
(2012) 11 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 20462 of 2012 (O and M)

Dr. Nilanjan Roy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Constitution of India, 1950 — Article 311
National Institute of Pharmaceutical Education and Research Act, 1998 — Section 16,
25, 27, 3(j), 36(1)

Citation : (2013) LabIC 263 : (2013) 169 PLR 533

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Kapil Kakkar, for the Appellant; K.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The petitioner has approached this Court impugning the order dated 20.4.2012 dismissing the petitioner from service and the order dated 27.9.2012 passed by the appellate authority partially modifying the order of dismissal to removal. Learned counsel for the petitioner submitted that the petitioner was appointed as Assistant Professor in the Department of Molecular Biology in National Institute of Pharmaceutical Education and Research (for short, "the Institute") on 22.5.2001. On 5.9.2006, he was appointed as Associate Professor. In the year 2010, the petitioner was nominated in various Committees and Statutory Bodies either as Chairman or the Member thereof. The petitioner being upright person pointed out various irregularities being committed and also made effort to bring transparency in the working, as a result of which the authorities became inimical towards the petitioner. Charge-sheet was issued to him on 18.2.2011 pertaining to some allegations, which were more than two years old and had already been settled. Despite the reply of the petitioner being satisfactory and the charge-sheet being mala fide, enquiry was ordered against him and he was placed under suspension on 4.4.2011. To the utter humiliation of the petitioner, he was asked to mark his presence at the gate of the Institute.

The enquiry officer held the petitioner guilty of the charges on the basis of which ultimately the petitioner was dismissed vide order dated 20.4.2012 by an incompetent authority. Even the appeal against the aforesaid order was also practically dismissed as dismissal was converted into removal.

2. Impugning the aforesaid orders, learned counsel for the petitioner submitted that earlier the petitioner had filed CWP No. 6810 of 2011 with a grievance that charge-sheet had been issued by an authority which is not competent as the Director of the Institute was merely officiating. The same was dismissed on 24.1.2012 holding that an Officiating Director is competent to issue a charge-sheet, however, for all other issues raised in the petition, liberty was given to take up during the course of enquiry.

3. The only contention raised by learned counsel for the petitioner is the competence of the authority in passing the order of dismissal. He referred to Clause 21 of the National Institute of Pharmaceutical Education and Research Statutes (for short, "the Statutes") framed u/s 36(1) of the National Institute of Pharmaceutical Education and Research Act, 1998 (for short, "the Act"), in terms of which employees of the Institute shall be governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, "the Rules") as amended from time to time. In terms of Rule 12 of the Rules, the disciplinary authority is the appointing authority or any other authority specified in the Schedule in this behalf. In terms of the Statutes, the appointing authority of the petitioner is the Board. In the present case, the punishment having been inflicted upon the petitioner by the Officiating Director is by an authority, who is not competent. Learned counsel further referred to the instructions issued vide memo No. STB 112/23/49 dated 15.12.1949 read with Memo of even number dated 26.2.1951 and submitted that in terms of the instructions issued by the Government of India, a person having officiating charge of a post cannot pass an order of punishment.

4. On the other hand, learned counsel for respondents Nos. 2 to 5 submitted that the Institute is a creation of a statute and an autonomous body. It has its own rules and regulations governing its establishment. In the earlier petition filed by the petitioner, he had raised the issue regarding competence of the Officiating Director claiming that the Board of Governors is the appointing authority, however, the same was decided against the petitioner. Even the Letters Patent Appeal against the same was also dismissed. Section 8 of the Act gives powers to the Board to frame Statutes and Ordinances. Section 16 of the Act provides for appointment of a Director. Statute 14 of the Statutes, which provides for powers, duties and functions of the Director and other officers working in the Institute, clearly provide that he can take disciplinary action against the employees including suspension pending enquiry and also impose any penalty in accordance with rules. An appeal against the order of the Director lies to the Chairman. The adoption of the Rules is only to the extent where Rules, Regulations and Statutes framed by the Institute are silent. These have not been adopted to over-ride

them. The employees of the Institute are not civil servants, hence, Article 311 of the Constitution of India is not applicable. Once the authority takes action against the employee like the petitioner has been defined in the Statutes, it is totally misconceived to argue that the Director was incompetent to take disciplinary action against the petitioner. In support of his plea, reliance was placed upon *Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay*, 1992 (2) SCC 224 4 and *T. Rajagopalan Vs. State Industries Promotion Corporation of Tamil Nadu, Ltd. and Others*, He further submitted that the instructions issued by the Government of India, referred to by the petitioner, have no relevance and further were never adopted by the Institute. The same came into existence much after the issuance of the aforesaid instructions.

5. Heard learned counsel for the parties and perused the paper book.

6. Before this Court proceeds to consider the issue raised by learned counsel for the petitioner regarding incompetence of the Director to take disciplinary action against the petitioner, it would be appropriate to refer to relevant provisions of the Statutes and the Rules. The same are extracted below:--

Statute 14 (q) of the Statutes

14. POWERS, DUTIES AND FUNCTIONS OF THE DIRECTOR, DEAN, HEAD OF DEPARTMENT AND REGISTRAR OF THE INSTITUTE.

The powers, duties and functions of the Director, Dean, Head of Department and Registrar, specified in column 1 of Table II below shall be those specified in the corresponding entry in column 2.

