

(2015) 04 RAJ CK 0193
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13372 of 2010

Nagendra Pratihast

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2015) 04 RAJ CK 0193

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Azadshatru Meena, for the Appellant; B.L. Avasthi, Addl. G.C.,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The petitioner while working as Professor (Astrology) at Government Acharaya Sanskrit College, Kota, was served with a charge sheet on 11th March, 2008, under Rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958, (hereinafter referred to as the "Rules of 1958", for short), for having studied as a regular student and having worked as Headmaster, simultaneously for the same period. As a consequence, penalty of removal from service, was inflicted. Aggrieved of the penalty imposed, the petitioner has approached this Court praying for the following relief(s):--

"a) By an appropriate order or direction the impugned Charge sheet dated 11.3.2008 and Punishment Order dated 22.9.2010, may kindly be quashed and set aside in all respect and the petitioner may kindly be reinstated back in service with all consequential service benefits from the date of dismissal.

b) Any other order or direction, which this Hon'ble Court may deem fit and proper, be also passed in favour of the petitioner."

2. Shorn off unnecessary details, the indispensable material facts necessary for

appreciation of the controversy raised herein needs to be first notice. It is pleaded case of the petitioner that he was initially appointed as Teacher Grade-II on 22nd January, 1973, on temporary basis. Having successfully participated in response to the advertisement issued in the year 1980, he was appointed as Professor Language Science. Later on, Language Science transformed into Discipline of Astrology and consequently, the petitioner was accorded appointment as Professor-Astrology. On 12th February, 1998, the College where the petitioner worked was taken over by the State Government. On 4th December, 1999, a High Level Selection Committee of the State Government, screened all the eligible candidates. On an analysis of the material on record as to the qualifications of the petitioner, the Committee selected the petitioner for the post of Professor. A preliminary enquiry was conducted in view of some complaints received regarding the documents with reference to academic qualifications and experience of the petitioner. The Assistant Director, Sanskrit Education, Jaipur, concluded that the genuineness of the academic credentials of the petitioner was doubtful. The competent authority decided to proceed under Rule 16 of the Rules of 1958, as to the genuineness of the educational qualifications, age certificate and experience certificates of the petitioner, leading to issuance of a charge sheet and ultimately the action precipitated into penalty of removal from service vide impugned order dated 22nd September, 2010.

3. The learned counsel appearing on behalf of the petitioner reiterating the pleaded facts and grounds of the writ application assailed the charge sheet and the impugned order of removal from service of the petitioner, firstly, for the petitioner could have been held guilty, only of misconduct in accordance with the relevant service rules enacted by the State Government. Secondly, the petitioner could not have been held guilty for misconduct solely on the ground of obtaining an experience certificate prior to his appointment, from a religious institution where he worked during vacation while he continued his studies as a regular student; and thirdly, the penalty of removal from service is disproportionate to the alleged misconduct. Therefore, the action of the State-respondents in terminating the services of the petitioner, is bad in the eye of law.

4. Referring to the period of the alleged misconduct i.e. with effect from 1st November, 1966 to 21st January, 1973, while the petitioner was principal at Shri Laxmikant Bhawan Banshiat, Vrindavan, Mathura (U.P.), and the educational qualifications acquired in the year 1968, as a regular student at Shri Sitaramiya Sanskrit University, Muzaffarnagar as well as studies pursued in the subject of "Viyakaran Shastra", as a regular student from Ram Krishna Sanskrit University, Muzaffarnagar, successfully; is the period prior to his employment with the State Government. Thus, the petitioner did not commit any misconduct or exhibit any unlawful behaviour, which is the most essential ingredient to constitute an act of "misconduct", while discharging duties. Moreover, the petitioner has been removed from service depriving him of all benefits of his unblemished service record of 35 years on the pretext of having received the experience certificate, for his religious teaching in an institution, which was not affiliated to any

university or state body.

5. It is further urged that the petitioner could not have been held guilty for misconduct merely for having obtained an experience certificate prior to his appointment, from a religious institution where he rendered his services during vacations while he was pursuing his studies as a regular student. The petitioner in his reply dated 16th June, 2008, specifically pleaded the fact of his teaching in Vrindavan, Uttar Pradesh, as a part of his religious activities, without receiving any remuneration from the institution.

6. The disputed experience certificate of the petitioner, was not considered as a valid experience at the time of his appointment as would be reflected from the enquiry report dated 24th September, 2009. Therefore, the finding arrived at by the enquiry officer, merely on the basis of having obtained an experience certificate from a religious institution, is bad in the eye of law. Referring to the affidavits, filed along with the rejoinder, the learned counsel asserted that the principal of the religious institution at Vrindavan, Uttar Pradesh, has stated on oath that the petitioner never worked as principal in the institution. The experience certificate was issued as recognition of his contribution towards the students and the institution, during the holidays. Hence, the findings arrived at on that count, holding the petitioner guilty of the misconduct and inflicting penalty of removal from the services, cannot be sustained in the eye of law.

