
(2009) 05 MP CK 0038
In the Madhya Pradesh High Court

Bharat Prasad Shukla

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 3 MPJR 133

Hon'ble Judges : Sanjay Yadav, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Krishn Kumar Lahoti, J.

The appellant has invoked jurisdiction of this Court u/s 2(1) of M.P.Uchch Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam 2005, by assailing order dated 6.9.2006 in W.P. No. 97/2002, by which the writ petition filed by the petitioner under Article 226/227 of the Constitution of India, was dismissed on merits.

The appellant challenged the order of suspension dated 17.7.2001 Annexure P-1, show cause notice dated 3.1.2002 Annexure P.1-A and prayed that he may be reinstated with full salary, allowances, with interest w.e.f 17.7.2001 and to treat the period from 17.7.2001 till the date in continuity of service and grant of all consequential benefits.

The petition was filed on following facts:

(a) The appellant was a member of approved confirmed staff of Shram Dham Arts & Commerce College, Kymore (hereinafter referred to as "College" for short) and was working as Head Clerk-cum- Accountant, for the last more than 16 years before the date of filing of petition, in the scale of Rs. 1320-2040. The college was receiving grant-in-aid from the State Government for payment of salary to the teaching and non-teaching staff of the College. In the college

provisions of M.P.Ashaskiya Shikshan Sansthan (Adhyapakon Tatha Anya Karmcharion Ke Vetano Ka Sanday) Adhiniyam, 1978 (hereinafter referred to as "Adhiniyam" for short) and Rules made thereunder are applicable. As per the provisions of M.P.Ashaskiya Shikshan Sansthan (Adhyapakon Tatha Anya Karmcharion Ke Nilamban) Niyam, 1978 (hereinafter referred to as "Niyam of 1978" for short) suspension of an employee, if it is proposed to be placed under suspension for more than 90 days, the management shall within 15 days of receipt of order of suspension by the employee concerned shall make an application to the competent authority for its approval as required by Sub-clause (4) of clause -A of Section 6 of Niyam of 1978. A detailed procedure is prescribed under the Niyam of 1978 for completion of enquiry. In absence of approval of the order of suspension said order was revocable immediately after expiry of 90 days.

(b) The appellant was placed under suspension vide order Annexure P-1 dated 17.7.2001. The competent authority for approval of suspension order was Commissioner-cum-Additional Director respondent No. 2. The order was not sent for the approval of the competent authority and in absence of approval of suspension order, immediately on expiry of 90 days suspension order was ceased to be effective.

(c) That during the period of suspension appellant was not paid any subsistence allowance, till the filing of petition. The appellant was also not paid salary for the period April till the date of filing of petition besides other dues.

(d) The appellant made a representation to the respondents Nos. 4 & 5 for revocation of suspension order dated 20.8.2001.

(e) That on 18.8.2001 respondent No. 5 issued a letter Annexure P-7 to the petitioner in respect of various charges against the petitioner and the petitioner was asked to submit his reply. The allegation of the petitioner, against the notice Annexure P-7, was that respondent No. 5 being an enquiry officer was not entitled to issue such charge sheet and only disciplinary authority was competent to issue such chargesheet. The reply of chargesheet could be furnished before the Disciplinary authority and only after submitting the reply the disciplinary authority was entitled to direct an enquiry or to drop the matter.

(f) That without extending an opportunity to the petitioner to submit his reply before the disciplinary authority, one Dr. Kailash Sharma, Principal of Shri Srinivas Sarawgi Mahavidyalaya, Katni was appointed as enquiry officer vide Annexure P-8. As per the Rules namely the M.P.Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ko Padachyut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 (hereinafter referred to as "Niyam of 1983" for short) only the head of the institution was to be appointed as an enquiry officer. But head of another college could not be appointed as an enquiry officer.

(g) The petitioner objected to letter Annexure P-8 that the appointment of such enquiry officer was bad in law and such enquiry officer was not entitled to proceed with the enquiry. On the aforesaid grounds, it was submitted that

suspension order and the enquiry proceedings be quashed and if an enquiry is required to be conducted then the enquiry officer be appointed as per the Rules.

