

(1979) 04 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 304 of 1977

Hukum Singh Majboot Singh Chauhan

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 30-04-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309, 310

Citation : (1979) MPLJ 625

Hon'ble Judges : U.N. Bhachawat, J;J.S. Verma, J

Bench : Division Bench

Advocate : D.M. Dharmadhikari, for the Appellant; K.L. Issarani, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, J.

The petitioner was appointed Chairman in the Revenue Inspector's office in 1953 and was confirmed in that capacity in 1956. The petitioner was suspended on 6-11-1974 pending a departmental enquiry into the charges contained in the charge-sheet Annexure-A. The substance of the charges levelled against him was of habitual unauthorized absence from duty for a long period and of intimidating the superior officer--the Revenue Inspector--to withdraw the report made by him against the petitioner of his unauthorized absence under threat of assault. The petitioner denied these charges and consequently a departmental enquiry was held for enquiring into their correctness. The Enquiry Officer found these charges proved against the petitioner in his report Annexure-C dated 19-4-1975. A show cause notice was accordingly given to the petitioner and after considering his reply to it, the Collector, Tikamgarh, by his order Annexure-E dated 16-12-1975 accepting the report of the Enquiry Officer, terminated the petitioner's service. Petitioner's appeal to the Commissioner, Sagar Division, was dismissed by order Annexure-F dated 23-8-1976, and the State Government has thereafter by its order Annexure-G dated 10-3-1977 rejected the petitioner's revision. Aggrieved

by the termination of his service in this manner, the petitioner has filed this petition under Article 226 of the Constitution challenging these orders.

Shri D.M. Dharmadhikari, Learned Counsel for the petitioner, has advanced several arguments in support of this petition, which are the following, viz.--

(1) The reports Exhibits P-1 and P-2 made by the Revenue Inspector and the report Exhibit P-3 made by the Tahsildar on the basis of which the aforesaid charges were levelled against the petitioner were not shown to the petitioner at any time during the departmental enquiry even though they were taken into account by the Enquiry Officer and this has resulted in denial of reasonable opportunity to the petitioner to defend himself;

(2) The petitioner was not given any opportunity to lead evidence in his defence which also has resulted in denial of reasonable opportunity to defend himself;

(3) The penalty of termination of service is too harsh and disproportionate in view of the charges found proved against the petitioner; and

(4) Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 is invalid because it gives an arbitrary discretion to the disciplinary authority to impose the penalties mentioned therein on a Government servant without laying down any guidelines to indicate when a minor penalty mentioned therein has to be imposed and when a major penalty is to be imposed on a Government servant. It is contended that the necessary guidelines are not contained either in Rule 10 or in any other rule contained in the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966.

The first contention of Learned Counsel for the petitioner cannot be accepted. The three reports P-1, P-2 and P-3 in the record of the departmental enquiry were produced by the Revenue Inspector and the Tahsildar who had made those reports, when they were examined as witnesses in the departmental enquiry in the petitioner's presence. The petitioner made no such grievance during the departmental enquiry or even in his reply to the show cause notice given at a time when the contents of the Enquiry Officer's report were known to him. It is obvious that no such complaint was made then by the petitioner for the reason that he was aware of the contents of those reports on the basis of which the charges were levelled against him leading to the departmental enquiry. No prejudice of any kind to the petitioner has been shown to us. Learned Counsel contended that without knowing the contents of these reports the petitioner was unable to properly cross-examine the Revenue Inspector and the Tahsildar. If that was really the petitioner's grievance there is no reason why the petitioner would not make such a complaint during the departmental enquiry itself when these reports were produced by the two witnesses in his presence. We have not even been shown that the contents of these reports were in any manner at variance with the statements made by the Revenue Inspector and the Tahsildar during the departmental enquiry so as to suggest that the petitioner was prejudiced in his right of cross-examination of these witnesses. We are satisfied

that this ground is taken by the petitioner only as an after-thought in an attempt to support his case. This contention is, therefore rejected.

The second contention also has no force. The order-sheets recorded during the departmental enquiry filed as Annexure R-2 with the return show that on 11-5-1975 the petitioner examined himself and one witness in his defence and then clearly stated that he did not want to adduce any further evidence in his defence. The petitioner was clearly given an opportunity to lead evidence in his defence which he availed of to the extent he thought necessary. There is no basis for such a complaint made now. This contention also fails.

