
(1985) 10 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 486 of 1985

Deepak Kumar Pandey

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 01-10-1985

Acts Referred:

Madhya Pradesh Labour Service (Class III Non-gazetted Recruitment Rules, 1966 — Rule 6(4))

Citation : (1988) MPLJ 446

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : Y.S. Dharmadhikari and Ravindra Shrivastava, for the Appellant; K.L. Kathal, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.

It is not in controversy that in 1983 the Labour Commissioner, Government of Madhya Pradesh, Indore (respondent No. 2) took steps to fill up certain vacant posts of Labour Sub-Inspectors by taking recourse to the methods of written examination and interview in exercise of powers vested in him under Sub-rule (4) of Rule 6 of the M.P. Labour Service (Class III non-gazetted Recruitment Rules, 1966.

It is also not in controversy that after they had successfully passed a written examination and gone through the interview held for the purpose the petitioner and sixteen other candidates were appointed to the posts of Labour Sub-Inspectors Vide order dated 24-12-1983 (Annexure-F) issued by the Labour Commissioner. According to the said order, the petitioner was posted as Labour Sub-Inspector in the office of Assistant Labour Commissioner at Satna. He joined his duties at Satna on 10-1-1984. Thereafter, in June, 1984, he was transferred from Satna to Bilaspur to the office of Assistant Labour Commissioner, Bilaspur (respondent No. 3) in the same capacity vide order dated 12-6-1984 (Annexure-

I).

It was while the petitioner had been working as Labour Sab Inspector in the office of Assistant Labour Commissioner at Bilaspur in the manner stated above and completed about thirteen months on the said post, that suddenly on 12-2-1985 he received a telegraphic order dated 8-2-1985 (Annexure-J) from the Commissioner which hit him like a bolt from the blue. He was informed by the said order that his services were terminated with immediate effect as a result of his "character verification. It is the said order which is challenged by the petitioner in this writ petition on the grounds of being arbitrary, punitive and violative of Articles 16 and 311 of the Constitution.

Now, the return filed on behalf of the State Government (respondent No. 1) and other Respondents (respondents Nos. 2 and 3) in the present case discloses certain interesting facts. It is not denied by the Respondents that during the entire period of about thirteen months the petitioner had worked and discharged his duties as Labour Sub-Inspector efficiently, honestly and without there being any complaint of any kind whatsoever from the authorities concerned or others. In fact, it is very emphatically pointed out by them that the reason for the termination of the services of the petitioner had nothing to do with anything done by him during the course of his employment. What is clearly suggested by them in their return is that as a result of verification of antecedents of the petitioner it was discovered that the police had instituted some criminal cases against him in the past. It is also suggested that after joining his duties the petitioner had filled up a declaration in the prescribed form on 18-1-1984 but did not disclose his adverse antecedents while doing so. But, then, surprisingly, though the return filed on behalf of the Respondents contains all sorts of details as regards small matters it does not specify anywhere as to what criminal cases had been instituted by the police against the petitioner and when were they so instituted. Similarly, though the Respondents have annexed a blank declaration form (Annexure R-4) along with their return they have for some reason best known to them withheld the declaration form filled up by the petitioner and submitted to them.

However, this Court is pleased to note that in spite of a vague and evasive stand taken by the respondents the petitioner has himself come forward to file a rejoinder mentioning therein certain incidents that had happened during the period he was a student of Kirodimal Government Arts and Science College at Raigarh. These incidents are three in number and happened during the period 1974 to 1976. In view of the vague and evasive stand taken by the Respondents, this Court has no reason to disbelieve that apart from the three incidents pointed out by the petitioner he was not involved in any other matter.

It has been pointed out by the petitioner in his rejoinder that in 1975 when he had been a student of Kirodimal Govt. Arts and Science College at Raigarh he became the President of Chhatra Sangharasha Samiti which was created on a call given by the political leader Shri Jay Prakash Narayan. After the proclamation of

emergency in June 1975, quite a large number of the supporters of Shri Jay Prakash Narayan were detained in custody on the charge of disturbing peace and tranquillity. It was accordingly that the petitioner was also detained u/s 151, Code of Criminal Procedure in August 1975 and the proceedings under Sections 107 and 116, Code of Criminal Procedure were also commenced against him. However, ultimately, the said proceedings were dropped and he was discharged without any condition.