The respondents Nos. 1 to 5 filed the reply and submitted as under:

(i) That in so far as suspension of petitioner is concerned respondent Nos. 1 to 3 supported the case of the petitioner that he was entitled to be reinstated in service with all consequential benefits as per law.

(ii) So far as Annexure P-1 is concerned, it was not required to be approved by the State.

(iii) That the respondent Nos. 1 to 3 had not directed suspension of the petitioner. They were only approving authority. No proposal was sent to the respondents after passing of the order Annexure P-1 for its approval, so there was no question of any approval by the respondents.

(iv) In para 6 it was submitted that if the petitioner was aggrieved by the order Annexure P-1, he ought to have preferred an appeal as per the law.

Learned Counsel for respondent Nos. 4 & 5 contested the case on merits. In nutshell the reply of respondent Nos. 4 & 5 was as under:

(i) The petitioner was appointed under the provisions of College Code. The statute No. 28 provides: selection, appointment and removal of an employee of an affiliated college to a University. The respondent College was affiliated to the Rani Durgawati University and the provisions under the College Code were applicable. Under part V of the College Code the Principal was Chief Executive Officer and the academic head of the College and was entitled to initiate disciplinary action against the Class-III & IV employees. The relevant provisions reads thus:

Part V - The Powers & Duties of the Principal:

(1) The Principal shall be the Chief Executive Officer and the academic head of the college and he shall participate in the teaching work of the college.

(2) ...

(3) The Principal shall have the following powers namely -

(a) ...

(b) ...

(c) to appoint, promote, grant leave, suspend and take disciplinary action against the class III and class IV employees of the college;

Provided that where disciplinary action is taken by the Principal, an appeal shall lie with the Governing body ;

Part VI - Suspension, Penalties & Disciplinary Authority : Rule 30(1) The

appointing authority may be an order place an employee, including a teacher, of the college under suspension -

- (a) Where a disciplinary proceeding against him is contemplated or is pending, or
- (b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation, inquiry or trial.

N.B. - In case of teachers the Governing Body and in case of their employees the Principal shall be deemed to be the appointing authority.

(2) An employee of the college shall be deemed to have been placed under suspension by an order of the appointing authority -

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty eight hours;
- (b) with effect from the date of his conviction, if in the even of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

(3) An order of suspension made or deemed to have been made shall continue to remain in force until it is modified or revoked by the appointing authority, but in cases other than criminal proceedings it shall not operate for more than six months.

(4) During the period of suspension, the employee shall be allowed subsistence allowance equal to fifty percent of the emoluments last drawn by him.

(5) If the employee is exonerated from the charge or charges are subsequently withdrawn he shall be reinstated in his post and shall be paid full salary for the period of his suspension after deducting the subsistence allowance already paid to him.

Rule 31 -

(1) ...

(2) ...

(3) No order imposing any of the penalties specified in sub-paragraph (1) above other than fine shall be made except in accordance with the procedure imposing penalties on Government servant prescribed by the Madhya Pradesh Government and in force at the time the appointing authority orders an inquiry against the college employee concerned.

Provided that no proposal to reduce in rank or pay a teacher confirmed in the service of the college or to remove or dismiss him from service or to retire him compulsorily shall be deemed to have been passed by the Governing body unless

it is supported by a majority of two thirds of the members present at the meeting of the Governing body in which it comes up for consideration and where a decision is duly taken it shall not be given effect to unless it is approved by the Executive Council.

Rule 32 (1) - Where any penalty is imposed on an employee concerned may prefer an appeal to the governing body of the College within thirty days from the date on which a copy of the order appealed against is delivered to the appellant.

