



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4024 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

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 or any order made thereunder ?	

NILESHBHAI KHUSALBHAI CHAUHAN
 Versus
 REGISTRAR GENERAL & 1 other(s)

Appearance:

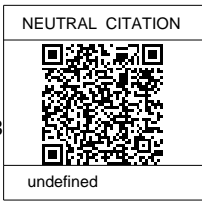
MR KAMLESH B MEHTA(2381) for the Petitioner(s) No. 1
 MS MAMTA R VYAS(994) for the Petitioner(s) No. 1
 MR MAYANK CHAVDA, ASST GOVERNMENT PLEADER for the
 Respondent(s) No. 2
 MS TRUSHA K PATEL(2434) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 18/12/2023

CAV JUDGMENT

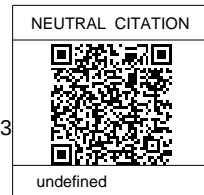
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)



1. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the impugned order of the High Court on its administrative side recommending that the petitioner be dismissed and the dismissal order passed by the State Government.

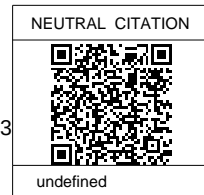
2. Facts in brief are as under:

2.1 The petitioner was selected as Judicial Magistrate, First Class by a notification dated 30.12.2005. He was appointed on 05.01.2006 on probation for a period of two years whereafter he was confirmed and was posted in various districts. The petitioner was on Earned Leave for the period from 24.04.2013 to 10.05.2013 and according to the petitioner during such period, a news item appeared regarding issue of certified copies published at the instance of one Mr. Nalin Patel, President of Vadodara Bar. While on leave, therefore, he brought



it to the notice of the Principal District Judge and personally met him. It is the case of the petitioner that narrating the entire episode, he addressed a letter dated 12.06.2013 to the District Judge. Taking this letter as a letter using intemperate language against the concerned administrative Judge and the Principal District Judge and because the letter indicated that unless and until the issue is resolved, the petitioner will not report for duty, the High Court on the administrative side on 12.03.2014 issued a charge-sheet.

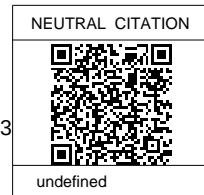
2.2 Two charges were levelled against the petitioner namely (1) that the petitioner had made baseless allegations against the administrative judge of the high Court and the concerned Principal District Judge using undignified language and (2) unauthorized absence from duty for the period from 13.05.2013 to 11.07.2013.



2.3 In response to the charge-sheet the petitioner responded by filing a written statement denying the charges and submitting that the charges were misconceived. An Inquiry Officer was appointed who by his report dated 30.12.2014 held both the charges as proved. A show-cause notice together with the Inquiry Officer's report was issued to the petitioner to which the petitioner responded by a communication dated 13.02.2015. The High Court on its administrative side recommended his dismissal from service and by an order dated 28.10.2015 the petitioner was dismissed from service which is the subject matter of challenge in this petition.

3. Ms. Mamta Vyas, learned counsel for the petitioner would make the following submissions:

3.1 That the letter dated 12.06.2013 only indicated the anguish of the petitioner to the extent that the

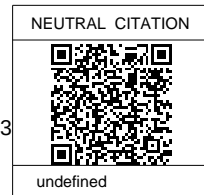


lawyers were proceeding on strike despite a judgement of the Apex Court. The letter nowhere indicated any use of any intemperate or undignified language and therefore could not have been made an issue so as to warrant a charge-sheet.

3.2 That it was with an intention to uphold the dignity of judicial institutions that the petitioner requested the District Judge to resolve the issue and till such an amicable resolution is arrived at, he chose to remain absent. It could not be termed as unauthorized absence.

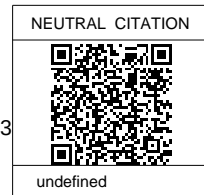
3.3 That the entire narrative, if appreciated in true spirit of the letter dated 12.06.2013, would indicate that redressal of a genuine issue was sought whereas the District Judge threatened the petitioner to give an adverse report to the High Court.

3.4 That the entire service record of the petitioner



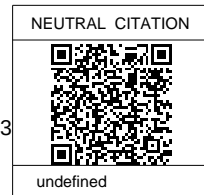
would indicate that there was not a single allegation of corruption or misconduct otherwise. She would rely on a decision of the Hon'ble Apex Court in the case of **K.P. Tiwari vs. State of Madhya Pradesh [AIR 1994 SC 1031]** and submit that the Hon'ble Apex Court had observed that the lower judiciary officers work under a charged atmosphere and are constantly under psychological pressure. Every error, however gross it may look, should not therefore, be attributed to improper motive. The judges in the higher courts have also a duty to ensure judicial discipline, however, higher courts must not publicly express lack of faith in subordinate judges.

3.5 That the explanation tendered by the petitioner ought to have been accepted inasmuch as the absence could not be said to be purposeful and the petitioner being an honest judicial officer at least on the doctrine of proportionality the punishment of



dismissal was shockingly disproportionate. In support of her submission, she would rely on the decisions of the Hon'ble Apex Court in the case of **B.C. Chaturvedi vs. Union of India and others [(1995) 6 SCC 749]** and in the case of **Chairman cum Managing Director, Coal India Ltd. and Others vs. Mukund Kumar Chaudhary and others [(2009) 15 SCC 620]**.

