

CASE NO.:
Appeal (civil) 897 of 2007

PETITIONER:
State of Gujarat

RESPONDENT:
Anand Acharya @ Bharat Kumar Sadhu

DATE OF JUDGMENT: 22/02/2007

BENCH:
C. K. Thakker & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
[Arising out of S. L. P. (C) No.9290 of 2005]

Lokeshwar Singh Panta, J.

Special leave granted.

The appellant-State of Gujarat, challenging the order dated 25.11.2004 of the High Court of Gujarat at Ahmedabad in LPA No. 2477 of 2004 in Special Civil Application No.2479 of 2001, has filed this appeal, whereby the Division Bench of the High Court has affirmed the judgment and order dated 20th March, 2001 passed by the learned Single Judge modifying the delinquent order of penalty imposed on the respondent by the Disciplinary Committee.

The relevant facts giving rise to the filing of this appeal are as under:

Anand Acharya alias Bharat Kumar Sadhu, respondent herein, joined the services of the appellant-State and has been serving as a Deputy Collector since 30.03.1993. On 16.12.1995, the respondent was served with a charge sheet on various grounds, which are mentioned below:

a) That, while discharging duties as a Cartographer in School Text Book Board, Gandhinagar, Gujarat, which is under the State Government and during the subsistence of his marriage with Bhavanaben Dave, he entered into immoral relations with his wife's sister, i.e., his sister-in-law, Smitaben Dave, from whom a daughter was born on 13.02.1989, thereby committed an act of moral turpitude in terms of Rule 3(1)(3) and Rule 26 of the Gujarat Civil Services (Conduct) Rules, 1971. Though, no evidence of marriage between the respondent and Smitaben was led on record of the departmental proceedings, yet the name of the respondent is entered to be the father of the girl.

b) That, since the respondent on his own did not inform the Government about the Criminal Miscellaneous Application No. 184 of 1992 pending in the Court of the Metropolitan Magistrate at Ahmedabad and Criminal Case No. 5094/1992 in the Court of the Judicial Magistrate (First Class) at Gandhinagar thereby he committed breach of Rule 18 of the Gujarat Civil Services (Conduct) Rules, 1971.

c) It was also made clear in the charges framed against the respondent, that he, after getting divorce from his wife Bhavanaben and his illicit continuing relationship with Smitaben, he married Priyaben and from that wedlock, a girl child was born on 08.12.1994.

In the statement of imputation and the charge sheet served on the respondent on 16-12-1995, detailed charges

were framed vide Government Memorandum, Revenue Department dated 16.12.1995 mentioned at (1) in the Preamble and after giving an opportunity to file the reply within a period of 30 days to the charges levelled against the respondent for violation of various Rules of the Gujarat Civil Services (Conduct) Rules, 1971, he was subjected to departmental inquiry. The Inquiry Officer was appointed on 03.01.1998.

The Inquiry Officer found charge [1(a)] not proved, charge [1(b)] having been proved and charge [2] fully proved against the respondent. The Competent Authority, after considering the Inquiry Report and agreeing with the findings of the Inquiry Officer, served a show-cause notice on the respondent asking him to submit a written explanation to the charges proved against him. The written explanation/submission filed by the respondent was found unsatisfactory and not acceptable. Thereafter, considering the seriousness of the charges, the Government in consultation with the Gujarat Public Service Commission, took the decision of removal of the respondent from the Government Service and, accordingly, removed him by Order dated 22.10.1999.

The respondent challenged the order of dismissal by way of a Special Civil Application No. 9487/1999 in the High Court of Gujarat at Ahmedabad. During the pendency of the writ application, the respondent filed a Review Application before the appellant-State on 22.10.1999, which could not be decided by the appellant-State as the matter was sub-judice before the High Court. The respondent withdrew the Special Civil Application No.9487/1999 on 13.09.2000 with a view to get his Review Application decided. The State Government finally rejected the Review Application of the respondent on 05.01.2000.

The respondent again filed a Special Civil Application No. 2479 of 2001 on 20.03.2001 before the High Court of Gujarat in which he challenges the order of dismissal from service dated 22.10.1999 and subsequent order dated 05.01.2001 whereunder his Review Application came to be rejected. The parties went to trial before the learned Single Judge of the High Court and filed their reply and counter reply. The learned Single Judge vide order dated 23.07.2004 partly allowed the Special Civil Application and set aside the impugned orders dated 22.10.1999 and 05.01.2001. The learned Single Judge concluded that as the respondent has not disclosed the fact about the criminal proceedings, which were pending before the Criminal Court in the year 1992, such act would warrant some punishment and a penalty of stoppage of two increments with future effect was ordered to be imposed upon the respondent. The appellant-State was directed to reinstate the respondent in service with continuity of service but without backwages on or before 01.09.2004, failing which the respondent shall be entitled to the salary from that date.

Aggrieved by the order of the learned Single Judge, the State of Gujarat filed a Letters Patent Appeal No. 2477/2004.