(ii) The working of the petitioner was not satisfactory, therefore he was served with a show cause notice Annexure P-7 dated 17.7.2001, to show cause why he be not suspended. The petitioner in reply denied the allegations. The respondents were not satisfied with reply and the petitioner was placed under suspension on 17.10.2001. The chargesheet alongwith relevant documents was supplied to the petitioner vide memo dated 18/21.8.2001 and 8.10.2001 Annexure R- 4/B and Annexure R-4/C. Thereafter petitioner was served an amended show cause notice Annexure R-4/C of which reply was submitted by the petitioner on 20.10.2001 Annexure R-4/D.

(iii) That as per the appointment of petitioner dated 13.2.1985, the service conditions were governed by the College code and rules framed by the UGC accordingly disciplinary proceedings were initiated against the petitioner under the college code.

(iv) So far as appointment of an enquiry officer is concerned, the respondents stated that Principal of the College herself initiated action against the petitioner therefore the respondents for a fair enquiry appointed Principal of another College to conduct an enquiry which was duly intimated to the petitioner on 14.9.2002 Annexure R-4/E. Thereafter the enquiry officer fixed the date and place of enquiry.

(v) The petitioner was extended full opportunity to submit his reply to show cause notice, but except raising an objection to the proceedings, petitioner had neither submitted his reply nor appeared before the enquiry officer. The enquiry officer proceeded with the enquiry. By letter dated 17.12.2001 Annexure R-4/F petitioner was asked to appear before the enquiry officer on 22.12.2001. Inspite of this petitioner had not appeared before the enquiry officer, as a result of which the proceedings were closed and the enquiry officer submitted his report.

(vi) Then a show cause notice dated 3.1.2002 was sent through the peon to the petitioner to submit reply which was received by the wife of petitioner on 3.1.2002, but after receiving the same she refused to acknowledge the receipt and concerned peon submitted his report stating that the wife of petitioner though received the report, but had refused to sign. A copy of the report was filed as Annexure R-4/J.

(v) That the petitioner was again served with 2nd show cause notice alongwith enquiry report on 3.1.2002, but he had deliberately made false statement in the

petition that the show cause notice dated 3.1.2002 was not served on the petitioner, but it was thrown in his house on 5.1.2002.

(vi) That though the petitioner was suspended on 17.7.2001 but inspite of this he neither handedover charge nor appeared in the office of respondents till filing of return.

Before the learned Single Judge the contentions were raised by the petitioner as under:

(1) That the order of suspension was bad in law as it was not approved within a period of 90 days.

(2) That the enquiry was conducted by an unauthorised person.

(3) That the petitioner was entitled for subsistence allowance and salary after deemed revocation of the suspension order.

(i) The learned Single Judge found merit in the contention of appellant that the suspension order was not approved by the competent authority, hence the suspension stood revoked after 90 days from the date of suspension.

(ii) The second contention of the petitioner that enquiry was conducted by an unauthorised person, the learned Single Judge found that the head of the institution of another College was appointed as an enquiry officer and no prejudice was caused to the petitioner. The person was holding the same rank. The respondent Nos. 4 & 5 rightly not considered proper to hold an enquiry by the Principal of the institution as she was personally aware of several facts and was to pass final order also. On the aforesaid reasons appointment of Dr. Kailash Sharma as enquiry officer was affirmed by the learned Single Judge.

(iii) The show cause notice was rightly issued by respondents and no prejudice was caused to the petitioner. Apart from this petitioner replied to the show cause notice which was considered by the institution and it was found unsatisfactory. The petitioner if advised so may file reply to second show cause notice on which a decision shall be taken by the authority in accordance with law by a reasoned order after due consideration of reply or representation if filed by the petitioner.

(iv) In so far as the salary and allowances are concerned, learned Single Judge found that it would depend upon the final outcome of the proceedings and the authority concerned shall examine the aforesaid question and pass orders in that regard. On the aforesaid ground the learned Single Judge dismissed the writ petition. However six weeks time was allowed to the petitioner to file reply to show cause notice and one month time was allowed to the authority to take the final decision. This order is under challenge in this petition.

