
(2002) 01 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Special Appeal No. 300 of 1998

Dr. Om Prakash Chandak

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-01-2002

Acts Referred:

Citation : (2002) WLC 201 : (2002) 2 WLN 710

Hon'ble Judges : Rajesh Balia, J;O.P. Bishnoi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. This appeal is directed against the order passed by the learned Single Judge rejecting the petition filed by the petitioner-appellant against the order of rejecting his representation against-adverse entries made in his Annual Confidential Rolls for the Financial Year 1994-95 and 1995-96. It relates to the period during which the petitioner was posted at Phalodi as Junior Specialist (Pediatric) and as Incharge of the Govt. Dispensary Phalodi which comes under jurisdiction of Chief Medical & Health Officer, Jodhpur.

3. Primarily the petitioner's contention before the learned Single Judge had been that adverse entries have been entered in his Annual Confidential Rolls of the years in question because of the malafide intention of respondent No. 4 the then Chief Medical and Health Officer, Jodhpur, without there being any material before him for the relevant period. Merely because he has been arrayed in contempt petition filed by him for wilful disobedience of the order passed by this Court on 14.12.1995 in S.B. Civil Writ Petition No. 5325/94. Because of that reason, his Annual Confidential Rolls have been spoiled deliberately by the respondent No. 4, who otherwise had been instrumental in getting him a certificate of appreciation of his work for 1994-95 from the Deputy Collector, Phalodi on 15th August, 1994.

4. Learned Single Judge was of the opinion that the case of the petitioner is fully governed by the ratio laid down in *Swatanter Singh Vs. State of Haryana and others*, wherein the apex court has held that sometimes there may not be concrete material evidence to make it part of the record. It may be impracticable for reporting officer or competent controlling officer, writing confidential report to give specific instances of short-falls supported with evidence. For this reason, the petition was dismissed summarily without issuing notices to the respondents.

5. In response to show cause notice with direction to dispose of the petition at the admission stage, the respondents No. 1 to 3 had filed the reply placing on record Annexure-R/1 to Annexure-R/7 that there was relevant material before the concerned Officer for making adverse entries in question, apart from his personal observation about conduct of the Officer concerned during the period in question and it has been urged that the adverse entries cannot be said to be founded on no material. In reply to earlier writ petition the respondents have already taken the plea about unsatisfactory and unbecoming conduct of the petitioner. Therefore, the allegation of malafide attributed to respondent No. 4 on account of contempt petition filed much later, cannot be a justifiable ground for interfering with the entries made in his Annual Confidential Rolls for the two years in question.

6. learned Counsel for the appellant has reiterated grounds taken before the learned Single Judge with specific emphasis on the insurance of certificate of appreciation in August, 1994. Annexure-R/4 filed with the writ petition for indicting the respondent No. 4 with malafide.

7. Having perused the material placed on record and heard both the learned Counsel, we are satisfied that no interference is called for in the present case.

8. It cannot be doubted that entries in Annual Confidential Rolls are made on the subjective satisfaction of the competent officer making such entries about the conduct and performance of the incumbent in various fields of his activities during the period such incumbent has worked in his subordination/supervision. The principle is well settled that any conclusion which is to be reached or satisfaction is to be recorded on the basis of subjective satisfaction, it is not ordinarily liable to be subjected to judicial review by examining such satisfaction on objective yardstick so as to substitute the satisfaction of the Court on the basis of that material. Such action founded on subjective satisfaction cannot be questioned where such satisfaction is reached from the existing material, even if, the Court would not have drawn the similar inference from the material. Such consideration would be irrelevant for the purpose of interfering with the entries recorded by the competent authority in the Confidential Rolls. The grounds on the basis of subjective satisfaction could be challenged, well settled, when no circumstances exist having any relevance for leading to an inference of the kind contemplated for the purpose of recording satisfaction. However, where some material, howsoever meagre it may be, having some relevant bearing to the enquiry or object of taking action exist, conclusion drawn by the competent

authority cannot be examined on the anvil of sufficiency and adequacy, of such existing circumstances. Malafide can be another ground. The attention in this connection may be invited to the decision of the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, wherein the Court opined:

Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of malafides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation.