Rule 12(1) and (2) of the Rules

12. Disciplinary Authorities.-- (1) The President may impose any of the penalties specified in Rule 11 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1) subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on--

(a) a member of a Central Civil Service other than the General Central Services, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) a person appointed to a Central Civil Post included in the General Central Services, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made by the appointing authority or the authority specified in the Schedule in this behalf.

xx xx xx

7. The primary contention sought to be raised by learned counsel for the petitioner is that Director of the Institute is not competent to take disciplinary action against the petitioner. For the purpose, reliance was placed upon Statute

21 read with Rule 12 of the Rules. The issue was raised by the petitioner in the earlier petition filed by him bearing. CWP No. 6810 of 2011, which was dismissed on 24.1.2012 and the judgment was upheld in LPA No. 226 of 2012, decided on 13.2.2012, against which even a review was also dismissed. The relevant paragraphs thereof are extracted below:--

3. The Statutes and Ordinances are defined u/s 3(j) as referring to the Statutes and Ordinances made under the Act. The Statute is made u/s 27 by the Board with the previous approval of the visitor and a copy of the same is laid before the House of the Parliament. All the appointments of the staff of Institute except that of the Director is required to be made in accordance with the procedure laid down by the Statutes. All the appointments of the academic staff in the post of Assistant Professor and above is made by the Board in terms of Section 25 of the Act. The petitioner is appointed, therefore, by the Board is not in dispute. This becomes essential to consider whether a person, who is lower than the Appointing Authority is entitled to constitute an enquiry and issue the charge-sheet. The Central Government has published the first Statutes u/s 36(1) of the 1998 Act on 30.10.2003. Rule 14 of the Statutes provides for powers, duties and functions of the Director, Dean, Head of Department and Registrar of the Institute respectively. Table II of Rule 14 (r) is relevant for our purposes relating to examining the tenure of the post of the Director. It reads as follows:--

(r) shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment.

Provided that the Visitor may direct that a Director, whose term of office has expired, shall continue in office for such period, not exceeding a total period of one year, as may be specified in the direction.

Rule 14(q) of the Statute empowers the Director to take disciplinary action on the following terms:--

(q) To take disciplinary action against the employees, and to suspend them pending inquiry to administer warnings to them or to impose any penalty in accordance with the rules.

Provided that no such penalty shall be imposed unless the person concerned has been given a reasonable opportunity of being heard and showing cause against the action proposed to be taken in regard to him.

4. The power to take disciplinary action against the employees surely, therefore, resides with the Director. It would be immaterial that he was not himself the Appointing Authority so long as the Rules specifically provide for such a course. As regards the contention that the five years period for the Director had already expired, it is contended on behalf of the respondents that he was appointed as Officiating Director on 12.1.2010 and on completion of one year, an extension has been given to him by the Board.

6. It is brought to the attention of the Court by the respondents that at the 54th

meeting of the Board of Governors on 2.8.2011, the levy of charge-sheet and suspension of the petitioner had been placed before the Board and the relevant extracts of the Minutes of the Meeting have also been filed before the Court. It has referred its earlier response to yet another agenda emphasizing that if the Director of the institute takes any decision within the frame work of rules as stipulated under the Act, Statutes, Ordinances or other governing Rules, which otherwise empower the Director to take decisions, those decisions could be placed before the Board for information only. What is brought out through these Minutes is that it had not disapproved of the action taken and it had merely affirmed the real position that if the Director had the power to initiate action, it did not require any ratification from the Board and it was to be treated as merely placed before Board in information. If a Director has a power to initiate action in terms of Section 16 and Rule 14(q), I will not fetter such right as unavailable for an Officiating Director. An Officiating Director assumes all the powers unless in the manner of such officiation itself any power is withdrawn from the Director.

7. The petitioner also wanted to contend that in terms of Rule 10 of Civil Services Conduct Rules, no enquiry could be constituted without a preliminary enquiry. Learned counsel would refer to Rule 14 that contemplates a preliminary enquiry before levying a charge-sheet. Preliminary enquiry is merely facilitative to ensure that valuable time and resources are not lost by proceeding against their own employees without adequate information and without adequate data. The provision ought not to be seen as mandatory in every case where disciplinary action is taken. If the management has decided to proceed against constitution of an enquiry and charges, I would not find the absence of preliminary enquiry as vitiating the constitution of the enquiry itself. I find that the Officiating Director of NIPER has the power to constitute enquiry. I also find that there is no need for securing any sanction either from the Visitor or from the Board for initiating departmental action against any of the employees. The fact that the Director himself is not the Appointing Authority for the Assistant Professor is irrelevant since the Rules specifically provide for such a power to the Director to initiate action. In relation to service that is not civil service protected under Art 311 of the constitution, Rules could always provide for a particular authority who is not lower in rank than the delinquent to be the disciplinary authority, as held by the Supreme Court in Krishna Mohan Mookherjee Vs. Secretary and Treasurer, State Bank of India and Others, A person, who is not a member of Civil Services of the Union or Civil Services of the State or who does not hold a civil post under the Union or a State, cannot seek any protection under Article 311 of the Constitution. He can claim only such rights, which have been conferred under the Regulations applicable to him. If the Regulation does not say that such a person shall not be dismissed or removed by an authority subordinate to that by which he was appointed, he can be dismissed, removed by any other authority specified in the Regulations applicable to him, in terms of law laid down by the Hon"ble Supreme Court in State of Bank of India Vs. S. Vijaya Kumar, . It has also been held in Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and

Others, where the Rules specified an authority lower than the appointing authority to be the disciplinary authority, such lower authority is competent to take disciplinary action. No exception could be taken as to the competency of such lower authority who acts as the disciplinary authority.

(Emphasis supplied)

8. In view of the specific findings recorded by this Court in the earlier writ petition filed by the petitioner, it does not lie in the mouth of the petitioner to claim that the Director was not the competent authority to take disciplinary action against the petitioner, especially when the Letters Patent Appeal filed against the aforesaid judgment was also dismissed. For the reasons mentioned above, the writ petition is dismissed.