

(2020) 08 MP CK 0223
In the Madhya Pradesh High Court
Case No : Writ Petition No. 17512 Of 2019

Brij Kishore Soni

APPELLANT

Vs

State Of M.P. & Ors.

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 323, 325
Madhya Pradesh Civil Services (Classification, Control And Appeal), Rules 1966 — Rule 14
Madhya Pradesh Government Service (Permanent And Quasi Permanent) Rules, 1960 — Rule 12

Citation : (2020) 08 MP CK 0223

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : K.C. Ghildiyal, Vivek Sharma

Final Decision : Allowed

Judgement

1. In this petition filed under Article 226 of the Constitution, the legality, validity and propriety of the punishment order dated 13.08.2019 (Annexure P/10) is called in question by the petitioner.

2. Draped in brevity, the relevant facts are that the petitioner submitted his candidature for appointment pursuant to an advertisement issued by M.P. Professional Examination Board for the post of Constable Excise (Class III Executive). The petitioner was selected and appointed by order dated 18.09.2013 (Annexure P/1). The petitioner was required to fill up an attestation form. In the relevant column (Para 12), the petitioner furnished the desired information. It was clearly mentioned that the petitioner faced criminal case for committing offence under Section 325/34 and 323 of IPC. The Case No.1569/10 was decided on 28.07.2006 and the petitioner's acquittal was based on a compromise (Rajinama).

3. Shri Ghildiyal, Learned counsel for the petitioner submits that the entries of verification form makes it clear that the petitioner has not suppressed any material fact and disclosed all relevant facts. The petitioner was shocked and surprised to receive a show cause notice dated 15.12.2015 (Annexure P/3) wherein the allegation was made by taking assistance of M.P.C.S. (Conduct) Rules, 1965 and M.P.C.S. (CCA) Rules, 1966. The petitioner filed his detailed reply dated 04.01.2016 (Annexure P/4). The petitioner pointed out that he has not committed any misconduct whatsoever. He had disclosed all material facts. By placing reliance on various judgments of High Courts and Supreme Court, it was pointed out that the acquittal even based on compromise amounts to an acquittal. Hence, the petitioner has not committed any misconduct.

4. The department was not satisfied with the reply aforesaid and, therefore, issued a charge sheet under Rule 14 of M.P.C.S.(CCA) Rules on 04.05.2016 (Annexure P/6). After conducting the enquiry, the Enquiry Officer submitted his report on 29.06.2018. The Enquiry Officer has not given any definite opinion regarding guilt of the petitioner. The petitioner filed his response to the Enquiry Officer's report and prayed for dropping departmental enquiry. However, the Disciplinary Authority by impugned order dated 13.08.2019 dismissed the petitioner by invoking Rule 12 of M.P. Government Service (Permanent and Quasi Permanent) Rules, 1960.

5. Shri Ghildiyal submits that the petitioner was duly selected and appointed after due verification of his character and antecedents. In absence of any suppression of fact, the petitioner cannot be said to be 'unsuitable' or it can be said that he has not committed any misconduct. The action of respondents in terminating the services of the petitioner after rendering almost seven years of service is bad in law. More so, when during these seven years, no allegation is made against the petitioner which is related to 'unsuitability'.

6. Shri Sharma, learned Deputy Advocate General supported the impugned order. However, he did not dispute that the petitioner had completely disclosed his previous criminal history. By placing reliance on the judgment of this Court passed in WPS. No.3101/05 (Union of India vs. Smt. Kamla Bai & Anr.) decided on 12.09.2019, it is canvassed that there is a distinction between the 'eligibility' and 'suitability'. The petitioner may be eligible but in view of his previous criminal record, he cannot be said to be 'suitable'. Thus, no fault can be found in the impugned disciplinary proceeding and final order dated 13.08.19. Much emphasis is placed on Para 12 of this judgment. To buttress the same contention, reliance is placed on the order of Supreme Court passed in Civil Appeal No.3046/19 (State vs. Banti). Shri Sharma placed reliance on certain paras of the reply of the department.

7. No other point is pressed by the parties.

8. I have heard the learned counsel for the parties at length and perused the record.

9. A Constitution Bench of Supreme Court in the case of Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 opined that validity of an order of a statutory authority needs to be examined on the grounds mentioned therein. It cannot be supported by assigning additional reasons in reply or in the supplementary reply. Indisputably, in this case, the petitioner apprised the department by furnishing necessary informations about his criminal history while filling Column 12 of the verification form. The department with eyes open considered the petitioner's candidature and appointed him. It is not the case of department that information regarding criminal history, so furnished by the petitioner, had escaped notice of the department. Thus, the department appointed the petitioner after fully knowing about his criminal antecedents/character. After having appointed him, the question is whether after 07 years it was open to the respondents to proceed against the petitioner by taking shelter of Conduct Rules and CCA Rules aforesaid.

