
(2005) 08 MP CK 0096

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13263 of 2003

Kaluram Rai

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Citation : (2005) 107 FLR 1126 : (2006) 1 MPHT 45 : (2005) 4 MPLJ 45 :
(2005) 4 MPLJ 357

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : A.G. Dhande and Sudeep Chatterjee, for the Appellant; Ashok Agrawal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

This petition was originally filed before the State Administrative Tribunal, Jabalpur on 7-1-1999, however, on account of abolition of the Tribunal, this petition has been received by this Court for its adjudication.

Initially this petition was submitted for seeking relief in regard to acceptance of the joining report w.e.f. 19-5-1987 and to pay all the monitory benefits to the petitioner as well as seniority etc. On 11-1-1999 the Tribunal issued show- cause notice to the respondents and in the return the stand which has been taken by the respondents is that vide Annexure R-15, dated 6-2-1991 the petitioner has been punished by an order of removal after holding ex-parte departmental enquiry against him in which charges of his long absence has been found to be proved.

The unfolded facts are that the petitioner, at the relevant point of time, was posted on the post of Senior Agriculture and Development Officer. Unfortunately he fell ill and he applied for obtaining earned leave for the period 4-3-1985 to 30-4-1985 which was forwarded by the department. In between the petitioner

had undergone the treatment as he was a patient of T.B. and was admitted in T.B. Hospital, Chhindwara. The relevant document in that regard Annexure A-4 has been placed on record in which the Medical Specialist has certified that the petitioner was treated for the said disease and from 1-4-1986. In between vide Annexure A-1, dated 28-4-1985 the petitioner submitted an application and applied for extension of leave as he was still under the treatment. The petitioner also annexed medical certificate Annexure A-2, dated 31-3-1986 issued by the concerning doctor of District Hospital, Chhindwara.

The case of the petitioner is that on the advise of the doctor when he became fit to resume his duty on 19-7-1987 he submitted his rejoining report along with medical certificate. Joining application is Annexure A-5 and the requisite medical fitness certificate issued by the concerning doctors of T.B. Hospital Chhindwara is Annexure A-6.

The contention of learned Senior Counsel is that the joining report of the petitioner was referred to Joint Director vide Annexure A-7, dated 19-5-1987. Thereafter vide Annexure A-8, dated 25-5-1987 the petitioner submitted his joining report to respondent No. 4 and obtained acknowledgment thereof. Later on, vide Annexure A-9, dated 25-5-1987 the petitioner submitted his joining report to the Joint Director, Agriculture, Jabalpur and copy of which was forwarded to Director, Agriculture and respondent No. 4. Since the department did not accept his joining report, the petitioner vide Annexure A-10, dated 18-6-1987 submitted his representation to the Director, requesting him to accept his joining. The petitioner further submitted another representation vide Annexure A-11, dated 8-7-1998. Thereafter again on 8-12-1998 vide Annexure A-13 the petitioner submitted another representation to the Director. The contention of learned Senior counsel is that no order has been passed in regard to accepting or rejecting his joining by any of the officer of the department and an ex parte enquiry was held without issuing any show-cause notice and without serving any charge-sheet to the petitioner and providing him adequate opportunity of hearing and thereafter vide Annexure R-15, dated 6-2-1991 the petitioner has been punished by the order of removal on the ground that the charge in regard to his long absence has been found to be proved.

On the other hand, it has been contended by Shri Ashok Agrawal, learned Govt. Advocate, that on 11-4-1986 a show-cause notice was issued by the Director to the petitioner but he did not submit any reply explaining his unauthorized absence. Thereafter vide. Annexure R-12 and R-13 notices were sent to the petitioner to participate in the departmental enquiry. Since he did not remain present in the departmental enquiry and the charges were found to be proved against him, the department has rightly been passed the order of punishment directing removal of the petitioner from the service vide Annexure R-15, as he was found absent for a long period. Learned Govt. Advocate further stated that Annexure A-11 and A-13 were never received in the corresponding offices of the respondents.

After having heard learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

The authenticity of Annexure A-1, dated 28-4-1985 by which the petitioner applied for grant of his earn leave has not been disputed. On going through this document, it is revealed that the same was filed along with medical certificate of concerning doctor of District T.B. Hospital, Chhindwara. The petitioner, since he was not cured, vide. Annexure A-3, dated 2-4-1986, applied for extension of leave along with medical certificate Annexure A-4. Thereafter vide Annexure A-5, dated 19-5-1987 the petitioner submitted his joining report along with medical fitness certificate Annexure A-6, dated 17-5-1987. The authenticity of Annexure A-15 has not been denied. On going through this document, it is revealed that it has been marked to Joint Director by the Assistant Director. Thereafter vide Annexure A-7, dated 19-5-1987 the Assistant Chemical Specialist wrote a letter to the petitioner informing him that he is not competent to accept his joining and it is in the competence of Joint Director. Thereafter vide Annexure A-9, dated 25-5-1987 the petitioner submitted his joining in the office of the Joint Director, Agriculture, Jabalpur. Though the authenticity of Annexure A-9 has been questioned by learned Govt. Advocate, but, on bare perusal of this document, it is revealed that it bears seal and signature of the concerning officer along with date, therefore, it can not be said that the petitioner did not submit his joining report to the Joint Director on 25-5-1987.

Learned Govt. Advocate could not point out any order which has been passed by the Competent Officer who has dealt the application of leave of the petitioner. In these circumstances, the view of this Court is that since the petitioner has applied for the grant of his earn leave for his treatment and also submitted his joining report, therefore, in all fairness there should be a specific order in regard to sanction or non-sanction of the leave period of the petitioner. It is no more in dispute that the immediate officer with whom the petitioner was serving, forwarded the joining report of the petitioner to the Joint Director. The petitioner also vide Annexure A-9 submitted his joining report to the Joint Director. In absence of any specific order in regard to the sanction of the leave period of the petitioner, holding a departmental enquiry in the absence of the petitioner is arbitrary in nature. There is nothing on record in order to show that the show-cause notice was ever served on the petitioner. No document in that regard has been submitted alongwith the return. Though Annexures R-12 and R-13 have been placed on record by the respondents along with the return in order to show that the petitioner was well informed in regard to pendency of departmental enquiry and he was further directed to remain present and to take part in the departmental enquiry, but, there is nothing on record in order to show that they were ever served to the petitioner. The respondents were obliged to submit the acknowledgment because it is the case of the petitioner that he was not allowed to join his service. Moreover it has been rightly pointed out by learned Senior Counsel for the petitioner that these two documents (Annexure R-12 and R-13) have been addressed to the petitioner to his office address where he was serving

and where he was not allowed to join his duty. In these facts and circumstances, only formalities have been done in order to complete the departmental enquiry and the departmental enquiry has been completed behind the back of the petitioner without affording adequate opportunity of hearing to him. Thus, the order of punishment Annexure R-15, dated 6-2-1991 is hereby quashed.

Resultantly, this petition is allowed. The respondents are hereby directed to take back the petitioner in service from the date when the order of removal Annexure A-15, i.e., 6-2-1991 was passed. The respondents are further directed to pass a specific order in regard to sanction of the leave of the petitioner w.e.f. 4-3-1985 to 19-5-1987. The petitioner shall be entitled for the wages w.e.f. 6-2-1991. It has been stated by learned Senior Counsel that the petitioner has already been retired. The respondents are hereby directed to fix the pension and retiral dues of the petitioner accordingly. Let this exercise be done within a period of four months from today. No costs.