9. Having examined the material on record in that light we find firstly, the certificate on which great reliance has been placed, is dated 15th August, 1994. If the entries in concerned ACRs are founded on materials which were existing prior to 15th August, 1994, there may be some ground to examine the question of malafide on that ground. This is not to say that in such case an inference of malafide must necessarily follow. In fact, issuance of such certificates by Administrative Authority more often than not are not founded on such consideration and it is often an exercise in conferring some honour by rotation, then on merit.

10. Recommendation, if any, made by the then CM&HO, for the said certificates of appreciation must have concerned with only such material that existed prior to the date of making such recommendation. Therefore, the material on the basis of opinion for recommending the case for grant of certificate Ex.-4, cannot have much relevance, and not the sole criterion, for making entries for the financial year ending on 31.3.1995. It is noticed that measure part of 1994-95 falls after 15.8.1994 and entire period of 1995-96 is of later period.

11. We shall presently notice that the material which has been placed on record as available before making the impugned entries and has gone into consideration consist of Ex.R/1 to R/7. These are all of a date after 15th August, 1994. Ex.R/1 is dated 5th September, 1994 and refers to an earlier communication dated 18th August, 1994 inviting attention of the petitioner-appellant to the fact that after putting in question-mark in his attendance register he voluntarily absented from headquarters without obtaining permission of his superiors and without informing the office, he has left the office. It also refers to his repetitive conduct that he leaves his office without prior intimation, that he writes marks in attendance register on his own like casual leave, govt. holiday or day-off, without there being a proper authority in that regard and about this conduct his attention was invited and explanation was sought.

12. Annexure-R/2 dt. 18.8.1994 is also a letter of the like nature, in furtherance of which Annexure-R/1 had been sent.

13. Annexure-R/3 is communication to the applicant dated 30th January, 1995 inviting his attention to the fact of remaining wilfully absent since 19.1.1995 without obtaining permission to leave headquarters which is in violation of Code of Conduct prescribed for the offices, his explanation was sought and he was directed to assume duty immediately on receipt of that letter.

14. Annexure-R/4 is yet another letter dated 22.5.1995 in which serious dereliction of duty is alleged against the petitioner. The contents of letter are revealing of the conduct observed in May, 1995 by the person who has filled his ACRs and we deem it proper to reproduce in its entirety:

,uDIj vkj@4

dk;Zky; eq[; fpfdRIk ,oa LokLF; vf/kdkjh] tks/kiqj

dzeakd LFkk0@jkti@1@95@5960@&66 fnukad 22-5-95 fpfdRIk vf/kdkjh izHkkjh]

jk0fp0 QykSnh A

fo"k; % drZO; ij mifLFkr ugh gksus ckr A mijksDr fo"k;kUrxZr ys[k gS fd Mk0 ch0Mh0vks0 QykSnh us forUrq lans"n fnukad 24-4-95 ds }kjk lwfpr fd;k gS fd vki ,oa vkids v/khu vf/kdkjh fnukad 24-4-95 le; 5-45 ih-,e- ij drZO; LFkku ij mifLFkr ugh gq, gS ,oa cxSj vuqefr izkIr fd;s eq[;ky; NksM+dj tks/kiqj "kgj pys tkrs gS fd vuq"kkluhurk dh pje ijkdK"Bk gS bls Li"V gksrk gS fd vki drZO; ds izfr ykijokgh cjr dj jkT; ljdkj dks /kks[kk ns jgs gSA

vr% vki ,oa vkids v/khu vf/kdkjh ds Li"Vhdj.k fuEu gLrk{kjdrkZ dsk i= izkfIr ds rhu fnol es fHktok;s fd vki bl izdkj dh dk;Zokgh D;ks djrs gS vHkh gky gh es ekSleh chekj dh izdksi py jgk gSA vki eq[;ky; ij jgdj xzkeoklh;ks dks fpfdRIk lqfo/kk miyC/k djkos ijUrq vki }kjk vkns"n dh vogsyuk dh tk jgh gSA