10. The Conduct Rules can be invoked when the employee commits a misconduct after entering into the service. As per the averments of the charge sheet, the petitioner has not committed any misconduct whatsoever after entering into the service. Thus, the question of invoking Conduct Rules does not arise. However, the department without considering this aspect issued a charge sheet dated 04.05.2016. The relevant portion of the charge sheet reads as under:-

"आरोप क्रमांक-01

पुलिस अधीक्षक, जिला जबलपुर से चरित्र सत्यापन के परीक्षण के दौरान पाया गया कि, आपके विरुद्ध थाना राड़ी अप.क्र.-55/06 धारा 323, 325/34 भा.द.वि. दिनांक 21/01/06 कायम किया जाकर, चालान क्रमांक-29/06, दिनांक 22/01/06 को पंजीबद्ध किया गया जो माननीय न्यायालय जबलपुर के समक्ष पेश किया गया।

आरोप क्रमांक-02

अति० मुख्य न्यायायिक दण्डाधिकारी, जबलपुर, के आदेश दिनांक 28.07.2006 से राजीनामा के आधार पर धारा 325/34 भा.द.वि. से आरोप से दोषमुक्त किया गया।

आरोप क्रमांक-03

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग के पत्र क्रमांक एफ सी-3-15/2012/1/3 दिनांक 24 नवंबर 2012 के द्वारा सीधी भरती के लिए चयनित उम्मीदवारों के चरित्र सत्यापन की प्रत्याशा में, आपको जारी इस विभाग के आदेश क्रमांक-2773 दिनांक 18.09.2013 से आबकारी आरक्षक के पद पर नियुक्ति दी गयी। नियुक्ति इस शर्त पर दी गई कि, यदि आपके चरित्र सत्यापनकी रिपोर्ट में अयोग्य पाये जाते हो तो, नियुक्ति तत्काल प्रभाव से समाप्त की जावेगी। जिसका उल्लेख नियुक्ति आदेश में शर्त क्रमांक 03 पर स्पष्ट अंकित किया गया है।

आरोप क्रमांक-04

विधि और विधायी कार्य विभाग एवं गृह विभाग से प्राप्त से अभिमत क्रमशः दिनांक 25 अगस्त 2015 एवं दिनांक 10 सितम्बर 2015 में स्पष्ट उल्लेख है कि, संबंधित आबकारी आरक्षक के विरुद्ध अपराधिक मामले में राजीनामा के आधार पर धारा 323, 325 सहपठित धारा 34 भादवि में दोषमुक्ति को गुण-दोषों के आधार दोषमुक्ति मान्य नहीं किया गया है ऐसी स्थिति में संबंधित आबकारी आरक्षक, शासकीय सेवा हेतु उपयुक्त नहीं माना जा सकता है।

श्री सोनी, आबकारी आरक्षक, द्वारा उक्त कृत्य शासकीय कार्य के प्रति धार उदासीनता लापरवाही, अकर्तव्यपरायणता, का उल्लघन का परिचायक होकर मध्यप्रदेश सिविल सेवा (आचरण)नियम 1965 के नियम-3 (1) (एक), 3 (1) (दो) एवं 3(1) (तीन) का उल्लघन है।"

11. A plain reading of Charge No.1,2 and 3 makes it crystal clear that the allegations mentioned therein do not constitute any misconduct on the part of the petitioner. To elaborate, if during police verification it was found that a criminal case was registered against the petitioner, it does not amount to misconduct. Similarly, as alleged in Charge No.2 that the petitioner was acquitted because of 'Rajinama' on 28.07.2006, it does not constitute a misconduct. More so, when there is no iota of suppression about these aspects by the petitioner. Similarly, Charge No.3 refers about a condition of appointment order relating to opinion of police verification about suitability but the same does not fall within the ambit of misconduct. So far the Charge No.4 is concerned, it is averred that the acquittal of petitioner on compromise does not amount to 'acquittal' as per opinion of GAD.

