
(1992) 12 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 1806 of 1986

Dilip	Vs	APPELLANT
Prabandhak Samiti Maheshwari H.S.S. and Others		RESPONDENT

Date of Decision : 18-12-1992

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ko Pad-chyut Karne Sewa Se Hatana Sambandhi Prakriya) Niyam, 1983 — Rule 12(3) (b)

Citation : (1993) ILR (MP) 96 : (1993) JLJ 529

Hon'ble Judges : V.S. Kokje, J; V.D. Gyani, J

Bench : Division Bench

Advocate : Madhu Bhatiya, for the Appellant; K.G. Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.—By this petition under Article 226 of the Constitution the Petitioner prays for issuance of a writ of certiorari, quashing the order dated for removal from service filed as Annex, "B" to the petition.

2. The Petitioner was appointed as a physical instructor on 25.10.68, he was later confirmed in the year 1972. By order dated 28.4.86 the Petitioner was suspended. On 7.5.86 he was served with a charge sheet and called upon to file his reply within 10 days. The Petitioner applied and prayed for extension of time to file reply which was extended upto 25.6.86, on which date his reply to the charge sheet was filed.

3. It is the Petitioner's case that after filing of aforesaid reply to the charge sheet the Respondent No. 1 did not at all consider Petitioner's case, no decision was taken on its own, nor was his case placed before, or processed for holding an enquiry, nor any inquiry officer appointed. Without holding any inquiry whatsoever into the charges against the Petitioner, the impugned order Annexure

"B" of removal from service was passed against him in utter disregard of elementary rules of natural Justice. It is further averred that although a show-cause notice dated 5.7.86, Annexure "A" proposing punishment of removal from service was given to him, but even this notice Annexure "A" proposing punishment of removal from service, was not submitted to Respondent No. 2 for his approval as required by law and without obtaining prior approval of Respondent No. 2 the removal order dated 23.7.86, Annexure "B" removing the Petitioner from service was passed in gross violation of Rule 12 (3) (b) of the M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ko Pad-chyut Karne Sewa Se Hatana Sambandhi Prakriya) Niyam, 1983, hereinafter, referred to as "Niyam" 1983.

4. It was only after filing of the present petition that when it was listed for final hearing on 23.7.87, that a day before this date, the Respondent No. 2, allegedly, under influence and pressure of Respondent No. 1 accorded his approval to the removal order Annex. "B" vide his (Joint Director's) letter dated filed as Annexure "T". This post facto approval, it was vehemently contended is of no avail to the Respondents, being illegal invalid, and void ab-initio.

5. The Respondents have by their returns resisted Petitioner's claim and prayed for its dismissal inter alia on the grounds-

(a) That a statutory right of appeal against termination order was admittedly available to the Petitioner who has failed to avail of the same, for no valid reasons;

(b) That the Respondent No. 1 though a registered society is not a State within the meaning of Article 12 of the Constitution of India, as such no petition under Article 226 of the Constitution is maintainable against it.

6. It was also contended by Shri Maheshwari learned Counsel for the Respondent No. 1, that in view of amended Section 6 of the Act as amended by Act of 24 of 81, prior approval of Respondent No. 2 was no longer necessary for the action taken by Respondent No. 1.

7. Referring to various Annexures filed by the Respondent No. 1 it was argued that prescribed procedure was followed by the Respondents in removing the Petitioner from service which was also sought to be justified on an allegations held as proved against the Petitioner.

8. It would not be out of place to note here, that after a hearing of this petition was concluded on 21.3.91, while preparing for order, it was noticed that the Respondent No. 1 had moved, in the meanwhile, an application I.A. No. 1972/91 praying for an opportunity of re-hearing arguments in the light of the amended legal position which could not be noticed at the time of hearing, accordingly the petition was again listed for hearing and the parties were heard on 7.8.92.

9. Before proceeding to deal with the rival contentions advanced by the counsel, it is necessary to dispose of the objections as regards maintainability of petition

as against Respondent No. 1. It is an admitted position that Respondent No. 1 is a Government aided institution and the State Govt. undeniably exercises statutory control in the matters relating to services. Shri Maheshwari, however, placing reliance on the following decisions:

- 1) Dipak Kumar Biswas Vs. Director of Public Instruction and Others, Dipak Kumar Biswas v. Director of Public Inst. and Ors.
- 2) Sabhajit Tewary Vs. Union of India (UOI) and Others, Sabhajit Tewary v. Union of India and Ors.
- 3) Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., Dr. S.L. Agrawal v. Gen. Manager, Hindustan Steel Ltd.
- 4) The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, Praga Tools Crop. v. CV Imanuel and Ors.
- 5) AIR 1988 Pat. Gl. Smt. ManjuDevi v. Dittl-Supdt. Of Edu. Bhagalpur and Ors.
- 6) In Re: Badri Narayan Thakur, Badri Narayan Thakur (In. Re.).

