
(2013) 04 MAN CK 0001
In the Manipur High Court
Case No : Writ Appeal No. 49 of 2004

Manipur Public Service Commission and Others	APPELLANT
Vs	
R.K. Jhulon Singh	RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Citation : (2013) 04 MAN CK 0001

Hon'ble Judges : Abhay Manohar Sapre, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : H.N.K. Singh, G.B. Das, M.G. Singh and Kh. Babulindro, for the Appellant; Babloo, for the Respondent

Final Decision : Allowed

Judgement

Abhay Manohar Sapre, C.J.—This is an intra court appeal filed by the respondent (Manipur Service Public Commission - for short called M.P.S.C.) of Civil Rule No. 869 of 1998 under Rule 2 of Chapter V-A of the Gauhati High Court Rules against the order dated 21.11.2002 passed by single Judge in aforementioned writ petition. By impugned order, the learned single Judge allowed the writ petition in part and while setting aside of the dismissal order impugned by him in the writ petition remanded the case to the appointing authority for imposing any lesser punishment other than that of the dismissal from service including considering for awarding punishment of compulsory retirement on the writ petitioner for the proved misconduct which the writ petitioner had committed in discharge of his official duties.

2. So, the short question that arises for consideration in this appeal filed by M.P.S.C. (respondent of the writ petition) is whether learned single Judge was justified in allowing the writ petition in part by quashing the dismissal order and remanding the case to the appointing authority for reconsideration of awarding punishment on the delinquent employee (writ petitioner) other than the punishment of dismissal from service?

3. In order to appreciate the issue involved in the appeal which lies in a narrow compass, few facts need mention infra.

4. The appellant is a statutory premier body in the State of Manipur. On 16.4.1994, the appellant issued a notification inviting applications from eligible candidates for the recruitment to the 9 posts of Manipur Civil Services (MCS) and 11 posts of Manipur Police Services (MPS) - Junior Grade. Several persons applied for these posts. Written tests were then held from 25.9.94 to 11.10.94 and results were accordingly declared on 23.12.1995.

5. This however led to spreading rumors in the entire State immediately after declaration of the result that in conduction of examination including preparation of the tabulation of marks, large scale of manipulation and malpractices were done by the officials concerned. It was complained that all this was done to favour some candidates to secure employment. Several representations were filed by unsuccessful candidates to the Chairman of M.P.S.C. praying for appointment of high power committee to probe in to the issues relating to manipulation, tampering and tampering of the tabulation of mark sheets and if found proved then to cancel the whole examination. Several writ petitions were also filed by the unsuccessful candidates in the High Court at Imphal against the M.P.S.C. praying for the grant of same reliefs claimed in the representations being Civil Rule No. 56/96 and other connected with this Civil Rule. These writ petitions were clubbed together for their common disposal.

6. By order dated 11.11.1997, the learned single Judge H.K. Seema, J. (as his Lordship then was and later became a Judge of Supreme Court) was constrained to allow the writ petitions by very reasoned order in which his Lordship examined every aspect of the case including the tampering of marks of each case. The learned Judge in no uncertain terms held that the examination which was conducted was nothing but a fraud played on the public as lot of bungling, manipulation and tampering was done in tabulation of mark sheets to favour several candidates. The learned Judge looking to the seriousness of the large scale manipulation directed the State to file FIR against all those involved in this examination scandal and take disciplinary action against erring officials under the service rules in accordance with law.

7. It is apposite to reproduce the subtle observations of his Lordship to show as to how much concern was shown by the High Court while allowing the said writ petition while giving the directions:

35. It is enlightening to know from the learned Advocate General that Manipur Public Service Commission has been reconstituted with new Chairman who has varied experience in the administration of the affairs of the State. It is hoped and trust that reconstituted Commission would carry out the sacred trust repose on them by the public, keeping in view of the observations made by the Apex Court as quoted above.

36. I am also constrained to observe that the way R.K. Jhulon Singh conducted

himself in conducting the written test examination involving manipulation/alteration of marks are penalty liable.

37. The Superintendent of Police Imphal is directed to investigate the case by himself and take necessary action in accordance with law. It is open to the Superintendent of Police Imphal to interrogate and book any person whether high or low involved in this matter/suspected to be involved in the matter and take action as per law. "Be ever you so high, the law is above you." It is hoped and trust that the long arm of law will not fail to reach the person responsible committing this sordid affairs. Superintendent of Police Imphal shall submit the progress report of the investigation to Registrar of this Court every month beginning from 15th December, who shall in turn place the report before the Court.

