
(2012) 03 MP CK 0090

In the Madhya Pradesh High Court

Case No : Writ Petition No : 2859 of 2000

Isem Singh Morye

APPELLANT

Vs

MP Hastashilp Vikas Nigam Ltd. and others

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 282, 287, 420, 468

Citation : (2012) 03 MP CK 0090

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Judgement

Hon"ble Shri Justice Rajendra Menon

1. Challenging the order-dated 10.11.1995 - Annexure P/18 removing the petitioner from service on the basis of the finding of guilt recorded in two departmental inquiries conducted against him; and, the order dated 13.4.2000 - Annexure P/22, passed by the appellate authority rejecting the appeal filed by him, petitioner has filed this writ petition.

2. Facts in brief, necessary for disposal of this writ petition, indicates that the M.P. Hastashilp Vikas Nigam Limited (hereinafter referred to as the "Corporation") published an advertisement in leading daily newspapers conducting a Special Recruitment Drive for filling up various posts in the Scheduled Caste and Scheduled Tribe category. When the advertisement - Annexure P/1 was issued in the year 1991, petitioner was already working as a Coordinator in the Department of Personnel and Administration, MP State Electronic Development Corporation, Bhopal. According to the petitioner, he belongs to the Scheduled Caste category and in pursuance to the advertisement issued by the Corporation vide Annexure P/1, he applied for appointment on the post of Manager/Assistant Manager. As the petitioner was already working in another Public Sector Undertaking, his application was duly forwarded by his employer namely - OPTEL, vide letter dated 25.3.1992 - Annexure P/2. The application form submitted by the petitioner is Annexure P/3, dated 24.3.92. It is

the case of the petitioner that he appeared in the written test and was interviewed by the Corporation and on the basis of his performance in the selection, he was appointed as an Assistant Manager vide order-dated 15.7.92 - Annexure P/4 and started working on the selected post of Assistant Manager.

3. While so working in the establishment of the respondent Corporation as an Assistant Manager, another advertisement - Annexure P/5 was published on 10.5.1993 again, for filling up certain posts in the Special Recruitment Drive for appointment of SC/ST candidates. The appointment in question and the vacancies notified were in the category of Manager, Accountant, Assistants etc. Annexure P/5 is a copy of the advertisement. The petitioner after obtaining "no objection" submitted his application Annexure P/6, on 31.5.1993, seeking appointment on the post of Manager (Administration). The respondents conducted the process of selection, interview and the petitioner was appointed in the Corporation itself on the higher post of Manager (Administration) vide order-dated 30.9.1993 - Annexure P/7. It is the case of the petitioner that he started working without any complaint, various certificates and documents showing his working are brought on record. It is the case of the petitioner that after respondent No. 2 joined the post of Managing Director and when the petitioner did not succumb to the unjustified demands of respondent No. 2, respondents 2, 3 and 4 started devising means to somehow remove the petitioner from service. It is stated that in pursuance to this ill-device, certain complaints were called for against the petitioner, but when nothing was forthcoming, no action could be taken. However, a complaint was got manufactured with the help of respondents 3 and 4, in the year 1994, and on the ground that petitioner has obtained appointment in the Corporation by producing false and fabricated documents, a charge-sheet dated 30.1.1995 was issued to the petitioner vide Annexure P/14. This charge-sheet is hereafter referred to as the "first charge-sheet". Immediately thereafter another charge-sheet dated 12.5.1995 was issued to the petitioner vide Annexure P/15. This is the "second charge-sheet" issued to the petitioner. Two disciplinary inquiries were conducted ex-parte and respondent No. 4 was appointed as an inquiry officer to conduct an inquiry into the matter. It is stated that respondent No. 4 conducted the inquiry, submitted a report and on the basis of the report submitted into the two inquiries, the impugned action is taken.

4. Petitioner has narrated various facts with regard to the action proposed to be taken; his filing of Writ Petition bearing No. 4839/1999; and, the action of the respondents and the appellate authority in proposing to somehow terminate the services of the petitioner without giving him proper opportunity. The aforesaid factual aspects are not relevant for the dispute and they are not being referred.

