
(2014) 11 JH CK 0094
In the Jharkhand High Court
Case No : WP(S) No. 4785 of 2009

Maryada Purushottam

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 2 JLJR 210

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : Krishna Shankar, for the Appellant; A. Allam, for the Respondent

Final Decision : Disposed off

Judgement

Sujit Narayan Prasad, J. Petitioner being aggrieved with the order dated 2.9.2009 issued under the signature of respondent No. 4 by which the appointment of petitioner as Consultant, Logistic & Procurement has been cancelled, has approached this Court. It is argued on behalf of the counsel for the petitioner that the petitioner was appointed to the post of Consultant, Logistic & Procurement on contract basis initially for a period of two years. Before entering into service, an agreement was entered into in between the petitioner and the competent authority of the department dated 26th August, 2008 wherein there is a term at clause 14 which speaks as follows:--

"The services of the consultant would be terminable with proper logical reasoning by giving one month written notice or one month's remuneration in lieu of notice by either side."

2. The point, which has been argued on behalf of the petitioner, is that before passing the order dated 2.9.2009 the compliance of the condition mentioned in clause 14 has not been complied with by the respondent authorities. It has further been submitted by the counsel for the petitioner that the Impugned order is absolutely non-speaking.

3. Counsel for the petitioner further submitted that although it is a contractual appointment but even in the contractual appointment the reasonableness of the principle of natural justice has to be followed.

4. Further, It has been submitted on behalf of the petitioner that the impugned order dated 9.2.2009 is non-speaking, the same cannot be developed by way of reasons given in the counter affidavit.

5. On the other hand learned counsel appearing of the respondents has submitted that petitioner has been removed from service on the basis of serious irregularities. Since the appointment of the petitioner was purely a contractual appointment, hence there is no requirement to follow the principle of natural justice.

6. Heard the parties.

7. Admittedly, petitioner was appointed to the post of Consultant, Logistic & Procurement on contract basis initially for a period of two years by virtue of agreement dated 26th August, 2008 wherein there is a specific clause i.e., clause No. 14 in which It is mentioned that before terminating the services of the petitioner one month written notice or one month's remuneration in lieu of notice by either side has been made a condition before the Issuance of impugned order.

8. From perusal of the impugned order dated 2.9.2009 It is apparent that no such notice has been given as contemplated under clause 14 of the agreement.

9. So far as the contention of State-respondent that since It is contractual appointment hence there is no requirement to follow principle of natural justice is not acceptable as per the facts of the present case. When State acts unfairly and unreasonably in its contractual, constitutional or statutory obligation. It acts contrary to the Constitutional guarantee found in Article 14 of the Constitution.

10. In this regard the judgment of the Hon'ble Apex Court in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, has held as follows:--

"23. It is clear from the above observations of this Court, once the State or an Instrumentality of the State is a party of the contract. It has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India....."

"53. From the above, it is clear that when an instrumentality of the state acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution....."

Further, in the case of Karnataka State Forest Industries Corporation Vs. Indian Rocks, same ratio was reiterated wherein it was held as follows:--

"38. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract. It is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable."

11. Even in the matter of contractual appointment, if the order is stigmatic then an opportunity of hearing is ought to be given by respondent authorities to the petitioner.

12. So far, the action of the respondent-State is concerned, the reason by which the petitioner was removed from service has not been mentioned in the Impugned order. The reason for removal of petitioner from service is specifically given in the counter affidavit. Although the reason has been supplemented by way of counter affidavit, but it is cardinal principle of law that the reason, which has not been mentioned in the Impugned order, cannot be supplemented by way of an affidavit. In this regard to the judgment rendered by Hon''ble Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein at paragraph 8 it has been held that:--

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

13. Further the same proposition of law has been held by the Hon''ble Apex Court in the judgment rendered in the case of East Coast Railway and Another Vs. Mahadev Appa Rao and Others, wherein at para 9 it has held that:--

"There is no quarrel with the well-settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the court where the validity of any such order is under challenge. The legal position in this regard is settled by the decision of this Court in Commr. of Police V. Gordhandas Bhanji wherein this Court observed: (AIR p. 18, para 9)

"9..... Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting?s and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

14. On the basis of above pronouncements of the Hon"ble Apex Court it is settled that the authorities should assign the reason in the order showing their application of mind, this is due to simple principle that the reason is not assigned in the impugned order, the person who is going to be affected from the said order will not be in position to know that on what basis, the final order has been passed.

15. On the basis of these facts and circumstances I find that the impugned order is not sustainable in the eye of law and it is hereby quashed. However, the matter is remitted back before the competent authority to decide the matter afresh on merit after affording opportunities to the petitioner, within a reasonable period preferably within a period of six weeks from the date of receipt/production of copy of this order and communicate copy of the same to the petitioner within two weeks thereafter. Writ petition is disposed of accordingly.