8. It is with the aforesaid background, and now coming to the facts of this case, the respondent herein (writ petitioner) was at all relevant time working as private Secretary of M.P.S.C. He was also made in charge of the conduction and supervising of the whole examination process. It may be pertinent to mention here that his Lordship while allowing the writ petitions had in clear terms observed in para 36 that the respondent was responsible for commission of the illegalities in the examination and had accordingly directed the M.P.S.C. to hold the departmental inquiry under the service rules against the respondent As a sequel to these directives, the appellant by order dated 23.1.1996 (Annexure A-2) immediately suspended the respondent from the services and initiated the departmental inquiry as provided in CCS Rules. A detail charge-sheet was accordingly served on him which included the charges relating to his indulging in all kinds of manipulation/fabricating/tampering of the marks given to selected candidates. The charge reads as under:

Article of Charge

That the said Shri R.K. Jhulon Singh, Private Secretary, Manipur Public Service Commission (now under suspension) while dealing with the confidential matters in the Section of the Secretary, MPSC during the period from April, 1994 to 23.1.1996 at the time of tabulation of marks secured by the candidates was found manipulating/tampering/fabricating of marks of some candidates of the Combined and Competitive Manipur Civil Service/Manipur Police Services Examination, 1994, inasmuch as he violated Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

9. The charge was duly supported with full details. They were supplied to the respondent. The respondent filed his reply dt 17.2.1996 (Annexure-A-4) to the charge-sheet. The respondent in clear terms admitted the allegations levelled against him in the charge-sheet relating to tampering and manipulations made in the marks given to candidates. It is apposite to mention herein the admission of the respondent admitting in clear terms the interpolation, tampering and manipulation done in tabulation of mark sheets. It reads as under:

That I do admit the charge to the extent that some discrepancies of marks were there in respect of candidates bearing Roll Nos. 17, 298, 913, 1126 and 3420, but Commission of it was bona fide human error beyond my imagination and without any mala fide intention.

10. The inquiry officer on perusal of the entire record and the reply of the respondent formed an opinion that in the light of clear admission of the respondent in his reply wherein he admitted that firstly he was in charge of the examination, and secondly the original record of the examination did contain the tampering of the tabulation of marks it is not necessary to hold elaborate inquiry into the matter. He also formed an opinion that the evidence on record clearly proved the charges against the respondent beyond reasonable doubt.

11. By order dated 12.4.1996. (Annexure-A-5), the inquiry officer accordingly held the respondent to be guilty of the charges levelled against him in the charge-sheet. His finding reads as under:

3. In addition to the above findings, the charged officer had damaged the reputation of the Commission beyond one's expectation.

4. In view of the premises mentioned above and also on a careful consideration and undersigned holds that the article of the charge is proved beyond doubt. The undersigned has therefore provisionally come to the conclusion that Shri. R.K. Jhulon Singh, Private Secretary, MPSC (now under suspension) is not a fit person to be retained in service and so the undersigned proposes to impose on him the penalty of dismissal from service.

5. Shri R.K. Jhulon Singh, Private Secretary, MPSC (now under suspension) is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make on the penalty proposed will be considered by the undersigned. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 15 days from the date of receipt of this Memorandum by Shri R.K. Jhulon Singh, Private Secretary, MPSC (now under suspension).

12. The appointing authority on receipt of the inquiry report and upon its perusal concurred with the reasoning of the Inquiry Officer and by order dated 22.9.1997 (Annexure-A-6) dismissed the respondent from the services. It is against this dismissal order, the respondent felt aggrieved and filed the writ petition out of which this intra court appeal arises. The writ court (learned single Judge) by impugned order upheld the findings of the inquiry officer which had held all the charges as proved against the respondent. However, in the opinion of the learned single Judge, a case for interference in the quantum of punishment was made out because in his view, the punishment of dismissal looking to the nature and gravity of charge coupled with respondents unblemished service record in the past was disproportionate. The learned Judge therefore proceeded to quash the dismissal order as being harsh and excessive as compared to the gravity of charges and remanded the case to the appointing authority to reconsider the

respondent's case for awarding lesser punishment to him in place of the dismissal. He also went on to suggest that if possible, the appointing authority may consider imposing the punishment of compulsory retirement. It is against this order; the respondent (M.P.S.C.) of writ petition felt aggrieved and filed this intra court appeal.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside of the impugned order dismiss the writ petition and in consequence uphold the dismissal order of the respondent as being just, legal and proper.

14. In our considered opinion, having regard to the nature of the charges levelled against the respondent, coupled with the fact that he in clear terms admitted the manipulation/tampering done in tabulation of marks to favour some selected students, the dismissal of respondent from the services was the most appropriate, and proper punishment which could be inflicted upon him by the appointing authority. Indeed, any lesser punishment other than dismissal in the facts of this case would have been considered as being wholly against the settled principal of law applicable to such case and was liable to be set aside.