5. According to the petitioner, the allegation against the petitioner in the first charge-sheet - Annexure P/14 dated 30.1.1995 is to the effect that the petitioner applied to the Collector, Bhopal for issuance of a permanent resident certificate and he obtained the same on the basis of false documents. Even though he was

a resident of Uttar Pradesh, he manipulated the records and obtained the certificate. It was alleged in the aforesaid charge-sheet that apart from the fact that this amounts to mis-conduct, it is also said to be a criminal offence under sections 420, 282 and 287 IPC. According to the petitioner with regard to the first charge-sheet and the three allegations levelled therein, petitioner was also prosecuted for offences under sections 420/468 IPC in the Court of Judicial Magistrate First Class, Bhopal. The JMFC, Bhopal by his judgment dated 7.11.2006 discharged the petitioner for the offence u/s 420 IPC, but found him guilty of an offence u/s 468 IPC and, therefore, an appeal was filed against the aforesaid judgment of the learned JMFC in the Court of 3rd Additional Sessions Judge, Bhopal and the said Sessions Judge, Bhopal vide judgment dated 20.7.2007 - Annexure P/38 passed in Criminal Appeal No. 334/2006, acquitted the petitioner of all the charges and held that the petitioner is not guilty of the charges levelled against him.

6. As far as the first charge-sheet and the departmental inquiry into this charge-sheet is concerned, Shri Vivek Rusia submitted that the allegations levelled against the petitioner in this charge-sheet and the allegations for which the petitioner was prosecuted in the criminal case are identical and once a court of competent criminal jurisdiction has acquitted the petitioner of the allegations in the criminal case, the findings recorded by the inquiry officer and the action taken for punishing the petitioner for this allegation is unsustainable. It is argued by him that for the same set of circumstances and on the basis of the same material, the petitioner cannot be punished in the departmental inquiry when he is exonerated and acquitted in the criminal case.

7. Even though during the course of hearing Shri Vivek Rusia tried to emphasize that the findings recorded by the inquiry officer with regard to the first charge-sheet is wholly perverse, illegal and further that the inquiry was held in violation to the principles of natural justice, but his main thrust of arguments was that once the petitioner is exonerated of the allegations in the criminal case, no action could be taken against him. It was emphasized by him that the only allegation against the petitioner with regard to this charge-sheet is that by use of forged and fabricated documents he had obtained a certificate of residence from the Collector, Bhopal and used the same for seeking appointment on the post of Manager (Administration). According to Shri Rusia neither in the advertisement nor in the notification issued was it a condition that the candidate has to be a local resident of Bhopal or MP. That being so, it was emphasized by him that when there was no condition of a candidate being a local resident, the question of petitioner submitting such a certificate does not arise and referring to the application submitted and the documents enclosed therein, he submits that no such certificate was submitted and the entire story in this regard is fabricated at the instance of respondent No. 2 against whom a Lok Ayukta inquiry was pending and the petitioner had refused to help him in the inquiry. Accordingly, contending that the allegations levelled in the first charge-sheet did not amount to any mis-conduct and further contending that the allegations cannot be sustained now in

the light of petitioner's acquittal in the criminal case, prayer made is that the first charge-sheet, the finding in the inquiry and the consequential punishment on the said charge-sheet be quashed.

8. As far as the "second charge-sheet" is concerned, four allegations were levelled against the petitioner in this charge-sheet and the same pertain to misuse of position and office by the petitioner for getting his relatives appointed in the Corporation. It was argued by Shri Vivek Rusia with regard to this charge-sheet that the inquiry into this charge-sheet was held ex-parte, the petitioner was under suspension, subsistence allowance was never paid to him and an ex-parte inquiry was conducted in an illegal manner, which is unsustainable. Accordingly, he contends that the inquiry conducted in the "second charge-sheet" is also illegal as an ex-parte proceeding is done against the petitioner without any justification. It was also argued by him that in this charge-sheet the allegations are that the petitioner processed certain note-sheets for appointment of his relatives and got them appointed in an illegal manner. It is argued that the petitioner prepared a note-sheet - Annexure P/24, on 19.4.1999, where he had clearly mentioned about his relationship with some of the persons particularly Shri Sethpal and Shri Virendra Pal, and without taking note of the note-sheet the action taken is said to be unsustainable. It is further argued that the appointments to these posts were made on temporary basis, as daily wages employees, appointments have been brought to an end within a short period and as the petitioner is not the appointing authority, the allegations in this charge-sheet cannot be sustained, more so, when an ex-parte inquiry is conducted. Accordingly, it is argued that in the facts and circumstances of the case, the entire action be quashed.

