
(1972) 11 MP CK 0001
In the Madhya Pradesh High Court

Nemichand

APPELLANT

Vs

Brahma Swaroop and Others

RESPONDENT

Date of Decision : 03-11-1972

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311
State Financial Corporations Act, 1951 — Section 20, 23, 45, 48, 8

Citation : (1973) JLJ 358 : (1973) 1 LLJ 481 : (1973) 18 MPLJ 135

Hon'ble Judges : G.L. Oza, J;A.P. Sen, J

Bench : Division Bench

Judgement

G.L. Oza, J.

This is a petition filed by the petitioner against an order of his dismissal from service in the Madhya Pradesh Financial Corporation (hereinafter called the Corporation), Indore.

According to the petitioner, he was appointed Class-A officer of the Corporation with the approval of the Board of Directors by an order dated the 25th June, 1960, and he was working as a Superintendent in the Corporation. On 17th May, 1968 he was given a notice to show cause why disciplinary action under Regulation 40 of the M. P. Financial Corporation (Staff) Regulations, 1958, should not be taken against him on the basis of certain charges pertaining to his joining an unrecognized association of Class-B and Class-C staff of the Corporation and also his having accepted to be its office-bearer and taking part in the activities of that association resorting to cessation of work. The petitioner submitted his reply to this show cause notice. According to the petitioner he was further given a memorandum in respect of language used by him in some letter. In pursuance of these charges, the secretary of the Corporation was appointed as enquiry officer. The petitioner objected to the appointment of the enquiry officer. It is alleged that later he also challenged the jurisdiction of the enquiry officer contending that there were no rules under which an enquiry could be conducted. After the completion of the enquiry, a show-cause notice was issued to the petitioner by

the Managing Director, and along with this notice the findings of the enquiry officer were also sent to the petitioner. The petitioner submitted his reply to the show-cause notice, and by the order dated 26th November, 1968 the petitioner was dismissed from service. Against this order of dismissal, the petitioner submitted an appeal, and the Board of Directors, after consideration of the appeal, dismissed it. When an intimation about this dismissal of the appeal was communicated to the petitioner, he made an application for getting a copy of the detailed order passed by the Board of Directors. But such a copy was not given to the petitioner.

The petitioner has raised various contentions challenging the appointment of enquiry officer and about the conduct of the enquiry. It has also been contended that the Managing Director had DO authority to terminate the services of the petitioner. The petitioner has also contended that he could not be dismissed from service merely on the ground of his joining an association of employees as this was his fundamental right.

On behalf of the respondent-Corporation, Shri Kohli raised a preliminary objection that this petition is not maintainable as the provisions of Article 311 are not attracted to the employees of the Corporation. In the alternative, he also contended that the procedure prescribed under Regulation 40 of the M. P. Financial Corporation (Staff) Regulations, 1958, (hereinafter called the Regulations, has been followed, and no grievance can now be made against the order of dismissal. learned Counsel placed reliance on the decisions in *Pramodrai Shamaldas Bhavsar Vs. Life Insurance Corporation of India*, , *Ramchandra v. D.I.G., of Police* (1951) M.P.L.J. 431, *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , *Indian Airlines Corporation Vs. Sukhdeo Rai*, .

Shri Mathur, learned Counsel for the petitioner, on the other hand contended that the Corporation being a statutory body, the provisions contained in Article 311 of the Constitution would be applicable. He placed reliance on the decisions in *Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others*, , *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, , *Prabhakar Ramkrishna Jodh v. A.L. Pande* (1970) M.P.L.J. 983 , and *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, . learned Counsel also contended that the provisions contained in Regulation 40 have not been complied with and consequently the petitioner is entitled to the relief claimed.

In the light of the respective contentions raised by learned Counsel for the parties, the questions that deserve to be considered in this petition are (i) whether the provisions of Article 311 of the Constitution would be attracted in the case of an employee of the Corporation created under a statute, (ii) whether the enquiry and the procedure followed during the course of enquiry and subsequent thereto is in contravention of the provisions contained in Regulation 40 of the Regulations, and (iii) whether the action taken against the petitioner is as a result of prejudice and, therefore, can be said to be mala fide exercise of

power.

It was contended before us that Section 23 of the State Finance Corporation Act, 1951, (hereinafter called the Act), provides for the appointment of officer and also for the framing of regulations determining the conditions of appointment and service and the remuneration payable to them, whereas Section 48(2) of the Act provides for framing of regulations for various purposes as indicated in different clauses of Sub-section (2). It was contended that provisions for regulation of services of the employees of the Corporation will not fall specifically under any of the clauses of Sub-section (2) of Section 48 of the Act, and consequently the Regulation will have no statutory sanction.

