

(1956) 09 MP CK 0003

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Case No. 15 of 1955

Kamalabai

APPELLANT

Vs

The State of Madhya Bharat and Others

RESPONDENT

Date of Decision : 13-09-1956

Acts Referred:

Civil Services (Punishment and Appeals) Act — Section 8

Constitution of India, 1950 — Article 226, 311, 311(2)

Government of India Act, 1935 — Section 210(3)

Madhya Bharat Civil Services (Punishment and Appeal) Rules, 1950 — Rule 6, 6(1), 8

Citation : AIR 1957 MP 128

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Advocate : M.P. Avadhoot, for the Appellant; J.D. Patel, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Nevaskar, J.—This is a petition under Article 226 of the Constitution submitted by the Petitioner for the issue of; a Writ of mandamus or any other kind of writ or direction against the State of Madhya Bharat and against the Director of Medical and Health Services.

2. The Petitioner was grounded on the following facts:

3. The Petitioner was in the service of former Dhar State since 15-4-1933 and was later assimilated in the State of Madhya Bharat in the Medical and Health Department. She was throughout employed as a nurse. During the material time she was posted as a nurse at the Civil Hospital Kukshi in the District of Dhar. The Petitioner got ill some time in July 1950 and was unable to join duty from 20-7-1950.

She was granted leave on her applications upto 6-9-1951 when she was informed by the Director of Health Services, Madhya Bharat, by means of a letter

of that date to join duty at once. She Continued to represent that she was ill. On 24-9-1951 the Director of Health Services, Madhya Bharat in-formed her that she could not be granted leave with-out pay for one year as prayed for by her on reasons of illness and that she should join duty at once else she would be" removed from service. The Petitioner"s continued to represent that she was ill and prayed for further leave. The Director did not accept her representation.

Ultimately by a memo dated, 3-12-1951 she was informed: that she was removed from service from the date she was on leave. She applied for review of that order. This was rejected on 19-2-1952. Petitioner appealed to the Minister-in-charge Medical and Health Services; Madhya Bharat This too was rejected though according to her in spite of her at-tempt to secure copy of that decision she did not get the same. The Petitioner then made a demand for justice to the Government by means of, petitions dated 12-8-1954. Her demand remained unconsidered till the date of this petition, viz., 29-3-1955.

4. Petitioner"s contentions are the Director of Health Services, Madhya Bharat, did not follow the procedure laid down in Rule 8 of the Civil Services (Punishment and Appeals) Rules, 1950, nor did her comply with the requirements of Article 311(2) of the Constitution. The order of her dismissal is according to her, void for these reasons.

5. She therefore prays for directions against the opponent for withdrawal of the impugned order and for treating her as in service and for any other suitable direction or writ.

6. In the returns submitted on behalf of the opponents it was averred that the; Petitioner, while at Kukshi applied for her transfer on 24-7-1949, for personal grounds. While this matter was pending she applied for privilege leave and then sick leave She was granted leave more than once at her request but she continued to apply for further leave, on what according to the department were pretexts. She was asked by the department to get herself medically examined at the Maharaja Tukojirao Hospital.

She thereupon was examined by the Super intendment of Maharaja Tukojirao Hospital who reported her to be fit to work. The Petitioner thereafter produced certificate of Dr. Akbarali. She was then ask-ed to get herself examined once again but she never did this. The Director of Health thereupon not being satisfied about her bona fides informed her by letter dated 6-9-1951 that no further leave, would be granted to her and called upon her to resume duty; and she was further informed that in case she failed to do so she would be removed from service Therer after she repeated her applications for leave "and the Director required her to join duty.

Ultimately the Director by his letter dated 29-11-1951 required her to send Medical certificate from the Superintendent, Maharaja Tukojiaro"s Hospital. She neither appeared before the Superintendent for Medical Examination nor explained her conduct. The conduct of the Petitioner was held by the Director to

amount to insubordination. She was for that reason directed to be removed from service.