9. Respondents have refuted the aforesaid and Shri H.K. Upadhyaya, learned counsel for the Corporation, took me through the entire records and argued that the petitioner used forged documents to get appointment in the establishment of the respondents and as it was found in the departmental inquiry that he was not a resident of Bhopal, but has somehow managed to obtain forged certificate from Collector, Bhopal, the action is proper. It is stated that even though in the advertisement, the condition of a person being a local resident was not incorporated, but it is the requirement of Fundamental Rule 53(2) to submit a certificate and as the requirement of the Rule is violated, it is stated that the action is taken. According to Shri H.K. Upadhyaya in both the cases serious allegations were levelled against the petitioner, an appropriate inquiry was conducted into the allegations and on the allegations being found to be proved, the impugned action is taken. As the impugned action is taken in accordance to the findings recorded in a properly conducted departmental inquiry, it is stated that the same does not warrant any interference. Accordingly, on the grounds raised, learned counsel for the respondents seek for dismissal of the petition.

10. I have heard learned counsel for the parties at length and perused the records.

11. It is clear from the records that action is taken against the petitioner on the basis of findings recorded into two departmental inquiries conducted against him and, therefore, it would be appropriate to take up for consideration both the inquiries separately and decide the controversy on merits in accordance to the submissions made by the parties and the material available on record.

12. As far as the first charge-sheet is concerned, the same is Annexure P/14 dated 30.1.1995 and in this charge-sheet three imputation of allegations are levelled against the petitioner. The first allegation against the petitioner is that on 16.1.1992, he submitted an application in the office of Collector, Bhopal for obtaining a certificate of residence and indicated that the certificate is required by him for seeking appointment. It is alleged in this charge-sheet that alongwith the application he submitted an affidavit and a forged mark-sheet of M. Sc (Botany) issued from Barkatullah University, Bhopal. It was alleged that the petitioner by submitting a false affidavit and forged mark-sheet obtained the residence certificate from the Collector, Bhopal and this amounts to an offence punishable under sections 420, 282 and 287 of the Indian Penal Code. The second allegation in this charge-sheet is that in the manner indicated hereinabove, by producing a false affidavit and a fabricated mark-sheet petitioner obtained a residence certificate and got appointment in the Corporation, which amounts to cheating the Corporation. The third allegation was that while working as Assistant Manager (Personnel) and as Manager (Personnel), he made some corrections in his bio-data with regard to change of his father's address, to show that he is a resident of Madhya Pradesh. Accordingly, the three allegations were levelled against the petitioner in this charge-sheet.

13. Petitioner denied all the allegations and a departmental inquiry was conducted. In the inquiry, at the very outset petitioner was examined on 3.5.1995 and thereafter two witnesses namely -PW/1 Shri Dinesh Jajawara was examined on 24.6.1995; and, PW/2 Shri P.K. Tripathi was examined on 1.7.1995, and the inquiry officer gave his finding on the basis of the aforesaid evidence. If the findings recorded by the inquiry officer with regard to the first charge-sheet is taken note of, it would be seen that the findings of the inquiry officer are based on documents produced by the two witnesses namely Shri P.K. Tripathi and Shri Dinesh Jajawara. Both these witnesses have only testified to the effect that they have produced the documents available in the record and based on these documents the charges are held to be proved. A perusal of the inquiry report indicates that the documents are the certificates produced by the petitioner, the application for appointment and the documents received from the office of District Collector, Bhopal with regard to issuance of residence certificate to the petitioner; and, the so called false affidavit and the forged marksheet of M. Sc (Botany). If the statement of the two witnesses recorded in the inquiry and the finding of the officer are scanned, it would be seen that the entire finding of the inquiry officer is based on the documents received by the Corporation from the office of District Collector, Bhopal and the report of a Deputy Collector to the

Corporation indicating that the certificate has been cancelled on inquiry. According to the petitioner, for getting appointment in the Corporation two advertisements were issued - one for the post of Assistant Manager and another for the post of Manager. Petitioner applied for both the posts and for appointment to both these posts, requirement of the candidate being a local resident was not at all mandatory.

