

SANCHALAKSHRI AND ANR.

v.

VIJAYAKUMAR RAGHUVIRPRASAD MEHTA AND ANR.

NOVEMBER 18, 1998

[S.P. BHARUCHA, G.T. NANAVATI AND B.N. KIRPAL, JJ.]

Service Law :

Teacher—Closure of school—Absorption in another school—Fixation of pay—Service book given to teacher for necessary endorsement of competent authority—Forgery committed by teacher—Dismissal order—Held valid—No financial gain by teacher held not relevant—Substitution of punishment with stoppage of two increments—Held substitution not justified.

Service law—Punishment—Power of High Court and Tribunal to substitute.

Respondent No. 1 was working as a teacher in Pallavi Vidyalaya. Consequent to the closure of said school he was absorbed in Durga Vidyalaya run by appellant No.1. In his service book the endorsement regarding fixation of salary of respondent was neither signed by District Education Officer nor the Auditor. For getting the said deficiencies removed the service book was given to respondent No. 1. Instead of getting the endorsement of competent authorities the Respondent forged the signatures of competent authorities and returned the service book to the school authorities. Consequently the services of the Respondent were terminated after conducting an enquiry. The Gujarat Secondary Educational Tribunal set aside the order of termination and held that stoppage of one increment with future effect would be the proper punishment. In taking a lenient view the Tribunal relied on three extenuating factors (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 school in giving the service book personally to respondent No. 1 provided an opportunity to the latter to commit the act of misconduct; (iii) the young age of the delinquent employee and (iv) that by his act the respondent has not gained any additional financial gain. The High Court also held that the penalty imposed was disproportionate but substituted the order of stoppage of one increment by directing stoppage of two increments with future effect.

A In appeal to this Court, it was contended on behalf of the appellant school management that (i) the Tribunal having found that the charges against the respondent were proved it should not have interfered with the order of dismissal; (ii) the extenuating factors taken into account by Tribunal cannot be regarded as good grounds for substituting dismissal order with stoppage of increment; and (iii) the High Court virtually rejected the writ petition filed by the appellant without proper application of mind.

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Allowing the appeal this Court

C HELD : 1. In the circumstances of the case there was no justification for the Tribunal to interfere with punishment imposed by the school management. A teacher is expected to maintain higher standard of honesty and integrity in view of the position he holds. Respondent committed acts of forgery. Even after he was called upon by the school management to disclose 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. That statement was false to his knowledge. Thus not only he committed a serious misconduct but also a serious criminal offence. 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 No. 1. 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.

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[16-G; 17-E-G]

2. 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. [17-H]

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3. If on a request made by respondent No. 1, Durga Vidyalaya handed over the service book to him for getting it completed instead of sending it directly to the concerned authorities, 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. Though Respondent No.1 was comparatively young, yet he was mature enough to realise the nature of his acts. Whether he was likely to gain anything or not thereby did not have much bearing on the gravity of the misconduct. Accordingly, the order passed by the High Court and that of the Tribunal are set aside.

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[18-C-D; F; 19-B]

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B.C. Chaturvedi v. Union of India & Ors., [1995] 6 SCC 749, explained

and held inapplicable.

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Bhagat Ram v. State of Himachal Pradesh and Ors., [1983] 2 SCC 442, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7789 of 1997.

From the Judgment and Order dated 14.10.97 of the Gujarat High Court in S.C.A. No. 6671 of 1997.

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R.P. Bhat and M.N. Shroff for the Appellants.

M.R. Anand, Aseem Malhotra and A.P. Medh for the Respondents.

The Judgment of the Court was delivered by

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NANAVATI, J. 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 No. 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.

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Respondent No. 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 No. 1. While joining this new School, respondent No. 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 31.7.93 informed him about the said deficiencies and requested him to get it completed. By letter dated 4.8.93, 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 No. 1 returned the service book and informed the School Management that all the deficiencies

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A have been removed. As it was returned within such a short time, Durga Vidyalaya felt some doubt regarding genuineness of the signatures of the concerned authorities. So it called upon him to disclose names of the persons who had signed the relevant endorsements. On 24.8.93 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 inquiry after giving a show cause notice dated 23.9.93 and as all the charges were proved, with prior approval of the concerned authority passed an order of termination of his service on 15.3.94.

C Respondent No. 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 No. 1 did amount to a serious misconduct; but as Respondent No. 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 No. 1 instead of sending it directly to the concerned authorities and as he was comparatively of 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. D 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. E

F 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.

G Mr. R.P. Bhat, learned senior counsel for the appellants, contended that the Tribunal having found that the charges levelled against respondent No. 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 H 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 No. 1 for getting the necessary endorsements made therein and not sending it directly to the authorities concerned and thereby providing an opportunity to respondent No. 1 to commit the act of misconduct; and (iii) young age of respondent No. 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 appellant holding that the reasons given by the Tribunal are cogent and do not call for interference.

After a review of earlier cases, this Court in *B.C. Chaturvedi v. Union of India and Ors.*, [1995] 6 SCC 749 has held that "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 No. 1 was shockingly disproportionate. Respondent No. 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 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.N. 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 No. 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.

The extenuating factors referred to by the Tribunal for taking a lenient view cannot reasonably lead to the conclusion that the punishment was

- A highly disproportionate. Respondent No. 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 No. 1 to indulge in the acts of forgery as he could have obtained the necessary endorsements by the District Education Officer, the Auditor and others in due course of time.
- B 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 No. 1. Durga Vidyalaya had not told him to get the service book completed within a few days. If on a request made by respondent No. 1, Durga Vidyalaya handed over the service-book to him for getting it completed instead of sending it directly to the concerned authorities, 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 No. 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.
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- E Learned counsel for respondent No. 1 relying upon the decision of this Court in *Bhagat Ram v. State of Himachal Pradesh and Ors.*, [1983] 2 SCC 442 submitted that penalty not commensurate with the gravity of the misconduct has to be considered as violative of Art. 14. He further submitted that dismissal from service being an economic death, such a severe punishment ought not to have been imposed upon respondent No. 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 (supra). 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 No. 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 personal view. What is to be noted is Hansaria, J. agreed with what the other two learned Judges
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- H 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's* case has accepted the view that the High Courts/Tribunals possesses the same power which this Court has under Article 142 of the Constitution for doing complete justice, even in absence of such a provision . A

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 O.A. filed by respondent No. 1. B

T.N.A.

Appeal allowed.