
(2014) 10 MP CK 0103
In the Madhya Pradesh High Court
Case No : Writ Petition (S) No. 10152/2012

Madhvendra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 489

Citation : (2015) 1 JLJ 304 : (2015) 2 MPHT 73 : (2015) 2 MPLJ 311

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Judgement

S.C. Sharma, J.—Parties through their Counsel.

The petitioner, before this Court, has filed this present petition being aggrieved by order dated 13-2-2010 (Annexure A-8) and 12-10-2010 (Annexure A-15), by which a punishment of compulsory retirement has been inflicted upon the petitioner and the appeal against the same has also been dismissed.

The facts of the case reveal that the petitioner was working on the post of Examiner at Bank Note Press, Dewas. A criminal case was registered against him under Section 489 of IPC being Criminal Case No. 274/1999. The petitioner was convicted vide judgment of conviction dated 16-4-2005 passed by 1st Additional Sessions Judge, Dewas, and a punishment of 6 years" rigorous imprisonment was inflicted upon him. The petitioner, thereafter, preferred an appeal before the High Court of Madhya Pradesh.

2. The petitioner"s contention is that after his conviction, a notice was issued on 26-5-2005 under Rule 19 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, and the petitioner did not submit a reply to the show-cause notice. The respondents have finally passed an order on 22-6-2005, removing the petitioner from services. The petitioner was later on acquitted by this Court in Cr. A. No. 967/2005, decided on 15-7-2008 and thereafter, on a representation was submitted by the petitioner, the respondents have issued an order on

13-2-2010, confirming the dismissal into compulsory retirement. The petitioner's appeal has also been dismissed by the authorities.

3. Learned Counsel for the petitioner has placed reliance upon a judgment delivered by the Apex Court in the case of State of Madhya Pradesh v. Hazarilal, reported in (2008) 3 SCC 272, and his contention is that even in a case of conviction, the order of dismissal was held to be a harsh punishment. He has also placed reliance upon a judgment delivered in the case of Ramratan Tiwari v. State of M.P., reported in 2002 (5) MPLJ 11 , and again his contention is that the petitioner is entitled for reinstatement in service on account of his acquittal. Learned Counsel has placed reliance upon a judgment in the case of Ram Abhilash Shukla Vs. State of Madhya Pradesh and Others, , and his contention is that keeping in view the aforesaid judgment again the order of punishment deserves to be set aside.

4. Learned Counsel submitted that in the light of the aforesaid judgments delivered in the aforesaid cases, the petitioner is entitled for reinstatement.

5. A detailed and exhaustive reply has been filed in the matter and the respondents have stated that the petitioner was initially dismissed from service on account of conviction in a criminal case. It has also been stated that as the integrity of the petitioner was doubtful and as he was involved in supplying counterfeit bank notes he was arrested by Dewas police and he was rightly convicted by learned Sessions Judge and the respondents after taking into account the judgment of acquittal have punished the petitioner and have passed an order of retiring the petitioner compulsorily under Rule 19 of Rules, 1965. The respondents have prayed for dismissal of the writ petition.

6. Heard the learned Counsel for the parties and perused the record. In the present case, it is an admitted fact that the petitioner was dismissed from service on account of his conviction in a criminal case by an order dated 22-6-2005. He was acquitted by the High Court vide judgment in Cr. A. No. 967/2005, on 15-7-2008. The respondents have thereafter passed an order in exercise of powers conferred under Rule 19 of 1965 on 13-2-2010, compulsorily retiring the petitioner. The appeal of the petitioner has also been dismissed.

7. Rule 19 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, reads as under:--

"19. Special procedure in certain cases.--Notwithstanding anything contained in Rule 14 to Rule--

(i) where any penalty is imposed on a Government servant on the ground of conduct, which has led to his conviction on a criminal charge, or

(ii) where the Disciplinary Authority is satisfied for reason to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

8. The aforesaid statutory provision of law empowers the Disciplinary Authority to impose a punishment upon a Government servant on the ground of conviction in a criminal case. In the present case, the conviction of the petitioner was set aside. No reason has been recorded in writing as to why departmental enquiry is not possible in case of the petitioner and the fact remains that no departmental enquiry was conducted by any of the authority before passing the order of compulsorily retirement and, therefore, in the light of the statutory provisions as contained under Rule 19 of 1965, the impugned orders have to pave the path of extinction.

