(2019) 08 RAJ CK 0156

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12018 Of 2019

Mohan Lal Khatu APPELLANT

Vs

UTI Asset Management Company Limited And Ors RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

UTI Asset Management Company (Staff) Rules, 2003 — Rule 3(h), 6(2), 55, 55(1), 55(2)
Constitution Of India, 1950 — Article 12

Citation : (2019) 08 RAJ CK 0156

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Sunil Joshi, Rajeev Purohit

Final Decision : Dismissed

Judgement

This petition has been filed by the petitioner questioning the validity of Note appended below Rule 55 (2) of the UTI Asset Management Company (Staff) Rules, 2003 ('the Rules, 2003'), the validity of order dated 24/7/2019 (Annex.9) proposing to impose penalty of dismissal from service as well as charge sheet and order of suspension with consequential reliefs.

It is inter alia indicated in the writ petition that petitioner was working as Chief Manager, was placed under suspension by order dated 28/5/2018 and was served with show cause notice dated 6/7/2018 which was replied by the petitioner. However, a charge sheet was issued to the petitioner on 10/9/2018 and whereafter, inquiry officer was appointed, who conducted the inquiry and submitted the inquiry report, which report was made available to the petitioner under letter dated 8/1/2019. Subsequent thereto an order dated 24/7/2019 (Annex.9) was passed providing opportunity to the petitioner to make a representation on the proposed penalty which was 'dismissal'.

It is submitted by learned counsel for the petitioner that though a show cause notice has been issued to the petitioner affording opportunity to represent on the proposed penalty in terms of Rule 55 of the Rules, 2003, the Note appended below Rule 55 (2) prohibits opportunity to be heard personally, which is ex facie illegal and contrary to the principles of natural justice and, therefore, besides the fact that issuance of show cause notice is rendered empty formality, the provision itself is liable to be struck down.

Reliance has been placed on the judgment in State of Madhya Pradesh vs. Chintaman Sadashiva Waishampayan : AIR 1961 SC 1623.

Further submissions were made that the show cause notice though has been issued by the Executive Vice President (HR), who alone is the competent authority in the case of petitioner, as he is officer Grade A, the proposed penalty has been determined by the Chief Executive Officer, which is without jurisdiction and, therefore, the notice dated 24/7/2019 deserves to be set aside.

Further submissions have been made that the charge sheet issued to the petitioner being vague and contrary to the requirements of Rule 55(1) of the Rules of 2003, the same deserves to be quashed and set aside.

Submissions have been made indicating that as 74% of the share capital of the respondent company is held by Public Sector Financial Institutions, the respondent company is a State within the meaning of Article 12 of the Constitution of India.

Learned counsel appearing for the respondent company on caveat vehemently opposed the submissions.

It was submitted at the outset that the writ petition against the respondent company was not maintainable as the company is not a State within meaning of Article 12 of the Constitution of India.

Reliance in this regard was placed on R.V.Dnyansagar vs. Maharashtra Industrial Consultancy Organization Ltd. : 123 Comp.Cases 520 (Bom.), Arun Kumar Agarwal vs. Union of India & Ors. : (2014) 2 SCC 609, DALCO Engineering Pvt. Ltd. vs. Satish Prabhakar Padhye & Ors. : (2010) 4 SCC 378, Mohan Laxman Gamare vs. Institute of Banking Personal Selection (IBPS) & Anr. : Writ Petition (L) No. 1042/2014 decided on 7/5/2014 by Bombay High Court, Smt. Basanti Pattnaik vs. Unit Trust of India & Anr. : OJC No.2284/2000 decided on 10/11/2014 by Orissa High Court.

Further submissions were made that the petitioner was accorded full opportunity during the course of inquiry before the inquiry officer of making oral submissions, cross examination of witnesses etc., whereafter when the inquiry report was submitted by the inquiry officer, by communication dated 8/1/2019 the petitioner was supplied with a copy of inquiry report requiring his representation on the report of inquiry officer and after receipt of the representation now again a show cause notice on the proposed penalty has been issued to the petitioner.