14. That being so, he poses a question as to why he should produce a certificate of residence when it was not at all required? This defence of the petitioner becomes very pertinent and important and has a bearing on the case as has not been adverted to by the inquiry officer. However, the inquiry officer and the disciplinary authority have brushed aside this defence by only holding that to make his candidature strong petitioner has submitted the certificates. In the departmental inquiry, no finding is recorded that alongwith his application such a certificate was produced by the petitioner before the respondents/Corporation. What is found established is that for obtaining the certificate from the office of Collector, Bhopal forged affidavit and mark-sheet were used. There is no evidence available on record to show that alongwith his application seeking appointment with the Corporation in pursuance to the advertisement petitioner ever submitted any such certificate of domicile or residence. It is, therefore, a case where in the departmental inquiry the respondents have failed to prove that the submission of a domicile certificate was a requirement as per the Rules for appointment or that the petitioner has produced this certificate for seeking appointment. On the contrary, the entire inquiry report and the finding of the inquiry officer and the disciplinary authority is based on the documents submitted by the petitioner before the Collector, District Bhopal. As far as submitting the documents before the Collector, Bhopal is concerned, the same has been subject to scrutiny by the Court of 3rd Sessions Judge, Bhopal in Criminal Appeal No. 334/2006 and a perusal of the certified copy of the judgment dated 20.7.2007 in this regard, indicates that in the criminal case also, petitioner is prosecuted on a complaint made by the Corporation to the effect that petitioner has obtained a false domicile/resident certificate by producing a false affidavit and a forged mark-sheet of M. Sc (Botany) from Barkatullah University. In the trial conducted against the petitioner, more than 11 prosecution witnesses have been examined and overwhelming documents were produced. The documents produced in the criminal case are the same set of 50 to 57 documents, which were produced in the departmental inquiry after obtaining them from the office of District Collector, Bhopal. If the findings recorded by the criminal court is scrutinized meticulously, it would be seen that the allegations levelled in the charge-sheet issued to the petitioner vide Annexure P/14 on 30.1.1995, and the allegations of imputation contained in allegation No. (1) and allegation No. (2) are the same, which were subject matter of consideration in the criminal case. As already indicated hereinabove, allegation No. (1) in the charge-sheet was that for obtaining the residence certificate from the office of District Collector, Bhopal petitioner submitted a false

affidavit and a forged mark-sheet of M. Sc (Botany). This was the allegation levelled against the petitioner in the criminal case also. Allegation No. (2) levelled in the charge-sheet is that by producing these two documents petitioner obtained the domicile certificate from the office of Collector and got appointment in the Corporation.

15. In the criminal case after analyzing the evidence that came on record, particularly the statements of PW/1 Shri Ramakant, PW/3 Smt. Aruna Gupta, PW/5 Shri Suresh Sharma and PW/7 Shri Shivcharan, it is found by the criminal court that the so called M. Sc (Botany) mark-sheet, which was allegedly produced by the petitioner, is not available in the record of the Corporation. It is further found in the criminal case that alongwith the application submitted for obtaining the residence certificate (Ex.P/14 in the judgment), no such mark-sheet of M. Sc (Botany) is produced by the petitioner either in the office of the Collector or in the establishment of the respondent/Corporation. Further finding is that the petitioner has never in his resume dated 24.3.1992 submitted to the Corporation vide Exhibit P/3, ever indicated that he has passed his M. Sc (Botany) from Barkatullah University. It is also found by the criminal court that the allegations against the petitioner with regard to obtaining the residence certificate on forged documents are not proved. The findings recorded by the criminal court in paragraphs 16 and 17 clearly indicate that the allegations levelled against the petitioner are not proved. The finding is in detail and is a finding acquitting the petitioner on merits, after analyzing the statement of all the witnesses and more than 50 documents.