7. In the alternative, the learned counsel submitted that the petitioner never used the experience certificate, from the religious institution at Vrindavan, Uttar Pradesh, for any benefit including his appointment with the State Government. Further, the certificate dates back to the period prior to joining of the service of the State Government. Be that as it may, the punishment of removal from service inflicted, forfeiting the entire service period of 35 years, has resulted into denial of retiral benefits, and thus, the penalty imposed is disproportionate. In support of his submissions the learned counsel has placed reliance on the opinion of the Hon"ble Supreme Court in the case of Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, AIR 1984 SC 505 : (1984) 1 LLJ 16 : (1983) 2 SCALE 831 : (1984) 1 SCC 1 : (1984) 1 SCR 230 : (1984) 1 SLJ 229 ; Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, (2007) 114 FLR 982 : (2007) 5 JT 294 : (2007) 5 SCALE 421 : (2007) 4 SCC 566 : (2007) 2 SCC(L&S) 58 : (2007) 4 SCR 968 ; Bhagat Ram Vs. State of Himachal Pradesh and Others, AIR 1983 SC 454 : (1983) LabIC 662 : (1983) 2 LLJ 1 : (1983) 1 SCALE 864 : (1983) 2 SCC 442 : (1983) 2 SLJ 323 ; P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, AIR 2006 SC 207 : (2005) 4 CTC 403 : (2005) 7 JT 417 : (2005) 3 LLJ 527 : (2005) SCC(L&S) 861 : (2005) 2 SCR 474 Supp : (2006) 1 SLJ 67 : (2005) AIRSCW 5690 : (2005) 5 Supreme 611 .

8. Per contra, Mr. B.K. Sharma, Additional Government Counsel and Mr. B.L. Avasthi, Additional Government Counsel, appearing on behalf of the State-respondents, reiterating the stand in the counter affidavit and supporting the action of the State-respondents in terminating the employment of the petitioner

vide impugned order dated 22nd September, 2010, emphasized that the petitioner was rightly found guilty of the charges. Moreover, the petitioner played a "fraud" as would be evident from the evidence and the materials available on record. The petitioner was initially appointed in the Vitthalnath Sadashiv Pathak Acharya Sanskrit Mahavidhyalaya, Kota, an aided institution, which was subsequently taken over by the State Government and was amalgamated with Government Sadashiv Pathak Acharya Sanskrit Mahavidhyalaya, Kota. The petitioner was absorbed in government service vide order dated 2nd December, 1999, as per the provisions of the Rajasthan Civil Services (Appointment and other service conditions of employees of private institutions and other establishment taken over by the Government) Rules, 1977 (hereinafter referred to as the "Rules of 1977", for short).

9. The "fraud" played by the petitioner surfaced in view of complaints received regarding the documents/experience certificates, produced by the petitioner. On a preliminary enquiry the genuineness of the documents became suspicious, and therefore, the competent authority decided to proceed with in accordance with Rule 16 of the Rules of 1958. A charge sheet was issued to the petitioner on 11th March, 2008. From the evidence and materials available on record it is evident that the petitioner obtained the experience certificate during the period with effect from 1st November, 1966 to 21st January, 1973, while pursuing his studies as a regular student. The findings arrived at by the enquiry officer are supported by the documents Ex. P1 to Ex. P4 and the statements deposited by P.W. 1 and PW2, during the course of enquiry. The fact that the petitioner was a regular student at the relevant time and successfully qualified the examinations of Shastri (Astrology), Shastri (Falit Astrology), Ancient Acharya and Model Classical Viyakaran and experience certificates produced as Ex. P4, was of the same time period while he worked on the post of principal; is not in dispute. The petitioner was accorded ample opportunity to defend himself during the course of enquiry, but could not put forth any legally tenable defence to demolish the charges.

10. I have heard the learned counsel for the parties and with their assistance perused the materials available on record.

11. Indisputably, the petitioner was absorbed in the service of the government as the institution merged with the State Government as would be evident from the materials available on record. On the recommendations of the screening committee the services of the petitioner were absorbed in the State service from the date of his initial date of engagement/appointment. Several complaints were received with reference to entries made in the service record of the petitioner with reference to his educational qualifications, teaching experience, date of birth etc. From the enquiry and the materials available on record as well as from the documents placed on record along with the additional affidavit as Annexure-R/A/1 and R/A/2; it is reflected that the date of birth of the petitioner as entered in the service record was 7th May, 1951.

