

(2018) 08 RAJ CK 0123
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 385 of 2015

Jugal Kishore Mathur @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 21-08-2018

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 08 RAJ CK 0123

Hon'ble Judges : NIRMALJIT KAUR, J;DINESH MEHTA, J

Bench : Division Bench

Advocate : Sunil Bhandari

Final Decision : Dismissed

Judgement

Nirmaljit Kaur, J

The present special appeal is preferred against the judgment and order dated 12.02.2015, vide which, the writ petition filed by the appellant-petitioner

being an RAS Officer (since deceased), challenging the order dated 21.08.1993 removing him from service was dismissed.

A charge-sheet was issued to the petitioner on 08.02.1991 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules,

1958 wherein it was alleged that the procedure adopted for selection of Teachers by the Committee, of which, Shri Jugal Kishore Mathur, the

appellant-petitioner (since deceased) was a Member Secretary, was not proper. The said charge-sheet was issued after the conclusion of the

preliminary enquiry. The petitioner filed a detailed reply to the charge-sheet denying the charges on 15.02.1992. After recording the evidence

produced by both sides, the enquiry report was submitted by the Enquiry Officer on 04.02.1998. The appellant-petitioner was found guilty of all the 9

charges. The petitioner submitted a detailed reply to the enquiry report. The

Disciplinary Authority vide its order dated 21.08.1998 imposed the punishment of removal from service. The petitioner filed review petition against the order of punishment which was dismissed by the Disciplinary Authority on 19.11.1998. Thereafter, the review petition was filed before His Excellency the Governor, which too was dismissed on 15.12.1999. Even, the review against the said order was dismissed by the Honâ??ble Governor on 03.04.2001. The impugned orders were challenged by Jugal Kishore Mathur, the appellant-petitioner, by way of S.B.Civil Writ Petition No.4588/2011. The said writ petition was dismissed by the learned Single Judge vide judgment and order dated 12.02.2015, which is impugned herein.Â Â While challenging the judgment and order passed by the learned Single Judge, the learned counsel for the appellant raised twofold arguments. Firstly, the appellant-petitioner was only a Member Secretary of the Committee and he had no independent role to play in the selection. It was a joint selection of the Committee, which finalized merit list.Â Therefore, he alone could not have been singled out and made a scapegoat. These facts were not considered by the learned Single Judge. Secondly, the said appointments so made by the appellant and the Selection Committee, which is the basis of punishment order, have been upheld by the High Court vide order dated 10.01.1994 passed in S.B.Civil Writ Petition No.1419/1990. Under these circumstances, the impugned order cannot be sustained because the High Court itself has held the selection as proper and valid. Even, the writ petition filed by unsuccessful candidates were rejected. It was further contended that the punishment is excessive and grossly disproportionate.

Heard.

It is a well settled proposition that the High Court should not interfere with the conclusion of the Disciplinary Authority unless the finding if not supported by any evidence. The Apex Court in the case of Union of India & Ors. Vs. P.Gunasekaran, arising out of SLP (Civil) No.23631 of 2008, while setting aside the order of the High Court interfering in the finding recorded by the punishing Authority and in agreement with the Tribunal observed that the High Court is not constituted in a proceeding under Article 226 of the Constitution, a Court of appeal, over the decision of the authorities holding a departmental enquiry against a public servant by holding as under:-

Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 the Constitution of India, shall not venture into reappreciation of the evidence.

In the present case, there is finding recorded by the Enquiry Officer, the Punishing Authority, the Honorable Governor and the learned Single Judge that the petitioner committed grave irregularities and illegalities in making appointments of Teachers while working as Chief Executive Officer, Zila Parishad, Bikaner. The interview marks were given to the candidates in an arbitrary manner. The applications were entered in the register even though they were received belatedly by keeping some entries vacant to be filled subsequently. In the interview, 60 marks were fixed for educational qualification and 40 marks were fixed for interview. As regards marking based on educational qualification is concerned, the marks of each candidate are mentioned in the register but marks obtained in the interview have not been mentioned to enable manipulations. It was further proved that high marks were given by the petitioner to a favoured few. Interview marks were not based on merit or performance but on recommendations. Names of number of candidates were deleted from the general category. One of the serious allegations which has also been noted by the learned Single Judge was the appointments given to 11 such candidates whose names did not find place in the merit list. The details of which are as follows:

S. General Teachers Trade Teachers Phy. Teachers No

1 Harish Kumar 226 Laxminarayan 110 Prabhudayal 70

2 Rajendra 235 Kishanlal 153 Mansukhdan 79

3 Daya Ram 342 Narendra 155 Bodu Ram 80

4 Moti Ram 343 Balveer 120

The above fact has neither been disputed before the learned Single Judge and nor before this Court. Thus, the petitioner committed grave illegalities

and irregularities and in a wholly arbitrary manner gave appointment to his favoured one by misusing his official position. It is indeed a glaring example of misconduct committed in appointment of Teachers which has been found duly proved during the course of a detailed enquiry.

The only argument as noted above is that he alone could not have been made a scapegoat as all were responsible for signing the merit list. Learned

counsel has relied upon the judgment of Honâ??ble supreme Court rendered in the case of Bongaigaon Refinery & Petrochemicals Ltd. &U Ors.

Vs. Girish Chandra Sharma, reported in (2007) 2 Supreme Court Cases (L&S) 638 to contend that one of the member of a committee cannot be

scapegoat when the select list has been signed by all the members. There is no dispute with the judgment rendered in the case of Bongaigaon

Refinery & Petrochemicals Ltd. (supra). However, each case has to be considered on its own facts. In the instant case, the petitioner was a Member

Secretary of the Selection committee. The witnesses Shabdsharan Sharma (the then Dy. District Education Officer) and Reamesh Dubey [the then

Additional District Collector (Admn.)] who were the members of the interview committee and were examined during the enquiry have clearly alleged

that all the documents were handed over to the appellant-petitioner after holding the interviews and the remaining job of the preparing the merit list

was conducted by the Zila Parishad.

The second argument of the learned counsel for the appellant-petitioner that the very selection which was found to be irregular and on the basis of

which the appellant-petitioner was removed from service was upheld by this Court vide order dated 10.01.1994 passed in S.B.Civil Writ Petition

No.1419/1990 does not help the petitioner. A perusal of the said judgment shows that the selected candidates had challenged the order cancelling their

selection by filing S.B.Civil Writ Petition 1419/1990. The same was set aside on the ground that the order of cancellation was passed without following

the principles of natural justice and without granting opportunity of hearing to the selected candidates. Reliance on the order dated 25.11.1994 passed

in S.B.Civil Writ Petition No.463/1990 (Chitrakala Adhyapak Birojgar Samiti, Bikaner & Ors. Vs. State of Raj. & Ors.) dismissing the petition filed by

the persons who were not selected, too, is of no help. The same was dismissed on the ground that the selected candidates were not made a party, the

petitioners of the writ petition had meanwhile also secured employment in subsequent years and the coordinate Bench had already set aside the order

of cancellation on the ground that such selected candidates were not given an opportunity of being heard. Therefore, the petitioner cannot derive any

benefit from the order and judgment dated 10.01.1994 as well as dated 25.11.1994. The said judgment does not absolve the allegation of illegalities and irregularities committed by the appellant-petitioner.

In these circumstances, we find no ground to interfere in the well reasoned order and judgment dated 12.02.2015 passed by learned Single Bench and

nor do we find any reason to interfere in the quantum of punishment imposed in the facts and circumstances of the present case which is in any case

a prerogative of the punishing authority.

Dismissed accordingly.