M.S.Kazi vs Muslim Education Society & Ors on 22 August, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3917, 2016 (9) SCC 263, 2016 LAB IC 4104, (2017) 1 SERVLR 353, (2016) 151 FACLR 819, (2016) 4 SCT 514, (2016) 168 ALLINDCAS 83 (SC), (2016) 3 CURLR 295, (2016) 3 SERVLJ 99, (2016) 3 LAB LN 520, (2016) 8 SCALE 139, AIR 2017 SC (CIVIL) 402, (2017) 3 ALL WC 2409, (2017) 1 JCR 58 (SC), (2016) 5 MAD LW 318, (2016) 2 WLC(SC)CVL 630, (2016) 119 ALL LR 894, (2016) 9 ADJ 41 (SC), (2016) 6 MAD LJ 388, (2016) 3 KER LT 887, (2016) 3 ESC 473, (2016) 4 PAT LJR 142, (2016) 4 JLJR 137

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Bench: D Y Chandrachud, A M Khanwilkar, T S Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL Nos. 11976-11977 OF 2014

M. S. KAZI .....APPELLANT

Versus

MUSLIM EDUCATION SOCIETY
& ORS. .....RESPONDENTS

J U D G M E N T

Dr D Y CHANDRACHUD, J A Division Bench of the High Court of Gujarat dismissed a Letters Patent Appeal filed by the Appellant. The LPA arose out of the dismissal of a Special Civil Application under Articles 226 and 227 of the Constitution by a learned Single Judge on the ground that it was not maintainable. In arriving at this conclusion the Division Bench relied upon a judgment rendered by a five-Judge Bench of the High Court in Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and Anr[1]., in which it was held that a Special Civil Application under Articles 226 and 227 of the Constitution is not maintainable where the court or tribunal whose order is sought to be quashed is not impleaded as a party to the proceedings. The Appellant assails the judgment of the Division Bench. 2 The Appellant was employed as an Assistant Teacher

on 30 June 1978 in a school conducted by the first Respondent, which is a minority institution. On 25 June 2002 a chargesheet was issued to the Appellant alleging that between 29 November 2001 and 15 December 2001, he had proceeded on a pilgrimage without prior permission and was absent without sanctioned leave. Apart from this allegation, which constituted the first article of charge, the second was that whereas in his application for withdrawal from the provident fund, the reason of the pilgrimage was shown to be Haj, the application for leave indicated a pilgrimage to Umrah. The Appellant denied the charges. Upon a departmental inquiry, the charges were found to be established and the Appellant was dismissed from service on 13 January 2004. The Appellant moved the Gujarat Higher Secondary Education Tribunal for challenging the order of dismissal. On 13 June 2006, the Tribunal dismissed the application.

3 Aggrieved by the order of the Tribunal, the Appellant instituted a Special Civil Application under Articles 226 and 227 of the Constitution before the High Court. Besides seeking to challenge the order of the Tribunal and the punishment of dismissal, the Appellant sought consequential reliefs for treating him in service until October 2005 when he attained the age of superannuation and the grant of pensionary benefits.

4 The learned Single Judge of the High Court dismissed the writ petition on 24 December 2012 on merits holding that the charge of misconduct stood established and there was no illegality in the view taken by the Tribunal or in the decision of the disciplinary authority. An LPA under Clause 15 of the Letters Patent was thereupon filed.

5 The Division Bench by its judgment dated 28 March 2014 held that the appeal was not maintainable. From the record, it appears that though the Tribunal was not impleaded as a party to the Special Civil Application, it was impleaded to the LPA. Be that as it may, the High Court relied upon a judgment of a Bench of five-Judges of that court in Gujarat State Road Transport Corporation (supra). The judgment, inter alia, holds that where a Special Civil Application is described as one under Articles 226 and 227 of the Constitution and the court or tribunal whose order is impugned is not made a party, the application would not be maintainable. In such an event, the objection to maintainability would – it was held - not be cured merely by impleading the tribunal or court to the LPA against a judgment of the Single Judge.

6 The issue whether a tribunal or court whose order is challenged in proceedings under Articles 226 and 227 of the Constitution is a necessary party to the proceedings has been considered in a judgment of this Court in Sh Jogendrasinhji Vijaysinghji Vs. State of Gujarat and Ors[2]. The judgment of this Court has also adverted to the view that was taken in the judgment rendered by a Bench of five Judges of the Gujarat High Court, noted above. After considering the position in law emanating from the earlier decisions of this Court, the judgment holds thus:-

> "43……..Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all

> required to defend their own order, and in that case such tribunals need not be arrayed as parties. To give another example:- in certain enactments, the District Judges function as Election Tribunals from whose orders a revision or a writ may lie depending upon the provisions in the Act. In such a situation, the superior court, that is the High Court, even if required to call for the records, the District Judge need not be a party. Thus, in essence, when a tribunal or authority is required to defend its own order, it is to be made a party failing which the proceeding before the High Court would be regarded as not maintainable."