It cannot be doubted that although Section 23 of the Act confers powers on the Corporation for appointment of officer and employees and also provides for regulations to determine their conditions of appointment and service and the remuneration payable to them, still in the provisions conferring rule-making power on the Corporation, that is Section 48 of the Act, no specific power has been conferred on the Corporation to frame regulations about the conditions of service of its employees. Consequently Section 23 can only mean to confer power on the Corporation to employ officers and other employees on respective terms of employment. Section 23 of the Act reads thus?

23 The Finance Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them.

In view of this, it cannot be doubted that although the Regulations are framed by the Corporation, which are described as M. P. Finance Corporation (Staff) Regulations, 1958, still those Regulations cannot be said to have any statutory sanction. They only lay down the conditions of service.

In *Indian Airlines v. Sukhdeo Rai* (supra) the Supreme Court was dealing with the question of an employee of the Indian Airlines Corporation and in that context, following the decision in *S.R. Tewari Vs. District Board Agra and Another*, it was observed as under :

This Court, after examining a number of decisions, followed the decision in *S.R. Tewari v. District Board, Agra* (supra) which laid down that there were only three well-recognized exceptions to the general rule under the law of master and servant where such a declaration would be issued, namely, (I) cases of public servants falling under Article 311(2) of the Constitution, (2) cases falling under the industrial law, and (3) cases where acts of statutory bodies are in breach of a mandatory obligation imposed by a statute.

In that case, the Supreme Court ultimately held as under:

As observed earlier under Sections 8(2) and 20 the appellant-Corporation has been given the power to employ its own officers and other employees to the

extent it thinks necessary on terms and conditions provided by it in Regulations made u/s 45. The Regulations contain the terms and conditions which govern the relationship between the Corporation and its employees. Though made under the power conferred by the statute, they merely embody the terms and conditions of service in the Corporation but do not constitute a statutory restriction as to the kind of contracts which the Corporation can make with its servants or the grounds on which it can terminate them. That being so, and the Corporation having undoubtedly the power to dismiss its employees, the dismissal of the respondent was with jurisdiction, and although it was wrongful in the sense of its being in breach of the terms and conditions which governed the relationship between the Corporation and the respondent it did subsist. The present case, therefore, did not fall under any of the three well-recognized exceptions, and, therefore, the respondent was only entitled to damages and not to the declaration that his dismissal was null and void.

As already discussed, the Regulations in the present case have not the force of a statute, There is no statutory obligation imposed on the Corporation. Consequently this case would not fall within the third exception to the general rule as referred to in the decision of the Supreme Court.

Pramodrai v. L.I. Corporation, (supra) the case of an employee of the Life Insurance Corporation was considered, and the question raised in that case was whether the Life Insurance Corporation fell within the ambit of "other authorities" and thus within the scope of Article 12 of the Constitution and consequently Article 311 would be applicable. While dealing with this question, it was observed in that case as under:

Applying the test in the present case, can the Life Insurance Corporation be said to have any authority in the matter of administering any law enacted by Parliament or by the State ? Or is it required to make any decision under any such law and to implement those laws ? Obviously it is a trading Corporation and is not concerned with implementing any law which affects in any manner any member of the public. The prohibition for any private agency to do the same business is not by reason of any order that is made by the Life Insurance Corporation but by reason of the statute itself as we have already seen.

In Smt. Ujjam Bai v. State of U.P. AIR 1962 S.C. 1921, the Supreme Court held that the Electricity Board was an authority within the meaning of Article 12 of the Constitution. It was held that the fundamental conception of an authority is that there is in it power to command and compel its obedience either by enforcing the same or by punishing disobedience, and it was observed that the Electricity Board had such powers while administering the law framed by Parliament. On an application of these tests, the Bombay High Court held that the Life Insurance Corporation was not "authority" within the scope of Article 12 of the Constitution, and, therefore, Article 311 had no application.

learned Counsel Shri Mathur for the petitioner referred to the decision in Vidya

Ram v. S.J.N. College (supra) to contend that non-compliance with Regulation 40 would amount to a breach of a statutory obligation. In that case, the Supreme Court observed that:

On a plain reading of Statute 151, it is clear that it only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the college and the teacher concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Statute 151 have *proprio vigore* no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract they have no vitality and can confer no legal rights.

and, therefore, held that the Regulations in that case had no force of law and conferred no legal rights. learned Counsel also placed reliance on the decision in Prabhakar Ram" krishna Jodh v. A.L, Pande (supra). In Vidya Rain a case (supra), the Supreme Court distinguished the case before it from Prabhakar"s case (supra) and observed as under:

Whereas in the case of Prabhakar Ramkmhna Jodh v. A.L. Pande (supra) the terms and conditions of service embodied in Clause 8(vi)(a) of the "College Code" had the force of law apart from the contract and conferred rights on the appellants there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in the contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract; so Clause 5 of the contract can, in no event, have even a statutory flavour and for its breach, the appellant"s remedy lay elsewhere.

