

**(1975) 01 RAJ CK 0004**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 1570 of 1970**

Manoharlal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision : 03-01-1975**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (1975) WLN 232**

**Hon'ble Judges : D.P. Gupta, J**

**Bench : Single Bench**

**Final Decision : Allowed**

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## **Judgement**

D.P. Gupta, J.—This is a petition under Article 226 of the Constitution of India challenging the order of the State Government dated December 5, 1969 modifying the order of the Inspector of School, Alwar dated August 28, 1962 and the order of the Deputy Director of Education, Ajmer Range, Jaipur dated October 9, 1963.

2. The petitioner was employed as a Physical Training Instructor under the Director of Education, Rajasthan, and was placed in the III running grade of Rs. 75-200 with an annual increment of Rs. 5/-. A show cause notice was served upon him on July 20, 1962 in which four charges were levelled against him and he was called upon to furnish an explanation as to why his annual grade increments be not withheld. The petitioner submitted an explanation which was considered by the Disciplinary Authority, namely the Inspector of Schools, Alwar and the said authority held that the explanation furnished by the petitioner was not satisfactory. The Inspector of Schools found that the work and behaviour of the petitioner was not satisfactory and he further found that the petitioner was guilty of insubordination and indisciplined activities, on the basis of the reports of the heads of institutions under whom he had worked. The Inspector of Schools imposed a two fold penalty upon the petitioner, namely that a warning be administered to him to mend his work and behaviour and the same be entered in

the service book and further that one annual grade increment be withheld with cumulative effect. The petitioner filed an appeal, but the Deputy Director of Education, Ajmer Range, Jaipur by his order dated October 9, 1963 rejected the appeal on the ground that he did not see any reason to interfere with order passed by the Inspector of Schools as the petitioner was found guilty of several acts of indiscipline and misconduct. The petitioner thereafter filed a further appeal to the State Government and submitted that he should have been given an opportunity to cross-examine the Head Master, who made a complaint against him. The State Government by its order dated December 5, 1969 partly allowed the appeal filed by the petitioner and held that the petitioner should have been given an opportunity to cross examine the Head Master, when an enquiry was conducted on the allegations revealed against him. It was, therefore, held that the penalty imposed upon the petitioner was harsh. The State Government modified the penalty imposed upon the petitioner and besides administering him a warning to be entered in the service record, a further penalty of stoppage of one annual grade increment without cumulative effect was imposed upon him. The petitioner has come up before this Court against the aforesaid order passed by the State Government imposing the aforesaid minor penalties upon him.

3. The submission of the learned Counsel for the petitioner is that while the State Government held that the petitioner should have been given an opportunity to cross-examine the Head Master on whose complaint disciplinary proceedings were initiated against him, yet without affording the aforesaid opportunity of cross examination the State Government proceeded to inflict penalties upon the petitioner. The grievance of the learned Counsel for the petitioner is that the State Government did not record any finding whatsoever in respect of any of the charges leveled against the petitioner and that in the absence of such a finding no penalty could have been imposed upon the petitioner.

4. Learned Assistant Government Advocate contended that under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the Rules") the petitioner had no right to cross-examine the Head Master. According to the learned Assistant Government Advocate no evidence was at all recorded in respect of the disciplinary proceedings against the petitioner. However, learned Assistant Government Advocate was unable to point out from the order of the State Government (Ex. 4) as to whether any of the charges levelled against the petitioner were found proved against him by the State Government. However, he relied upon the fact that certain penalties were imposed upon the petitioner by the very same order of the State Government (Ex. 4) and he argued that in these circumstances it must be presumed that the State Government agreed with the findings arrived at by the Inspector of Schools.

5. I am unable to accept this contention of the learned Assistant Government Advocate. The order of the State Government (EX. 4) does not at all go to show that it agreed with any of the findings arrived at by the Inspector of Schools. On

the other band, the State Government was definitely of view that as the Head Master had made a complaint against the petitioner, on the basis of which the disciplinary proceedings were taken against him, the petitioner should have been afforded an opportunity to cross-examine the Head Master. It appears that at the time when the examinations took place, the petitioner was one of the invigilators and he made a complaint to the Head Master that certain students were found copying. As the Head Master did not take any action in this matter, the petitioner appears to have approached the Inspector of Schools and made a complaint against the Head Master and some other members of the staff of the School. However, on enquiry the Inspector of Schools found the report of the petitioner baseless. Thereupon the Head Master appears to have made a complaint to the Inspector of Schools on the basis of which the disciplinary proceedings were initiated against the petitioner. In his reply to the charge sheet the petitioner repeated the allegations against the Head Master. In these circumstances, the State Government took the view that the petitioner should have been afforded an opportunity to cross-examine the Head Master on whose report the disciplinary proceedings were initiated. It cannot, therefore, be held that the State Government at all came to the conclusion that any of the charges levelled against the petitioner were proved. In the absence of a positive finding holding any of the charges proved against the petitioner or even expressing agreement with the Inspector of Schools, the State Government could not have proceeded to inflict any of the penalties upon the petitioner. I must observe that the two portions of the order of the State Government (Ex. 4) one holding that the petitioner was entitled to an opportunity to cross-examine the Head Master and the other imposing penalties upon the petitioner in modification of those inflicted upon him by the order of the Inspector of Schools are self contradictory and cannot be reconciled as the order of imposition of penalties could not be maintained on the basis of the earlier portion of the order of the State Government itself. In this view of the matter I am unable to hold that the State Government found the petitioner guilty of any one of the charges levelled against him or that the State Government even expressed its agreement with any of the findings arrived at by the Inspector of Schools. The order passed by the State Government dated December 5, 1969 imposing penalties upon the petitioner, therefore, deserved to be struck down.

6. The Inspector of Schools while passing his order dated August 28, 1962 found the petitioner guilty of insubordination and indisciplined activities on the basis of the reports of the Heads of Institutions under whom the petitioner had worked. There was no such allegation in the notice served upon the petitioner, dated July 20, 1962 and the petitioner was not called upon to submit an explanation in respect of any such charge. In this view of the matter, the order of the Inspector of Schools as well as the appellate order of the Director of Education, Ajmer Range; Jaipur are also vitiated in as much as the petitioner could not be punished for alleged charges of insubordination and indisciplined conduct on the basis of some reports of the Heads of Institution under whom the petitioner

might have worked as he was not afforded of any pportunity to submit his explanation in respect of such reports.

7. In the result, the writ petition is allowed. The orders passed by the Inspector of Schools, Alwar dated August 28, 1962, the Deputy Director of Education, Ajmer Range, Jaipur dated October 9, 1903 and the State Government dated December 5, 1969 are quashed. However, in the circumstances of the case the parties are left to bear their own costs.