Shri Rohit Arya, learned senior Advocate appearing for the appellant submitted that the appellant was a confirmed employee and entire procedure of Rules of 1983 ought to have been followed for enquiry. Under Rule 7(1)(e) only the head of the institution ought to have been appointed as enquiry officer, so appointing

another Principal was without jurisdiction.

That against the petitioner there were no allegations in respect of financial irregularities and in absence of which petitioner can not be dismissed or removed from the service. Apart from this, the petitioner has attained the age of superannuation, so no further enquiry is required in the matter.

That after revocation of suspension order petitioner was entitled for salary since 17.7.2001, but the salary was not paid to the petitioner.

That on 20.10.2001 an objection was raised by the petitioner, but the said objection was not decided by the Disciplinary authority till date. Reliance was placed to the judgment of Apex Court in UCO Bank and Another Vs. Rajinder Lal Capoor, and a judgment of this Court Ram Prakash Gaya Prashad v. State of M.P. and Ors. 2008(4) MPLJ 35.

Shri Deepak Awasthy, learned G.A., reiterated the contention as were made in the return.

Shri G.S. Baghel, learned Counsel for respondent Nos. 4 & 5 supported the order and submitted:

(i) That the appellant was rightly suspended by the respondents. He referred to an affidavit, filed in this writ appeal, in which it was specifically stated that appellant contested the election of Panchayat in the year 1999-2000 and was elected as Panch of Gram Panchayat and thereafter he was elected as Sarpanch of the same Gram Panchayat. A certificate in this regard Annexure R-1 was filed. In the year 2000, again the appellant was elected as Sarpanch of the Gram Panchayat and was discharging the duties. A copy of the certificate issued by the Chief Executive Officer, Janpad Panchayat Maihar was filed on record as Annexure R-2.

(ii) That the appellant was appointed as Head Clerk-cum-Accountant on 29.7.1985, on probation, the appointment order contained following conditions:

2. You will devote your whole time to the service of the College and shall not without the written permission of the Governing Body of the College, engage yourself directly or indirectly in any other trade or business or other remunerative work which may in fare with the proper discharge of your duties.

In additions to your normal duties you will be required to perform such other duties as may be assigned to you by the Principal in connection with the social intellectual and athletic activities of the College or Examinations or administration or keeping of discipline in the College.

You will not be a member or be otherwise associated with any political party or any organisation which takes part in politics.

That inspite of specific conditions in the appointment order appellant participated in the political activities and he was also an active member of INTUC. In the year

1995 he was elected as President of Kymore Refractory Mazdoor Congress Kymore as per Annexure R-3. That in the year 1998 he was elected as Secretary of Bokaro Steel Mines, Stone Mining Workers Union, Village Gairtalai as per Annexure R-4. That the village Gairtalai is situated at a distance of 50 kms from Kymore and he remained absent from the duty because of Union activities.

(iii) That appellant was permanent resident of village Magraura. His name was appearing in the list of said Gram Panchayat. Since 1979 petitioner was elected as Panch, Up-Sarpanch and Sarpanch of the same Gram Panchayat. In spite of specific condition in the appointment order petitioner had participated in the political activities, which was contrary to his appointment order. For this appellant never sought any permission from the respondents.

(iv) That after the suspension of appellant, a letter was sent to the Commissioner, Higher Education, Bhopal for grant of approval of suspension Annexure R-5. On the aforesaid letter the Commissioner, Higher Education asked the respondents to explain under what circumstances the Head Clerk-cum-Accountant was suspended as per Annexure R-6. The respondents informed to the Commissioner the allegations labelled against the appellant. Thereafter no reply was received from the Commissioner in respect of the approval. Then the chargesheet was issued to the appellant and the appellant was asked to submit his reply. The appellant had not filed any reply to the show cause notice, but challenged the suspension order in the writ petition, which has been immediately decided by the impugned order.

(v) That as per the Adhinyam of 1978 it was not necessary to get approval within a period of 90 days.