In these circumstances, having found that the Regulations in the present case have no force of a statute, the two decisions referred to by the learned Counsel do not help the petitioner"s case.

In U.P.S.W, Corporation, Lucknow v. C.K. Tyagi, (supra) while considering the case of an employee of the U.P. State Warehousing Corporation, Lucknow, it was observed by the Supreme Court as under:

As pointed out by us, the Regulations are made under the power reserved to the Corporation u/s 54 of the Act. No doubt they lay down the terms and conditions of relationship between the Corporation and its employees. An order made in breach of the regulations would be contrary to such terms and conditions, but would not be in breach of any statutory obligation, as was the position which this Court had to deal with in the Life Insurance Corporation case, L. I. Corpn. v. Sunil Kumar, (supra). In the instant case, a breach has been committed by the appellant of Regulation 16(3) when passing the said order of dismissal, inasmuch as the procedure indicated therein has not been followed. The Act does not

guarantee any statutory status to the respondent, nor does it impose any obligation on the appellant in such matters.

Apparently, these observations of the Supreme Court fully apply to the present case. As discussed earlier, although the Regulations provide for conditions of service of the employees, they do not impose any statutory obligation on the Corporation. Consequently it cannot be doubted that even if it is held that the dismissal of the petitioner from service is in contravention of Regulation 40, still no direction under Article 226 of the Constitution can be issued as the said Regulation does not impose any statutory obligation on the Corporation. At best, the petitioner may be entitled to damages for a breach of the contract of employment.

As we have already held that Article 311 is not attracted and consequently this petition under Article 226 is not maintainable, it may not even be necessary for us to deal with other questions raised by the parties before us. But as they have been argued at length and it is contended that the procedure prescribed under Regulation 40 has not been complied with and the impugned order has been passed on account of malice against the petitioner, it is worthwhile to deal with those questions as well.

Regulation 40 lays down that in case of major punishments orders will not be passed unless a charge has been framed and is given to the employee and he is given a reasonable opportunity to answer them in writing and if he so prefers to lead evidence in defence. The conduct of the enquiry in the present case admittedly fulfils all these requirements. The petitioner was permitted to cross-examine. He was also allowed to lead his evidence in defence. The only allegation in the petition about enquiry is that the petitioner was not permitted to cross-examine at length as he desired. It is also the grievance of the petitioner that the enquiry officer was not independent as he was under the Managing Director. A perusal of the return goes to show that there is no substance in the contentions raised by the petitioner. The enquiry was conducted in accordance with the provisions contained in Regulation 40. Consequently it cannot be contended that the enquiry was conducted contrary to the Regulations.

It was also contended that the Managing Director could not appoint an officer subordinate to him as an enquiry officer, and reliance for this purpose was placed on Regulation 6. This Regulation refers to delegation of powers and it is provided that powers under Regulation 40 shall not be delegated, and it is on this basis that this contention has been advanced. Regulation 40 provides for passing of orders in the nature of disciplinary action against employees. But it does not lay down that the procedure contemplated in Clause (2) of this Regulation has to be followed by the Managing Director himself. It is not in dispute that the impugned order in this case was passed by the Managing Director. Consequently the contention of the petitioner cannot be accepted.

It was also contended that the Managing Director acted with prejudice and,

therefore, the order in question is bad on account of mala fide. The circumstances appearing in the petition and the return do not justify the allegation made by the petitioner. There is nothing in the order also to indicate any malice on the Managing Director. It was contended that the portion of the order quoted in the petition indicates bias and prejudice. That portion is in these words:

Denial by the accused-officer is bound to be suspect since his denial is obviously to save his own skin.

There is nothing in these words on the basis of which an inference about mala fides can be drawn.

Consequently there is no substance in this petition. It is, therefore, dismissed. Respondents Nos. 1 and 2 shall be entitled to the costs of this petition. Counsel's fee Rs. 100 if certified. Outstanding amount of security deposit, if any, after deduction of costs, shall be refunded to the petitioner.