
(2015) 05 MP CK 0066

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1928/2009 (S)

Mahendri Chourasia

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) 05 MP CK 0066

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : D.P. Singh, for the Appellant; Pawan Singh Raghuvanshi, Panel Lawyer, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rohit Arya, J.

1. By this writ petition under Article 226 of the Constitution of India petitioner has challenged the legality, validity and propriety of the order dated 25/2/2009 passed by respondent No. 2, Annexure P/1, directing respondent No. 3 that punishment of withholding two increments without cumulative effect is not sufficient and further directed to lodge an FIR against the petitioner.

2. It is submitted that for the same set of allegations the petitioner was already visited with the penalty of withholding two increments without cumulative effect under Rule 10 (4) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as "the Rules of 1966") by respondent No. 3 vide order dated 6/7-5-2008 and after nine months respondent No. 2 issued command for lodging of the FIR, as according to his understanding the award of aforesaid punishment was not sufficient. The said action is imputed as highly arbitrary, unreasonable and malafide. Therefore, it is prayed that the aforesaid order deserves to be quashed.

3. Facts relevant for disposal of this writ petition are to the effect that petitioner

belongs to Scheduled Caste category. She was provided appointment as Assistant Grade-III on 30/10/2001 on compassionate ground. She was performing her duties in the office of respondent No. 3. A departmental enquiry was initiated against one Mr. O.P. Mudgal, the then Sub Engineer, RES Department Block Pohri. At that time petitioner was posted in the Receipt Section. The charge-sheet issued to Shri O.P. Mudgal was received, but got subsequently misplaced, therefore, show-cause notice was issued for aforesaid lapse on the part of petitioner. She filed reply thereto, however, respondent No. 3 being dissatisfied with the reply decided to initiate departmental enquiry against the petitioner vide order dated 15/12-6-2007. Petitioner filed reply denying the allegations in the charge-sheet. Factual assertions as regards denial of charge is described in para 5.4 of the writ petition. After conclusion of the enquiry, petitioner was found guilty of the charge and was punished with the penalty of withholding two increments without cumulative effect.

4. Though several grounds have been raised assailing the order of punishment, but for the purpose of this petition main question is as regards issuance of Annexure P/1 by respondent No. 2 on 25/2/2009 after gap of nine months from the date of passing of the punishment order directing respondent No. 3 to lodge an FIR against the petitioner as he was not satisfied with the punishment imposed.

Learned counsel contends that the disciplinary authority-respondent No. 3 had already imposed a penalty on 6/7-5-2008. This could have been reviewed by the higher disciplinary authority within six months in exercise of powers under Rule 29 of the Rules of 1966. In the instant case the impugned order is passed after more than nine months. Respondent No. 2 by passing the impugned order in fact and in effect acted in a highly arbitrary and illegal manner without any basis or justification. He being superior authority is not only required to act judiciously in the matter of departmental enquiry and punishment, but also in accordance with the rules with circumspection, care, caution and objectivity. Subjectivity in executive action prejudicial and detrimental to the rights and interest of aggrieved party (in this case the petitioner) is antithesis of equality clause under Article 14 and 16 of the Constitution of India and by no stretch of imagination can withstand judicial scrutiny, hence, the impugned order deserves to be quashed. It is also contended that neither there is any material on record or otherwise any indication in the impugned order as regards application of mind by respondent No. 2 while passing the impugned order. Typical hostility and resulting depravity is shown towards the petitioner by respondent No. 2. Hence, the order impugned deserves to be quashed. Besides, it is also submitted that the impugned order is an example of misuse of authority with vindictive biased mind to the grave prejudice of the petitioner.

It is also submitted that the petitioner has already suffered the punishment imposed on her by the punishment order dated 6/7-5-2008 and by issuance of impugned order ordering for registration of FIR for the same allegations she is

subjected to double jeopardy.

With the aforesaid submissions, it is prayed that the impugned order be quashed.

