

Gujarat High Court

Suthar vs District on 7 April, 2010

Author: Ks Jhaveri,&Nbsp

Gujarat High Court Case Information System

Print

SCA/7736/1995 3/ 5 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION No. 7736 of 1995

For
Approval and Signature:

HONOURABLE
MR.JUSTICE KS JHAVERI

=====

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 ?

=====

SUTHAR
VIJAYSINH BIJALSINH - Petitioner(s)

Versus

DISTRICT
PRIMARY EDUCATION OFFICER & 2 - Respondent(s)

=====

Appearance
:
MR
RD DAVE for
Petitioner(s) : 1,
MR RA MISHRA for Respondent(s) : 1,
RULE
SERVED for Respondent(s) : 2 -
3.

=====

CORAM

:

HONOURABLE

MR.JUSTICE KS JHAVERI

Date
: 07/04/2010

ORAL
JUDGMENT

By way of present petition, the petitioner has inter alia prayed for quashing and setting aside the impugned order dated 30th June 1995 passed in Appeal No.353 of 1994 by respondent No.3 against the petitioner and quashing and setting aside the impugned order of dismissal dated 12th May 1994 passed by the respondent No.1 against the petitioner as well as for grantnig consequential benefits and reliefs of reinstatement and continuity of service and backwages.

When this matter came up for final hearing before this Court (Coram : C.K. Thakkar, J) on 11th October 1995, this Court passed the following order :

Rule.

To be heard along with Spl.C.A. No.12311 o 1994 and allied matters.

Notice as to interim relief, returnable on 20th November 1995.

It is pertinent to note that the said Special Civil Application No.12311 of 1994 and allied matters have been disposed of vide judgment dated 02nd February 1996 passed by this Court (Coram : M.S. Parikh, J). It would be beneficial to reproduce the said order as under :

1. Heard thee learned Advocate for the petitioner as also learned Advocates for Respondents No.1 & 2 and the learned Government Pleader.
2. This petition is directed against the decision of Primary Education Tribunal, District Education Committee, District Junagadh, rendered on 20th July 1994 in Appeal No. 101 of 1994 dismissing the petitioner's Appeal.
3. Unlike the material facts in Special Civil Application No._____ and allied matters where by a common Judgment the Appeals have been remanded. The petitioner herein faced charges, one of which is regarding producing a false/bogus certificate of caste for obtaining employment as primary teacher and there is prosecution launched in that respect by C.I.D.(Crime). It is not in dispute that the petitioner was given opportunity before the concerned authority pursuant to the directions issued by this Court. The petitioner could have produced his original

certificate before the said Authority or even before the Primary Education Tribunal. This matter is pending before this Court for quite long, but no original Certificate has, either, been produced or shown before this Court. It is from this stand point that the learned Counsels appear on behalf of the respondents have made reference to number of Judgments rendered by this Court. In Special Civil Application No.8627 of 1994 between Arvinbhai Dahyabhai Adhyaru V/s. the District Panchayat & anr., the allegation was of procuring the employment by producing the forged marksheet and this Court (Coram : M.R.Calla, J.) by Judgment dated 18.1.1995 dismissed the petition and discharged the Notice. In Special Civil Application No.8612 of 1994 between Patel Kiranben Kantilal v/s. District Panchayat and others, this Court (Coram : J.M.Panchal, J.) by order dated 25.11.1994, took a similar view in similar set of circumstances. One of such matters went before L.P.A. Bench in L.P.A. No. 709 to 714 of 1994 in Special Civil Application No. 8609 of 1994 and other matters. The Letters Patent Bench (Coram : B.N. Kirpal, CJ, as His Lordship was then and A.N. Divecha, J.) rendered following decision :-

"We find no merit in these appeals. The action was taken against the appellants and on the allegation that the Secondary School Certificate Examination marksheets which were produced were forged. Despite the opportunity of hearing having been granted no evidence was produced by the appellants to satisfy the authority that the marksheets produced were genuine. Even in the Special Civil Applications filed in this court and now in these appeals no effort has been made to secure a certificate or a duplicate marksheet from the S.S.C. Board in order to satisfy the court that the contention of the respondents is not correct. Legal pleas are sought to be taken by the appellants to the effect that because a complaint has been filed inquiry cannot be proceeded with. There is no merit in this. We also do not find any merit in the contention of the learned counsel for the appellant that the onus of proof was on the respondents. We do not find any merit in this contention also. The Appeals are dismissed."

4. The gist of the reasoning is that whereas on one hand the opportunity was made available to the concerned petitioner to show cause. Such petitioner failed to avail of the same by producing the evidence to satisfy the Authority that the documents produced by the concerned petitioner was genuine, the burden of being on the concerned.

5. Hence in the facts and circumstances of the present case this petition deserves to be dismissed. Rule is discharged. No order as to costs.

Thus, when the issue involved in the present petition is already decided by this Court vide above cited judgment rendered in Special Civil Application No.12311 of 1994 and allied matters, the present petition is required to be disposed of.

In view of aforesaid, the present petition is hereby disposed of accordingly. The parties to abide by the decision rendered in the said Special Civil Application No.12311 of 1994 and allied matters. Rule is discharged accordingly with no order as to costs. Interim relief, if any, stands hereby vacated. Liberty to revive in case of difficulty.

(K.S.

Jhaveri, J) Aakar Top