
(2014) 08 MP CK 0107
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 108/2014

Hari Singh Gour Vishwavidyalaya

APPELLANT

Vs

Mannu Lal Rajak

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2015) 1 MPJR 260

Hon'ble Judges : Rajendra Menon, J;Alok Verma, J

Bench : Division Bench

Advocate : Shobha Menon, Learned Senior Counsel and Rahul Choubey, Advocate for the Appellant; N.K. Salunke, Learned Counsel, Advocate for the Respondent

Judgement

Rajendra Menon, J.—This appeal by the Dr. Harisingh Gour Vishwavidyalaya, Sagar has been filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 calling in question tenability of an order dated 18.9.2013 passed by the learned Writ Court in W.P. No.4815/2001.

2. Facts in brief goes to show that respondent Shri Mannu Lal Rajak was working as Chowkidar in the establishment of the University. He was appointed on compassionate ground after his father died in harness. On account of repeated absence unauthorizedly without leave and because of his negligence in performance of duties as certain theft took place in the University campus, he was placed under suspension on 16.4.1999 and thereafter, a charge sheet dated 22.5.1999 Annexure P/4 was issued to him. In the charge sheet five imputation of allegations were leveled against him mainly pertaining to his unauthorized absence and the result of which was a theft in the University. A departmental enquiry was conducted and based on the finding recorded in the departmental enquiry, he was removed from service. Appeal preferred having also been rejected, the respondent employee filed the writ petition. In the Writ Petition, the

learned Writ Court found that an ex-parte enquiry without proper notice to him has been conducted, statutory rules in the matter of issuing notice has not been complied with and therefore, the termination order has been set aside, matter was remanded back for conduct of enquiry from the stage of submission of reply and the liberty is granted to the department to take action for regularizing the intervening period after completion of enquiry. The entire action has been taken in accordance to the law laid down by the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . Challenging this order of the Writ Court, this writ appeal has been filed.

3. Learned Senior Counsel for the appellant made a three fold submission. The first contention of the learned Senior Counsel was that in the face of the admission to the charges by the respondent employee and the manner in which the proceeding has been held, it was not appropriate on the part of the Writ Court to remand the matter for fresh enquiry as the material available on record does show that employee has admitted the guilt.

4. The second contention advanced by learned Senior Counsel for the appellants was that merely because enquiry was conducted ex-parte or the report of Enquiry Officer was not given to the delinquent employee, prejudice in the matter being not demonstrated, remand was not called for and it is said that in the absence of demonstration of prejudice, remand of the matter was not a proper course to be adopted by the learned Writ Court.

5. Finally, it was argued that the employee has not discharged his burden of explaining the circumstances existing against him and in the matter of termination of Chowkidar as a reasonable decision has been taken by the department, interference into the matter is not called for.

6. Taking us through the documents and material available on record, the conduct of employee during the period of service, learned Senior Counsel emphasized that in the facts and circumstances of the case, interference into the matter was not called for. In support of her aforesaid contention, she relied on the following judgments New India Assurance Co. Ltd. Vs. Vipin Behari Lal Srivastava, , The Regional Manager, Central Bank of India Vs. Vijay Krishna Neema and Others, , Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , Delhi Transport Corporation Vs. Sardar Singh, and Union of India (UOI) and Others Vs. Bishamber Das Dogra, .

7. Refuting the aforesaid contention, Shri N. K. Salunke, learned counsel appearing for the respondent employee argued that when the departmental enquiry was vitiated for non compliance with the statutory rules and procedure, remand of the matter was the only proper course available to the Writ Court and in doing so, as the Writ Court has not committed any error, the appeal is liable to be dismissed. Placing reliance on a judgment of Supreme Court in the case of Chairman, LIC of India and Others Vs. A. Masilamani, , Shri Salunke submitted that when the statutory rules in conduct of departmental enquiry are violated,

the entire enquiry stands vitiated and in remanding the matter on such consideration, learned Writ Court has not committed any error.

8. We have heard learned counsel for the parties and we have considered the rival contentions. We find from the record that the employee was suspended and the charge sheet was issued to him. Even though learned counsel referred to the explanation and the appeal submitted by the employee to say that there is admission of guilt in the matter, on going through the same, we find that they are not unconditional or unequivocal admission by the respondent employee. The reply Annexure P/5 available at page 20 of the paper book is in fact an explanation given by the respondent employee to say that as his mother was suffering from cancer and he was to take her to Indore for treatment he could not attend the duties. He further says that he is a poor employee, he has been granted compassionate appointment and looking to his mother's ailment, he says that it has been reported to him that an exparte enquiry without notice has been held and he prays for taking action in an lenient manner.

9. Be it as it may be, fact remains that a permanent employee has been removed from service after a departmental enquiry has been conducted against him in accordance to Central Civil Services (CCA) Rules. The learned Writ Court based on the statutory rules applicable for conduct of enquiry found that service of notice has not been done as per Rule 30. Rule 30 contemplates that every order, notice and other process made or issued under these rules has to be served on the Government servant concerned and is to be communicated to him by registered post. After going through the records of the enquiry, learned Writ Court found that notices were not sent by registered post, they were never served on delinquent employee, instead they were given to his brother and behind his back the departmental enquiry was conducted. It was further found that as per Rule 14(11) of CCS CCA Rules when the delinquent employee fails to appear in the enquiry or refuses or omits to plead the enquiry officer is required to adjourn the enquiry and statement of witnesses are to be recorded and then supplied to the employee as provided under the rule. The learned Writ Court after examining all these aspects found that certain statutory rules in the matter of conducting the enquiry has been violated and therefore, it has remanded the matter back to the Enquiry Officer to commence the enquiry from the stage the departmental enquiry is found to have been vitiated.

10. Learned Senior Counsel had argued that once the enquiry was conducted and no prejudice is demonstrated, interference into the matter is not called for. The law with regard to prejudice is clearly laid down and Supreme Court in a series of judgments right from the case of State Bank of Patiala and others Vs. S.K. Sharma, , it has been consistently held that when statutory rules are violated, prejudice to the employee are deemed to have been occasioned and in such cases demonstration of prejudice is not necessary. It is only when non-statutory procedural rules are violated that prejudice has to be demonstrated. In the present case as statutory procedural rules have been violated and after the law

laid down in the case of S. K. Sharma (supra) will apply and it is not necessary for the delinquent employee to demonstrate prejudice. That apart, the so called admission of the employee is not an admission in the eyes of the law, it is only his explanation and the reasons for absence and therefore, learned Writ Court has not committed any error in remanding the matter. The Judgments relied upon by learned counsel for the parties are based of peculiar facts and circumstances of the individual cases and they cannot be applied in the present case where an exparte departmental enquiry is held and the same is found to be contrary to statutory rules and, therefore, in remanding the matter back on such consideration, the enquiry office and the learned Writ Court has not committed any error warranting reconsideration.

11. The appeal is therefore, dismissed.