
(1991) 04 MP CK 0019
In the Madhya Pradesh High Court
Case No : S.A. No. 118 of 1985

Balramprasad Patel

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 25-04-1991

Acts Referred:

Fundamental Rules — Rule 54

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 29

Citation : (1991) 36 MPLJ 904 : (1991) MPLJ 904

Hon'ble Judges : S.D. Jha, J

Bench : Single Bench

Advocate : D.D. Vyas, for the Appellant; S.K. Pawnekar, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Jha, J.

This Second Appeal by the plaintiff-Government Servant - Balramprasad, was by order dated 24-4-1985 admitted for final hearing on the following substantial question of law : -

"Whether, on the facts and circumstances of the case, the Court below has erred in not holding that the order Ex. P/I was passed by the Conservator of Forests violating the provisions of fundamental rules"?

Facts material for decision of this appeal are that the plaintiff was posted as a forester at Para in District Jhabua, M.P. A departmental enquiry on certain charges was initiated against him and he was suspended on 11-9-1975 and dismissed from service on 28-2-1977. Plaintiff presented an appeal to the Conservator of Forests, Indore which was dismissed on 6-12-1977. The plaintiff then preferred review petition against the aforesaid order of the Conservator of Forests to the Chief Conservator of Forests, Bhopal, who by order under challenge, Ex. P/I, dated 6-12-1978 ordered as follows. (The order is in Hindi,

and its English translation is given) :

"Charge No. 2 is also not proved against the Government servant,

Charge No. 3 as to having collected Rs. 65/- in excess of grazing charges from residence of Dolatpura and Shyamapura is partially proved against the applicant Government Servant and considering his long service his review petition dated 3-5-1978 is accepted, he should be taken again in service and he shall remain for two years on the minimum of the pay scale of the forester. During this period he shall not be eligible for any increment. After expiry of the period his pay shall be fixed at his previous pay. The period between the date of his dismissal from service till the date of his joining service shall be treated as leave without pay. If it is in excess of 120 days the matter shall be submitted for Government to approval."

The plaintiff after his order took charge as forester on 5-1-1979 in Khargone district. He was thereafter served notice u/s 80, CPC through his counsel Shri A. N. Pradhan, Ex. P/4, on State Government complaining that the order of Chief Conservator of Forests dated 16-12-1978, Ex. P/I, ordering deduction in pay, withholding annual increment for two years of the plaintiff and treating the suspension period as leave without pay was in violation of principle of natural justice, equity and good conscience and liable to be quashed. On his demand contained in the notice not being fulfilled the plaintiff filed suit in the Court of Civil Judge Class I, Jhabua on 26-11-1981.

In the plaint it was claimed that the three punishments imposed by the Chief Conservator of Forests in review order dated 16-12-1978, Ex. P/I were without any opportunity of hearing of show cause notice to the plaintiff and were, therefore, arbitrary and illegal. Relief claimed was that the punishment part of the order dated 16-12-1978 should be declared to be illegal and the plaintiff held eligible for full pay and other allied benefits for the period 11-9-1975 to 5-1-1979 i.e. period of his dismissal from service till the date of his rejoining.

The suit was resisted by the State of M. P. In the written-statement, it was denied that the Chief Conservator of Forests had in Ex. P/I fully exonerated the plaintiff or that he was reinstated. It was submitted that in respect of charges Nos. 1 and 2 he was given benefit of doubt and with respect to charge No. 3 he was found partially guilty and considering the plaintiff's long service against the punishment of dismissal he was awarded three punishments as set out in the order. It was submitted that the order was in accordance of F. R. 54. It was also denied that the plaintiff was not given proper opportunity or that the order offended principle of natural justice. On these contentions defendant prayed for dismissal of the suit.

The Civil Judge Class I, Jhabua, by judgment dated 20-10-1983 dismissed the suit with costs on the plaintiff, plaintiff's appeal to the District Court by judgment and decree dated 23-1-1985 was dismissed by Additional Judge to the Court of District Judge, Jhabua with costs on the plaintiff-appellant. Hence the present

second appeal.