(vi) That the answering respondents had not enquired the matter themselves, but the governing body of the institution appointed Principal of Shri Srinivas Sarawgi Mahavidyalaya, Katni as enquiry officer to avoid any charge of partiality by the appellant.

(vii) That the appellant had not participated in the enquiry and the enquiry was completed by the enquiry officer, who had submitted his report and a second show cause notice was issued to the appellant. Because the proceedings were stayed by the writ Court, no further action was taken in the matter. Raising the aforesaid contention, it was submitted that this appeal is without any merit and may be dismissed.

In this appeal only 3 questions emerge for the consideration of this Court.

1. Whether the enquiry officer appointed by the respondent was not competent, to be changed and head of the institution deserves to be appointed as an enquiry officer.

Whether the enquiry against the petitioner can continue even after attaining age of superannuation.

Whether the petitioner is entitled for salary and other emoluments as his suspension order stood revoked by the Learned Single Judge.

So far as first contention is concerned, the relevant provision is Rule 7 of the Niyam of 1983 which reads thus:

7. Enquiry Officer - (1) After the written statement is received from the teacher or other employee in accordance with Rule 5 or if no statement received, within the time specified a reference shall be made -

(a) in the case of a teacher of pre-primary, primary and middle school to the concerned District Education Officer;

(b) in the case of a teacher of Higher Secondary School to the concerned Divisional Superintendent of Education;

(c) in the case of a teacher or Lecturer of a college, to the Secretary Madhya Pradesh Uchha Shiksha Anudan Ayog; and

(d) in the case of a teacher of a technical institution to the Director of Technical Education for appointing an enquiry officer whereupon the officer/Ayog, applied to, shall appoint such other officer as he deems fit, to act as the enquiry officer;

(e) in the case of an employee, the Head of the Institution shall be appointed as an enquiry officer.

(2) The enquiry officer, after his appointment shall enquire into the charges framed against the teacher or other employee as provided in Rule (8).

In this case it is not in dispute that the Principal of the respondent, Dr. Smt Laxmi Pathak issued show cause notice to the petitioner and she herself issued chargesheet to the appellant. Infact the entire proceedings before initiation of the enquiry took place under the signature of Dr. Smt. Laxmi Pathak. As per the case of appellant, for conduction of the enquiry, Dr. Laxmi Pathak being the head of the institution ought to have been appointed as an enquiry officer. The learned Single Judge considered this aspect in para 10 of the judgment and found that in the facts and circumstances, if the head of the institution, of another college, was appointed as enquiry officer no prejudice was caused to the appellant. The person was holding same rank, it was rightly considered by the Principal of the respondent institution not to conduct herself the enquiry, as she was aware personally of several facts and was going to participate in the process of passing the final order, also to the fact that no prejudice was caused to the appellant because of Head of another institution was appointed as enquiry officer. Merely on the ground that the enquiry officer ought to have been appointed as per the rules, the appointment of any other officer cannot be set aside. The aforesaid contention has no merit, particularly in the facts and circumstances of this case. The judgment relied on by the petitioner in Ram Prakash (supra), is not applicable in the present case. The Apex Court had an occasion to consider this aspect in H.V.Nirmala v. Karnataka State Financial Corporation and Ors. (2008) 7

SCC 639, the Apex Court held that the appointment of a incompetent enquiry officer may not vitiate the entire enquiry proceedings. The authority may lack inherent jurisdiction in which case the order passed would be a nullity, but it may commit a jurisdictional error while exercising jurisdiction. The legal rights conferred upon the employees in this behalf may be different under different statutes. In this case, the authority is the disciplinary authority who appointed an enquiry officer. An enquiry officer if in the peculiar facts and circumstances of the case has been appointed for an independent enquiry, the disciplinary authority has not committed any error in appointing an independent enquiry officer. Recently the Apex Court in *Union of India (UOI) and Others Vs. Prakash Kumar Tandon*, considering a question held that disciplinary proceedings must be fairly conducted. An enquiry officer is a quasi judicial authority. He therefore must perform his functions fairly and reasonably, which is even otherwise the requirement of principles of natural justice. If disciplinary proceedings have not been fairly conducted an inference can be drawn that the delinquent officer was prejudice thereby.