Another incident had taken place in 1974. In the said incident, in connection with the activities of the Students' Union the petitioner and eight other students were involved in a criminal case for alleged offences under Sections 435, 147, 149, 353 and 186 Indian Penal Code. But, then, the said case was finally withdrawn by the prosecution and all the accused were discharged. The third incident took place in 1975. The petitioner and six other students were implicated in a criminal case for alleged offences under Sections 323 and 448, Indian Penal Code on the complaint of one Babulal. However, the said case was ultimately dismissed as a result of the complainant having compounded the offences.

Now, as far as the first of the abovesaid three incidents are concerned, this Court can do no better than to reiterate the view expressed by Chinnappa Reddy, J. in *State of Madhya Pradesh Vs. Ramashanker Raghuvanshi and Another*, . As pointed out by the learned Judge, the whole business of seeking police reports about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the preamble of the Constitution. It offends the Fundamental Rights guaranteed by Arts. 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. To hold otherwise would be to introduce "McCarthyism" into India. "McCarthyism" is obnoxious to the whole philosophy of our Constitution. It is a different matter altogether if a police report is sought on the question of the involvement of the candidate in any criminal or subversive activity in order to find out his suitability for public employment.

While expressing the abovesaid view, it has been clarified by the learned Judge that this does not mean that even after entering into Government service a person may engage himself in political activities. All that can be said is that he cannot be turned back at the very threshold on the ground of his past political activities. Once he becomes a government servant he becomes subject to the various rules regulating his conduct and his activities must naturally be subject to all rules made in conformity with the Constitution.

It is obvious that the petitioner's participation in the activities of Chhatra Sangharsha Samiti during 1975 on a call given by the political leader Shri Jay Prakash Narayan could not be made any basis for denying him public employment after a lapse of eight years in 1983. In the said connection, it is

significant to note that after completing his education the petitioner had been enrolled as an Advocate in 1979 and practised law till he joined his duties as Labour Sub-Inspector on 24-12-1983. It is also significant to note that as mentioned above it is not denied by the Respondents that after the petitioner joined his appointment on 24-12-1983 he worked and discharged his duties as Labour Sub-Inspector efficiently, honestly and without incurring any complaint of any kind whatsoever from the authorities concerned or others.

As far as the remaining two incidents of 1974 and 1976 are concerned, in the first instance, it is noteworthy that none of them resulted in the conviction of the Petitioner for any offence. It is also noteworthy that in none of the said incidents the petitioner was involved singly, the accusations were made collectively against a group of students including the petitioner. The incidents pertained to the affairs of the Students' Union. From the manner in which they finally ended, there was hardly any basis for regarding them as "adverse antecedents" of any consequence against the petitioner. Moreover, after a lapse of eight years they were certainly too remote to be of any relevance in the context of public employment offered to the petitioner in 1983.

For the reasons stated above, this Court is satisfied that the termination of services of the petitioner as Labour Sub-Inspector by the Respondent No. 2 Labour Commissioner vide telegraphic order dated 8-2-1985 (Annexure-J) on the ground of his alleged "character verification is completely arbitrary, punitive and violative of Arts. 16 and 311 of the Constitution. In the case of recruitment to public service, in the absence of any rules governing the matter, it is essential that any verification of antecedents of a candidate as a condition precedent for appointment to a particular post is completed either before his appointment to the said post or soon thereafter. Needless to say, if that is not done, and the action to terminate his services on the ground of his alleged bad antecedents is taken after undue delay after his appointment, the said actum becomes punitive attracting provisions of Article 311 of the Constitution, in the matter.

It has been stated by the petitioner in his rejoinder that in the relevant column of the declaration form submitted by him to the respondents he had mentioned that he was neither prosecuted nor detained in connection with any case during the last five years and also that there was no criminal case pending against him. The respondents have withheld the said declaration form and have not filed it along with their return. In the circumstances, there is no reason to disbelieve the statement made by the petitioner. It may be that the information given by him was not complete. But, then, it could not be said that he made any incorrect or false statement. Moreover, as was clear from the language of Annexure-J, the services of the petitioner were not terminated on the ground that he suppressed anything or made any false statement but on the ground that on verification his character i.e. his antecedents were found to be bad.

Accordingly, the petition is allowed. It is declared that the termination of services of the petitioner as Labour Sub-Inspector by the respondent No. 2 Labour

Commissioner vide his telegraphic order dated 8-2-1985 (Annexure-J) is arbitrary, punitive and violative of Arts. 16 and 311 of the Constitution. The said termination is quashed. The petitioner shall be deemed to be continuing on his post of Labour Sub-Inspector in the MJP. Labour (Non-gazetted Class ID), Civil Services and shall be entitled to all consequential benefits.

There shall be no order as to costs. The amount of security shall be refunded to the petitioner.