9. The Apex Court in the case of State of M.P. v. Hazarilal (supra), in case of dismissal on account of conviction, in Paragraphs 3, 5, 7, 8 and 16 has held as under:--

"3. The respondents, thereafter, filed an original application before the State Administrative Tribunal, Gwalior. The Tribunal by an order dated 25-11-2002 allowed the said application holding:--

"However, the applicant succeeds on the ground that the punishment of removal from service is grossly excessive because the punishment was only under Section 323, IPC and the High Court has clarified that the punishment does not involve any moral turpitude; every power vested in a Public Authority has to be exercised fairly, justly and reasonably. The respondents should have applied their mind to the penalty, which should be appropriately imposed in the circumstances of the case. Please see: Shankar Dass v. Union of India. This does not seem to have been done."

A writ petition filed thereagainst by the appellants before the High Court has been dismissed by reason of the impugned judgment.

5. The case in hand appears to be a gross one. This Court is unable to appreciate the attitude on the part of the appellant herein, which ex facie appears to be wholly unreasonable. The respondent had not committed any misconduct within the meaning of the provisions of the Service Rules. He was not even sent to prison. Only a sum of Rs. 500/- was imposed upon him as fine.

7. By reason of the said provision, thus, "the Disciplinary Authority has been empowered to consider the circumstances of the case where any penalty is imposed on a Government servant on the ground of conduct, which has led to his conviction on a criminal charge", but the same would not mean that irrespective of the nature of the case in which he was involved or the punishment, which has been imposed upon him, an order of dismissal must be passed. Such a construction, in our opinion, is not warranted.

8. An authority, which is conferred with a statutory discretionary power is bound to take into consideration all the attending facts and circumstances of the case before imposing an order of punishment. While exercising such power, the Disciplinary Authority must act reasonably and fairly. The respondent occupied the lowest rank of the cadre. He was merely a contingency peon. Continuation of his service in the department would not bring a bad name to the State. He was not convicted for any act involving moral turpitude. He was not punished for any heinous offence.

16. For the reasons aforementioned there is no merit in this appeal, which is dismissed with costs. Counsel fee is quantified as Rs. 25,000."

10. In the aforesaid case, the applicant was convicted in a criminal case, where in the present case, petitioner has been acquitted by this Court, and therefore, in the light of the aforesaid judgment again the order of dismissal is bad in law. This Court in the case of Ramratan Tiwari (supra), has directed reinstatement on account of acquittal by Division Bench of this Court. In the case of State of M.P. v. Hazarilal (supra), workman was terminated on account of involvement in a criminal case though he was acquitted and his reinstatement was ordered by the Labour Court, the same has been upheld.

11. Resultantly, this Court is of the considered opinion as the order of punishment is not based upon any departmental enquiry, and as no reason has been recorded by any Disciplinary Authority under Rule 19 of 1965, the impugned order, which has been passed even after acquittal of the petitioner, is bad in law.

12. Resultantly, order dated 13-2-2010 (Annexure A-8) and order dated 12-10-2010 (Annexure A-15) are hereby set aside. The respondents are directed to reinstate the petitioner forthwith in service. So far as the amount of backwages are concerned, as the petitioner is already receiving the pension, this Court is of the opinion that the amount paid towards pension shall be adjusted towards backwages, however, other terminal dues other than pension shall be recovered by the employer from the petitioner. The petitioner shall be entitled to all consequential benefits except back wages. The period during which petitioner was under suspension and the period during which the petitioner was not in job, shall be treated period as spent on duty for all purposes, except for payment of salary. He shall be entitled for notional fixation of salary. With the aforesaid, petition stands allowed. No order as to costs.