Contended that Respondent No. 1 is not amenable to writ jurisdiction.

10. It is too late in the day for any one to contend that an institution like Respondent No. 1 is not amenable to writ jurisdiction, in face of the Supreme Court judgment in Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others, In Face of Vidyadhar's case it is not necessary to deal with the authorities relied upon by the Respondent No. 1.

11. As for availability of an alternative remedy, indisputably; the Petitioner had a statutory right of appeal. The Petitioner himself has pleaded such a right in his petition para 5. Shri Maheshwari learned Counsel for the Respondent No. 1 placing reliance on 5. Jagdishan v. Ayya Nadar Janki Animal College and Anr. AIR 1984 SC 152 submitted that the petition be rejected on this ground.

12. Normally when there is a clear alternative remedy available by way of appeal, High Court would not entertain a petition as a salutary principle that extra ordinary jurisdiction should not be allowed to be invoked, unless other available ordinary remedies are not exhausted but it must also be remembered that existence of an alterantive remedy does not operate as an absolute bar, as has been pointed out by the Supreme Court in State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd., (Para 4) there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to the Petitioner. It is a matter of discretion with the Court. The existence of an alterantive remedy is undoubtedly a material circumstance to be taken into account while exercising that discretion. If the ordinary statutory remedy available is too dilatory, on delaying or otherwise rendered inefficacious the Court should invoke its extra-ordinary jurisdiction but cannot overlook a glaring fact, standing in our face, that the Joint Director, has accorded post facto approval to the impugned action of Respondent No. 1 terminating Petitioner's

service. How can one ignore this conduct on the part of the Joint Director Education ? In face of such a conduct what is the efficacy of appeal ? At this distance of time six years after admission of this petition directing the Petitioner to avail of his right of appeal, would not serve any useful purpose more so in face of the conduct of the Respondent No. 2, who as alleged by the Petitioner was acting under the influence and pressure of Respondent No. 1, although the allegations have been controverted but the fact remains that post facto approval was accorded vide Annex. "T" by Respondent No. 2, just a day before when this petition was listed for final hearing on 23.7.87. In face of the peculiar facts of the case, the petition cannot be thrown out on the ground of existence of alternative remedy of right of appeal available to the Petitioner.

13. Now coming to the Petitioner's case, he has challenged the termination order dated 23.7.86 filed as Annexures "B" to the petition, on the ground that prior approval of Respondent No. 2, Joint Director, as required by Rule 12(3)(b) of the Rules was not obtained by the Respondent No. 1.

14. Although the Respondent No. 1 has placed on record documents Annex. E.F.G.H. and to justify its action of termination of Petitioner's services, we do not propose to go into this question. The Petitioner has not challenged merits of the charges levelled against him. Confining ourselves to the question of legal requirements a pure question of law, we proceed to examine the validity of termination order dated 23.7.86 Annex. "B". Rule 12 (3) of the Rules read as follows:

(3) (a) The Management shall after considering the representation, if any, made by the teacher or other employee, determine what action, if any, should be taken against the teacher or other employees and make a proposal for the order which it intends to pass.

(b) The Management shall thereupon forward the whole case alongwith its proposal of the order intended to be passed to the competent authority for its approval and the competent authority shall not refuse to grant such approval except in one or more of the following grounds:

(i) that there has not been, in the course of enquiry, proper or sufficient compliance of the procedure laid down in these rules.

(ii) that the provisions of the Act, are likely to be defeated by the said order; and

(iii) that the said order, on the face of it, is perverse.

15. As is evident from Annex. "T"; dated 22.7.87 filed by the Respondent No. 1 alongwith its amended return, dated 12.8.87 the approval as required by Rule 12 "(3) (b) was accorded by the Respondent No. 2 on 22.7.87 only after the termination order Annex "B" was passed on 23.7.86 by Respondent No. 1 terminating the Petitioner's services. Shri Maheshwari invited our attention to resolution dated 23.7.86. Annex. "D"; as passed by the Respondent No. 1, which was forwarded to Respondent No. 2 with a letter of request Annex. "N" of the

same date accordingly approval Annex. "T" was granted. There is a time gap of one year between the termination order Annex "B" and its approval vide Annex "T" as given by the Respondent No. 2.

The language of the rule as quoted above is plain it does not admit of any ambiguity or vagueness, "a proposal for the order" cannot be equated with an order taking effect immediately then and there. It is significant to note that Annex. "B" as placed on record by the Petitioner, alongwith the petition does not bear even an endorsement to the effect that it was forwarded to the Respondent No. 2 seeking his approval as in Annex. "N" found at its foot, filed by Respondent No. 1 alongwith its return on 11.3.87. The following words.