5. The respondents have filed counter affidavit and in para 2 have submitted that the petition is premature inasmuch as FIR has not been lodged. Petitioner has no locus standi to challenge the impugned order as it was only addressed to the Collector to register an FIR against the petitioner. There is no law which prohibits lodging of the FIR against the petitioner. It is further submitted that when the matter for award of penalty on the petitioner was scrutinized by the Commissioner, it was found that sufficient punishment has not been imposed upon the petitioner and separate criminal proceeding deserves to be initiated against her and, therefore, the Commissioner has issued the letter/order dated 25/2/2009 and, hence, no interference is warranted under Article 226 of the Constitution of India. For ready reference the justification shown for issuance of impugned letter/order dated 25/2/2009, as contained in para 5.6 of the counter affidavit, is quoted below:--

"5.6) That, as to reply of this para, it is submitted that when the matter with respect to grant of penalty on the petitioner, was scrutinized with evidence, by the Commissioner, it was found that sufficient punishment has not been imposed on the petitioner and a separate criminal proceeding deserves to be initiated against the petitioner, therefore, the Commissioner has rightly issued a letter dt. 25-2-2009 directing Collector to record and register a criminal case against the petitioner, thus having not committed any error, warranting no interference under Article 226 of the Constitution of India. Letter dated 25-2-2009 issued by the Competent authority calls for no interference in these proceedings."

6. Heard.

Petitioner in sequence to show-cause notice dated 1/5/2007 has already been visited with the penalty of withholding of two increments with non-cumulative effect vide order dated 6/7-5-2008. Impugned order has been issued by Deputy Commissioner purportedly on the orders of the Commissioner and addressed to the Collector, Shivpuri indicating the assessment that penalty of withholding of two increments without cumulative effect was not sufficient and, therefore, direction is issued to lodge an FIR: firstly, nothing is brought on record either in terms of averments or documentary evidence to show that in what capacity the Commissioner has passed the impugned order, as impugned order is in the context of penalty as passed against petitioner under the Rules of 1966 and secondly, there is no material on record to suggest that the concerned authority had an occasion to apply its mind to the given factual matrix and reach the conclusion for issuance of impugned order. The aforesaid assumes importance as the petitioner submits that the Commissioner is the appellate authority and no appeal has been filed. As such, issuance of impugned order is the product of total subjective exercise of an authority, which otherwise appears to be not vested with respondent No. 2-Commissioner, and in fact and in effect tantamounts to

dictatorial order for which he lacks competence and jurisdiction. Such arbitrariness and misuse of authority is definitely an antithesis of rule of law as well as equality clause as enshrined under Article 14 and 16 of the Constitution of India. It needs no mention that direction of lodging of FIR is a serious act to the grave prejudice of the delinquent. It is a criminal proceeding and sets in motion criminal action. Such unmindful direction, contained in the impugned order, in a slip shod manner without any justification that too with the lack of authority and competence cannot withstand the test of judicial review. The Commissioner, Revenue, is the divisional head amongst the revenue authorities. He is expected to discharge his duties with care and caution and utmost sense of disciplined responsible senior revenue officer setting norms and trends for its subordinates. Neither he is expected to play fast and loose with its authority nor over enthusiasm in discharge of his official duties. He must bear in mind that he is also a public servant appointed to subserve the public cause.

Having considered the pleadings brought on record by the parties and documents on record, the impugned order appears to be irresistibly a glaring case of an arbitrary and illegal action reflecting misuse of authority. As the appellate authority, respondent No. 2, has already caused serious prejudice to the petitioner, petitioner, under such circumstances, cannot hope a fair and impartial decision on his departmental appeal against the order dated 6/7-5-2008 imposing penalty of withholding two increments without cumulative effect. Petitioner is definitely put to double jeopardy. Therefore, order, Annexure P/1, dated 25/2/2009 passed by respondent No. 2 is hereby quashed. Accordingly, writ petition stands allowed.