

(2012) 11 MP CK 0028
In the Madhya Pradesh High Court
Case No : W.A. No. 968 of 2012

Board of Director M.P. State Ware Housing Corporation and Others APPELLANT

Vs

Anil Kumar Saxena RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Citation : (2013) ILR (MP) 21

Hon'ble Judges : T.K. Kaushal, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : P.K. Kaurav, for the Appellant; Shobha Menon with Surabhi Ahirkar, for the Respondent

Final Decision : Dismissed

Judgement

Krishn Kumar Lahoti, J.—This appeal is directed against an order dated 16.5.2012 in W.P. No. 886/2003 by which learned Single Judge of this Court allowed the writ petition, quashed the order of punishment imposed upon the respondent, after departmental enquiry. The appellants have assailed the aforesaid order on the following grounds:-

(i) That the learned Single Judge erred in quashing the punishment and exonerating the respondent from the charges.

(ii) That the respondent had used a communication between Chairman and Managing Director for filing a writ petition and in this regard a charge-sheet was duly issued to the respondent. It is also submitted that without obtaining any permission from the department, the respondent visited Jabalpur for filing a writ petition before the High Court. It is submitted that it was sufficient against respondent for punishment, but the learned Single Judge erred in allowing the writ petition.

2. Smt. Shobha Menon, learned Senior Advocate supported the order. It was submitted that the Chairman of the appellants recommended cancellation of the

transfer order by a communication addressed to the Managing Director. When no action was taken by the Managing Director even on the basis of the recommendation of the Chairman, respondent was constrained to file a writ petition before the High Court for his statutory right. It was submitted that for filing a writ petition, respondent was under an obligation to visit Jabalpur for invoking extraordinary jurisdiction of the High Court and without visiting Jabalpur, writ petition could not have been filed. It is also submitted by her that in the peculiar facts and circumstances, there was no necessity for obtaining permission of the appellants for visiting Jabalpur for filing a writ petition.

3. We have heard learned counsel for the parties and perused the record.

4. Facts of the case are that the respondent was working as Technical Assistant under the appellants at the Headquarters at Bhopal from where he was transferred on 12.9.2001 to Khotagara in the State of Chhattisgarh. The respondent after receiving the transfer order met personally to the Managing Director of the appellants but no action was taken for modification of the transfer. Again he had tried to seek an appointment with the Managing Director but it was refused. Thereafter on 14.9.2001, he had met with the Chairman of the appellants and submitted his grievance. It appears that on the basis of aforesaid, a letter was sent by the Chairman to the Managing Director for modification of the transfer order of the respondent. In the letter, it was recommended that respondent may be posted anywhere within the State of M.P. and not at Katghora which is in State of Chhattisgarh. Aforesaid letter was communicated to the Managing Director, but in spite of this, respondent was relieved by the Managing Director, so he had filed a Writ Petition bearing No. 4985/2001 before the High Court in which an order was passed on 23.11.2001. Relevant portion of the order is referred thus:-

The petitioner has also placed on record endorsement made by the Chairman on representation filed by the petitioner which clearly mentions that as far as possible employees of the State of M.P. should be transferred within the State of M.P. The endorsement made by the Chairman is also required to be taken into consideration by the Managing Director. Hence, in the circumstances, it is directed that the order of transfer of the petitioner shall be kept in abeyance till the matter is decided afresh in the light of the order of Chairman and also the fact that petitioner's wife is serving in State of M.P. and others problems pointed out by the petitioner. It is directed that the petitioner shall be allowed to work at Bhopal where he was posted on 12th September, 2001. The petitioner is further directed to file a detailed representation along with a certified copy of this order within ten days from today. The same may be considered and decided sympathetically by the competent authority/respondent No. 2. Petitioner is at liberty to assail the order if passed in derogation of his interest afresh.

5. It appears that after the order passed by the High Court, respondent continued at Bhopal at the Headquarters of the appellants but suffered a charge-sheet which was issued on 29.12.2001. In nut-shell, the charges were that

respondent without following the procedure had visited the Chairman, he had received the letter of the Chairman, though he was not authorised, with malafide intention he had not handed over the envelope on the same day to the Managing Director. Charges No. 4 and 5 relate to visiting Jabalpur for filing of a writ petition without seeking prior permission. Charge No. 6 relates to allegation that the original representation submitted by the respondent to the Chairman on 14.9.2001 was filed before the High Court which was appearing in the order dated 23.11.2001 of the High Court. A regular enquiry was conducted in which charges were found proved and the respondent was punished with the penalty by reversion to a lower grade as Junior Technical Assistant on 28.3.2002. Against this order, an appeal was preferred but it was dismissed by the Chairman on 31.7.2002. These orders were under challenge before the High Court. Learned Single Judge considered the matter and held in Paras 10 and 11 thus:-