At the hearing of the appeal Shri D. D. Vyas, learned Advocate representing the plaintiff-appellant relying on a decision of the Supreme Court in *M. Gopalkrishna Naidu v. State of M. P.* 1968 MPLJ 49 :1968 J LJ 170 (also reported in 1968 MPLJ 48) submitted that before imposing the three punishments as to reduction of pay, withholding of increments and treating the period of suspension as leave without pay, the reviewing authority, Chief Conservator of Forests had not given any opportunity of showing cause of hearing against the order and, therefore, the punishment part of the order was bad in law and violated F. R. 54. He, therefore, submitted that the appeal should be allowed and punishment part of the order, Ex. PI, should be set aside.

Controverting submission of Shri Vyas, Shri S. K. Pawnekar, Government Advocate, representing State relying on Division Bench Judgment of this Court in *Chandrika Prasad v. Union of India*, 1971 MPLJ 64 : 1971 J LJ 116 submitted that in the present case also the plaintiff had not been fully exonerated by the Chief Conservator of Forests and therefore the decision in *M. Gopalkrishna Naidu's* case will not be applicable. He submitted that the division bench decision of this Court had noticed the Supreme Court decision in *M. Gopalkrishna Naidu's* case and in spite of the decision as the Government servant was not fully exonerated, held the same distinguishable and inapplicable.

Shri D. D. Vyas was questioned whether it is plaintiff-appellant's case that while presenting review petition to the Chief Conservator of Forests, he had requested for hearing which was denied to him. Shri Vyas denied that such was the case of the plaintiff. His case was that by imposing the punishment of withholding increments, reduction of pay and denying full pay and allowances during the period of suspension without complying with the principles of natural justice, F. R. 54 was violated.

At this stage it may be stated that F. R. 54 governs payment of pay and allowances for the period the Government Servant before his reinstatement remained absent from his duty or for the period of suspension before such reinstatement. Therefore, the argument based on F. R. 54 would have no relevance or application to lesser punishments of withholding of increments and reduction of pay substituted for the penalty of dismissal imposed by the lower authorities. In later part of the judgment it has been held that in view of Rule 29 of M. P. Civil Services (Classification, Control and Appeal) Rules 1966 no further compliance with the principles of natural justice was necessary on part of reviewing authority, Chief Conservator of Forests of M. P., when he substituted the lesser punishment of withholding increments and reduction of pay for the penalty of dismissal imposed by the lower authorities. In view of this assuming contention of Shri Vyas relying on *M. Gopalkrishna Naidu's* case (supra) were correct, all that might be done would be to call upon the competent authority to consider the question of pay and allowances during the period of suspension de novo after complying with the principles of natural justice.

During argument it was felt that the Chief Conservator of Forests exercised power of review Under Rule 29 of M. P. Civil Services (Classification, Control and Appeal) Rules, 1966 as head of the department under sub-rule (1) and clause (ii). Proviso to sub-rule (1) provides for a reasonable opportunity of making a representation of hearing inter alia where the penalty imposed is sought to be enhanced by the reviewing authority. In the instant case the reviewing authority had not and looking to its nature could not enhance the penalty of dismissal imposed against plaintiff by the lower authorities. He had imposed lesser penalties as to withholding of increments, reduction of pay. The order passed by the Chief Conservator of Forests would also not appear to be one of reinstatement. This aspect was put to the parties. Shri D. D. Vyas had no particular comments to make. Shri S. K. Pawnekar, Government Advocate, stated that this provision reinforces argument of the State of M. P. that as the reviewing authority had itself not imposed any penalty nor enhanced the punishment of dismissal imposed on the plaintiff but reduced the same, no show cause notice of hearing was necessary. Parties had no particular comments to make on the point whether order Ex. P/1 reinstated the plaintiff.

In *Chandrika Prasad v. Union of India*, (supra) Division Bench of this Court in para 5 of the judgment observed and held as under : -

"The order disallowing his full pay during the period of suspension has been challenged. It has been contended that it is against Rule 54 of the Fundamental Rules. In order to appreciate the argument the said rule may be quoted below : -

(1) When a Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order -

(a) Regarding the pay and allowance to be paid to Government servant for the period of his absence from duty; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent allowances are admissible :

Provided that the payment under clause (2) or clause (3) shall be subject to all other conditions :

Provided further that such proportion of such pay and allowance shall not be less than the subsistence and other allowances admissible Under Rule 53.

(4) In case falling under clause (3), the period of absence from duty shall be

treated as period spent on duty for all purposes.

