(1991) 10 MP CK 0003

In the Madhya Pradesh High Court

Case No : M.P. No. 336 of 1982 (G)

Govind Chandra Chaturvedi APPELLANT

Vs

M.P. Text Book Corporation, Bhopal RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:
Constitution of India, 1950 — Article 12, 226, 227, 311

Citation : (1992) 1 MPJR 157

Hon'ble Judges : S.K. Dubey, J;R.C. Lahoti, J

Bench : Division Bench

Judgement

The following order of the Court was delivered by S.K. Dubey, J: By this petition under Article 226 of the Constitution of India, the Petitioner has prayed for issuance of a writ of Mandamus/Certiorari for qnashing of the order of termination dt. 23-11-81 (Annexure-10) and for a declaration that he continues in the employment on his post as Upper Division Clerk with all ancillary benefits.

Material facts leading to this petition are thus; the Petitioner was appointed in the Madhya Pradesh Text Book Corporation (for short "the Corporation") on probation vide order dated 1-12-73 (Annexure-1) then was confirmed vide order dated 18-7-77 (Annexure-2), thereafter, the Petitioner was promoted as ad hoc to work on the post of Accountant/Store-keeper vide order dated 11-9-79 (annexure-3). Vide Annexure-4 dt. 19-9-90 the Petitioner was sent back to his substantive post of Upper Division Clerk, and by the order of the same day, the Petitioner was suspended vide Annexure-5. The Petitioner was served with a charge-sheet dated 15-1-81 Annexure-6 along with articles of charges. The charges related to the shortage of books amounting to Rs. 67, 128-28 ps. during the period, in which the Petitioner worked as Store-keeper. The Petitioner by Annexure-7 demanded copies of fourteen documents, for submitting the reply to the charges and to prove that the Petitioner has not committed any act causing loss to the Corporation. Copies of the documents having not been supplied, the Petitioner made two applications Annexure-8 dt. 13-3-81 and Annexure-9 dt.

16-4-81 for giving of copies. The Petitioner, instead of being supplied the copies and to be proceeded with departmental enquiry, was terminated simpliciter from his services by order dt. 23rd November, 1981 (Annexure A-10) as services no longer required. Against this order, the Petitioner made representations and served notices Annexures 11, 12 and 13 and having not received any response, has approached this Court.

The Respondents have raised a preliminary objection that the Corporation is a society registered under the Societies Registration Act, is not an authority under Article 12 of the Constitution. Article 311 of the Constitution is not applicable, the relationship between the Petitioner and the Corporation was of master and servant, therefore, it was submitted by Shri N.K. Mody, learned Counsel for the Respondents that this Court cannot issue any writ or direction under Article 226/227 of the Constitution of India.

Shri H. N. Upadhyay, learned Counsel for the Petitioner submitted that though the Corporation is registered under the Societies Registration Act but it constituted and established under Madhya Pradesh Text Book Corporation Regulation 1974 (for short "Regulation") and is controlled and financed by the State Government which is evident from various provisions of the Regulation. Corporation as defined under Regulation 2 (a) is constituted which constists of 16 members of the Corporation, functions through its two authorities specified under Regulation 7; (i) General Assembly and (ii) Board of Governors. The Board is constituted under Regulation 22 which consists of 11 members; (i) Minister for Education as President, (ii) Minister of State/Deputy Minister for Education as Vice-President, (iii) Secretary to Govt., Madhya Pradesh Education Department, (iv) Secretary to Govt., Madhya Pradesh, Finance Department, (v) Director of Public Instruction, M. P. (vi) Chairman, Board of Secondary Education M. P. (vii) Director, State Institute of Education, Bhopal, (viii) Director of Science Institute of Education, Jabalpur, (ix) Controller, Printing and Stationery, M. P., (x) Two experts in the fields of school education; above all as members and (xi) Managing Director, Text Book Corporation as Member Secretary.

Regulation 23 gives power to State Government to vary, at any time, the composition of the Board of Governors or substitute any or appoint any new member of the Corporation The Board is the Chief Executive body of the Corporation and exercises the executive powers of the Corporation and performs its functions as laid down under Sub-clauses (a) to (w) of Regulation 34; Sub-clause (b) of sub-regulation (2) relates to the sanction posts and appoint officers and other employees and regulate the terms and conditions of their service in accordance with the provisions of the Regulations. Regulation 42 gives power to the Board to frame bye-laws in respect of the services conditions, method of recruitment, manner of appointment and conditions of deputation of the officers and other employees of the Corporation. Regulation 43 speaks of the funds of the Corporation which consists of; (i) grants, assignments, contributing advance and loans made by the Government for furtherance of the objects of the

Corporation, (ii) Receipts from sale of text books and other literature produced by the Corporation and (iii) Income and any other assets acquired by the Corporation.

In pursuance of the powers given under Regulation 42 to the Board, bye-laws relating to service conditions and method of recruitment in relation to its employee, has been framed. Bye law (3) speaks of that the bye-law shall be applicable to all employees of the Corporation without affecting the applicability of the M. P Civil Services (General Conditions of Services) Rules 1961, therefore, under the bye-laws, M. P. Civil Services (Generl Conditions of Services) Rules 1961 have been applied, as bye-laws only speak of classification of the employee, manner of recruitment, eligibility and appointment by promotion.

In case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . the Supreme Court has laid down the test to determine whether a society registered under the Societies Registration Act, is an "authority" falling within Article 12, and said in paras 11 and 12:

We may point out that it is immaterial for this purpose whether the Corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to benot as to how the juristic person is born but why it has been brought into existence. The Corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1960 or any other similar statute. Whatever be its genetical orgin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the right of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12.

