

(2016) 07 MP CK 0062
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2047 of 1998

Manoj Shrivastava

APPELLANT

Vs

High Court of M.P.

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Citation : (2017) 2 MPLJ 179

Hon'ble Judges : Rajendra Menon, ACJ. and Anurag Shrivastava, J.

Bench : Division Bench

Advocate : Shri Mahendra Pateriya, Learned Counsel, for the Petitioner; Shri P.R. Bhawe, Senior Advocate and Shri Bhanu Pratap Yadav, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Anurag Shrivastava, J. - By filing this petition under Article 226 & 227 of the Constitution of India, the petitioner has challenged the order dated 06.08.1997 (Annexure P-1) by which he has been dismissed from service and also order dated 09.02.1998 (Annexure P-2) by which the appeal preferred by him against the said dismissal order has been rejected.

2. Petitioner was Class-III Government employee working as Sale Amin in the office of District Judge, Damoh (respondent No.2). On account of various irregularities committed by him a charge-sheet dated 15.02.1996 (Annexure P-4) containing as many as 12 charges was issued to him containing imputation of misconduct on allegations inter alia of dereliction of his duties and making false entries in office record, not conducting the auction sale and not depositing the reports/work tickets of process servers in office etc.

3. Thereafter, the disciplinary proceeding was initiated by the respondents. The inquiry was conducted in accordance with the provisions of M.P. Civil Services (Classification Control and Appeal) Rules, 1966 (hereinafter referred to as the Rules). The Civil Judge Class-II was appointed as the Enquiry Officer. After

holding the inquiry, the Enquiry Officer submitted his report to the District Judge, who was the disciplinary authority. In accordance with provisions of Rule 15, a copy of inquiry report was furnished to the petitioner and a show cause notice was given to him proposing penalty of removal from service. The petitioner submitted his reply. Thereafter, the disciplinary authority by order passed, after recording his agreement with the conclusion of the Enquiry Officer imposed the punishment on the petitioner of his removal from service. The petitioner filed an appeal against the impugned order before respondent No.1, which was dismissed.

4. Shri Mahendra Pateria, learned counsel appearing on behalf of the petitioner has taken this Court through the record of inquiry to show nature of charges, the findings of the Enquiry Officer and the conclusion drawn by disciplinary authority. It is submitted that the charges were concerning trivial violation of procedural rules and they did not amount to any serious misconduct. Attempt was also made to demonstrate that there is no evidence worth reliance to hold the petitioner is guilty of charges of misconduct and fabrication of record by making wrong entries in the daily diary, work ticket and other sale register. The findings given by Enquiry Officer are perverse and contrary to law.

5. Learned counsel for the respondents has supported the report of Enquiry Officer and argued that the petitioner had not been performing his duties diligently. He had submitted false reports on the warrant received by him for service. The charges nos.4, 8, 10, 11 & 12 are duly proved by cogent evidence, the findings of Enquiry Officer is based upon sound appreciation of evidence on record. Keeping in view the gross misconduct of the petitioner, the disciplinary authority has properly imposed punishment on him.

6. Considering the rival contentions of the learned counsel for the parties and on perusal of record, it is seen that the petitioner was held guilty of charges nos.4, 8, 10, 11 & 12, which relates to (a) none submission of duplicate work tickets dated 17.02.1995 and 04.04.1995 to Nazir (b) not executing the sale and auction warrant dated 15.12.1995 and giving false report regarding auction (c) not describing the details and particulars of witnesses in sale register (d) not handing over the report of service of process received from process servers to Nazir and (e) not attending the duty on visit of dignitary.

7. Departmental enquiry is an enquiry to ascertain the facts. It is not a criminal case in which evidence is to be appreciated on footing of reasonable doubt. After going through the record of the enquiry and the relevant part of the statement of witnesses, this Court finds no scope for it to go into correctness of the findings recorded in the enquiry. It is the duty of Sale Amin to paste the duplicates of work ticket on to the corresponding original. The explanation given by petitioner regarding missing duplicate works ticket is not acceptable. Similarly, the report of petitioner regarding execution of "auction sale warrant" is controverted by his daily diary entries, in which it is mentioned that the petitioner on said date of auction worked in office. Petitioner accepts that he has received the processes from Bhagwandas, but he could not prove this fact that he had given these

processes to Nazir. This is gross negligence in service of process of High Court. The Enquiry Officer on proper appreciation of evidence has arrived at the findings of guilt against petitioner. It is not open to this Court while exercising power of judicial review to go into the sufficiency of the evidence on record. In exercise of writ jurisdiction the scope of interference in matters of departmental proceedings is circumscribed. The High Court does not sit over the said decision as a Court of appeal. Therefore, the disciplinary authority has rightly held the petitioner guilty of charges as stated above.

8. While hearing the matter, learned counsel for the petitioner had not pointed out any procedural irregularity in the departmental inquiry. Challenge was made mainly to the finding of guilt recorded by the Enquiry Officer with regard to the four charges and the quantum of punishment imposed. As already discussed here in above, the findings of the Enquiry Officer are based on due appreciation of the evidence that came on record and the scope of judicial review in this matter is very limited. In the case of *B.C. Chaturvedi v. Union of India and others* [(1995) 6 SCC 749], it has been held by the Supreme Court that a writ Court cannot re-appreciate the findings recorded by Enquiry Officer in a departmental inquiry and give a different conclusion by exercising the power of an appellate authority. The same view was taken by the Supreme Court in the case of *Government of Tamil Nadu and another v. A. Rajapandian* (AIR 1995 SC 561). Reference may also be made in this regard to another judgment of the Supreme Court in the case of *Union of India v. B.K. Shrivastava* (AIR 1998 SC 300). That being so we find that the petitioner is found guilty of the misconduct, four in number, levelled against him, after due appreciation of evidence that has come on record and therefore, we find no reason to interfere with the punishment.

9. As far as imposition of punishment is concerned, a writ Court exercising limited power of judicial review into an administrative action, particularly in the matter of imposition of punishment, can interfere with the imposition of punishment or the quantum of punishment only if the punishment is found to be irrational, shocking the conscience of the Court and imposed in a manner which does not meet the requirement of the very principle i.e. law laid down by the Supreme Court in the case of *Union of India and others v. G. Ganayutham* [AIR 1997 SC 3387], *State of Meghalaya v. Makhan Singh Mark* [(2008) 2 SCC (Labour & Service) 431] and *Deputy Commissioner, Kendriya Vidyalaya Sangathan and others v. J. Hussain* [(2013) 10 SCC 106]. In this case the petitioner was working as a Sale Amin and in execution of warrants issued by the Court and also in the matter of checking the work done by other process servers, he had committed serious dereliction of the duty. The reports submitted by him were found to be incorrect. The Court works on his reports and if he commits error, the same would amount to hindering in the process of working of the Court. The applicant in this case had not only shown dereliction of duty and even by preparing false reports, and not recording the issuance of process fees tickets properly, he seems to have not worked honestly.

10. Taking into consideration all these circumstances, the punishment has been imposed and we see no reason to interfere with the order of punishment.

11. Accordingly, finding no ground for interference in this petition, the same is dismissed.