16. It is, therefore, clear that on the same set of two allegations petitioner is prosecuted in the criminal case and in the departmental inquiry - he is acquitted in the criminal case and he is held guilty in the departmental inquiry. In the departmental inquiry, the petitioner is not held guilty on the basis of any independent evidence or documents produced, the documents produced in the departmental inquiry were the same documents which were obtained from the office of District Collector, Bhopal and these documents were part of record in the criminal case. Therefore, on the basis of same set of documentary evidence, petitioner is held guilty in the departmental inquiry, but in the criminal case the petitioner is exonerated. In the criminal case more than seven witnesses are examined, which include the officers of the District Collector, Bhopal, who are responsible for keeping the records and issuing the certificate, but in the departmental inquiry the two witnesses examined namely Shri Dinesh Jajawara and Shri P.K. Tripathi are only custodians of certain documents in the office of the Corporation and are not independent witnesses with regard to allegations in the charge-sheet. Therefore, it is a case where on the same set of allegations levelled against the petitioner, as far as charge Nos. (1) and (2) are concerned, two parallel proceedings are held. The material, evidence and the documents in both the proceedings are exactly similar and identical and a court of criminal jurisdiction exonerates the petitioner of all the allegations and acquits him, whereas merely on the ground that the documents are obtained from the

Collectorate, they are taken to be correct and the petitioner held guilty in the departmental inquiry. This cannot be permitted. This is not a case where on technical grounds or on the basis of evidence, which was not produced, petitioner is exonerated in the criminal cases and is convicted in the departmental inquiry on the basis of a different set of evidence. When the evidence and the material in both the cases are similar then the finding recorded by a court of criminal jurisdiction i.e.... the criminal case will have to be accepted and given predominance over the finding recorded in a departmental inquiry.

17. That apart, in this particular case there is peculiar distinguishing feature. In the departmental inquiry neither any independent oral evidence is recorded nor is separate document produced which did not form part of the criminal case. The documents produced in the departmental inquiry were only the documents received from the office of Collector, Bhopal and it is on the basis of these documents that in the criminal case the petitioner is acquitted. Accordingly, once on the same set of evidence and material the petitioner is acquitted in the criminal case, the findings recorded against him in the departmental inquiry on the same set of evidence and material cannot be upheld. It is a case where the finding recorded in the departmental inquiry has to be held to be perverse and unsustainable when the criminal court has recorded a finding that the allegation of producing false affidavit or mark-sheet is not established and when the said finding is based on due appreciation of the documents and evidence on merits by the criminal court, the disciplinary authorities cannot punish the petitioner on the same set of allegations.

18. In the present case the allegation against the petitioner is that he obtained appointment by producing a false residence/domicile certificate. The very fact as to whether the domicile certificate was required for seeking appointment is not established. On the contrary, the respondents themselves admit that neither in the advertisement nor in the communications made to the petitioner, was he ever asked to submit any domicile certificate or residence certificate. When it is held that production of a domicile certificate is not a requirement for appointment then on the ground that the petitioner got appointed on the basis of a false domicile certificate, petitioner cannot be punished departmentally by the employer. That apart, the respondents have failed to prove that in his application for appointment the petitioner ever enclosed any certificate of residence issued by the Collector. Even in the criminal case this aspect has been considered and in paragraph 16, the finding recorded is that in the application submitted by the petitioner vide Exhibit P/3, to the Managing Director of the Corporation, there is no mention that he is a resident of MP and is submitting the residence certificate or M. Sc (Botany) certificate. It is indicated and found by the criminal court that in the 21 documents referred to in this application - Exhibit P/3, none of these documents are referred to and, therefore, the finding recorded is that the petitioner has not submitted any documents in this regard before the employer. For the sake of convenience the findings recorded by the criminal court in this regard in paragraphs 16 and 17 is reproduced herein, which goes to show that

the allegations levelled against the petitioner in the charge-sheet are false and perverse:

19. Accordingly, it is a case where the allegations levelled against the petitioner with regard to Charge Nos. (1) and (2) in the first charge-sheet is not established. As far as Charge No. (3) in this charge-sheet is concerned, it only pertains to the petitioner changing the address of his father in the Bio-data. This allegation against the petitioner is not found to be established from the evidence that has come on record and, therefore, all the three allegations levelled against the petitioner with regard to the first charge-sheet is found to be not established and, therefore, the findings recorded with regard to the first charge-sheet is hereby quashed.