Submissions have been made that requirements of principles of natural justice have been followed to the hilt. It is submitted that providing of the opportunity to represent qua the proposed punishment in writing is sufficient and there is no necessity to provide opportunity to be heard personally and as a specific provision prohibits such opportunity in the Rules, the petitioner cannot seek such an opportunity.

Submissions were made that non providing of opportunity to be heard personally cannot be termed as violation of principles of natural justice and, therefore, the plea raised in this regard being baseless deserves to be rejected.

Reliance was placed on X vs. State of Maharashtra & Ors. : Writ Petition No. 1342/2010 decided on 15/4/2015 by Bombay High Court, Y.P.Sarabhai vs. Union Bank of India & Ors. : 2002 (4) BomCR 715, which judgment has been upheld by Hon'ble Supreme Court in Y.P.Sarabhai vs. Union of India : AIR 2000 SC 2316 and Oriental Bank of Commerce & Anr. vs. R.K.Uppal : (2011) 8 SCC 695.

Further submissions were made in terms of Rule 3(h) of the Rules of 2003, wherein 'competent authority' has been defined, read with Rule 6(2) of the Rules of 2003 that the acting Chief Executive Officer, who happens to be the Group President and CFO of respondent company being a superior authority than the Vice President (HR) is competent to propose penalty and, therefore, the plea raised in this regard being baseless deserves to be ignored. Reliance has been placed on Annex. R/8.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

Though the preliminary objection raised by the learned counsel for the respondent company appears to have substance based on the law cited in this regard, the said aspect of the matter requires a deeper deliberation for reaching to a definite conclusion in this regard. However, as apparently, the pleas raised by the petitioner in the present writ petition do not have much substance, keeping the issue as raised by the respondent company pertaining to the maintainability of the writ petition qua the respondent company, the issues as raised by the petitioner have been dealt with.

The provisions of Rule 55 (2) insofar as relevant, as quoted in the petition, reads as under:

"(2) No employee shall be subjected to the penalties (b), (c) or (e) of sub/rule (1) except by an order in writing signed by the

(i) Chairman & Managing Director: in the case of officers in Grade 'D' and above.

(ii) Vice President (HRD): in the case of officers in Grades 'A' to 'C' and other employees,

And no such order shall be passed:

(i) without charge or charges being formulated in writing and given to the said employee so that he/she shall have reasonable opportunity to answer them in writing or in person, as he/she prefers, and in the latter case his/her defence shall be taken down in writing and read to him/her; and

(ii) without giving him/her an opportunity to make representation on the penalty proposed to be imposed on him.

Note: In the case of officers, the opportunity to make representation on the penalty proposed does not include an opportunity to be heard personally."

A perusal of the above Rule indicates that before a penalty inter alia of dismissal is imposed by Vice President (HR) in case of officer Grade-A the charges are to be formulated in writing and the employee shall have reasonably opportunity to answer them in writing, he would be provided an opportunity to make a representation on the penalty proposed to be imposed on him. The Note provides that the opportunity to make representation on the penalty proposed does not include an opportunity to be heard personally. The above provisions essentially are in consonance with a settled principle that an employee is required to be provided an opportunity during disciplinary proceedings and again after the inquiry report is submitted by inquiry officer before imposing penalty.

Admittedly, in the present case the petitioner participated in the disciplinary proceedings before the inquiry officer who submitted his report which was supplied to the petitioner and the petitioner responded to the same and, thereafter, an opportunity has been provided to the petitioner to make a representation on the proposed penalty to be imposed on him.

As to whether the opportunity of oral hearing which has been specifically prohibited in the Note appended to Rule 55 is sine qua non for the purpose of bringing the action of the respondent company within the parameters of compliance of principles of natural justice, is the issue.

