

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3661 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

LALJIBHAI BHULABHAI VAGHRI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 3661 of 1992
MR RJ OZA for Petitioner No. 1
MS MANISHA LAVKUMAR, AGP for Respondent No. 2
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CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 31/03/2003

ORAL JUDGEMENT

The present petition is filed against the judgement and order of the Gujarat Civil Services Tribunal dated 26-3-1992 in Appeal No.399/1991, dismissing the appeal of the petitioner and thereby confirming the order of respondent-authority holding the petitioner guilty for the charge of temporary

misappropriation levelled against him and imposing penalty of placing the petitioner in the lowest pay scale for the period of three years, in the cadre of Senior Clerk.

2) It is the case of the petitioner that while he was working as a Senior Clerk, Taluka Panchayat, Balasinor, he was served with a memorandum of charge sheet dated 15-2-1989 under the order of respondent No.1, alleging that while the petitioner was working as Senior Clerk, the the work of constructing houses was entrusted to Gram Panchayat, Mahij under N.R.E.E.Scheme. The petitioner brought written cheque No.666714 dated 11-7-1986 for the amount of Rs.16,698.85 ps. in his name, encashed the said cheque and kept the said amount on hand during the period between 11-7-1986 to 20-9-1986, without making payment thereof and thereby committed temporary misappropriation and to cover such misappropriation, instead of maintaining cash book, has maintained U.D.R. (undisbursed remains) and got the same certified from the Taluka Development Officer and thereby the petitioner was guilty of committing temporary misappropriation and for irregularity in maintaining records and was liable for punishment.

3) The petitioner was issued a showcause notice for imposition of penalty as specified in Rule 5 of the Gujarat Panchayat Services (Discipline and Appeal) Rules, 1964. The petitioner has given his reply dated 4-3-1989, in response to the charge-sheet issued against him, inter alia, contending that out of the cash withdrawn on 11-7-1986, he had disbursed the amount of Rs.1662/- to the labourers. He, however, did not make the payment of 16,698.85 ps. to Mahij Gram Panchayat as the work of the premises was not completed. He, therefore, brought back the said amount to Mehmabad and put such fact to the notice of the Taluka Development Officer and as per the advice of his superiors, he had credited the said amount in U.D.R. on 14-7-1986 and kept the cash in the iron safe in his office. It is further contended that as per Rule 199 of the Gujarat Taluka and District Panchayat Rules, cash balance in U.D.R. is to be verified by the Taluka Development Officer at the end of each month and as per the said provision, the relevant cash with him was verified by Shri P.G.Chaudhary on 1-8-1986 and noted that it was verified by in-charge Taluka Development Officer.

4) After considering the explanation given by the petitioner and after having gone through the charges, the respondent No.1 has decided to hold a full fledged inquiry against the petitioner. Accordingly, by an order

dated 6-7-1989, the Taluka Development Officer, Borsad was appointed as Inquiry Officer. The Inquiry Officer has given his report on 25-5-1990 to the respondent No.1. On the basis of the Inquiry Officer's report and on the basis of the reply received pursuant to the showcause notice, the respondent No.1 has passed an order on 26-9-1991 directing to impose the penalty of putting him in the lowest pay scale as provided by the provisions of Rule 5(vi) of the said Rules.

5) Being aggrieved by the said order of the respondent No.1, an appeal was preferred and the said appeal was also dismissed on 19-8-1991 by the respondent No.2. The petitioner, thereafter preferred an appeal No.399/1991 before the Gujarat Civil Services Tribunal at Gandhinagar and the said appeal was also dismissed by judgement and order dated 26-3-1992. It is this order of the Tribunal, which is under challenge before this Court.

6) Heard Mr.R.J.Oza, learned advocate appearing for petitioner and Ms.Manisha Lavkumar, learned Assistant Government Pleader appearing for respondent.

7) Mr.Oza, learned advocate appearing for the petitioner has reiterated all his submissions and stated that the petitioner was innocent and he has acted only as per instructions given by his superior. He has further submitted that Bombay Treasury Rules are not applicable to the petitioner's case and the relevant rules, which are applicable are Gujarat Taluka and District Panchayat Financial Accounts and Budget Rules and the petitioner has followed the procedure laid down in Section 199 of the said Rules. He has further submitted that the Tribunal has not considered the relevant aspect of the matter. He has further submitted that simply because there was some mistake in mentioning the date, no adverse inference could be drawn against the petitioner. As a matter of fact, the petitioner has gone to Mahij on 11-7-1986 and this fact was also verified in Inquiry Officer's report, as well as the letter dated 12-9-1986 written by the Gram Panchayat, Mahij, wherein also it was stated that the petitioner has gone to Mahij on 11-7-1986. He has further submitted that the petitioner has not misused the amount in question nor the said amount was kept by him. On the contrary, it was lying in the office and proper explanation was also given to the superior officer in this regard. Since none of the authorities have considered the explanation tendered by the petitioner in its proper perspective, the orders passed by the authorities below are unjust, illegal, improper and required to be quashed and set aside.

8) Ms.Manisha Lavkumar, learned AGP appearing for respondents has taken me through the order of the Tribunal wherein detailed submissions were recorded and finding was arrived at by the Tribunal. She has further submitted that the Tribunal, as a matter of fact, held that the appellant by adopting illegal means written a cheque in his name and by nonpayment of the said amount after encashing it kept with him from 11-7-1986 to 20-9-1986 alleging wrongfully that it was lying in the office of Gram Panchayat for the said period and therefore, the appellant was held to be temporarily misusing the said amount. She has further submitted that since all the three authorities have given concurrent finding of facts, this Court while exercising its writ jurisdiction under Article 227 of the Constitution of India should not reappreciate the evidence and disturb the finding given by the authorities below. She has, therefore, submitted that the petition should be dismissed with costs.

9) Having considered the arguments canvassed by the learned advocate and the learned Assistant Government Pleader appearing for respective parties and also having gone through the orders passed by the authorities below, I am of the view that the authorities have considered the detailed submissions and evidences led by both the parties and thereafter come to the conclusion that no interference was called for. The petitioner's explanation could not be believed by any authority. On the contrary, it was found to be an eye-wash or tendered with a view to save his skin. When such finding is arrived at or conclusion is drawn after appreciation of evidence, it is not open for this Court to hold that it is perverse or unreasonable requiring interference while exercising extraordinary writ jurisdiction under Article 227 of the Constitution of India. Since the case of temporary misappropriation was proved against the petitioner, punishment imposed cannot be said to be disproportionate, which would shock the conscience of the Court. I, therefore, do not find any substance and merits in the petition and hence the petition is dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)

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