
(2015) 12 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4159/200

Kiran Sharma

APPELLANT

Vs

Agricultural University, Udaipur and Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Citation : (2015) 12 RAJ CK 0016

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Anil Bhandari, for the Appellant; Rajesh Punia, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioner aggrieved against the order dated 25/26.04.2000 (Annex.-13), whereby the petitioner was imposed with punishment of compulsory retirement and order dated 18.04.2001 (Annex.-19) communicated to the petitioner on 18.06.2001 passed by the Appellate Authority, whereby the appeal filed by the petitioner was dismissed.

2. The petitioner was working on the post of Technical Assistant and was relieved from the College of Home Science, Udaipur on 28.02.1996 having been transferred to Krishi Vighan Kendra, Banswara ("KVK"), where she joined on 11.03.1996. It is claimed that at KVK neither there was any post nor any fund available for making payment of salary to the petitioner and, therefore, the payment of salary was to be made to the petitioner from the College of Home Science, Udaipur; whereafter, no salary was paid to the petitioner despite making several representations. She was informed that as petitioner's leave record was not received from the College of Home Science, Udaipur at KVK, her salary bill could not be prepared. A memorandum of charges dated 29.01.1999 was served on the petitioner, inter alia, requiring her to respond to the charges. The Inquiry Officer was appointed and inquiry was fixed at Banswara. It is claimed that on account of financial hardship on account of non-payment of salary, the petitioner

could not participate in inquiry effectively and made a request for conducting the inquiry at Udaipur, which request was turned down. When again a request was made, it is claimed that the inquiry proceedings were transferred from Banswara to Udaipur, where the petitioner appeared before the Inquiry Officer and submitted the required documents, which were not accepted, however, the Inquiry Officer completed the inquiry on 26.04.1999, and though the petitioner was still seeking payment of her salary, an office order dated 25/26.04.2000 was served on the petitioner imposing punishment of compulsory retirement.

3. The petitioner filed appeal against the order dated 25/26.04.2000, within the prescribed period and after several reminders, by communication dated 18.06.2001, it was informed that the appeal has been dismissed on 18.04.2001 alongwith the copy of the order.

4. It is submitted by learned counsel for the petitioner that the action of the respondents in initiating the inquiry, imposing the punishment of compulsory retirement and dismissing the appeal are ex-facie illegal and deserves to be quashed and set aside. It was submitted that the report of the Inquiry Officer was not supplied to the petitioner before the punishment was imposed by the Disciplinary Authority i.e. the Vice Chancellor and as such the action of the Disciplinary Authority stands vitiated; the order of compulsory retirement was passed by the Vice Chancellor as Disciplinary Authority and the same Vice Chancellor heard and decided the appeal as Appellate Authority, which is impermissible in law and on account of bias, the order of the Appellate Authority also stands vitiated; the petitioner was not paid any salary since 1996 and, therefore, the action of the respondents in continuing with the inquiry in absence of any subsistence being available to the petitioner, the inquiry itself stands vitiated and, therefore, the inquiry proceedings, orders passed by the Disciplinary Authority and the Appellate Authority deserve to be quashed and set aside.

5. Reliance was placed on Chhel Singh Vs. M.G.B. Gramin Bank, and Arun Prakash Vs. State of Rajasthan and Another, .

6. In response, it was submitted by learned counsel for the respondents that the various pleas sought to be raised by the petitioner in the present writ petition has no substance. It was submitted that despite repeated opportunities granted to the petitioner, the petitioner did not appear before the Inquiry Officer and, therefore, the Inquiry Officer had no option, but to proceed ex-parte against the petitioner. It was submitted that as the petitioner after transfer from Udaipur to KVK took several leaves, the leave case could not be finalized. It was submitted that even if copy of inquiry report was not supplied to the petitioner, the same ipso facto cannot vitiate the order passed by the Disciplinary Authority and as the petitioner has failed to indicate any prejudice, the said aspect is of no consequence. It was also contended that the Appellate Authority has given opportunity of hearing to the petitioner and, therefore, the absence of inquiry report is of no consequence. Regarding the issue about Disciplinary Authority and

the Appellate Authority being the same, it was submitted that by the resolution of the Board of Management, the appeal of orders imposing the major penalty lies to the Vice Chancellor only and, therefore, the appeal was heard by the Vice Chancellor, though the order was passed by the Vice Chancellor as the Disciplinary Authority, who under the Rules has such power. It was submitted that as the petitioner is guilty of willful absence and has failed to make out any case, the writ petition deserves to be dismissed.