12. In my view, this also does not amount to any misconduct on the part of the petitioner, the Enquiry Officer has not given any opinion whether the petitioner is found to be guilty or not. His opinion reads as under:-

"उक्तानुसार तथ्यों के परिप्रेक्ष्य में अपचारी कर्मचारी के विरुद्ध किसी अपराध में किसी न्यायालय द्वारा दण्डित होना नहीं पाया गया है। अपचारी कर्मचारी के विरुद्ध किसी पूर्व आपराधिक चरित्र सम्बन्धी कोई प्रकरण/घटना जांच के दौरान नहीं पाई गई है। राजीनामा के आधार पर, आपराधिक प्रकरण समाप्त किये जाने के परिप्रेक्ष्य में एवं उक्तानुसार अवर सचिव, विधि की टीप दिनांक 25.03.2013 के अनुक्रम में संस्थित विभागीय जांच विरुद्ध श्री बृजकिशोर सोनी मामले में जांच प्रतिवेदन प्रेषित है।"

13. The Disciplinary Authority under the CCA Rules mainly has two options after receiving the Enquiry Officer's report; (i) he can accept the Enquiry Officer's report, put the employee to notice, if he is found to be guilty and after obtaining his response, impose an adequate punishment; and (ii) he may disagree with the Enquiry Officer's report, by assigning reasons provide a discordant note based on material on record to the delinquent employee, call for response and then impose appropriate punishment.

14. In the instant case, the Enquiry Officer has not held the petitioner as guilty. The Disciplinary Authority has not disagreed with the findings. Yet he has decided to terminate the services of the petitioner. For the first time, he invoked M.P. Government Service (Permanent and Quasi Permanent) Rules, 1960. The petitioner was never put to notice in this regard. Putting it differently, at no point of time, it was informed to the petitioner that the department intends to invoke these rules and he is obliged to submit his response in the light of these rules.

15. At the cost of repetition, in my opinion, the department has committed an error of law in subjecting the petitioner to disciplinary proceeding. Thus, initiation of disciplinary proceeding and imposition of punishment as an outcome of disciplinary proceeding by passing order dated 13.08.2019 cannot sustain judicial

scrutiny. This is well settled that this Court can interfere in the disciplinary proceeding, if the charge sheet does not constitute a misconduct or in other words, charges so mentioned in the charge sheet does not amount to misconduct. Interference can be made if the decision making process is polluted and punishment is uncalled for and unwarranted. In my opinion, all three ingredients on which interference can be made are satisfied in the present case. This is equally settled that when a statute prescribes a things to be done in a particular manner, it must be done in the same manner. The other methods are forbidden [See AIR 59 SC 93 (Baru Ram vs. Prasanni) and (2002) 1 SCC 633 (Commissioner of Income Tax vs. Anjum M.H. Ghaswala and others)] A departmental enquiry instituted for committing misconduct cannot culminate with a declaration of 'unsuitability' as per a different rules of 1960.

16. In view of judgment of Supreme Court in 2007 AIR SCW 6444 (Khursheed & Anr. vs. State of U.P. & Anr.) it cannot be doubted that an acquittal based on compromise indeed amounts to an acquittal. Although it cannot be treated as an "acquittal on merits" or acquittal on "benefit of doubt". In view of this judgment, the opinion of two departments mentioned in Charge No.4 cannot be countenanced.

17. The principles laid down in the case of Smt. Kamla Bai and Banti (supra) on which reliance is placed by learned Dy.A.G. cannot be doubted. The 'eligibility' and 'suitability' are two different facets. If the petitioner was not 'suitable', the employer should not have selected and appointed him. The disciplinary proceeding is not initiated against the petitioner regarding any allegation that he secured employment by misrepresentation or suppression of facts. It is not the case of employer that the petitioner projected himself to be 'suitable' on the basis of any incorrect information. After getting all necessary informations, the petitioner was appointed. During these seven years of his employment also, nothing was pointed out to him which shows that he was 'unsuitable' to perform the duties entrusted to him. Thus, the question of examining suitability in the peculiar facts of this case does not arise. Resultantly, the judgment of Smt. Kamla Bai and Banti (supra) cannot be pressed into service in a case of this nature.

18. At the cost of repetition, in the peculiar facts of this case, it is clear that the petitioner before his termination by order dated 13.08.2019 has already worked for about seven years and there was no suppression fact on his part. He admittedly stood acquitted on the basis of 'compromise'. Thus, the impugned order dated 13.08.2019 cannot be countenanced. Resultantly, the said order is set aside. However, this order passed in the peculiar facts and circumstances of this case shall not be treated as a precedent. The respondents shall reinstate the petitioner with consequential benefits to the petitioner within 60 days from the date of production of copy of this order.

19. The petition is allowed.