20. As far as the second charge-sheet dated 12.5.1995 - Annexure P/15 is concerned, there are four allegations against the petitioner in this charge-sheet. The four allegations are with regard to petitioner helping his relatives in getting appointment in the Corporation. With regard to this charge-sheet, an ex-parte departmental inquiry is conducted and in the same these charges are found to be proved. However, the appointment in question is also found to be granted by the Manager of Gwalior office one Shri Hojiram Shakya. This officer is also found to be equally responsible like the petitioner, but in the case of this officer the minor penalty of "stoppage of increment without cumulative effect" is imposed. This discrimination is explained by the respondents by contending that Shri Hojiram Shakya is not an employee of the Corporation, he is an employee of the State Government and, therefore, the State Government is responsible for imposing the minor penalty on him. However, while holding the petitioner guilty of the charges levelled in the second charge-sheet the fact that petitioner had in the note-sheet Annexure P/4 pointed out that Shri Sethpal and Shri Virendra Pal are his relatives and further that the appointments were made on temporary basis for a short period on daily wages and subsequently the appointments were terminated are all not taken note of. That apart, the punishment of removal from service imposed is the cumulative effect of issuance of two charge-sheets. But, this Court has found the allegations levelled in one charge-sheet and the finding recorded in the same to be unsustainable. That being so, even if the allegations levelled in the second charge-sheet are found to be correct, it is only a case where the petitioner is not the appointing authority, he has only forwarded the application of some persons for appointment as daily wage employees and even if those persons are appointed, it is only for a short period, their services are not regularized and records indicate that after working for some period, their services as daily wage employees have been terminated. Under such circumstances, even if the entire allegation with regard to this charge-sheet is found to be correct, for the same punishment of removal from service is not warranted particularly when co-accused Shri Hojiram Shakya is let off by the appointing authority with a minor punishment of stoppage of increment. Accordingly, as far as the second charge-sheet is concerned, it is a case where the punishment of removal from service is not warranted and, therefore, it is a fit

case where the question of imposing of an alternate punishment with regard to this charge-sheet should be reconsidered.

21. Accordingly, this petition is allowed. Charge-sheet dated 30.1.1995 - Annexure P/14 and the finding of guilt recorded by the inquiry officer with regard to this charge-sheet (first charge-sheet) are quashed and it is held that the petitioner is not guilty of the allegations levelled in this charge-sheet and no action can be taken against the petitioner for the same.

22. As far as the second charge-sheet is concerned, the finding recorded with regard to this charge-sheet even if accepted in its totality and the mis-conduct established, does not warrant imposition of the extreme punishment of dismissal from service. Accordingly, the matter is remanded back to the disciplinary authority for reconsidering the question of imposing punishment with regard to the second charge-sheet dated 12.5.1995 - Annexure P/15, and after hearing the petitioner, considering his defence a decision be again taken in the changed scenario with regard to this charge-sheet and ultimately if it is found that some punishment is to be imposed with regard to this charge-sheet, then any other alternative punishment except dismissal or removal from service be imposed upon the petitioner and if the said punishment is imposed and petitioner still feels aggrieved, he may agitate the same in accordance with law.

23. The petitioner may submit all his defence and objections to this charge-sheet (i.e.... second charge-sheet) and the finding recorded by the inquiry officer and the disciplinary authority is directed to reconsider the entire matter again and pass a fresh order not only with regard to holding the petitioner guilty of the charges levelled in this charge-sheet, but also with regard to quantum of punishment.

24. Accordingly, the petition stands allowed and disposed of. No order as to costs.