7. Reliance was placed on State of Rajasthan Vs. Dr. Mahaveer Chand, and Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, .

8. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

9. From the material available on record, it appears that the dispute arose on account of transfer of the petitioner, who was working as Technical Assistant at College of Home Science, Udaipur to KVK, Banswara by order dated 19.02.1996 and was relieved from Udaipur on 28.02.1996. The petitioner though joined at KVK, it is apparent from the letter (Annex.-R/5) dated 22.08.1996 that as the leave record of the petitioner was not forwarded from Udaipur to KVK, her salary bill was not prepared and it was indicated that she would be paid subsistence allowance from the earlier office. Whereafter a notice dated 23.07.1997 appears to have been issued to the petitioner indicating her willful absence despite the fact that leave applied by her was not sanctioned and a notice was published in the newspaper when the said notice dated 23.07.1997 was not served.

10. Another notice dated 22.04.1998 was issued when the petitioner objected about the publishing of the notice in the newspaper and sending the registered notice on wrong address. Whereafter the impugned memorandum of charges dated 29.01.1999 was issued to the petitioner for willful absence from duty, change of residential address without information and failure to discharge duty regularly and sincerely.

11. The Inquiry Officer was appointed by order dated 16.02.1999 and the inquiry was scheduled to be held at Banswara. When the petitioner sought change of place of inquiry from Banswara to Udaipur, the same was rejected and ultimately, on account of alleged non-appearance of the petitioner before the Inquiry Officer, the inquiry report dated 24.05.1999 was submitted by the Inquiry Officer. The Inquiry Officer found that the charge of willful absence was proved against the petitioner, the petitioner did not inform about the change in address and has failed to discharge her duty regularly and sincerely.

12. It is an admitted fact that neither the copy of the inquiry report was supplied to the petitioner nor any show cause notice was issued to her by the Disciplinary Authority and by order dated 25/26.04.2000, she was imposed with the punishment of compulsory retirement.

13. The above fact of non-supply is fortified from the letter dated 07.03.2001

(Annex.-R/15) produced by the respondents, wherein while fixing the personal hearing of the appeal filed by the petitioner, the petitioner was supplied with the copy of Inquiry Officer's Report.

14. The operative portion of the penalty order signed by the Registrar reads as under:--

"6. Whereas the work of KVK, Banswara is suffering a lot due to her continuous absence from her duties and the charge that she has not discharged her duties regularly/sincerely at KVK, Banswara hold true and proved against her, the Vice Chancellor is pleased to order that Mrs. Kiran Sharma, TA, KVK, Banswara be retired compulsorily with immediate effect as per Rule No. 96 of Employees other than Teachers and Officers Services and Conduct Rules.

Registrar"

15. From the above order, it is apparent that the Vice Chancellor passed the order in his capacity as Disciplinary Authority though the order was communicated by the Registrar.

16. The petitioner, filed appeal against the penalty order and was heard by the Vice Chancellor himself, who had passed the impugned order and the appeal was rejected with the following observations:--

"Therefore, the charges levelled against Mrs. Kiran Sharma stands true and the steps taken by the University in imposing penalty of retiring her compulsorily is genuine. Hence the appeal dated 12th May, 2000 presented by Mrs. Kiran Sharma is therefore dismissed."

17. The Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , laid down that doctrine of natural justice requires supply of a copy of Inquiry Officer's Report to the delinquent, if the Inquiry Officer is other than the Disciplinary Authority and non-supply of report of Inquiry Officer is breach of natural justice. It was further held that failure to supply report of the Inquiry Officer to a delinquent employee would not ipso facto result in proceedings being declared null and void and order of punishment non est and ineffective as it is for the delinquent employee to plead and prove that non-supply of such report has caused prejudice and resulted in miscarriage of justice and if he fails to satisfy the Court on the said aspect, the order of punishment cannot be set aside. The said aspect has been reiterated in the case of Haryana Financial Corporation (supra).