12. In the year 1960, at the age of 9 years the petitioner acquired the

qualification of "Prathma" with second grade from Bihar Sanskrit Samiti. In the year 1963, the petitioner acquired the qualification of "Madhyama" with second grade from Shri Kameshwar Singh Darbhanga Sanskrit University. In the year 1966 the petitioner acquired the qualification of "Shastri" in "Jyotish Prathma" with third grade while he was aged about 15 years. In the year 1968, the petitioner acquired the qualification of "Shastri" in "Falit Jyotish" and in the same year also acquired the qualification of "Acharya" with second grade. In the year 1970, the petitioner acquired qualification of "Acharya" in "Falit Jyotish" with first grade. In the year 1971, he acquired the qualification of "Shastri" in "Viyakaran" with first grade. Thus, it is evident that the petitioner while working as Professor in Government Acharya Sanskrit College, Kota, also worked as principal in Ram Krishna Sanskrit College, Vrindavan, Mathura.

13. There is no material available on record to indicate that the petitioner ever applied for permission or was accorded any permission to teach at the institution in Mathura while working at Kota. Be that as it may, the factual matrix is not in dispute.

14. The action of the respondents has been assailed for that the petitioner did not commit any misconduct or exhibited behaviour, while he was a member of service of the State Government, and therefore, could not be held responsible or guilty of the alleged misconduct, for a period prior to his employment with the State Government.

15. In the case of Galaxo Laboratories (I) Ltd. (supra) the dispute was with reference to interpretation of Clause 10, 16 and 30 of the Standing Order 22 applicable to workmen employee by the employer. The respondent workmen therein obstructed the "loyal workmen" who boarded the bus chartered by the employer for the use of "loyal workmen" commuting between the city and the factory. The striking workmen including the second respondent boarded the bus and during the journey in the bus at different places manhandled the "loyal workmen". Moreover, the Hon"ble Supreme Court considered the question therein while adjudicating upon the misconduct as alleged in the charge sheet, if the conduct/misconduct squarely fell within the clauses of the Standing Order 22. The misconduct that was committed at the places, referred to in the charge sheet therein, in the bus. Whether the bus, which was stated to be in the part of the premises or in vicinity of the premises or the bus was on public road; was the moot question in that case. In the instant case at hand the facts are entirely different and distinguishable. The documents with reference to educational qualifications, date of birth and experience certificates, were the very basis of appointment of the petitioner. His services were absorbed under Rules of 1977 on the basis of this material. Hence, the case referred to and relied upon is no help to the petitioner.

16. In the case of Inspector Prem Chand (supra) the applicant therein was charged for having organized raid on Shri Preet Pal Bansal, Inspector (Malaria), MCD, for demand of a sum of Rs. 3,000/- as a bribe and an FIR was registered

for offence under Section 7/13 of the Prevention of Corruption Act against Shri Preet Pal Bansal. The tainted money although not accepted by the accused Shri Preet Pal Bansal, was not seized by him being a Raid Officer despite being an important piece of evidence. The accused Shri Preet Pal Bansal was acquitted by the Special Judge, Tishazari, Delhi. It was in the backdrop of those singular facts the Hon'ble Supreme Court advertent to the question involved therein referred to the meaning of term "misconduct" as interpreted in the case of State of Punjab and Others Vs. Ram Singh Ex. Constable, AIR 1992 SC 2188 : (1992) 4 JT 253 : (1992) 2 SCALE 76 : (1992) 4 SCC 54 : (1992) 3 SCR 634 , and held thus:--

"Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.

Misconduct in office has been defined as:

Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

17. By now it is well settled that "misconduct" means the misconduct arising from ill motive. Acts of negligence, errors of judgment, or innocent mistake, do not constitute such "misconduct". In the instant case at hand the petitioner having obtained educational qualifications at the age of 9, 15 and 17 years; speaks volumes about his "misconduct" and motive. Moreover, the certificates of experience obtained, found place in the service record obviously at the instance of the petitioner. Thus, the facts of the case at hand are entirely different from that of Inspector Prem Chand (supra).

18. In the case of Bhagat Ram (supra) after a threadbare analysis of the evidence the Hon'ble Supreme Court concluded that the appellant therein (Bhagat Ram), who was a Class-IV government servant was not afforded reasonable opportunity to defend himself and accordingly, enquiry and consequently order of removal of service were held to be vitiated. Moreover, in the case of Bhagat Ram (supra), the matter related to illicit felling of trees from forest area leading to disciplinary enquiry for negligence in performing the duty. A joint disciplinary enquiry was initiated against the appellant wherein the co-delinquent, who was a superior, was defended by another officer. It is apparent on the face of record that the facts and circumstances of the case at hand are entirely different from that of Bhagat Ram (supra), referred to and relied upon.