(5) In a case falling under clause (3), the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government Servant so desired, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant."

It has been submitted that the petitioner was entitled to show cause notice in respect of the order of not giving him full pay during the suspension period. He relies on the decision of the Supreme Court in *M. Gopalkrishna Naidu v. The State of Madhya Pradesh* in this collection. In particular he bases his argument on the following observations :

"In our view Fundamental Rule 54 contemplates a duty to act in accordance with the basic concept of justice and fair play. The authority therefore had to afford a reasonable opportunity to the appellant to show cause why clauses (3) and (5) should not be applied and that having not been done the order must be held to be invalid".

In the above mentioned Supreme Court decision the Government servant was exonerated of all charges and clause (2) could be applicable but in the present case he has been found guilty of some charges and was not exonerated. Therefore, there was no question of suspension order being wholly unjustified. In this case there was no choice but to apply clauses (3) and (5). It is clearly distinguishable from the case decided by their Lordships of the Supreme Court.

As in the present case the plaintiff-appellant was not fully exonerated, in view of the above Division Bench decision of this Court the sub-rules (3) and (5) would be applicable to the case and there was no question of compliance with principle of natural justice before the reviewing authority.

Apart from the above, the source of power of review of the Chief Conservator of Forests in Rule 29 of the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966. The provision after setting out who may exercise the power in sub-rule (1), about the order that may be passed by the reviewing authority stipulates : -

Rule 29 xx xx xx xx

(a) Confirm, modify or set aside the order; or

(b) Confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit; provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the commission where such consultation is necessary."

From the power that the reviewing authority may exercise and the proviso reproduced above, it would be seen that the reviewing authority was himself not imposing any penalty against exoneration which might have been made by lower authority nor was enhancing any penalty imposed against the plaintiff Government-servant. The major penalty of dismissal from service was reduced into lesser penalty of reduction of pay, withholding of increments. The order cannot be said to the detriment of plaintiff. Having regard to the proviso reproduced above, in such a situation compliance with principles of natural justice on the part of the reviewing authority, the Chief Conservator of Forests would appear unnecessary and excluded.

The order of Ex. P/I is in Hindi. After observing that the charges proved against the Government Servant were not that serious and that the punishment awarded by the D.F.O. and the Conservator of Forests was excessive, inter alia ordered :-

^^bUgsa Isok esa iqu% fy;k tkdj 2 lky ds fy, ouiky ds in ij U;wure osru esa yk;k tkrk gSA bl vof/k esa ouiky ds in ij osruo`f) vkfn ugha feysxhA vof/k lekIr gksus ij vius iwoZ osru ij fu/kkZfjt fd;s tk;sxsA**

Doubt arose whether expression would mean reinstatement. The reason for doubt was that expression is not in accordance with meaning of reinstatement given in different English Hindi Dictionaries. As parties had no particular comments on this doubt, it is not necessary to further discuss the point or give Hindi meaning of "reinstatement" given in different dictionaries. The appeal would have to be decided on the premise that expression - iqu% Isok esa fy;k tkdj would mean reinstatement.

From proviso to Rule 29 of M. P. Civil Services (Classification, Control and Appeal) Rules, 1966 where the order passed by the reviewing authority is in favour of the government servant, compliance with principles of natural justice would appear to have been excluded. The order denying full pay and allowances for the period of absence of duty, period of suspension, would also appear to be saved under sub-rule (d) pass such other orders as it may deem fit. But. in view of the Division Bench decision in Chandrika Prasad's case (supra) which has noticed and distinguished the Supreme Court decision in M. Gopalkrishna Naidu's

case in case where the Government servant has not been fully exonerated held compliance with principles of natural justice unnecessary, this point does not require to be further deliberated. Following the Division Bench decision, the denial of full pay and allowances for the period of suspension would have to be upheld.

To conclude reduction of pay and withholding of increments is not relatable to F. R. 54. The denial of full pay and allowances during the period of suspension in view of the Division Bench decision of this Court in Chandrika Prasad's case (supra) is upheld.

As a result the appeal is dismissed and decree passed by the lower Court maintained. Considering the facts and circumstances of the case, parties shall bear their own costs as incurred throughout. Pleader's fees according to schedule or certificate whichever may be less. A decree be drawn up accordingly.