The third contention with regard to penalty is also untenable. One of the charges found proved against the petitioner was that he intimidated his superior officer to withdraw the report made against him of his habitual unauthorized absence under threat of assault. There can be no doubt that this was a serious misconduct and it could not be taken lightly while determining the quantum of punishment to which the petitioner had rendered himself liable for the misconduct proved against him. We are satisfied that the penalty of termination of service cannot be termed too harsh or disproportionate. The contention also fails.

The last contention also is without any merit. The basic fallacy in this argument is that it assumes that Rule 10 of the M.P. Civil Service (Classification, Control and Appeal) Rules, 1966, is the sole repository of the State Government's power to punish its servants for misconduct. This is clearly an erroneous assumption. The source of general law of master and servant is still the English common law to a larger extent, subject to the special provision applicable to a particular class of servants. According to the general law of master and servant, the only remedy of a servant complaining of wrongful dismissal is by a suit for damages unless security of tenure is assured to the servant conferring on him a legal right to remain in service for a particular period. Under the general law, a servant cannot, therefore, bring a suit for specific performance of the contract of service to continue in service if there be statutory provision giving him that right. So far as the Government servants are concerned the general law of master and servant stands modified to the extent to which it is covered by the provisions in our Constitution and the various statutes. The right of the master, under the general law, to dismiss a servant even during the period of currency of a contract of service is, therefore, subject to these restrictions embodied in our Constitution and the statutory provisions applicable to them. The common law doctrine of pleasure, i.e. "durante bene placito" has been adopted in our Constitution only in its modified form, subject to the provisions of the Constitution and the statutes. Article 310 of the Constitution lays down the principle that a Government servant holds office at the pleasure of the President or the Governor, as the case may be, except as expressly provided by this Constitution. Article 311 operates as a proviso to Article 310 in relation to persons holding civil posts. Article 311 contains certain guarantees given to persons holding civil posts under the Union

or a State subject to which alone they can be dismissed or removed or reduced in rank. Thus, the principle of "doctrine of pleasure" contained in Article 310 is subject to the guarantee given by Article 311 to persons holding civil posts. Article 309 confers rule making power on the appropriate Legislature to regulate the recruitment and conditions of service of Government servants and the proviso enables the President or the Governor to make rules operating in this field until provision in that behalf is made by or under an Act of the appropriate Legislature under this article. This power contained in Article 309 is "subject to the provisions of the Constitution". However, Article 311 is not subject to Articles 309 and 310 or any other provision of the Constitution. It is in this manner that the common law principle of "doctrine of pleasure" has been adopted in its modified form in our Constitution. Except to the extent of the guarantee contained in Article 311 of the Constitution and the provisions of the rules made under Article 309, the common law right of the Government to terminate the service of its servant continues. The result is that whenever a Government servant claims that the termination of his service is void and he is entitled to continue in service, he must show the breach of any of these provisions in order to substantiate his claim that the termination of his service is void and ineffective. It is obvious that the right of the Government to terminate the service of its employee is not based either on Article 311 of the Constitution or the rules framed under Article 309 but is based on the general law of master and servant which is restricted only to the extent already indicated by Article 311 of the Constitution and the Rules framed under Article 309 which are not inconsistent with Article 311 and other provisions of the Constitution. It is, therefore, fallacious to assume that the Government's right to impose the penalty of termination of service or any other penalty on a Government servant is derived from Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 or any other rule framed under Article 309 of the Constitution. The assumption on which the last contention of Learned Counsel for the petitioner is based is, therefore, clearly fallacious.

Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 enumerates several penalties including dismissal and removal from service and reduction in rank and classifies them into minor and major penalties. The penalties of dismissal and removal from service and reduction in rank are major penalties. This rule says that for good and sufficient reasons and as thereafter provided, the penalties mentioned therein may be imposed on a Government servant. In some of the rules thereafter the procedure for imposing these penalties is laid down. The procedure prescribed for imposing major penalties is more elaborate than the procedure prescribed for imposing minor penalties. The reason is obvious. The contention of Learned Counsel for the petitioner is that Rule 10 or any other rule contained in this set of rules does not lay down guidelines for deciding as to when one of the minor penalties is to be imposed and when a major penalty is called for. It is argued that the absence of these guidelines confers arbitrary and uncanalized discretion on the disciplinary

