
(1999) 11 MP CK 0058

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4722 of 1998

Mohanlal Prasad Prajapati

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 27-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 3 MPLJ 56

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : Mukhtar Ahmad, for the Appellant; A.S. Raizada for Respondent No. 4 and A.K. Chourasiya, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

By this writ petition, filed under Articles 226 and 227 of the Constitution of India, petitioner prays for quashing of the order dated 18-4-1994 (Annex.P/2) whereby he has been put under suspension by the Special Area Development Authority, Khajraho. At the relevant time petitioner was an employee of Special Area Development Authority, Khajraho and it is common ground that after the dissolution of the said Authority, petitioner has become an employee of Nagar Panchayat, Rajnagar, respondent No. 5.

Petitioner was put under suspension by order dated 18-4-1994. After lapse of 45 days, memorandum of charge dated 12th July, 1994 was issued (Annex.P/3). Petitioner submitted his reply on 3-8-1994 (Annexure P/5) and it is the stand of the petitioner that till date neither the departmental enquiry has concluded nor the order of suspension has been revoked. This fact has not been controverted by the respondents. It is relevant here to state that by order dated 18th April, 1994, besides the petitioner, one Maniram Harijan was also put under suspension but later on by order dated 5th March, 1997 (Annexure.P/10), his suspension

has been revoked.

Mr. Mukhtar Ahmad, appearing on behalf of the petitioner contends that as the copy of the charges and other documents were not issued within 45 days from the date of order of suspension, in view of the first proviso to Rule 9(5)(a) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, hereinafter referred to as the Rules, order of suspension shall stand revoked.

It is common ground that the petitioner is governed by the M.P. Development Authority Services (Officers and Servants) Recruitment Rules, 1987, hereinafter referred to as the "Recruitment Rules". Rule 55 of the aforesaid Rules provide for suspension, same reads as follows:-

55. Suspension pending disciplinary proceeding. - (1) If having regard to the nature of the charge and the circumstances in any case, the disciplinary authority which indicate any disciplinary proceeding is satisfied that it is necessary or desirable to place under suspension an Authority employee against whom such proceedings are started, it may pass an order placing him under suspension.

(2) A Authority employee who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty eight hours shall be deemed to have been suspended under this rule.

(3) A Authority employee against whom criminal charge is pending may, at the discretion of the disciplinary authority, be placed under suspension until the termination of the proceedings if the charge is connected with his position as an Authority employee or is likely to embarrass him in the discharge of his duties in the Authority or involves moral turpitude: Provided that in the case of an Authority employee on deputation to the Authority, the disciplinary authority shall, without delay, inform the landing authority of the circumstances in which that employee was placed under suspension.

(4) An Authority employee who is placed under suspension shall during the period of such suspension be entitled to receive payment as subsistence allowance of such amount as may be admissible to him according to the provisions contained in Chapter VIII of the Fundamental Rules applicable to the Government servants.

Rule 54 of the aforesaid Rules provides for procedure for imposing minor and major penalty. Same reads as under:-

54. Procedure for imposing minor and major penalties. - Without prejudice to the provisions of the Act and these rules the procedure for imposing major and minor penalties shall be regulated according to the procedure laid down in the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 and the Central Book Circular applicable to the Government servants subject to the codification that if the report of the Enquiry Officer is received by the disciplinary authority or if the enquiry has been carried out by the disciplinary authority itself,

after be heard he has completed the enquiry, the delinquent shall be heard on merits as well as punishment and a formal notice to show-cause need not be served on him.

Mr. Ahmad, appearing on behalf of the petitioner contends that Rule 54 of the Recruitment Rules provides that procedure for imposing minor and major penalty, shall be regulated according to the procedure laid down in the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966. He points out that proviso to Rule 9(v)(a) of the said Rules clearly provided that the order of suspension shall stand revoked on expiry of the period of 45 days, in case copy of charges and other documents are not issued to the employees. He submits that in view of aforesaid, the impugned order of suspension shall be deemed to be revoked.

Arguments of Shri Mukhtar Ahmad prima facie seems attractive; but on deeper scrutiny, I find no substance in the same. Part IV of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, hereinafter referred to as "Rules", deals with suspension. So far as the suspension of the employees of the Authority are concerned, same is governed by Rule 55 of the Recruitment Rules. Rule 55 of the Recruitment Rules nowhere provides that suspension shall stand revoked in case copy of the charges are not issued to the employee within 45 days. It is further relevant here to state that Part VI of the Rules provides for procedure for imposing penalty. Rule 54 of the Recruitment Rules has provided that the procedure for imposing major and minor penalties shall be regulated according to the procedure laid down in Rules.

Rule 55 of the Recruitment Rules mandates following of the same procedure for imposing penalties as provided under the Rules, with certain modification. Procedure for imposing penalties has been provided under Chapter VI of the Rules. Power of suspension has been separately provided under the Rules as also the Recruitment Rules. Rule 55 of the Recruitment Rules has provided for suspension. Hence the provision in relation to suspension under Chapter IV of the Rules shall not be applicable in the case of the petitioner. There being no provision in the Recruitment Rules by which the petitioner is governed, that suspension shall be deemed to be revoked in case copy of the charges are not issued to the employee within 45 days, I am of the opinion that the petitioner cannot bank upon the provision of the Rules in relation to suspension, to ask for revocation of suspension on the ground of failure to issue charge-sheet within 45 days from the date of suspension. I do not find any substance in this submission of Shri Ahmad.

Mr. Ahmad submits that the action of the respondents in not revoking the order of suspension of the petitioner is discriminatory. He submits that along with him one Maniram Harijan was also placed under suspension and his order of suspension has been revoked by order dated 5th March, 1997, hence action of the respondents in continuing the petitioner under suspension is discriminatory. This submission of Shri Ahmad is also misconceived. Said Maniram Harijan was a

peon whereas, the petitioner was a clerk. In the facts of the present case, no question of discrimination arise.

Mr. Mukhtar Ahmad lastly submits that action of the respondents in not concluding the departmental enquiry, even after lapse of more than 5 years from the date of suspension resulting into continuance of the petitioner under suspension, is arbitrary. In case of delay in conclusion of the departmental enquiry, its quashing is not the only course open to the Court. As stated earlier, after the petitioner was put under suspension by order dated 18-4-1994 he was served with the memorandum of charges dated 12th July, 1994. He submitted his reply on 3rd August, 1994. Charge of misconduct levelled against the petitioner is not of such nature that it should have taken such a long time. In the facts and circumstances of the case, I deem it expedient to direct respondent No. 5 to conclude the departmental enquiry initiated against the petitioner within 3 months from the date of receipt/production of a copy of this order. In case the departmental enquiry initiated against the petitioner is not concluded within the aforesaid period, his order of suspension dated 18-4-1994 shall be deemed to have been revoked on the expiry of the aforesaid period. In case petitioner does not co-operate in the enquiry, respondent No. 5 shall have liberty to pray before this Court for extending the period fixed by this Court.

In the result, I do not find any merit in the writ petition and it is dismissed accordingly with the observation made above. No cost.

Writ petition dismissed.