19. In the case of P.V. Mahadevan (supra) the disciplinary proceedings were initiated after ten years of the alleged misconduct, which involved irregularity in

alleged transaction of sale, and no explanation was furnished for an inordinate delay of ten years in initiating the disciplinary proceedings while the appellant therein superannuated in the meantime. In the instant case at hand it is reflected from the additional affidavit, filed on behalf of the State-respondents, that the petitioner approached this court by institution of a writ petition which was registered as SBCWP Number 2330 of 2004, and was disposed of vide order dated 1st July, 2006, with a direction to the department to conclude the enquiry proceedings ascertaining the genuineness and correctness of the documents relating to the educational qualifications and teaching experience of the petitioner within a period of six months from the date of receipt of the copy of the judgment. In compliance of the directions, a preliminary enquiry was conducted where the petitioner was found guilty, and as a consequence was served with the memorandum of charge sheet dated 11th March, 2008. The Additional Commissioner (I) Department of Enquiry, Rajasthan, Jaipur, was appointed as Enquiry Officer, who submitted the enquiry report on 24th September, 2009, returning a finding of guilty on the charges. The Disciplinary Authority agreeing with the enquiry report and the findings arrived at, inflicted the penalty of removal from service vide order dated 22nd September, 2010.

20. The petitioner who commenced his studies at the age of 9 years and concluded his academic career in the year 1971 at the age of 20 years, and at the same time also worked on the post of principal as reflected from his experience certificates (Ex. P4) which are available on record, are sufficient and adequate materials to draw an inference on the basis of preponderance of probabilities. A finding cannot be characterized as perverse or unsupported by any irrelevant material if it is a reasonable inference from the proved facts.

21. The scope and extent of interference with the quantum of punishment has been subject matter of a catena of judgments by the Hon"ble Supreme Court. It has been held in uncertain words by the Hon"ble Supreme Court that such an interference cannot be a routine matter referring to the observation of Lord Greene in the famous case of *Associated Provincial Picture Houses v. Wednesbury Corpn.*: (1948) 1 KB 2 : (1947) 2 All ER 680 (CA) ; wherein it has been observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. An interference was not permissible unless the order was contrary to law or relevant factors were not considered or irrelevant factors were considered or the decision was one which no reasonable person could have arrived at. The principles have been consistently followed while conducting scrutiny of the validity of an administrative action. The Hon"ble Supreme Court in the case of *Om Kumar and Others Vs. Union of India*, (2000) 3 JT 92 : (2000) 7 SCALE 524 : (2001) SCC(L&S) 1039 : (2000) 4 SCR 693 Supp , held that "proportionality" will have to be considered in the backdrop of the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures have been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order. Where the administrative action is

assailed for being arbitrary under Article 14; in cases where punishments in disciplinary cases are challenged, the criteria for scrutiny would be as to whether the administrative order is "rational" or "reasonable" and whether it stands the Wednesbury test. In such matters, the Courts are confined only to a "secondary role" while examining the "primary role" of the administrator as to whether he is acted illegally or has omitted relevant factors or has considered irrelevant factors or the view arrived at is one which no reasonable person could have arrived at. This principle has been reiterated by the Hon'ble Supreme Court time and again and the common feature that runs through all the decisions on the subject matter, is to the effect that the Court should not interfere with the decision of the administration until and unless the decision was illogical or suffered with procedural impropriety or was so shocking, to the conscious of the Court, that same was in defiance of logic or moral standard. Thus, the scope of judicial review and scrutiny in such matters is limited only to the decision making process. The punishment imposed by the Disciplinary Authority or the Appellate Authority unless is found to be in defiance of logic or moral standard or shocks the conscious of the Court, the same is not open for interference. In the instant case at hand, from the materials available on record, the enquiry conducted while returning the finding of guilt and the decision arrived at by the Disciplinary Authority, in terminating the services of the petitioner, cannot be faulted on any count as there is no element of illegality in decision making process. The petitioner was found under the influence of alcohol and has been imposed with the appropriate penalty. The penalty cannot be said to be disproportionate by any stretch of imagination, calling for any interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

22. For the reasons and discussions herein above, the writ petition is devoid of any substance, and lacks in merit, and therefore, deserves to be dismissed.

23. Ordered accordingly.

24. In view of the final adjudication on the writ application, the stay application stands closed.

25. However, in the facts and circumstances of the case, there shall be no order as to costs.