
(2013) 02 MP CK 0094

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1192 of 2004

Dr. Smt. Rajni Chhari and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Citation : (2013) 02 MP CK 0094

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Judgement

Sujoy Paul, J.—By filing this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 27.5.2004 (Annexure P/4), whereby the petitioners were held to be guilty in some enquiry and accordingly service book warning is recorded against him. Another order dated 27.5.2004 (Annexure P/5) is also called in question whereby the petitioners were inflicted with punishment of stoppage of two increments without cumulative effect. Shri S.K. Sharma, learned counsel for the petitioner, has challenged the said orders on the singular ground. He submits that both the orders are adverse in nature and entails civil consequences. Before passing the said orders petitioners have not been given any opportunity in consonance with the principles of natural justice. He submits that said orders cannot be permitted to stand.

2. Shri Pravin Newaskar, learned Deputy Government Advocate, submits that if because of technical ground interference is made, the respondents be given liberty to proceed against the petitioners in accordance with law. However, it is stated at the bar that during pendency of the petition petitioner No. 3 has expired.

3. The Apex Court has opined as under regarding necessity to observe principles of natural justice:-

The Apex Court in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, has held that any order which entails civil consequences should be passed only

after following the principles of natural justice. The following quotes will establish the importance of following the principles of natural justice:-

Principles of natural justice are to some minds burdensome but this price - a small price indeed-has to be paid if we desire a society governed by the rule of law.

..... even God himself did not pass [a] sentence upon Adam before he was called upon to make his defence. Adam (says God), where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?....

In *Lloyd v. McMahon* 17 (AC pp. 702 H-703 B), it was held as under:-

My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

The Apex Court in *Radhy Shyam v. State of U.P.*, reported in (2011) 5 SCC 55, held as under:-

45. The amplitude, ambit and width of the rule of audi alteram partem was lucidly stated by the three-Judges Bench in *Sayedur Rehman Vs. The State of Bihar and Others*, in the following words:

11..... This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties.

46. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , Krishna Iyer, J. speaking for himself, Beg, C.J. And Bhagwati, J. highlighted the importance of the rule of hearing in the following words:

43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy Government, recognised from earliest times

and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam and of Kautilya's Arthashastra the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these depths for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

47. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

4. So far Annexure P-4 is concerned, it is an administrative order. Direction to record service book warning is an administrative order. The said warning is not a punishment within the meaning of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, the "CCA Rules"), accordingly, before that principles of natural justice were not required to be followed. However, by Annexure P-5 a minor punishment is inflicted on the petitioner. The procedural safeguards provided in the CCA Rules are not followed before inflicting the said punishment. The said punishment entails civil consequences and could not have been passed without following the principles of natural justice. Thus, Annexure P-1 is liable to be interfered with.

5. Consequently, the order Annexure P/5 is set aside. Since the matter is pending since 2004, limited liberty is reserved to the respondents to proceed against the petitioners no. 1 and 2 in accordance with law. If the respondents intend to proceed, they shall complete the proceedings within eight months from the date of receipt of certified copy of this order, failing which the right to proceed against the petitioners shall stand automatically abated. Petition is allowed to the extent indicated above. No costs.