The Hon'ble Supreme Court in the case of R.K.Uppal (supra) while dealing with the case of grant of opportunity of personal hearing by the appellate authority, inter alia came to the following conclusion:

"24. The appeal provision in Regulation 17 of the 1982 Regulations does not expressly provide for personal hearing to the appellant. Is the right of personal hearing to the appellant implicit in the provision? We think not. In our considered view, in the absence of personal hearing to the appellant, it cannot be said that the very right of appeal is defeated...."

Recently the Hon'ble Supreme Court in State Bank of India vs. Jah Developers Pvt. Ltd. : AIR 2019 SC 2854 categorically laid down as under:

"13. The next question that arises is whether an oral hearing is required under the Revised Circular dated 01.07.2015. We have already seen that the said Circular makes a departure from the earlier Master Circular in that an oral hearing may only be given by the First Committee at the first stage if it is so found necessary. Given the scheme of the Revised Circular, it is difficult to state that oral hearing is mandatory. It is even more difficult to state that in all cases oral hearings must be given, or else the principles of natural justice are breached. A number of judgments have held that natural justice is a flexible tool that is used in order that a person or authority arrive at a just result. Such result can be arrived at in many cases without oral hearing but on written representations given by parties, after considering which, a decision is then arrived at. Indeed, in a recent judgment in Gorkha Security Services v. Govt. (NCT of Delhi) and Ors., (2014) 9 SCC 105, this Court has held, in a blacklisting case, that where serious consequences ensue, once a show cause notice is issued and opportunity to reply is afforded, natural justice is satisfied and it is not necessary to give oral hearing in such cases [see paragraph 20]."

(emphasis supplied)

In view of the law laid down by Honb'le Supreme Court, it cannot be said that in absence of a provision for oral hearing/personal hearing or prohibition in this regard, as in the present case, the provision would be in violation of principles of natural justice and the consequent exercise on the part of the respondents would be bad in law.

So far as the judgment relied on by the learned counsel for the petitioner in the case of Chintaman Sadashiva (supra) is concerned, same pertain to reasonable opportunity to defend at the stage of departmental inquiry and denial of opportunity to public servant to cross examine witnesses was held to be in violation of reasonable opportunity to defend, which aspect has no application to the facts of the present case, wherein, the challenge is against the lack of personal representation in response to the show cause notice for proposed penalty and not during disciplinary inquiry.

So far as the issue of competence of Acting Chief Executive Officer in arriving at a conclusion of imposing penalty of dismissal on petitioner is concerned, it is no doubt true that in case of the petitioner the disciplinary authority is Vice-President (HR), however, in view of the provision of Rule 6(2) of the Rules of 2003, the same cannot be said to be without jurisdiction. The provision of Rule 6(2) of the Rules,2003 provides as under :-

"6(2)The powers exercisable by an authority under these Rules shall also be exercisable by any authority superior to the authority first mentioned."

A perusal of the above rule provides that power exercisable by an authority under the Rules shall also be exercisable by any authority superior to the authority first mentioned. The above provision is in consonance with the otherwise settled practice. A higher authority has the power to exercise powers which can be exercised by an authority lower in designation and therefore, as the Acting Chief Executive Officer, who has proposed the penalty is Group President and CFO of the respondent company, as is reflected from Annex.R/8, he being superior to Vice-President (HR), it cannot be said that the exercise of power is without jurisdiction, as alleged.

So far as the feeble attempt made by learned counsel for the petitioner questioning the validity of the charge-sheet is concerned, the stage of such challenge is already over, inasmuch as, the inquiry based on the charges has already been held and inquiry report already submitted. The issues sought to be raised by the petitioner were / are open for the petitioner to be raised before the authorities / appellate authority, the same cannot be made subject matter of the present writ petition.

In view of the above, the grounds raised by the petitioner seeking to question the validity of the Rule, competence of the authority and the charge-sheet have no substance.

In view of the above discussion, leaving open the question of maintainability of the writ petition qua the respondent company, as this Court has found no substance in the grounds raised by the petitioner in the present writ petition, the writ petition is dismissed.