
(2014) 08 MP CK 0096
In the Madhya Pradesh High Court
Case No : WP. 2187/2008

Munna Khan

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 08 MP CK 0096

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : Alok Katare, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sheel Nagu, J.—This petition under Article 226/227 of Constitution of India assails the order dated 6.5.2008 contained in Annexure P/1 passed by respondent no. 3, the Principal, I.T.I., Jhansi, Road Distt. Shivpuri whereby on amount of Rs. 2,50,318/- is directed to be recovered in 324 installment at the rate of Rs. 772/- per month and remaining Rs. 190/- from retiral benefits.

2. Learned counsel for the rival parties are heard.

3. Learned counsel for the petitioner contends in support of the challenge to the said order of recovery that the said order is vitiated on account of being against the principle of natural justice. It is contended that a show cause notice was issued to the petitioner vide P-4 dated 12.2.2007 asking for his explanation as to why the said amount be not recovered on account of theft in the night intervening 16th December, 2003 and 17th December, 2003 at the main building of ITI, Shivpuri. It is further submitted that a response vide Annexure P-5 was given by the petitioner denying the said allegation of being negligent towards his duty as Chaukidar of the place where the theft took place.

4. Thereafter impugned order was passed making the above said recovery.

5. Learned counsel further submits that on receipt of the impugned order and the filing of the reply in response to this petition it came to the knowledge of petitioner that enquiry was held behind his back which is evident from Annexure R-3 (page 8 of the compilation) dated 25.6.2004 whereby an implicative report was submitted by the Principal of Industrial Training Institute, Shivpuri who was also the Enquiry Officer of the Directorate of Training, Jabalpur. It is contended that on the basis of the enquiry report impugned order of recovery has been passed without supplying the adverse report. It is thus contended that neither the report nor it's adverse material was supplied and furthermore no opportunity was afforded to the petitioner to defend himself as statement of witnesses were merely recorded with no opportunity to the petitioner to cross-examine.

6. On the other hand, the State has filed the return submitting that huge loss has been incurred by the State on account of theft which took place due to negligence on the part of petitioner who failed to discharge his duties as Chaukidar in the night intervening 16th December and 17th December, 2003. Accordingly the inquiry was held inter alia against the petitioner and during the course of enquiry petitioner admitted his laps of having slept during the night. The statement of several other witnesses, namely, Shri S.A. Shivani, Hostel Superintendent, Shri Rajendra Ram, Training Superintendent, Shri D.N. Shrivastava, Training Officer Class-2, Shri Rajesh Kushwaha, Lab Attendant, Shri Uttam Singh, Chukidar, Shri Raghuveer, Chaukidar and Shri Ratanlal Chaukidar were recorded. It is further submitted that after holding enquiry, statement of petitioner was also recorded, whereafter it was decided to pass the impugned order of recovery.

7. Learned counsel for the State submits that there was no occasion to supply the enquiry report or any adverse material against the petitioner since there was admission on the part of the petitioner of his lapses.

FINDINGS;

8. Considering the arguments of the rival parties, it is seen from the record that the impugned recovery is based upon an enquiry which was conducted on the behest of the Directorate of Training at Jabalpur by appointing Principal of the said I.T.I. as Inquiry Officer. Statements of large number of witnesses were recorded including that of the petitioner. It is not denied by the State that neither the enquiry report which is inculpatory in nature nor any of the adverse material relied upon in the enquiry was supplied to the petitioner. No doubt that the impugned order is an order of recovery which falls within the definition of minor penalty under Rule 10 of M.P. Civil Services(CCA) Rules, 1966 (for brevity "Rules of 1966") but the same was imposed without following due process of law provided in Rule 16 of the Rules of 1966 which for convenience and ready reference is reproduced below:-

"16. Procedure for imposing minor penalties:- (1) Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a Government servant any of the

penalties specified in clauses (i) to (iv) of rule 10 and rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

(b) holding an inquiry in the manner laid down in sub-rule (3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary.

(c) taking the representation, if any, submitted by the government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration.

(d) recording a finding on each imputation of misconduct or misbehavior; and

(e) consulting the commission where such consultation is necessary.

[(1-a) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government Servant under clause (a) of that sub-rule to withhold increments of pay or Stagnation Allowance and such withholding or increments of pay or Stagnation Allowance is likely to effect adversely the amount of pension payable to the Government Servant or to withhold increments of pay or Stagnation allowance for a period exceeding three years or to withhold increments of pay or Stagnation allowance with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of rule 14, before making any order imposing on the Government Servant any such penalty.]

(2) The record of the proceeding in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputation of misconduct or misbehavior delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the commission, if any;

(vi) the findings on each imputation of misconduct or mis-behaviour; and

(vii) the orders on the case together with the reasons therefor".

9. From the above said Rules, it is evident that without supplying adverse material and inquiry report, the order of penalty of recovery could not have been passed as that would amount to violation of principle of natural justice (Audi

Alteram Partem).

10. The other aspect which needs consideration is the tenability of the admission of the petitioner which has been raised by the respondent State. Perusal of the inquiry report Annexure R-3 reflects that petitioner admitted before the Enquiry Officer that he had slept on account of extreme cold weather during intervening night of 16th December and 17th December, 2003. However if the reply Annexure P-5 to the show cause notice of the petitioner is seen there is no such admission.

11. If there is any explanation given by the delinquent employee with the admission then the said admission cannot in the eyes of law be treated to be a legal admission to the charges against delinquent employee. This court finds support in the verdict of the Apex Court in the case of Jagdish Prasad Saxena Vs. The State of Madhya Bharat (now Madhya Pradesh),

12. In view of the above, it is evident that neither was the adverse enquiry report supplied to the petitioner nor the State and its functionaries rightly considered the legality and tenability of the admission made by the petitioner.

13 Consequently, this petition deserves to be and is therefore allowed with the following directions:-

1. The impugned order of recovery dated 6.5.2008 contained in Annexure P/1 passed by respondent no. 3, the Principal, I.T.I., Jhansi, Road Distt. Shivpuri is quashed.
2. Recovery, in case made against the petitioner under the said impugned order be refunded to him within 30 days from the date of communication.
3. The disciplinary authority is free to take appropriate action against the petitioner, in accordance with law.
4. No order as to cost.