7 The Gujarat Secondary Education Act 1972 was enacted by the State legislature for the regulation of secondary education in the State. Section 2(o) defines the expression private secondary school to mean a secondary school which is not owned, managed or sponsored by the Central or the State Governments. In order to be a registered school under Section 2 (s), the school has to be registered by the Gujarat Secondary and Higher Secondary Education Board under Section 31. Section 39 provides for the constitution of a tribunal. Section 38 confers upon the tribunal the jurisdiction to decide certain disputes. Section 38 provides as follows:

> "38. Dispute to be decided by Tribunal- (1) Where there is any dispute or difference between the manager of a registered private secondary school and any person in service of such school as head-master a teacher or a member of non-teaching staff, which is connected with the conditions of service of such person, the manager or, as the case may be, the person may make an application to the Tribunal for the decision of the dispute.
>
> (2) As from the appointed day the State Government or any officer of the State Government shall have no jurisdiction to decide any such dispute pending before the State Government or any officer of the State Government immediately before the appointed day shall, as soon as may be, after the appointed day, be transferred to the Tribunal for its decision." Under Section 39 (4) the tribunal is empowered to decide among other things a dispute of the nature referred to in sub-Section (1) of Section 38 or an appeal under sub-Section (5) of Section 36. Under sub-Section (5) of Section 36 a person aggrieved by an order of dismissal, removal or reduction in rank has a remedy of an appeal before tribunal. Section 39 (9) provides for the orders which can be passed by the tribunal upon finding that the dismissal, removal or reduction in rank of a headmaster, teacher or member of the non-teaching staff is unlawful or unjustified.

Section 39(9) is in the following terms:

> "(9) Where any order of dismissal, removal or reduction in rank of a headmaster, a teacher or a member of the non-teaching staff of a registered private secondary school is decided by the Tribunal to be wrong, unlawful or otherwise unjustified, the Tribunal may pass an order directing that the head master, the teacher or, as the case may be, the member of the non- teaching staff concerned shall be reinstated in

> service, or as the case may be, restored to the rank which he held immediately before his reduction in rank, by the manager, and the manager shall forthwith comply with such direction." The tribunal, in other words is constituted both as an original and an appellate adjudicating forum: an original forum to decide disputes under Section 38 (1) and an appellate forum under Section 39(5).

8 The tribunal is not required to defend its orders when they are challenged before the High Court in a Special Civil Application under Articles 226 and 227. The lis is between the management and a member of its teaching or non-teaching staff, as the case may be. It is for the person aggrieved to pursue his or her remedies before the tribunal. An order of the tribunal is capable of being tested in exercise of the power of judicial review under Articles 226 and 227. When the remedy is invoked, the tribunal is not required to step into arena of conflict for defending its order. Hence, the tribunal is not a necessary party to the proceedings in a Special Civil Application.

9 The Appellant instituted a proceeding before the tribunal to challenge an order of dismissal passed against him in disciplinary proceedings. Before the tribunal, the legality of the order of dismissal was in question. The lawfulness of the punishment imposed upon the Appellant was a matter for the employer to defend against a challenge of illegality in the Special Civil Application. The tribunal was not required to defend its order in the writ proceedings before the learned Single Judge. Even if the High Court was to require the production of the record before the tribunal, there was no necessity of impleading the tribunal as a party to the proceedings. The tribunal not being required in law to defend its own order, the proceedings under Articles 226 and 227 of the Constitution were maintainable without the tribunal being impleaded.

10 For these reasons, we hold that the High Court was in error in dismissing the LPA on the ground that it was not maintainable. Consequently, the judgment and order of the Division Bench dated 28 March 2014 is set aside and LPA 86 of 2014 is restored before the High Court for disposal on merits.

11 Since the disciplinary proceedings relate to a chargesheet which was issued fourteen years ago, we would request the High Court to endeavour an expeditious disposal. We clarify that all the rights and contentions of the parties on merits are left open for decision by the High Court.

12 The Civil Appeals are allowed in the above terms. No costs.

.....CJI [T S THAKUR] .....J [A M KHANWILKAR] .....J [Dr D Y CHANDRACHUD] New Delhi AUGUST 22, 2016.

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[2] [2014 GLH 1]

[4] (2015) 9 SCC 1