izfr mRrj le; ij izkIr ugh gksus ij ;g eku fy;k tkosxk fd vkidks bl IEcu/k es dqN ugh dguk gSA ,oa vkidks nks"kh ekurs gq, mPp vf/kdkjh dks vkids fo:) fu;ekuqlkj dk;Zokgh djus gsrq fy[k fn;k tkosxk ftldh IEiw.kZ ftEesnkjh vkidh Loa; dh gksxh A

g0

eq[; fpfdRIk ,oa LokLF; vf/kdkjh

tks/kiqj

15. Annexure-R/5 is a paper cutting of a newspaper wherein the conduct of the petitioner has been observed in public where he has been seen in drunken condition at Dayanand Chowk, Pipar.

16. Annexure-R/6 is a wireless message dated 24.4.1995 in which absence of Health Officers at Govt. Dispensary of Phalodi were reported on surprise checking on 16.4.1995 and Annexure-R/7 is a communication dated 24.7.1995 inviting

attention of the Incharge of the Govt. Dispensary Phalodi to the wireless report dated 24.4.1995 and asking his explanation. These two letters and letter Annexure-R/4 are in sequel.

17. Coupled with this material which is all of period after 15th August, 1994, the date on which certificate of appreciation was issued to the petitioner, we find that in reply to the Writ Petition No. 5324/94 a clear plea about petitioner's unsatisfactory conduct was taken by the present respondents. It is noticed from the order dated 14.12.1995 that grounds of dis-satisfaction of the conduct of the petitioner were placed before the Court by the present respondents which included the then Chief Medical & Health Officer while contesting that writ petition, the Court recorded the substance of the defence as under:

The case of the respondent is that the petitioner has repeatedly committed irregularities and mistakes by leaving the headquarters without prior sanction of the leave and without prior permission of the competent authorities, tampering with the attendance register, over-writing in the attendance register and, therefore, an enquiry is contemplated against him and the case of the petitioner will be decided after the decision of the enquiry.

18. Respondent No. 4 in a separate reply has denied any ill will on his part against the petitioner and has referred to reply submitted by respondents No. 1 to 3 to substantiate existence of material which made him make the impugned entries in ACRs.

19. The two replies were filed on 21.7.1999 after serving copy there-of on the learned Counsel for the appellant-petitioner. No rejoinder has been filed to deny existence of such material.

20. From the aforesaid material, it cannot be said that dis-satisfaction of Reporting Officer/Competent Officer for the purpose of writing entries in the Annual Confidential Rolls, was a new found discovery after he has received notices of contempt petition which is alleged to have been filed somewhere in 1996. Obviously all these materials relate prior to even filing of the contempt petition and came into existence during the period relevant for making entries in concerned ACRs after recommendation for accord of certificate Annexure-4 was alleged to have been made by the then CM&HO.

21. In the aforesaid circumstances, we are satisfied that writing of adverse entries in Annual Confidential Rolls for 1994- 95, 1995-96 cannot be co-related with issuance of contempt notices somewhere at the later part of 1996 and the charges of malafide against respondent No. 4 are not even prima faice established on the basis of material placed on record.

22. Coupled with that conclusion, we are satisfied that materials placed on record do provide nexus for the formation of subjective opinion by the competent officer for making entries in his Annual Confidential Rolls and therefore, making of entires and subsequent rejection of representation by the superior authorities on

examining the same is also beyond the pale of judicial review of this Court.

23. Accordingly, the appeal fails and is hereby dismissed with no order as to costs. Accordingly, this revision petition filed by the accused petitioner Kewal Ram is allowed and the impugned judgments and orders dated 11.9.1987 passed by the learned Addl. Sessions Judge, Raisinghnagar and dated 9.6.1983 passed by the learned Addl. Chief Judicial Magistrate, Raisinghnagar are set aside and the accused petitioner is acquitted of the charges framed against him. Since the accused petitioner is on bail, he need not surrender and his bail bonds stand cancelled.