The case law relied on by the appellant in *Rajinder Lal Capoor (supra)* the Apex Court was considering imposition of punishment on a retired employee and considering the fact that an employee who already stands retired from service cannot be imposed a punishment of removal or dismissal from service. In *Ram Prakash Gaya Prashad (supra)* the question for consideration before the Single Bench of this Court was entirely different. The learned Single Judge was considering the question of action of an enquiry officer who acted as presenting officer. In that circumstances the learned Single Judge found that the enquiry proceedings stand vitiated, but in the facts of present case both the aforesaid judgments are not applicable.

Now in the light of the aforesaid pronouncement of the Apex Court factual position in the case may looked into. It is not in dispute that the head of the institution is the principal who issued various notices and chargesheet to the appellant. His allegations starts from Annexure P-1 the suspension order and thereafter various letters writtren by Smt. Laxmi Pathak. In these circumstances Smt. Laxmi Pathak who issued notice and chargesheet to appellant was having personal knowledge of the facts and if the same authority is directed to conduct an enquiry, grave prejudice may cause to the appellant and the principles of natural justice may be violated. In these circumstances, if another head of the institution, Principal of Shri Srinivas Sarawgi Mahavidyalaya, Katni was appointed as enquiry officer, no jurisdictional error was committed by the respondents. Such enquiry officer, who is an independent person has no concern with the institution of respondent No. 4 and 5, can be expected to act independently without any prejudice and fairly. Apart from this no allegations have been made by the appellant against the said enquiry officer. Apart from this on his report final decision will be taken by the disciplinary authority. In these circumstances, if a independent person has been appointed as an enquiry officer no prejudice is caused to the appellant and in this regard we affirm the order passed by the

learned Single Judge.

Now second contention of the appellant, that after attaining the age of superannuation of the appellant, no such enquiry can continue may be looked into. In this case initially chargesheet was issued on 21.8.2001 in which various allegations of serious nature were made against the appellant. The appellant was issued various letters since 1985 which are referred in Annexure A-3. Apart from this appellant is continuously holding office of Panch, Up-Sarpanch and Sarpanch, and at present also he is holding office of Sarpanch. These allegations deserves to be enquired into by the respondents. Without holding an enquiry the matter cannot be decided by the respondents. The appellant though has been superannuated, but the enquiry which was initiated against the appellant before his attaining the age of superannuation can very well continue. Apart from this, appellant's claim that he is entitled for all the arrears of salary and emoluments is to be considered and decided immediately after completion of enquiry, in these circumstances if the enquiry continues even after the age of superannuation, against the appellant, no fault is found.

So far as contention of appellant that he is entitled for salary and other emoluments immediately after deemed revocation of suspension order is concerned, though the appellant's contention appears to be just, but considering peculiar facts that the appellant was continuously holding various other offices, still he is holding the office of Sarpanch, he never attended the office after suspension, and infact the employment of appellant was mere a formality, while he was and is continuously engaged in political activities, in these circumstances, the appellant is not entitled for payment of aforesaid amount at this juncture and in this regard we direct that the aforesaid amount be paid to the appellant immediately after completion of enquiry, subject to result of the enquiry and decision of disciplinary authority. The Learned Single Judge rightly allowed appellant to submit reply to the show cause notice within a period of six weeks from the date of the order which order is also just and proper. Though the appellant has not filed reply to the 2nd show cause notice, but in the interest of justice learned Single Judge if allowed such an opportunity to the appellant by extending six weeks time from the date of order, then it will provide due opportunity to the appellant to submit his contention before disciplinary authority. However the respondent Nos. 4 & 5 shall take a final decision in the matter within a period of thirty days from the date of receipt of reply of the show cause notice, if any.

In the result, this appeal is found without merit and is accordingly dismissed with no order as to costs.