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Jheku la;qDr lapkyd egksn;] yksd f?{k.k bUnkSj laHkkx] dks Isok esa vxzsf"kr dj fuosnu gS fd lapkyd lfevr ds izLrko dh iqf"V djus dh d`ik djsaA

are missing from Annex "B" It is clearly indicative of the fact that Annex. "B" was not even forwarded to Respondent No. 2, otherwise, similar endorsement would have been found in Annex "B" as well.

Petitioner"s services were terminated with immediate effect vide Annex. "B" dated 23.7.86, while approval was accorded by Respondent No. 2 on 22.7.87 exactly after a year vide Annex. "T". Such an approval cannot by any stretch of imagination be said to be prior approval of proposed order of punishment intended to be passed in accordance with Rule 12 (3) of the Rules.

16. It was contended by the Respondents" counsel that in view of amendment made by Act No. 24 of 81 to Section 6 of the Adhinyam such prior approval was no longer necessary.

The amending Section 5 of the Amending Act No. 24 of 81 reads as follows:

Amendment of Section 6 - in Section 6 of the Principal Act in Sub-clause (iii) of Clause (a) for the words beginning with "no teacher or other employee" and ending with "prior approval of the competent authority" the following words shall be substituted, namely:

No teacher or other employee shall be dismissed or removed from service or his services terminated except by an order passed after following such procedure as may be prescribed.

Section 6 as amended also speaks of following such procedure as may be prescribed.

17. The M.P. Ashaskiya Shikshan Sanstha (Adhyapako Tatha Anya Karamachariyon Ko Pad-Chyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983, prescribe the procedure. These Rules were framed in 1983 after the aforesaid amendment to Section 6 in 1981.

18. It is abundantly clear that the Respondents have not followed the procedure

as prescribed by Rule 12 (3) of the Rules. The impugned order of termination Annex. "B" passed by the Respondent No. 1 on 23.7.86 is liable to be quashed on this short ground alone, it is accordingly quashed. We deliberately refrain from expressing any view on the justifiability of the impugned order in view of the charges levelled against the Petitioner. It is solely on the basis of the glaring procedural lapse on the part of the Respondents in not complying with Rule 12 (3) of the Rules that the termination order is struck down as void and inoperative.

19. During pendency of the petition, the Respondent No. 1 passed yet Anr. order of termination filed as Annexure "V" alongwith an application for amendment of return I.A. No. 2463/81 presented on 13.8.87. This application was allowed. Consequently the Petitioner has also amended his petition denouncing the order Annex. "V" as arbitrary and illegal.

20. Shri Maheshwari contended that the order Annex. " V" cannot be held as invalid inasmuch as it was passed by the Respondent No. 1 after the Respondent No. 2 accorded his approval vide Annex. "T" dated 22.7.87. This according of approval by Respondent No. 2 vide Annex. "T" was in pursuance to letter No. 269 dated 23.7.86 and letter dated 11.9.86 (letter No. 562), written by Respondent No. 1

21. Apart from fully exposing the Respondent's conduct this passing of resolution Annex. "V" and communication Annex "X" takes away the very foundation of their case and the arguments as advanced by Shri Maheshwari.

22. Rule 12 (3) casts duty on Management to forward the case alongwith its proposal of the order intended to be passed, to the Competent Authority for its approval. Annex. "A" as placed on record by the Respondent No. 1 is dated 2.9.86, received by the Respondent No. 2 on 6.9.86. By this letter there is a reference to letter No. 269 dated 23.7.86, which the Respondent No. 1 had addressed to Respondent No. 2. A mere reading of this letter Annex. "A" would go to show that till 2.9.86, the record was not forwarded to the Respondent No. 2, otherwise, the Respondent No. 2 would not have asked for a report and calling upon the Respondent No. 1 to prove whether proposed procedure was followed by the Management in terminating the Petitioner's services. Para 3 of Annexure "A" relates to the Petitioner. It is evident that the order of termination was passed without obtaining the approval of the competent Authority. In fact, the reminder was addressed by the Management to Respondent, No. 2 vide Annexure "P" dated 8.8.86. A second reminder Annex. "Q" dated 21.8.86 has also been filed by the Respondent No. 1 seeking confirmation of his action by the Respondent No. 2. Had there been prior approval as contemplated by Rule 12(3), there was no need by the Respondent No. 2 to call upon the Respondent No. 1 to place its report and prove if the prescribed procedure was followed by removing the Petitioner from his service.

