
(2004) 12 MP CK 0037
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8606 of 1994

Kanchan Singh Rajpur

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 20

Citation : (2005) 1 MPHT 366 : (2005) 1 MPLJ 476

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

Bench : Single Bench

Advocate : R.C. Tiwari, for the Appellant; Ashok Agrawal, Government Advocate and Shashank Shekhar, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition, the petitioner is challenging the pregnability of the order (Annexure A-1) passed by Divisional Forest Officer, Sukhtawa Kshathipurthi Vanikaran Mandal, Hoshangabad as well as the appellate order dated 20-1 -1993 (Annexure A-2) passed by conservator of Forest. 2. The unfolded facts are that the petitioner was serving under Forest Department. However, vide order dated 10-5-1990 (Annexure A-4) which was passed in pursuance to order No. 470, dated 30-4-1990 the services of petitioner alongwith several persons were deputed to Narmada Ghati Vikas Pradhikaran. On account of certain misconduct committed by petitioner, he was charge-sheeted by the borrowing department and ultimately the punishment order was also passed by the borrowing department and the departmental appeal was also rejected by the same department.

The contention of learned Counsel for the petitioner is that the borrowing department, i.e., Narmada Ghati Vikas Pradhikaran was competent to conduct the departmental enquiry, however, the said department or any officer of the said

department was not having any jurisdiction to pass punishment order and the punishment order, if any, ought to have been passed by the lending department. In this regard, learned Counsel has placed reliance to Rule 20 of the M.P. Civil Services (CCA) Rules, 1966 (in short "the Rules").

On the other hand, Shri Agrawal, learned Government Advocate argued in support of the impugned order.

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

Before considering the rival contentions of learned Counsel for the parties, it would be condign to refer Rule 20 of the said Rule which read thus:-

"20. Provisions regarding officers lent to the Union or any other State Government or any subordinate or Local Authority, etc.-

(1) Where the services of a Government servant are lent by one department to another department or to Union Government or to any other State Government or any authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority") the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:

Providing that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conduct against the Government servant-

(i) If the borrowing authority is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 10 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) If the borrowing authority is of the opinion that a penalty specified in Rule 11 should be imposed on any member of the Class IV Government servant, it may impose such penalty without consulting the lending authority;

(iii) If the borrowing authority is of the opinion that any of the penalty specified in Clauses (v) to (ix) of Rule 10 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit

to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such orders thereon as it may deem necessary or, if it is not the disciplinary authority submit the case to the disciplinary authority which shall pass such order on the case as it may deem necessary:

Provided that before passing any such order the disciplinary authority shall comply with the provisions of Sub-rules (3) and (4), Rule 15.

Explanation :- The Disciplinary Authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority, or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with Rule 14."

On going though the above said Rules, it is as clear like a noon day that though the borrowing department may proceed with the departmental enquiry and may also accord certain minor punishment but if any major penalty is to be imposed the matter has to be referred to the lending department. In the present case, petitioner has been removed from his services which is a major penalty. Thus, the borrowing department by following the mandate given in Rule 20 of the said Rule ought to have sent the case to the lending department for imposing necessary punishment. Since this procedure has not been adopted, according to me, the impugned punishment order (Annexure A-1), dated 22-8-1992 passed by respondent No. 3 and affirmed by Appellate Authority vide its order dated 20-1-1993 (Annexure A-2) can not be allowed to remain stand. Since both these orders are coram non judice.

The respondents are directed to take back petitioner in service and if necessary, send the entire record of departmental proceeding to the lending department of the petitioner which shall, if necessary, may pass necessary orders in terms of procedure given in Rule 20 of the said Rules. The petitioner shall also be entitled for the back wages.

In the result, the petition succeeds and is hereby allowed. Annexure A-1, dated 22-8-1992 and Annexure A-2, dated 29-1-1993 are hereby quashed. Looking to the facts and circumstances, the parties are directed to bear their own costs.