
(2014) 07 MP CK 0003
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 930/11

H.S. Gour Vishwavidyalaya	Vs	APPELLANT
Gopal Krishna Gupta		RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

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

Citation : (2014) 07 MP CK 0003

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

Bench : Division Bench

Advocate : Shobha Menon, Learned Sr. Counsel and Rahul Choubey, Learned Counsel, Advocate for the Appellant; Neeraj Wegad, Learned Counsel, Advocate for the Respondent

Judgement

1. Calling in question tenability of an order dated 6.07.11 passed by the Writ Court in W.P. No. 1000/03 allowing the writ petition filed by the respondent employee, this appeal has been filed by the University under Section 2 of Madhya Pradesh Uchcha Nyayalaya Ke Khand Peeth Ko Appeal) Adhiniyam, 2005.

2. Facts in nut-shell goes to show that respondent Gopal Krishna Gupta was working in the University in the Dr. Hari Singh Gour Vishwavidyalaya, Sagar. He was a Laboratory technician and vide order dated 11.05.2000, he was suspended on the ground of his unauthorized absence. Thereafter, a charge-sheet was issued to him and a departmental enquiry was conducted into the allegations levelled in the charge-sheet. Further, neither the result of the departmental enquiry was made known to the respondent nor is any punishment order issued. In pursuance to the report of the enquiry officer, an order was passed on 4.02.02 by which he was reinstated in service and when he was reinstated in service, he has been deprived of full wages during the period when he remained under suspension.

3. Inter alia contending that he has been punished without any enquiry, infact no

proper enquiry was held and even the report of the enquiry officer has not been supplied to him and by making the bald averments without conducting any enquiry the action was taken, the writ petition was filed.

4. The Writ Court found that an employee was suspended and, thereafter, a departmental enquiry was conducted but in the departmental enquiry, it was not known as to what happened. He was not held guilty in the departmental enquiry. The enquiry report was not known nor brought to the notice of the Writ Court after the departmental enquiry. There is no indictment of an employee in the departmental enquiry. The Writ Court has directed for regularizing the period of suspension by granting salary and other allowances. There is nothing to show that the petitioner was held guilty for an act for which he was suspended.

5. Learned counsel for the appellant invites our attention to the provisions of Clause 4 of the statute no. 31 which is produced in para 5 of the memorandum of appeal and by placing reliance on the judgment of the Supreme Court in the case of The Greater Hyderabad Municipal Corporation Vs. M. Prabhakar Rao, tried to emphasize that once, the employee was suspended and, thereafter, he is reinstated in service, he is not entitled to any salary or allowances for the period when he remained under suspension. It is said that the University is empowered to suspend the employee and after the enquiry, the intervening period can be treated as the suspension period as per the rules framed.

6. We have considered the rival contentions and we have gone through the material available on record. Except for the provisions of Clause 4 of the Statute No. 31, no rule, regulation or statutory provision applicable to the University is brought to the notice of this Court wherein any provision is made out for not regularizing the period of suspension after an employee is exonerated in the departmental enquiry and no punishment is imposed.

7. In case, any departmental enquiry is held against the employee, the provisions of Clause 4 to 56 (1) of the statute only empowers the authority concerned to suspend the employee concerned during the period when the disciplinary proceedings are initiated against him. Only the power of suspension pending departmental enquiry is available to the disciplinary authority. No other provision is available wherein after conclusion of the departmental enquiry, the question of regularization of the period is stipulated. As far as the judgment in the case of M. Prabhakar Rao (supra) is concerned, the said judgment deals with a case that when the employee is under suspension or suspended because of his involvement in the criminal case and his subsequent acquittal in the criminal case.

8. The principle applicable in the criminal case is not applicable in the present case, for the employees involvement in the criminal case, the employer is not responsible and, therefore, if the employee is acquitted in the criminal case or is exonerated, the principle is that the employer should not be saddled with the responsibility for payment of wages or salary for the intervening period as the

employee himself is responsible for his involvement in the criminal case. Present is not a case where the employee is involved in the criminal case or he is suspended because of his involvement in the criminal case. On the contrary, this is a case where pending departmental proceedings, the employee is suspended.

9. That apart, according to the appellant/University, the departmental enquiry is conducted but neither the report of the enquiry officer is brought to the notice of this Court nor it is communicated to the respondent employee. The only action taken after conclusion of the enquiry is to reinstate the employee and taking the impugned action of denying him salary for the intervening period, there is no punishment imposed after conclusion of the enquiry. Once, the employee is proceeded against and a departmental enquiry conducted, then based on the result of the departmental enquiry, he may be punished but if he is exonerated the period of suspension should be regularized.

10. In the present case, what was the report of the departmental enquiry and nothing is pointed out to say that after conclusion of the departmental enquiry, the employee is punished. Under such circumstances, an assumption has to be drawn that after conducting the departmental enquiry, nothing is proved against the employee and, therefore, he was reinstated in service without any indictment or imposing any order of punishment. The suspension automatically goes and the period of suspension is required to be regularized by granting difference of full wages and all other consequential benefits as the departmental enquiry is culminated after exoneration of the employee.

11. That being so, we are of the considered view that a reasonable approach is adopted by the Writ Court and the same does not call for any interference. During the course of hearing, learned counsel for the appellant tried to indicate that they may be permitted to bring on record the departmental proceedings but no such prayer is made in the writ petition. There is nothing to show as to what happened in the departmental enquiry nor is the enquiry report and the punishment order if any issued is filed along with the writ appeal nor is any document filed in this regard, even in the memorandum of appeal filed, there is no whisper with regard to conduct of the departmental enquiry.

12. That being so, after such a long period of time, it is not appropriate to grant liberty to the University to bring on record all these documents when the matter is pending since 2003.

13. Accordingly, finding no ground to interfere with the reasonable order passed by the Writ Court, we dismiss this writ appeal.