IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3561 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VADODARA DISTRICT PANCHAYAT - Petitioner(s)
Versus
R H PATHAN & 1 - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR NK MAJMUDAR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 11/05/2012
ORAL JUDGMENT

The petitioner has brought under challenge the order dated 29.7.2011 passed by the Gujarat Civil Service Tribunal whereby the tribunal has set aside the order dated 27.4.2007 passed by the petitioner directing that two increments with future effect may be withheld and a sum of Rs.2,570/- may be recovered from the respondent employee.

2. It emerges from the record that the respondent No.1 is an employee of the petitioner Panchayat and is serving therein in the cadre of Health Visitor. It also appears from the record that certain

report was made about irregularities allegedly committed by the respondent No.1. It was alleged therein that the respondent No.1 acted outside her earmarked area in motivating the persons for family planning operation. By acting outside her earmarked area, she motivated certain persons and family planning operations were performed on such persons and incentives / payments were made. After the said incident came to the notice of the authority, the respondent No.1 was visited with charge-sheet.

3. It is pertinent to mention, at this stage, that before issuing the charge-sheet, the authority had conducted a preliminary inquiry and report of the officer who conducted the preliminary inquiry was called for and it was on the basis of such report that the subsequent proceedings were initiated. The respondent No.1 submitted her reply to the charge-sheet. The disciplinary authority was not satisfied with her reply. Therefore, departmental inquiry proceeding were conducted. On conclusion of the departmental inquiry, Inquiry Officer submitted it report dated 23.11.2003. In the said report, the Inquiry Officer has recorded his finding that the charges levelled against the respondent No.1 stand proved. In view of the said report by the Inquiry Officer, the disciplinary authority issued 2nd show-cause notice dated 18.12.2003 calling for her explanation as regards the proposed penalty. The respondent No.1 submitted her reply dated 12.1.2004. It appears that the respondent No.1 was afforded opportunity of personal hearing as well. After considering the entire material, submissions made by the respondent No.1 and reply submitted by her, the disciplinary authority passed order dated 8.2.2005. Feeling aggrieved by the said order, the respondent No.1 preferred Departmental Appeal before the First Appellate Authority. The said appeal was rejected vide order dated 27.4.2007. The respondent No.1 thereafter approached the Gujarat Civil Service Tribunal, by way of appeal, which was registered as Appeal No.177 of 2007. The tribunal, after considering the material on

record and submissions made by learned counsel for the contesting parties, found that the penalty order passed by the disciplinary authority was not sustainable and that therefore, the tribunal set aside the penalty order dated 27.4.2006.

4. The main grounds on which the tribunal found that the penalty order and the proceedings were not sustainable is that the proceedings were initiated after inordinate delay (of about 9-10 years) and disciplinary authority had relied on the report of the officer who conducted the preliminary inquiry, however, the officer, who conducted the preliminary inquiry, was not offered for cross-examination by the petitioner.

5. The petitioner is aggrieved by the said order dated 29.7.2011 passed by the tribunal, hence, present petition.

6. Mr. Munshaw submitted that the Rules required that the respondent No.1 should perform her work within her earmarked area only and should not try to motivate persons not residing in her designated/earmarked area. Mr. Munshaw submitted that the conduct of the respondent No.1 amounted to indiscipline and the petitioner authority could not have taken such attitude and conduct of the respondent No.1 in any lenient manner and that therefore, regular proceedings were conducted against her and the penalty order came to be passed which is legal and proper. Mr. Munshaw, learned advocate, has appeared for the petitioner and has submitted that it was not only in one case that the respondent No.1 acted in such manner but more number of incidents were also found against the respondent No.1. He submitted that the tribunal has erred in passing the order without taking into account the fact that the respondent No.1 had herself admitted that she had acted beyond her earmarked area and had motivated persons not residing in her earmarked area for family planning operations. He submitted

that since vital aspects have not been considered by the tribunal, the impugned order is bad.

7. It is necessary to mention at the outset that the alleged admission of which reference is made by the petitioner and heavy reliance is placed for assailing the order passed by the tribunal was, even if, it is to be taken into account, made by the respondent No.1 out side the proceedings of departmental inquiry. The alleged admission, even if made, by the respondent No.1, outside the proceedings of the department should not and could not have been taken into account by the disciplinary authority or the Inquiry Officer and could not have been taken cognizance of and could not have been relied on and/or could not have been made road for reaching the conclusion or the base for the decision. It being out side the purview of proceedings of departmental inquiry, the Inquiry Officer as well as the departmental authority could not have taken into account that material. Only that material which formed part of the departmental inquiry proceedings and nothing beyond that, could have been taken into account because undisputedly the said material was supplied to the petitioner before serving the charge sheet and/or along with the charge sheet and/or even during the inquiry proceedings. Therefore, the ground for assailing the order passed by the tribunal is unacceptable.

8. The petitioner does not have any reply or explanation for the defect noticed by the tribunal in the inquiry proceedings.

9. It is not in dispute that the preliminary inquiry was conducted and officer for the said purpose was appointed. It is also not in dispute that the officer submitted the preliminary inquiry report and the disciplinary authority has relied on the said report. It is trite law that if the disciplinary authority seeks to rely on any material to arrive at a conclusion and/or for imposing penalty then

such material should be supplied to the delinquent employee and opportunity to offer explanation and to deal with such material should be afforded to him.

In present case, the Inquiry Officer has, on careful examination of the record, found that the officer who conducted the preliminary inquiry and submitted the report, who has been relied upon, was not offered for cross-examination. The tribunal has, therefore, found that the proceedings were defective and the penalty order passed on such defect cannot be sustained.

10. learned advocate for the petitioner has not been able to offer any explanation on this count. He has also not been able to demonstrate, actually it is not even the case of the petitioner, that the said finding is factually incorrect. So far as the submission that petitioner motivated persons outside her designated area are not once but on more than one occasion and/or that the petitioner had admitted the one incident mentioned in the charge sheet are concerned, it is necessary to note that the alleged admission, even according to the petitioner's record, was made outside the inquiry proceedings and that therefore, even otherwise it cannot be considered. Thus, there is nothing on record to hold that the findings recorded by the tribunal are contrary to the weight of evidence on record or are perverse.

11. Besides this, the tribunal has also taken into account the fact that the incident in question had allegedly occurred in 1989-90 whereas the respondent No.1 was served with charge-sheet in 1999, i.e., thus, the charge-sheet was served after delay of almost 9 to 10 years.

The Hon'ble Apex Court has in case of *The State of Madhya Pradesh v. Bani Singh & Anr.* [AIR 1990 SC 1308] observed that proceedings which are commenced after inordinate delay ought not be initiated or continued after inordinate delay.

In present case, undisputedly, the charge-sheet was issued after delay of 9 to 10 years.

The learned tribunal has taken into account the said aspect also and in light of the said fact the learned tribunal found that the charge-sheet as well as proceedings are vitiated on account of inordinate delay i.e. another ground on which the tribunal has considered it appropriate to interfere with the penalty order.

12. Learned advocate for the petitioner could not offer any explanation or defence on this count also.

13. Under the circumstances, what emerges in light of the foregoing discussion is that there is no material on record to establish or even demonstrate that the findings by the tribunal on both counts on which the order is passed, are sound reasons and there is nothing on record to establish that the said findings are incorrect, arbitrary or perverse. In such situation and circumstances, this Court, exercising jurisdiction under Article 227 of the Constitution of India, would not be justified in interfering with the order passed by the tribunal.

As a result of foregoing discussion, the petition fails and deserves to be rejected and is accordingly rejected.

(K.M.Thaker, J.)

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