authority to decide which penalty has to be imposed on a Government servant for a particular misconduct and this may result in discrimination inasmuch as for the same misconduct one Government servant may be awarded a major penalty and another Government servant a minor penalty by the same disciplinary authority depending on his arbitrary discretion. As earlier stated, the power to impose any of these penalties is not conferred by Rule 10 but is available under the general law of master and servant including the doctrine of pleasure embodied in our Constitution in its modified form to the extent already indicated. It is true that the fundamental right of equality contained in Articles 14 and 16 of the Constitution is available to Government servants and in a case where there is such hostile discrimination between persons similarly placed, the impugned action may be liable to be struck down for violation of this fundamental right but that would not by itself render Rule 10 invalid because there is no vice of hostile discrimination in Rule 10 itself. Moreover, Rule 10 furnishes a reasonable and workable guide line in the words "for good and sufficient reasons" used therein. The discretion of the disciplinary authority is, therefore, controlled by the guide line furnished by this expression used in Rule 10. The expression "for good and sufficient reasons" has been used in similar set of rules applicable to Central Government servants and they have withstood so far the test of times. The question as to what is "good and sufficient reason" for imposing a particular penalty in a given case would be one of fact and no hard and fast rule can be laid down for that purpose. If the penalty imposed in a particular case is challenged on the ground that it is arbitrary and not "for good and sufficient reasons" the question will have to be examined in that light because it is settled that wherever discretion is given it has to be exercised on sound principles and not arbitrarily or according to the whim and caprice of the authority. Arbitrariness is the very negation of the rule of law, the system which governs us. This has been settled for too long to require any elaboration. It is sufficient to say that in such a case challenge to the penalty imposed would be on the ground of arbitrariness in the exercise of discretion which is against the very basic concept of rule of law and not because Rule 10 permits any arbitrary exercise of discretion. We are unable to accept the contention of Learned Counsel for the petitioner that Rule 10 confers any arbitrary power on the disciplinary authority.

This argument addressed before us is merely hypothetical and no case of hostile discrimination against the petitioner has been set up. It has neither been alleged nor shown that there has been any hostile discrimination against the petitioner so as to infringe his fundamental right under Articles 14 and 16 of the Constitution. The charges found proved against the petitioner include the charge of intimidation of a superior officer and the pressure to withdraw a report made against the petitioner by his superior officer under threat of assault. The penalty of termination of his service for such a serious misconduct cannot be termed as an arbitrary exercise of discretion. The benefit of such an argument is, therefore, not available to the petitioner.

Learned Counsel for the petitioner relied on the decision of the Supreme Court in

Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., We fail to appreciate how that decision supports the petitioner's contention. This decision lays down that the common law rule of "doctrine of pleasure" pithily expressed in the latin phrase "durante bene placito" has been adopted only in a modified form under our Constitution to the extent already indicated by us. The question for decision in Moti Ram's case (supra) was not the same as before us. The question there was of the validity of a rule which was first made by the Railway Company when employment with the railways was a purely commercial matter governed by the ordinary rules of contract, after the railways were taken over by the State. It was held that the position had essentially altered after the railways were taken over by the State and the validity of the rule was exposed to challenge under Article 14, if the rule framed earlier resulted in a hostile discrimination of the railway employees as against Government servants employed in the other departments. That case has no application. The other decision relied on is The State of Orissa v. Dhirendranath Das AIR 1961 SC 1715. That was a case in which there were two sets of rules under which enquiry could be ordered against a Government servant for his misdemeanour. One set of rules was more drastic than the other. In that context it was held that if against two public servants similarly circumstanced enquiries may be directed according to procedure substantially different at the discretion of the Executive authority, exercise whereof is not governed by any principles having any rational relation to the purpose to be achieved by the enquiry, the order selecting a prejudicial procedure, out of the two open for selection, is hit by Article 14 of the Constitution. That is not the position in the present case inasmuch as there is only one set of rules applicable to all Government servants similarly placed. This decision also is not apposite. The last contention of Shri Dharmadhikari also fails.

Consequently, this petition fails and is dismissed. Since the petitioner is out of employment, there shall be no order as to costs. The outstanding amount of security deposit shall be refunded to the petitioner.