
(2014) 03 MP CK 0055

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5225 of 2006 (s)

Balram Gumasta

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2014) 4 MPHT 201 : (2014) 2 MPLJ 462

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : A.M. Trivedi and Mr. S.K. Tiwari, for the Appellant; Rajesh Tiwari, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

K.K. Trivedi, J.—The petitioner working as a Patwari was issued a show cause notice on 28th May, 2005 proposing to impose a major penalty on account of certain misconducts, as indicated in the said show cause notice. It was alleged that the petitioner was taken in custody and sent to civil prison for non-payment of the maintenance amount to his wife, by an order of the Judicial Magistrate and he had remained in Sub Jail Mandla w.e.f. 15.3.2005 to 13.4.2005. The petitioner made an application for voluntary retirement and when he was called upon to make a statement, he did not disclose this fact. The petitioner was found absent from duty on certain occasions. He was called upon to submit his reply in writing. A reply was submitted by the petitioner and it was stated that since he was fallen ill, he could not appear to attend his duties and, therefore, the period of leave was required to be regularized. It was stated that because the payment of maintenance to wife, as directed by the competent court u/s 125 of the Criminal Procedure Code, was not made by him, he was sent to civil prison. However, he was not responsible for any other misconduct, as alleged. After hearing the petitioner, an order was issued on 22nd June, 2005 by the Sub Divisional Officer dismissing the petitioner from service by imposing a major penalty under Rule 10

of the Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to as "the Rules"). The petitioner preferred an appeal before the Collector Mandla, but that too was dismissed on 30.1.2006. Therefore, this writ petition is required to be filed. Upon notice of the writ petition, a return has been filed by the respondents contending inter-alia that the petitioner deliberately concealed the fact relating to his confinement in civil prison. He was not keeping good health, as was alleged, but no material was made available. Timely the application for grant of leave was not made by the petitioner and in view of this, after giving an opportunity of hearing, if a penalty is imposed on the petitioner, no wrong is committed by the respondents. It is thus contended that these aspects were rightly considered by the appellate authority and the appeal of the petitioner was rightly dismissed. Therefore, no interference in the order is called for in this writ petition.

2. After hearing the learned counsel for the parties at length and perusal of the record, one thing is clear that before imposing major penalty of dismissal from service on the petitioner, a detailed enquiry, as required under Rule 14 of the Rules aforesaid, was not conducted. The opening lines of Rule 10 of the Rules itself prescribe that the major penalty can be imposed only after following the procedure as laid down under Rule 14 of the Rules. The penalty of dismissal from service is a major penalty, which is not in dispute. That being so, before imposing such a penalty, at least a regular departmental enquiry should have been conducted against the petitioner and after proving of the misconduct the penalty should have been imposed on the petitioner. That being so, the order passed by the disciplinary authority is not sustainable in law. This particular aspect was not considered by the Collector while hearing the appeal of the petitioner and, therefore, the order of the Collector is also equally bad in law. Now the question would be that in case an enquiry is required to be conducted, whether steps can be taken without the reinstatement of the petitioner in service or not? It is settled in law that unless the orders of termination, dismissal or removal from service are not set aside and unless an employee is not taken back in service, no further departmental proceedings can be done by the employer. As a result, the petitioner is required to be reinstated in service and an opportunity is to be granted to the respondents to initiate proceedings against the petitioner for the alleged misconduct in accordance to the Rules aforesaid. The question whether the petitioner was unauthorizedly absent from duty is still required to be considered by the departmental authorities.

3. That being so, the writ petition is allowed. The orders dated 22nd June, 2005 (Annexure P-9) and 30.1.2006 (Annexure P-11) are hereby quashed. The petitioner be reinstated in service and for the period of absence w.e.f. 22nd June, 2005 till the date of reinstatement petitioner be paid 50% of the back wages. For the period of absence earlier than the aforesaid dates, the respondents would conduct an enquiry and will regularize the period of absence according to law. The writ petition is allowed to the extent indicated hereinabove. However, there shall be no order as to costs.