A Division Bench of the High Court dismissed the appeal in limine on 25.11.2004 and upheld the order of the learned Single Judge.

Now, the appellant-State is before this Court by means of this appeal.

We have heard learned counsel for the parties and perused the material on record.

Mr. R. P. Bhatt, learned Senior Advocate appearing on behalf of the appellant-State, contended that the High Court has failed to appreciate the basic and important fact that the respondent was guilty of suppression of facts inasmuch as he

had failed to disclose the pendency of criminal proceedings against him in 1994 in the Court of Judicial Magistrate (First Class) and non-disclosure of the said pending proceedings amounted to violation of the provisions of the Gujarat Civil Services (Conduct) Rules, 1971 governing the service conditions of the respondent. He next contended that the reasoning recorded by the learned Single Judge of the High Court that mere giving the name of the respondent to be father of the girl in the birth certificate born from his alleged illicit relationship with his sister-in-law Smitaben during the subsistence of his first wife is sufficient evidence to prove that the respondent was the father of the girl. He then contended that the Inquiry Officer found the respondent guilty of misconduct because he again married one Priyaben and from that wedlock one baby girl was born on 08.12.1994.

According to the learned senior counsel, the conduct of the respondent constitutes moral turpitude and in violation of the provisions of the Conduct Rules for which he was properly dealt with in departmental proceedings and suitably punished by the Authority by imposing punishment of his dismissal from service. The learned Senior Advocate contended that the High Court, in exercise of its judicial review jurisdiction, has not given adequate and cogent reasons to interfere with the quantum of punishment imposed on the respondent by the Competent Authority.

Per contra, Mr. E. S. Saiyad, Advocate appearing on behalf of the respondent has sought to support the judgment of the learned Single Judge which came to be affirmed by a Division Bench of the High Court. He contended that this Court in exercise of its jurisdiction and powers under Article 136 of the Constitution of India should not interfere with the findings recorded by the High Court.

We have given our careful consideration to the respective contentions of the parties and perused the relevant material on record.

The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the Court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof [see *Bhagat Ram v. State of H. P.* (1983) 2 SCC 442; *Ranjit Thakur v. Union of India* (1987) 4 SCC 611; and *U. P. State Road Transport Corporation and Anr. v. Mahesh Kumar Mishra & Ors.* (2000) 3 SCC 450].

Applying the said principles laid down by this Court in the cases noted hereinbefore, we see that the Inquiry Officer had not found the respondent guilty of having married Smitaben during the subsistence of first wife. The department has not established on record that the respondent had married Smitaben, except showing his name as father of the girl child allegedly born out of his illicit relationship with Smitaben entered in the birth certificate. The only allegation having been proved against the respondent by the Inquiry Officer was non-disclosure of the criminal proceedings pending against him in which the respondent was ultimately acquitted. However, we do not agree with the finding of the learned Single Judge that non-disclosure of the criminal proceedings pending against the respondent was not of such a serious nature, which would call for removal of service on the ground of moral

turpitude. This finding cannot be sustained. The charge itself shows that the respondent deliberately had concealed this fact for any collateral consideration and at the most it could be an act of negligence. The disciplinary authority, while considering the quantum of punishment, came to the conclusion that the misconduct of the nature alleged against the respondent should be viewed very seriously to prevent such actions in future, therefore deterrent punishment of the respondent from the removal of service was imposed on him. It has come on record before the Inquiry Officer that the respondent had divorced his first wife Smt. Bhavanaben on 12.12.1989. Smitaben, sister-in-law of the respondent, filed an application before the Metropolitan Magistrate, Gandhinagar claiming maintenance from the respondent for her daughter Sweetu. The Metropolitan Magistrate awarded Rs.350/- towards maintenance in favour of Sweetu and against the respondent. In the said proceedings, Smitaben produced a birth certificate dated 09.04.1992 issued by the Public Health Department of the Government of Gujarat, in which registration of birth of a baby girl in Gandhinagar was made at Serial No.307 dated 14.02.1989 giving the names of mother as Smitaben and father Anandbhai Acharya residing in Block 759/3, Sector-24, Gandhinagar. The respondent submitted an application on 24.02.1994 before the Judicial Magistrate (First Class), Gandhinagar, for his discharge in these proceedings.

The Division Bench of the High Court declined to interfere with the order of the learned Single Judge as the learned Single Judge contained cogent reasons in reducing the penalty. Hence, having considered the basis on which the punishment of dismissal was imposed on the respondent and the facts and circumstances of the case in hand, we are not inclined to interfere with the findings recorded by the learned Single Judge and affirmed by the Division Bench of the High Court modifying the order of punishment imposed on the respondent by the disciplinary authority and substitution of the punishment of withholding of two increments with future effect and directing the appellant-State to reinstate the respondent in service without back wages.

For the above-said reasons, this appeal is dismissed. Parties are left to bear their own costs.