15. If an employee responsible for conducting examination is found to have indulged in commission of manipulation, tampering of marks to favour some candidates for extraneous consideration then such person deserves to be thrown out of service forthwith because he by doing such act actually commits a fraud on his employer thereby betrays the trust reposed on him by his employer. It is the duty of the person/employee to be sincere, honest, transparent and dedicated towards his duty and the work assigned to him. He must perform his duties with loyalty, and fairness to win the confidence of his employer. He must always ensure that due to his act, the employer is not put to any loss or inconvenience. Any act done by him in discharge of his official duties without the knowledge of his employer and with an intention to secure or extend any undue benefits either for himself or/and for any outsider results in loss of confidence of his employer on him and hence such person/employee has to quit the services when asked to do so by his employer for such act after following the due procedure of law.

16. In our considered opinion, the case in hand is a classic case where the respondent was found indulging in doing malpractices in tampering with tabulation of mark sheets to give undue favour to some students who were otherwise not eligible to secure the job but were able to secure due to illegal acts of the respondent. The respondent had no answer to the charge levelled against him in the charge-sheet and hence he had to admit the charges. His sayings that it was a bona fide act on his part was on the face of it a ridiculous statement and was not acceptable to any one. A responsible officer who has put more than 25 years of service cannot plead ignorable of what was happening under his nose unless he is a party to such act and received under benefits. Indeed, this court having already held against him in para 35, nothing more need be said on this

issue.

17. In the light of such undisputed factual scenario emerging from the record of the case there was no need for the inquiry officer to hold any further inquiry and on the basis of undisputed records of the case coupled with the finding of the writ court in the order dated 11.11.1997, a finding of charges as proved could easily be recorded by him and was so rightly recorded.

18. With respect, we cannot agree to the reasoning and the view taken by the learned single Judge. In our opinion, it is entirely misplaced and cannot be upheld on any grounds. In the first place, there was neither any basis and nor material (whether factual or/and legal) for taking such view. Secondly, no reasoning was given much less legally sustainable one for coming to such a conclusion. Thirdly looking to the seriousness of the charge and his unambiguous admission, the order of dismissal was the most appropriate one which could be passed and lastly, it being the sole prerogative of the appointing authority to decide as to what punishment should be imposed on the delinquent employee once the charge levelled against him stands proved in domestic inquiry, the court should have been very slow in interfering in the punishment issue. In our opinion, it was only when the punishment imposed has been found to be shockingly disproportionate as compared to the gravity of the charges or when it had shocked the conscience of the court, then in such event, the court could consider proper to interfere in the quantum of punishment in its extra ordinary powers conferred under Article 226/227 of the Constitution of India and in such event could have either substituted with another lesser punishment or remanded the case to the authorities to reconsider awarding of the punishment lesser than dismissal else not. Such was, however, not the case here.

19. Learned counsel for the respondent (delinquent employee) however contended that since the respondent had an unblemished service record of more than 25 years to his credit and hence this factor was rightly taken into consideration by the writ court while remanding the case to the appointing authority to reconsider imposition of any lesser punishment than that of the dismissal.

20. To say the least, the submission has no merit and deserves rejection at its threshold. In order to decide as to what should be the nature of punishment that should be imposed upon the delinquent employee, the appointing authority is first required to see the gravity and nature of charge and then it is required to see whether it is proved or not and if so whether fully or partly. If the charges are grave and serious, then the extreme penalty of dismissal is justifiable. It is more so when it is provided in the Rules.

21. In the case at hand, the charges of indulging in manipulation, fraud and tampering with the original records of the examination to extend undue benefit to candidates was a serious charge so much so that it attracted both civil and criminal consequence against the delinquent under penal laws and service Rules.

The delinquent in such case did not deserve to remain in service regardless of his past performance. Indeed, no employer could afford to have the services of such employee who has no regard for the welfare of the institute/employer where he was serving. Indeed, it would be preposterous to hold that since the delinquent had an unblemished service record of 25 years to his credit though there is no record to support this fact and hence he should be visited with minor punishment for the commission of major misconduct. In our view, the gravity of the charge would remain the same whether he has an unblemished record or not. It would not dilute the consequence flowing from the charge once proved. It is for all these reasons, we are of the considered opinion that the impugned order is not legally sustainable and deserves to be set aside.

22. Before parting with the case, we consider it apposite to state that we are equally concerned about the casual manner in which the entire examination in question was conducted by the M.P.S.C. It was, as if, there was no supervision over the activities of the persons responsible for conducting the examination. It was a clear case where the sanctity and purity of the examination was given go by and virtually compromised for the vested personal interest of their employees. At no cost, such activity, behaviour and action could be countenanced. This court do hope that the M.P.S.C. being the premier institute in the State in the field of education and other related activities would strive to maintain the best standards at all levels and would act as a role model for others to follow so that confidence of a common man is regained, for the M.P.S.C. It is with these observations; we allow the appeal, set aside the impugned order and dismiss the writ petition. As a consequence, the dismissal order dated 22.9.1997 impugned in the writ petition is held as legal and proper. No costs.