7. According to opponent No. 3, she failed to avail herself" of the opportunity to show cause against the proposed punishment. It was contended that Constitutional requirement was fully satisfied and that sufficient opportunity had been given to her to show cause against her removal.

8. It was also urged that her petition to the Government for reconsideration of the order for her removal is still under consideration of the Government.

9. Thus on these respective averments the questions for consideration are:

(i) whether the procedure prescribed by Rule 8 of the Civil Services (Punishment and Appeals) Rules, 1950, was complied with and had the Petitioner adequate opportunity to meet the charge of insubordination levelled against her?

(ii) Whether provisions of Article 311 of the Constitution had been complied with at the proper stage?

10. In my opinion both these tailings were not done in this case. All that appears to have gone is a sort of correspondence between the Director of Health and the Petitioner. There does not appear to be adequate reason to suppose that the Petitioner"s attempt to obtain leave on reason of health was motivated by her failure to secure her transfer from Kukshi. There was no doubt a report of Superintendent, Maharaja "Tukojirao Hospital that was found fit to work in her examination on 22-5-1951 but this was followed by a certificate of Dr. Akbarali dated 24-5-1951 that she needed rest in bed for two months.

Thereafter also she continued to represent that she was ill and unfit to work and prayed for leave without pay and the Director insisted her to join duty. By letter dated 6-9-1951 the Director asked her to join duty and warned that on her failure to do so she would be removed from service. Even then the Petitioner represented that she was ill. This went on till 29-11-1951 when as stated in the return she was asked to send the certificate from the Superintendent, Maharaja Tukojirao Hospital. She was soon after ordered to be removed from service and a memorandum to her to that effect was issued on 3-12-1951.

11. Section 8 of the Civil Services (Punishment and Appeals) Rules, 1950, which applied in this case pro-vide for the following procedure in the case of proposed dismissal, removal or reduction in rank of a Civil servant:

(1) Procedure for removal, dismissal or reduction in rank:-- No order imposing the penalties mentioned in Rule 6(i), (j) and (k) shall be passed against a Government servant other than an order based on facts found proved by a Criminal Court, unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself.

The grounds on which it is proposed to take action shall be reduced to the form

of a definite charge on charges, which shall be communicated to the person charged together with a statement of allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall, be required within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person.

If he so desires and if the authority so directs an inquiry shall be conducted as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a reasonably sufficient record of evidence and a statement of the findings and the grounds thereof:

Provided that tin's clause shall not apply --

(a) Where a person is dismissed or removed or reduced in rank on the ground or conduct which had led to his conviction on a criminal charge.

(b) Where an authority empowered to dismiss or remove a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) Where the Rajpramukh is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

Provided further that the full procedure prescribed in this rule shall not be followed in the case of a probationer discharged in the circumstances described in explanation (2) under Rule 6. In such cases it will be sufficient if the probationer is given an opportunity to show cause in writing against the discharge after being apprised of the grounds on which it is proposed to discharge him and his reply duly considered before orders are passed.

Note:--If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under Clause 8(b) of the first Proviso, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

2. The inquiry referred to in Sub-rule (1) above may be held:--

(i) by an officer of the department who has nothing to do with the subject-matter of the inquiry or who is not connected otherwise with the Government servant whose conduct is under inquiry, or

(ii) by a special officer or tribunal appointed by the Government for the purpose.

3. No person who is called upon to produce his defence as to charges which form the subject-matter of an enquiry against him shall be allowed to engage a

counsel.

Provided that if a counsel is engaged on behalf of any department of Government the person against whom the charges are being inquired into shall be entitled to engage a counsel.

4. In all cases where it is proposed to dismiss or remove a person on the findings of the departmental inquiry referred to Sub-rule (1) above, the person concerned shall again be given, before orders are passed, a copy of the findings and asked to show cause why the proposed action should not be taken against him.

