has supported the judgement through out and according to her no illegality is committed in departmental inquiry and looking to the scope and ambit of the judicial review in a matter of departmental inquiry, the learned trial Judge has very rightly dismissed the suit filed by the appellant which does not require any interference and, therefore, she urged to dismiss the appeal.

9. I have considered the submission advanced by the learned advocates appearing for the parties. I have perused the judgement impugned herein and the evidence produced before the learned trial Judge, which is consisting of the relevant papers of the departmental inquiry including evidence recorded therein.

10. At the outset, it may be stated that the preliminary inquiry was held against the appellant and during the preliminary inquiry he was found guilty and, therefore, he was charge-sheeted vide Ex.53 wherein six charges were made against him. The departmental inquiry was conducted by the Additional Sessions Judge, Gondal. He has given opportunity of hearing to the appellant and according to the Additional Sessions Judge, Gondal all the charges except charge No.1 was proved against him. The inquiry officer, therefore, submitted his report to the competent authority, the District Judge, Rajkot. The District Judge, Rajkot had issued a notice proposing punishment of dismissal from service. After having heard the appellant, the District Judge dismissed him from service. The said order was carried in appeal by the appellant before the High Court of Gujarat. In appeal,

the High Court did not agree with the findings of the inquiry officer and the competent authority with regard to charge Nos.2 and 3 and, therefore, held that the charge Nos.2 and 3 were not proved, however, charge Nos.4, 5 and 6 were proved and, therefore, imposed lesser punishment of compulsory retirement.

11. Law in the matter of departmental inquiry is now very settled by catena of the decisions of the Supreme Court, scope is very limited.

(a) The Supreme Court in the case of KULDEEP SINGH Vs. COMMISSIONER OF POLICE AND OTHERS, (1999) 2 SCC 10, held that scope of judicial review in the matter of departmental inquiry in petition filed under Articles 226 and 32 is not totally barred finding of guilty although would not be normally interfered with, the Court can interfere therewith if the same is based on no evidence or is such as could not be reached by an ordinary prudent man or is perverse or is made at the dictates of a superior authority. In the said judgement the Supreme Court has prescribed four exceptions.

(b) In the case of MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION Vs. K.S. GANDHI AND OTHERS, (1991) 2 SCC 716, the Supreme Court has held that in a departmental inquiry where facts are not in dispute, non-recording of reasons in support of the conclusion arrived at in the report not violative of principles of natural justice.

(c) In the case of R.S.SAINI Vs. STATE OF PUNJAB AND OTHERS, AIR 1999 SC 3579, the Supreme Court has held that writ Court while exercising writ jurisdiction will not reverse a finding of the enquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiry authority, it is not the function of the Court to review evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

12. Applying the principle in above referred to decisions to the facts of the present case there is no manner of doubt that the departmental proceedings was conducted in accordance with law. On having perusal of the record and proceedings of inquiry, it is seen that

opportunities were given to the appellant and ultimately all the charges except charge No.1 were proved and, therefore, he was dismissed from the service. However, in appeal, High Court of Gujarat held that the charge Nos.2 and 3 were also not proved, and therefore, for remaining charges i.e. charge Nos.4,5 and 6, quantum of punishment was reduced from the dismissal from the service to compulsory retirement.

13. The submission that still lenient view may be taken against the appellant, so far as the quantum of punishment is concerned, has no substance in view of the fact that charge Nos.4,5 and 6 were proved and, therefore, the High Court of Gujarat has imposed maximum lenient punishment of compulsory retirement so that the appellant can get all the retiral benefits for rendering his service.

14. According to me, the trial Court has very rightly considered all the relevant papers of the inquiry held against the appellant and the final order recorded by the High Court. On the facts and in the circumstances of the case, the trial Court has not committed any error either in law and facts.

15. In above view of the matter, I find myself in complete agreement with the reasoning adopted by the trial Court and findings arrived by it and, therefore, I do not see any justifiable reason or valid grounds to interfere with the impugned judgement and decree.

16. It is settled legal position that even at the final hearing state when the appellant Court agrees with the reasons given and conclusions arrived at by the trial Court, it is not necessary for the appellate Court to reiterate the evidence and elaborately state reasons for reaching the same conclusion. Expression of general agreement with the reasons given and conclusions arrived at by the trial Court would be sufficient. This is so held by the Supreme Court in the case of GIRIJANNANIDI DEVI AND OTHERS Vs. BIJENDRA NARAIN CHOUDHARY, A.I.R. 1967 SC 1124

17. Seen in the above context, there is no merit in the appeal and, therefore, the same is liable to be dismissed.

18. For the forgoing reasons, the appeal fails and accordingly it is dismissed with no order as to costs.

(A.M.Kapadia, J)

' Bhavesh '