Although the Respondent No. 1 had filed Annex "A" with a view to show that an appeal was preferred by the Petitioner, a fact controverted by him. This so called

appeal, which subsequently to be filed as Annex. "S" by the Respondent No. 1 is nothing but a grievance made by the Petitioner against his suspension. It is dated 11.8.86 the Petitioner has incidently referred to the termination order in Annex "S", which was passed against him by the Respondent No. 1 throwing of procedural requirements to winds. This letter of grievance Annex "S" was received by the Respondent No. 2 on 14.8.86 and it was the letter which has been referred to as "appeals" in Annex "A". It was but natural that the Respondent No. 2, in face of the grievance made by the Petitioner in Annex. "S" called upon the Management by letter dated 2.9.86 Annex. "A" to place the case and further to prove if the prescribed procedure was followed. The Respondent No. 1 cannot be allowed to make a capital to use the term "appeal" in Annex "A". The Respondents have placed no material on record to show that whole case of the Petitioner was placed before the Respondent No. 2. The post facto approval accorded by the Respondent No. 2 speaks volume for itself.

23. Ramchandra v. J.N.U. 1970 MPLJ 748 is a case where the Petitioner was appointed officiating temporarily as Asstt. Registrar by Vice Chancellor u/s 48 (1) (d) of the J.N.K.V.V. Act No. 12/63. It does not take into account the basic question involved in this case at hand.

Similarly, in Dipak Kumar Biswas Vs. Director of Public Instruction and Others, it was found as a fact that the declaration as sought could not be granted as DPI (sic) sanction was not in contravention of statutory provisions or Regulations of procedural rules. In the case at hand, contravention of procedural rules is fully established. The Respondent No. 2 has gone out of way in extending approval to the Management in utter disregard of Rule 13 which prescribes six months period for completion of whole procedure. In the instant case, the approval itself is accorded by the Respondent No. 2. exactly on expiry of one year that too without assigning any reason.

In a case of Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another, it is held that in a matter touching either the discipline or the administration of the internal affairs of a University, Courts should be most reluctant to interfere. They should refuse to grant an injunction unless a fairly good prima facie case is made out for interference with the internal affairs of educational institution. It was the case where allegations of collusion implying some kind of fraud were made by the Respondents against Vice-Chancellor. The injunction sought was against the appointment of permanent lecturer, while the Respondent was merely asked temporarily to take classes. The suit was filed by the Respondents seeking to restrain the University from appointing anyone else in his place. The facts are clearly different. No such relief is sought in this petition. A clear violation of prescribed procedure is fully established so much so the Respondents have gone out of way in obtaining and granting post facto approval to the Petitioners removal from service. None of these cases are of any avail to the Respondents.

24. If Annex. "B" was passed in accordance with the Rules after obtaining prior

approval of Respondent No. 2 there was no need to pass the resolution Annex. "V" and communication Annex. "X" addressed to the Petitioner. In order to justify one wrong the Respondents have indulged with the impunity in perpetrating Anr. . They are frantically trying to put the base at the pinnacle.

25. What has the Respondent No. 2, to say about it, as her return filed by both Respondent No. 2 and 3, the approval as contemplated by Rule 12(3) was granted on the basis of two letters referred to in Annex. "T" as filed by the Respondent No. 1 and Annex. R/III as filed by the Respondent No. 2. Neither the order Annex. "T" according approval as passed by the Respondent No. 2 nor the return filed by Respondent Nos. 2 and 3 anywhere suites that the management had forwarded the whole case alongwith the proposal of the order intended to be passed on that it was so received by the Respondent No. 2. It does not stand to reason as to why the Managing Committee Respondent No. 1 was required to pass second resolution, Annex "V" in face of its own earlier resolution dated 23.7.86, Annex "B" resolving termination of Petitioner's service with immediate effect and actually terminating his services vide Annex. "B".

26. Annex, "V" is passed and introduced by way of amendment to the return, during pendency of this petition, while amendments can be sought and even liberally granted, its effect cannot be avoided. An irreconcilable situation is created by introducing Annex. "V" which is based on Annex. "T" As noted above, neither Annex. "T" nor the return filed by Respondents No. 2 and 3 contains any averment to the effect that Petitioner's case as a whole, was forwarded to the competent authority as contemplated by Rule 12 (3) (1) (b) of the Rules.

There is no document placed on record was received at any point of time prior to Annex. "T" by Respondent No. 2 consequently, Annex. "T" is also liable to be quashed as prayed by the Petitioner". It is accordingly quashed.

27. In view of the foregoing discussion the resolution Annex "V" as introduced by amendment to the return and the order Annex "X" based as they are Annex "T" both, the resolution Annex "V" as well as the order Annex "X" are also quashed.

28. The petition succeeds and is accordingly allowed. Counsels fee Rs. 200/- if certified. The Petitioner be reinstated in service and paid all his dues by way of salary and other emoluments upto date. He shall be deemed to be in continuous service as though the orders Annex. "B" and "X" had never been passed.

29. It is, however, open to the Respondent No. 1 to hold an inquiry afresh in accordance with law if it so chooses.