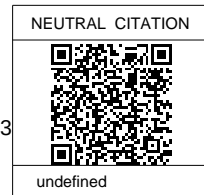
4. Ms. Trusha Patel, learned advocate appearing for respondent no. 1 would submit that in the circumstances of the case, the penalty of dismissal was just and proper. Even in the past, the petitioner has been in the habit of addressing letters using intemperate language and making baseless allegations. Reading the letter dated 12.06.2013, she would submit that it was highly unbecoming of a judicial officer to abandon his duties which would tantamount to going on strike.



4.1 Ms. Patel would invite the court's attention to a response filed by the petitioner to the charge-sheet and indicate that the petitioner continued to use intemperate language by branding the issuance of a charge-sheet as a design.

4.2 Reading the Inquiry Officer's report, Ms. Patel would submit that based on the evidence on record, the charges are proved on the basis of preponderance of probabilities and therefore this court in exercise of powers under Article 226 of the Constitution of India should not interfere with the order.

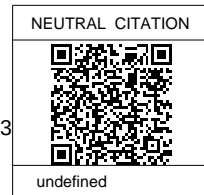
4.3 Ms. Patel would invite the court's attention to the report dated 13.07.2015 of the Committee where the petitioner was given an opportunity of hearing wherein after having admitted the charges, the committee had observed that the conduct on the part of the delinquent officer does not befit a judicial



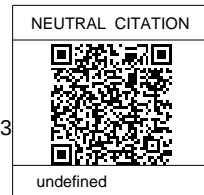
officer.

5. Having considered the submissions made by the learned counsels for the respective parties, at the outset, this court is conscious of the fact that in the case of judicial review in matters of disciplinary proceedings where the charge has been proved on the basis of preponderance of probabilities, the court should be loathe in interfering. Proceeding to examine the Inquiry Officer's report in light of the charges levelled against the petitioner would indicate that it is not even the case of the petitioner that the departmental proceedings were defective and/or in violation of principles of natural justice. Keeping this in mind, we proceed further to examine the legality and validity of the order of dismissal.

6. Reading the letter dated 12.06.2013 which triggered the episode indicates that the petitioner addressed a letter to the District Judge raising



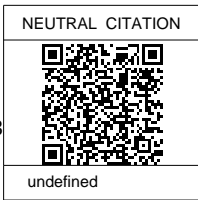
grievances against the President of the District Bar Association. It is his case that the Bar proceeded on strike without a just cause and in violation of the decision of the Apex Court. Thus far and no further, the conduct of a Judicial Officer could not be a matter of scrutiny as an officer of the judiciary, but the matter would not rest here. The Judicial Officer concerned, i.e. the petitioner herein in the letter so addressed expressed an opinion that the whole judicial system was facing a rot by virtue of such elements in the Bar and the concerned administrative judge of the High Court as well as the Principal District Judge tantamounts to directly or indirectly helping the system in encouraging setting in a systematic destruction of the judicial system. Obviously, a judicial officer may be justified in venting his anguish against the system but in doing so the language used in the letter would indicate that he roped in the administrative judge of the High Court and the District Judge in saying that these



elements were encouraging and cooperating in bringing such a systematic decline.

6.1 The Judicial Officer did not stop here. He further informed the Principal District Judge that as long as the issue was not resolved he would not report for duty. He therefore without applying for leave remained absent for the period from 13.05.2013 to 11.07.2013. It will be in the fitness of things to quote the findings of the Inquiry Officer in context of the misconduct so reflected in the behaviour of a judicial officer.

“Even assuming that the delinquent was depressed due to family disputes, he could have, as a judicial officer, avoided the intemperate language in the letter and while penning the letter, the control over the language should not have been forgotten and ought to have had made a committed comprehensive endeavour to control the baseless allegations made in the letter. The delinquent being a Judicial Officer, the decision making process expected from him to apply restraint, ostracize perceptual subjectivity, make his emotions subservient to his reasoning and think dispassionately. He is expected to be

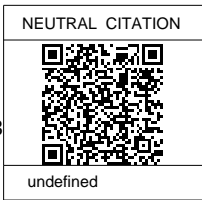


guided by the established norms of judicial process and decorum. ... A judge is required to remember the humility and respect for temperance and chastity of thought are to be bedrock of apposite expression. In that context the rhetoric becomes sans reasons and without root. It is likely to blinden the thinking process.”

6.2 In context of the petitioner abandoning his service, the Inquiry Officer observed as under:

“The aforesaid act of the delinquent shows the intention of the delinquent to desert from service and go on leave unauthorizedly. The intention of the delinquent was to go on strike which is clear from his letter dated 12.06.2013 and when an employee intentionally absents himself from a duty, the same would amount to unauthorized leave.”

7. Viewing unauthorized absence of an ordinary employee, may perceive a different perception. Similar standards cannot and should not be applied in case of a Judicial Officer who abandons his service in defiance by addressing a letter to his Principal District Judge that unless a particular issue is not resolved he shall not report for duty. The report of the committee on the



administrative side of this court, has therefore, rightly recorded that such a conduct on the part of the delinquent officer is not befitting the Judicial Officer.

8. I have therefore viewed the case in that perception. The argument of the learned counsel for the petitioner that the punishment of dismissal is shockingly disproportionate and therefore also it deserves interference on merits and needs reconsideration cannot be accepted.

9. For the aforesaid reasons, we hold that the order of dismissal dated 28.10.2015 passed by the State of Gujarat on the recommendations of the High Court is just and proper and therefore no interference is called for in the petition. Petition is accordingly dismissed. Rule is discharged.

(BIREN VAISHNAV, J)

(NISHA M. THAKORE, J)

DIVYA