
(2015) 02 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10500/2009

Chunni Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 02 RAJ CK 0012

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Deepak Vishnoi, for the Appellant; B.L. Bhati, GC, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—By way of the instant writ petition, the petitioner seeks to assail the legality and validity of the orders (Annex. 7) dated 13.8.2009, order (Annex. 5) dated 7.3.2007 and order (Annex. 3) dated 9.12.2005 and for quashing the charge-sheet (Annex. 1) dated 28.4.2004.

2. The petitioner was posted as a Headmaster in the Govt. Secondary School, Sakrana, Jalore. He was served with a charge-sheet (Annex. 1) dated 28.4.2004 issued by the Director, Secondary Education Rajasthan being the petitioner's disciplinary authority. It was alleged in the charge-sheet that while working on the post of Headmaster in the school, the petitioner failed to discharge his duties with due diligence and was negligent due to which the result of Class X of the petitioner's school fell below the prescribed norms. The petitioner submitted a detailed reply to the charge-sheet stating therein that the result of Class X fell below the norms because the only teacher of the English subject being one Shri Rashid Khan fell ill in the beginning of the academic session 2000-01 and attended the school only for 5 days during the entire session. Shri Rashid Khan passed away on 20.8.2000. The petitioner sent numerous request letters to the higher authorities for posting an English teacher in place of Shri Rashid Khan but his requests were not heeded to. Thus, there was no teacher for imparting

education in English subject to the students of Class X and the scores of the said class fell below expectations due to the low scoring of the students in the English subject alone. The disciplinary authority considered the reply of the petitioner and passed the order (Annex. 3) dated 9.12.2005 holding that the explanation submitted by the petitioner was unacceptable because as per the authority, the petitioner should have used his offices and powers to make alternative arrangements for English teacher and thereby the result could have been improved. The petitioner failed to exercise his powers to make alternate arrangement and therefore, he was guilty of negligence in performance of duties due to which the school's results fell below norms to mere 18.75%. The disciplinary authority accordingly held the petitioner guilty of the charge and imposed upon him a punishment of stoppage of one grade increment without cumulative effect. The petitioner preferred an appeal against the said order (Annex. 3) specifically pleading therein that he had sent numerous communications to the District Education Officer for posting an English teacher in the school but the District Education Officer failed to accede the requests made by the petitioner and thus, the disciplinary authority's order holding the petitioner responsible of negligence in performance of duty was unjust and arbitrary. The appellate authority decided the appeal by order (Annex. 5) dated 7.3.2007 observing that the result of the Class X fell below the parameters only because of poor scoring by the students in the English subject. For the remaining subjects, the result was 68.75%. The petitioner made numerous efforts to seek a replacement for the deceased English teacher and sent number of communications to the superior officers. The appellate authority further observed that in view of the documents submitted by the petitioner, it was evident that he made wholesome efforts to procure the services of an English teacher against the vacant post. Despite the above finding, the appellate authority held that result of the school fell below the prescribed parameters. Finding the punishment of stoppage of one grade increment imposed upon the petitioner to be disproportionate and excessive, the same was modified and instead the petitioner was punished with censure. The petitioner preferred a revision against the rejection of his appeal which came to be dismissed by the order (Annex. 7) dated 13.8.2009. Hence, this writ petition.

3. Learned counsel for the petitioner submits that from a bare look at the order (Annex. 5) dated 7.3.2007 passed by the disciplinary authority and the order (Annex. 3) dated 9.12.2005 passed by the appellate authority, it is evident that the petitioner was held guilty of alleged delinquency without any justification whatsoever. Learned counsel submits that the only English teacher posted in the school passed away in the beginning of the session and therefore, the petitioner was left with no means to provide tuition in English subject to the students of Class X. Despite his limitations, the petitioner made numerous efforts and wrote repeated letters to the higher ups for providing an English teacher but they failed to accede to the requests thus made by the petitioner. Learned counsel submits that the petitioner has been penalized for no fault whatsoever and therefore, the

impugned orders deserve to be quashed and set aside as being unjust and arbitrary.

4. Shri B.L. Bhati, learned GC appearing for the respondents though feebly tried to support the orders under challenge but he too concedes that the responsibility of the result falling below the required parameters could not have been fixed on the petitioner alone looking to the facts and circumstances as available on record.

5. Heard and considered the arguments advanced at the bar and perused the material available on record.

6. The result of the Class X students in the petitioner's school fell below the parameters solely because of low scoring of the students in the English subject. It is an admitted position on the record that the only teacher of English subject in the petitioner's school was Rashid Khan, who passed away in the beginning of the session. The petitioner made numerous efforts to procure the services of an alternative teacher and sent numerous request letters to the higher authorities for providing an English teacher in the school but the same met deaf ears. The disciplinary authority while passing the order (Annex. 3) observed as below:--

7. A bare look at the said finding recorded by the disciplinary authority shows that the burden of the superior officer's failure to perform duties has been fixed on the head of the petitioner without any justification. The observation that the petitioner could have procured the services of teachers by using his powers has no basis whatsoever. It is not in dispute that the petitioner has no powers to recruit teachers on his own and such powers and duties are enjoined on the Education Department and the RPSC. Furthermore, the observations made by the disciplinary authority that the petitioner did not make efforts to make alternative arrangements of an English teacher are patently false as evident from the appellate authority's order. The appellate authority whilst deciding the petitioner's appeal and modifying the penalty observed in its order (Annex. 5) as under:--

8. Despite recording a categoric finding to the effect that the petitioner made all efforts to procure the services of alternate teachers for imparting coaching of English language to the students and made full endeavour to keep the result of the school within the parameters, the appellate authority penalized the petitioner simply for the reason that the result of the school fell below the parameters. Once it was concluded that the responsibility of the result having fallen below the parameters was not that of the petitioner, this Court fails to comprehend as to how the petitioner could have been punished for the same charge. As a matter of fact, the appellate authority should have identified the concerned District Education Officer or the Director concerned to whom the petitioner had submitted numerous representations for providing an alternative English teacher and should have initiated disciplinary action against such officers. The woes of the petitioner are well defined by the latin maxim *nullus commodum capere potest de injuria sua propria* "no man can take advantage of his own wrong". The

superior officers themselves having failed to provide the services of an English teacher in the petitioner's school held him guilty of failing to meet the standards and parameters even though he made the best of the efforts for maintaining the same. If at all anybody was to be penalized in the case, it was the District Education Officer or the Director concerned, who failed to respond to the repeated requests made by the petitioner to provide an English teacher in the school. In view of the positive and categoric findings recorded by the appellate authority (supra) that the petitioner made all efforts to keep the result of the school upto the required parameters by making alternative arrangements and also requested the higher officers to provide an English teacher for this purpose, holding him responsible of failure to discharge duties was totally unjustified and arbitrary.

9. As a result, the writ petition deserves to be and is hereby allowed. The impugned orders (Annex. 7) dated 13.8.2009 passed by revisional authority, order (Annex. 5) dated 7.3.2007 passed by appellate authority and order (Annex. 3) dated 9.12.2005 passed by disciplinary authority are quashed and set aside and the petitioner is exonerated of the charge leveled against him in the charge-sheet (Annex. 1) dated 28.4.2004. He shall be entitled to all consequential benefits.

10. No order as to costs.