It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State" within the meaning of Article 12, it may not be alevated to the position of ''State'' for the purpose of Arts. 209,313, and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is not limited in its application only to Part III and by virtue of Article 36, to part IV, it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution.

From the various provisions of Regulations referred in paras 5 to 7, it cannot be doubted that the Corporation has been created for the attainment of the object specified in the Memorandum of the Association. The Respondents have not produced any material to demonstrate that under the Memorandum of Association, the Corporation has not been established or registered under the Societies Registration Act for achieving the objects, which are not governmental functions therefore, the preliminary objection of the Petitioner that the Corporation is not an authority under Article 12 of the Constitution and the Regulations and Bye-laws are not statutory-and that the relationship between the Petitioner and the Corporation was merely contractual, cannot be accepted.

On merits:Though, the order is innocuous, it is now settled that in a case of order of termination even that of a temporary of ad hoc employee, the Court has to see whether the order was made on the ground of misconduct. If such a complaint was made and in that process, the Court would examine the real circumstances as well as the basis and foundation of the order complained on and if the Court is satisfied that the termination of services does not show innocuous as claimed to be and if the circumstances further disclose that it is only a camouflage with a view to avoid any enquiry as warranted under Article 311 (2) of the Constitution or under the Service Rules, then such a termination is liable to be quashed See Anoop Jaiswal Vs. Government of India and Another, case, Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora, case, Jarnail Singh and Others Vs. State of Punjab and Others, case, Smt. Rajinder Kaur Vs. State of Punjab and Another, case and a recent report of the Supreme Court of Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another,

Recently, this Court in Devendra Kumar v. Laxmibai National College of Physical Education, Gwalior and another M.P. No. 613/1988. decided on 1-10-91 placing reliance on Jarnail Singh''s case (supra) has observed that it is immaterial that the termination simpliciter is in accordance with the terms of the appointment without attaching any stigma to the Petitioner It is substance of the order i.e. the attending circumstances as well as basis of the order, that have to be taken into consideration as law is well settled that the Court can lift the veil to see the real circumstances as well as the basis and foundation of the order to know whether the order was made on the ground of misconduct/ insufficiency or not and if that is so, the order passed without observing the principles of natural justice and without following the procedure laid down for holding an enquiry into the misconduct, the order has to be struck down.

From narration of facts in paras 2 and 3, it cannot be doubted that the Petitioner was suspended and charge-sheet was issued with articles of charges in respect of shortage of books, when the copies of relevant documents demanded, copies were not supplied, the Respondents feeling difficult dropped the enquiry and resorted to the course of termination of the services by a simpliciter order, such order founded on misconduct, cannot be said to be an innocuous order, which is passed without observing the rules relating to enquiry and is against the principles of natural justice, hence, has to be quashed and is hereby quashed.

Shri Mody, learned Counsel for the Respondents has contended that the Respondents are free to hold the enquiry into the misconduct, and, as the Petitioner has directly approached the Court under Article 226 of the Constitution, would not be entitled to back wages, as while ordering reinstatement an enquiry has to be there about the gainful employment of the Petitioner. Reliance was placed on a decision of the Apex Court in the case of The Managing Director, U. P. Warehousing Corporation and Ors. v. Narayan Vajpayee AIR 1984 SC 840.

True, the Petitioner would have resorted to the remedy in Industrial Law but instead of that the Petitioner approached this Court under Article 226 of the Constitution. As the order dt. 23rd November 1981 has been quashed, the question arises whather the Respondents should be given a liberty to hold an enquiry afresh ? As more than a decade has passed, the Petitioner should not be left at the mercy of the Respondents, should not be forced to have a fresh inning of the lis; one does not know when the Us will attain its finality. So as to end the strife the wisdom and justice require that the matter be disposed of now one for all under Article 226, which is intended to do justice between the parties and to save wastage of time. This Court can grant the relief as mandamus is very wide remedy which must be easily available to reach injustice, wherever it is found. Technicalities should not come in the way of granting that relief under Article 226 The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances.

This petition remain pending for last nine years in this Court, while a writ relating to labour and service matters ought to have been disposed of normally within a period of one year from the date of its presentation as said by the Supreme Court in Mahabir Jwe Mills Limited, Gorakhpur v. Shibban lal Saxena and Ors. 1915 LLJ SC 326.,

Labour matter should have been given top priority and should not have been allowed to be prolonged for such a long period in the High Court. The inordinate delay results in situations causing embarrassment both to the Court and to the parties. It is, therefore, in fitness of things that such matters should be given top priority and should be disposed of by the High Court within a year of the presentation of the petition.

The Supreme Court in Atma Ram Mittal Vs. Ishwar Singh Punia, has observed:

It is well settled that no man should suffer because of the fault of the Court or delay in the procedure; "actus curiae nominem gravabit" an act of Court shall prejudice no man. Bearing in mind the well-settled principles that the rights of the parties crystallise on the date of the institution of the suit.

Therefore, to deny the back wages would be a great injustice to the Petitioner. But, it is equally true, that question of gainful employment depends on enquiry rested on evidence. Therefore, the better course suiting to the circumstances of the case would be that the Petitioner is awarded half hack wages, insteed of full back wages, as the Petitioner during this period of 10 years of forced unemployment must have earned something to meet bare requirement of his livelihood.

In the result, the petition is allowed with costs. The order of termination and also suspension is quashed. Let a writ be issued to the Respondents to reinstate the Petitioner on bis original post with continuity of service giving all ancillary benefits to the post attached, with half back wages only. Counsel fee Rs. 500/-, if already certified.