5. The pay and allowance of a person who is dismissed or removed from service shall cease from the date of such dismissal or removal but, a person under suspension preliminary to the departmental inquiry shall be granted such subsistence and other allowances as may be admissible under the Fundamental Rules.

6. The departmental inquiry referred to in Sub-rule (1) above shall be conducted as expeditiously as the circumstances of the case may permit, particularly one against an officer under suspension.

12. It is clear from the facts and circumstances detailed above that the aforesaid procedure was not allowed.

13. It also appears clear that the Director, of Health did not arrive at any definite conclusion regarding the so called insubordination after an enquiry in accordance with the Rules nor did he provisionally determine the punishment at the proper stage. It further appears that no notice had been given to the Petitioner after the stage had been reached.

14. What seems to have happened is that the Director required the Petitioner to join duty and gave a warning that if she defaulted she would be removed from service, This was on 6-9-51. Later on further applications by her though he was not satisfied that the illness was not feigned gave her an opportunity to produce medical certificate of the Superintendent, Maharaja Tukojirao Hospital, and within four days of that passed an order of dismissal.

15. Whatever may be the position upon the merits of this controversy regarding which I do not propose to express any opinion it is certain that the requirement neither of Civil Services (Punishment and Appeals) Rules nor of Article 311 of the Constitution had been complied with. In this state of circumstances it is difficult to accept the contention with the opponents Unit the same had been complied with and that she had more than enough opportunity to show cause against her proposed removal which she failed to avail of.

16. The letter dated 6-9-1951 wherein the warning regarding her dismissal was given cannot by any means be treated as a notice under Article 311(2) of the Constitution.

17. At that time the stage cannot be said to have been reached for the issue of such a" notice under Article 311 of the Constitution. The Director required her to produce certificate even in his communication dated 29-11-1951.

18. It is held in *P. Joseph John Vs. The State of Travancore-Cochin*, , approving the decision in AIR 1948 121 (Privy Council) , that:

When a stage is reached when definite conclusions have come to as to the charge; and the actual punishment to follow is provisionally determined on that the statute gives the civil servant an opportunity for which Sub-section (3) of Section 210 of the Government of India Act, 1935 Which corresponds to Article 311) makes provision, and that at that stage a reasonable opportunity has to be afforded to the civil "servant concerned.

19. It was also held that there was no anomaly in the view that tire statute contemplates a reasonable opportunity at more, than one stage.

20. The same view is taken in *Sher Singh Malhar v. State of Madhya Pradesh* AIR 1955 Nag 175(C). We are not concerned in this petition to find whether the Petitioner"s conduct in failing to join the duty was justifiable or not. That concerns the merits of the controversy and depends upon facts What we have to find is whether the Petitioner was given fair opportunity at both the stages to meet the charge of insubordination for which she is said to have been removed. It will not suffice to say that the facts were too patent and that she was justifiably removed. The real crux of the matter is, was she removed in accordance with law?

21. Learned Deputy Government Advocate strongly urged that the petition is filed after a long lapse of time and for that reason alone it deserves to be dismissed.

22. I am not impressed by this argument.

23. In the first place the return does raise this ground of delay and in the second place it was specifically averred in Para, 6 of the return on behalf of opponent No. 3 that the Petitioner"s application to the Government for reconsideration of the order for her removal is still under consideration of, the Government. This was probably the reason why the opponents did not raise the ground of delay Although the Petitioner in, her petition had not given details as to how she proceeded in the matter till the present petition was put in that might have been due to her inability to obtain a copy of the decision of the Minister in charge. Details prior to that are on record.

24. In any case with these departure on the part of the Director from the lawful procedure as prescribed by the Rules and the Constitution, I do not feel inclined to reject her petition on the ground of delay.

25. The result is that the petition is allowed and the order of the director referred to in the memo sent to the Petitioner dated 3-12-1951 directing her removal

from service is hereby quashed. The Petitioner will get her costs from the Government of Madhya Bharat. Counsel"s fee Rs. 50.

Samvvatsar, J.

26. I agree.