10. In view of forgoing, it is apparent that the recommendation of the Chairman made in favour of the petitioner, has been duly considered by this Court and the directions have been issued to the Managing Director to consider the representation in the light of the aforesaid recommendation and also the family circumstances of the petitioner and till then he has been allowed to continue at Bhopal. After passing such an order by this Court, the act of the petitioner to meet with the Chairman was found to be unbecoming and showing it within the purview of indiscipline and the charge sheet was issued. Charge No. 1, 2 and 6 relate to meeting with the Chairman on 14/9/2001 without following the procedure, for obtaining the recommendation from the Chairman on the representation submitted by the petitioner and to put it before this Court where upon the order was passed on 23/11/2001. Charge No. 4 and 5 relates to leaving the headquarter without obtaining the permission from the competent authority and during the said period he was not on medical leave and went to Jabalpur from Bhopal for filing the writ petition. Charge No. 3 has been dropped by the Managing Director. However, it is apparent that the entire controversy emerged on account of the order of transfer Annexure-P/1 whereby the petitioner was shifted from Headquarter Bhopal to the Branch Office, Katghora within the state of Chhattisgarh. The Managing Director has refused to meet him and on meeting the Chairman has recommended for modification of said order and posting the petitioner any where within the State of Madhya Pradesh looking to the fact that his wife is posted in the State of Madhya Pradesh, but after passing the order by this Court, charge sheet was issued to him.

11. On the anvil of the aforesaid facts, it is to be examined whether the order impugned reverting the petitioner is justified and up to what extent. After perusal of the record of the enquiry, it reveals that after issuance of the charge sheet and on receiving reply thereof, charge No. 1, 2, 4 and 5 found as admitted, and on account of such admission enquiry was not conducted while charge No. 3 was dropped and the enquiry was conducted only on charge No. 6. Looking to the reply Annexure-P/10 filed by the petitioner, it is apparent that he has denied all the allegations as levelled in the charge sheet. While giving the explanation, it

is stated by him that when the Managing Director has refused to meet him, then only he met the Chairman who recommended in his favour and such recommendation was taken note by this court. Reply to the other charges also make it clear that it is an explanation of the allegation as given in the charges, however, in the opinion of this Court, there is no admission by the petitioner in regard to Charge No. 1, 2, 4 and 5. It is to be further noted here that charge No. 1 relates to meeting with the Chairman without following the procedure. Learned counsel for the respondents is unable to show what is the procedure prescribed to meet with the chairman. In absence of the said procedure, it cannot be presumed that the petitioner has met with the Chairman without following the procedure, however, the said charge cannot be found to be proved. The recommendation made by the Chairman on the representation submitted by the petitioner has been duly considered by this Court and thereafter direction has been issued to consider the representation by the Managing Director in view of the observations as quoted herein above. In such circumstances, it cannot be inferred that the petitioner has met with the Chairman to create differences between the Chairman and the Managing Director particularly when an employee wants to meet with his employer for making recommendation in his favour. The said act cannot be accepted to be an act of the petitioner unbecoming to the conduct of an employee and with a view to create differences between them particularly when the recommendation has been found genuine, therefore, relied upon by this Court and the directions have been issued to the Managing Director to consider the representation of the petitioner. In the said context, in the opinion of this Court, as per clause 21 which deals with the rule of conduct of the employees, the act of the petitioner cannot be said to be contrary to the norms of conduct and unbecoming. More so the procedure for imposition of the penalty which is adopted by the Managing Director himself in the context as aforementioned is not as per fair procedure.

6. Accordingly, relying on the judgment of the Apex Court in Mathura Prasad Vs. Union of India (UOI) and Others, the learned Single Judge allowed the writ petition and quashed the order of punishment. This order is under challenge in this appeal. Though learned counsel appearing for the appellants assailed the aforesaid order but from the perusal of the averments, charges and findings recorded by the enquiry officer, we find that in fact no case was made out even for initiating a departmental enquiry. Merely, respondent had used the communication sent by the Chairman to the Managing Director for modification of the transfer order cannot be said to be a ground for issuing a charge-sheet. Apart from this for filing a writ petition before the High Court though normally permission ought to have been sought by the respondent from the authorities but when the action itself was intended to be taken against the appellants, there was no question of obtaining prior permission for filing a writ petition before the High Court. Normally an employee cannot expect a permission from the employer for grant of permission to an employee for filing a writ petition against the employer. Apart from this, for filing a writ petition, respondent was required

to visit Jabalpur and could not have filed a writ petition from Bhopal. In aforesaid circumstances, learned Single Judge has rightly quashed the order of punishment in which no fault is found. This appeal is found without merit and is dismissed at admission stage with no order as to costs.