
(2015) 03 MP CK 0159
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 619 of 2014

Hiramani Deepankar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Constitution of India, 1950 — Article 166(2), 166(3)

Citation : (2015) 03 MP CK 0159

Hon'ble Judges : Rajendra Menon, J;S.K. Gangele, J

Bench : Division Bench

Advocate : R.K. Verma, Learned Senior Advocate assisted by Preeti Khanna, Learned Counsel, for the Appellant; Sahin Fatima, Learned Govt. Adv., Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J—This appeal has been filed against the order dated 9.7.2014 passed in W.P. No. 7788/2014.

2. The question for consideration in this writ appeal is that whether the charge sheet served against the Government Servant after retirement requires sanction from the Governor in accordance with the provision of Rule 9 of M.P. Pension Rules 1996 or the Council of Ministers is competent to accord the sanction for initiation of the departmental enquiry. The appellant was retired from service after attaining the age of superannuation on 31.10.2011. A charge sheet was issued to him vide memo dated 7.3.2014 and he was subjected to a departmental enquiry in accordance with Rule 9 of M.P. Pension Rules 1996. The appellant challenged the action of initiation of departmental enquiry in the writ petition on the ground that the sanction has to be granted by the Governor himself in accordance with the Provisions of Rule 9 of Pension Rules because in the case of the appellant, the sanction was not granted by the Governor, hence the enquiry initiated against him was without authority and jurisdiction.

3. Learned writ court has negatived the aforesaid contention.

4. It is an admitted fact that the Council of Ministers accorded an approval for initiation of departmental enquiry against the appellant. Rule 9 (2) (b) (i) of Pension Rules 1976 requires that the departmental proceeding shall not be instituted against a Government Servant after his retirement with due sanction of the Governor. The aforesaid provision has been considered by the Hon''ble Supreme Court in State of Madhya Pradesh and others Vs. Dr. Yashwant Trimbak, AIR 1996 SC 765 : AIR 1995 SC 765 : (1996) 2 SCC 305 : (1996) 1 UJ 436 . The Hon''ble Supreme Court has formulated two questions:-

"In view of the rival submission at the Bar two questions really arise for consideration :

1) On the admitted position that the order initiating the departmental proceeding was served upon the respondent by a duly authenticated order passed in the name of the Governor, is it open to the Court to examine the validity of the same in view of the provisions contained in Article 166(2) of the Constitution?

2) Whether the power to sanction conferred on the Governor under Rule 9(2)(b) (i) of the Pension Rules can at all be conferred on the Council of Ministers by making rules for convenient transaction of the Business of the Government of State under Article 166(3) of the Constitution?"

5. The Hon''ble Supreme Court has after considering the legal provisions in detail has held that the decision of the Council of Ministers under the Rule of business is the decision of the Governor, hence the personal satisfaction of the Governor is not required.

6. In view of above pronouncement of law of the Supreme Court in our opinion writ court has rightly held that there was no necessity to obtain the sanction from the Governor before initiation of departmental proceeding against the appellant.

7. Learned counsel for the appellant has relied on the judgment of the Supreme Court delivered in State of Gujarat and Another Vs. Hon''ble Mr. Justice R.A. Mehta (Retd.) and Others, (2013) 1 AD 325 : AIR 2013 SC 693 : (2013) 1 JT 276 : (2013) 1 RCR(Civil) 610 : (2013) 1 SCALE 7 : (2013) 3 SCC 1 : (2013) 1 SCC(L&S) 490 : (2013) AIRSCW 671 : (2013) 1 Supreme 33 and has contended that in accordance with the provision of Pension Rules quoted above, the sanction of the Governor is necessary. In our opinion, the question of law decided in the present case and referred by learned counsel for the appellant is not applicable in the present case because earlier judgment of the Supreme Court has specifically dealt with the issue. Both the judgments are of two Judges Bench, hence in view of the judgment passed by Five Judges Bench delivered in Jabalpur Bus Operators Association and Others Vs. State of M.P. and Another, AIR 2003 MP 81 : (2003) 4 JCR 325 : (2003) 1 JLJ 105 : (2003) 1 MPHT 226 : (2003) 1 MPJR 158 : (2003) 1 MPLJ 513 ., the decision of this court, the decision

of earlier Bench would prevail and would be binding in the case of judgment pronounced by comprising equal number of Judges.

8. In view of above, we do not find any merit in this appeal. It is hereby dismissed.

9. No order as to costs.