18. In the present case, the allegations against the petitioner had been of willful absence from duty, the petitioner has all along been complaining about non-payment of salary at Banswara on account of the conduct of the respondent-University in not sending her leave record from Udaipur to KVK, Banswara. The Inquiry Officer in his inquiry report did not make any mention of the said aspect, which according to the petitioner, led to hardship in attending the office at Banswara, the same naturally caused great prejudice to the petitioner as she

failed to plead her cause against the inquiry report and give out reasons for her absence at KVK, Banswara before the Disciplinary Authority. The Disciplinary Authority, in absence of any notice of the inquiry report and obvious absence of any explanation, took the report of the Inquiry Officer as gospel truth and imposed punishment of compulsory retirement. The grave prejudice to the petitioner on account of non-supply of the inquiry report is apparent and, therefore, the order of the Disciplinary Authority stands vitiated as the non-supply has led to miscarriage of justice and the same therefore cannot be sustained.

19. Besides the above, once the petitioner filed the appeal, despite the fact that the Vice Chancellor himself was the Disciplinary Authority, he chose to hear the appeal himself, which action also cannot be sustained as the hearing of the appeal by the same Authority, which passed the impugned order is clearly in violation of rule of bias. The appeal in the said circumstances could only be heard by the Board of Management sans the Vice Chancellor.

20. The Supreme Court in *Amar Nath Chowdhury Vs. Braithwaite and Company Ltd. and Others*, , in similar circumstances held as under:--

"6. One of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as "*Debt esse Judex in Propria Causa*", which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias. Bias may be of different kind and form. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid form of bias. What we are concerned with in the present case is whether an authority can sit in appeal against its own order passed in the capacity of Disciplinary Authority. In *The Financial Commissioner (Texation) Punjab and others Vs. Harbhajan Singh*, , it was held that the Settlement Officer has no jurisdiction to sit over the order passed by him as an Appellate Authority. In the present case, the subject-matter of appeal before the Board was whether the order of removal passed by the Disciplinary Authority was in conformity with law. It is not disputed that Shri S. Krishnaswami, the then Chairman-cum-Managing Director of the Company acted as a Disciplinary Authority as well as an Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function is not permissible on account of established rule against bias. In a situation where such a dual function is discharged by one and the same authority, unless permitted by an act of legislation or statutory provision, the same would be contrary to rule against bias. Where an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already prejudged the matter otherwise

such an appeal would be termed an appeal from Caesar to Caesar and filing of an appeal would be an exercise in futility. In that view of the matter, in the present case, fair play demanded that Shri Krishnaswami, the then Chairman-cum-Managing Director of the Company ought not to have participated in the deliberations of the meeting of the Board when the Board heard and decided the appeal of the appellant."

21. In view of the law laid down by the Supreme Court, the order passed by the Vice Chancellor as Appellate Authority also cannot be sustained.

22. So far as the submissions made by learned counsel for the petitioner regarding non-payment of salary to the petitioner and the said aspect vitiating the inquiry itself is concerned, the judgment in the case of Purshottam Lal Gupta (supra), though is based on non-payment of subsistence allowance during suspension period and the inquiry getting vitiated on account of such non-payment, the principles laid down therein would apply to the present case as well, as the petitioner has been repeatedly writing letters from before the inquiry was initiated and after the inquiry commenced indicating her inability to defend the charges and hardship faced by her on account of nonpayment of salary by the respondents and inquiry being held at Banswara.

23. In view of the above, it is apparent that the petitioner was not accorded reasonable opportunity to defend on account of non-payment of salary, which failed her to undertake repeated journeys from Udaipur to Banswara during the course of the inquiry proceedings.

24. So far as the judgment in the case of Dr. Mahaveer Chand (supra) is concerned, the same has no application to the facts of the present case.

25. In view of the above discussion, the writ petition is allowed. The orders dated 25/26.04.2000 (Annex.-13) and 18.04.2001 (Annex.-19) of the Disciplinary Authority and Appellate Authority respectively are hereby quashed and set aside with all consequential benefits.

26. No order as to costs.