
(2014) 11 MP CK 0049
In the Madhya Pradesh High Court
Case No : W.P. 6479/13

Nirbhay Singh Pal

APPELLANT

Vs

Madhya Pradesh Police Housing Corporation

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 145 FLR 911 : (2015) 1 MPLJ 613

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Vivek Jain, Advocate for the Appellant; Kumar Gaurav Sharma, Advocate for the Respondent

Judgement

Sujoy Paul, J.—This petition filed under Article 226 of the Constitution challenges the order dated 14.8.2013, whereby the petitioner's contractual appointment was cancelled by the respondents.

2. The petitioner was appointed on contract basis as Sub- Engineer by order dated 21.2.2013 (Annexure P-2). A contract was entered into between the petitioner and the employer on 12.2.2013 (Annexure P-3). The petitioner was directed to supervise the construction work of certain police stations at Datia by order dated 18.3.2013. The respondents issued order dated 30.4.2013 and directed one Shri Pramod Kumar Nakhate, Sub Engineer to look into the construction work of two police stations at Datia. He was directed to supervise that work and remain posted at Datia. In the same order, the petitioner was directed to hand over his charge to said Shri Nakhate. The petitioner, in turn, submitted the charge to said person on 3.5.2013. The petitioner was served with a show cause notice dated 17.7.2013. In the said notice it is mentioned that the petitioner is not taking interest in his work and his work is not satisfactory. He was directed to supervise the construction work but is not obeying the said instructions. The petitioner's headquarter was fixed at Datia but he is residing at Gwalior.

3. The petitioner, in turn, submitted his detailed reply dated 5.8.2013 (Annexure P-8). The respondents passed the impugned order dated 14.8.2013 and terminated the contractual appointment by giving one month's notice. The order is passed by taking assistance of Clause 15 of Contract and Clause 12 of the appointment order.

4. Shri Vivek Jain assailed this order on the ground that the order is non-speaking. It does not deal with the detailed reply of the petitioner and, therefore, principles of natural justice are not followed. He relied on Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and judgment of Apex Court in (2001) 9 SCC 180 (O.K.Bharadwaj Vs. Union of India and others).

5. Per contra, Shri Kumar Gaurav Sharma, learned counsel for the respondents supported the order. He submits that condition 5 of the contract makes it clear that petitioner was required to stay at the headquarter itself. By taking this Court to the reply of the petitioner, it is submitted that petitioner has admitted that he is not residing in the headquarter. On the contrary, he is asking a question to the employer as to why he should remain present in the headquarter. Thus, he violated the condition of appointment order and contract and, therefore, the employer has rightly passed the order impugned.

6. I have heard the learned counsel for the parties and perused the record.

7. It cannot be doubted that even in cases of contractual appointment, the principles of natural justice are applicable. The requirement of natural justice can be molded in order to take care of two basic facets of this principle. (1) to make known the nature of acquisition and (2) to give opportunity to state the case. The respondents have given opportunity to the petitioner to put-forth his defence. Condition No. 5 of appointment/contract makes it clear that petitioner was required to remain in the headquarter. The petitioner in his reply (page 22) has stated that his charge was given to Pramod Nakhate and, hence, he stood relieved from the work of Datia and, therefore, why it is compulsory to remain at the headquarter? The order dated 18.3.2013 shows that petitioner was directed to remain at his headquarter, i.e., Datia. He was given charge of supervision work of three police stations viz., (1) Kotwali Datia, (2) Kotwali Chiroola, District Datia, (3) Kotwali Goraghat, District Datia. The order dated 30.4.2013 shows that work of Chiroola and Goraghat was entrusted to Shri Nakhate. Thus, the supervision work regarding Police Station Kotwali Datia was still with the petitioner and it was not entrusted to Shri Nakhate. There is no order which shows that petitioner's headquarter was changed from Datia. The charge list Annexure P-6 also shows that he had handed over the work of Chiroola and Goraghat, Datia only to Shri Nakhate. In view of petitioner's reply, it is clear that he was fully aware about the accusation against him. He made it clear in the reply that he on his own treated himself as relieved. No relieving order related to petitioner is shown. It is strange that petitioner posed a question as to why he should remain at the headquarter. This act of the petitioner is clearly contrary to the condition of contract/appointment order. In this factual backdrop, it is to be

seen whether order needs to be interfered with for alleged violation of principles of natural justice.

8. In the opinion of this Court, it is clear that no prejudice is caused to the petitioner if detailed order is not passed by the respondents because petitioner's own stand in the return shows that he flouted the condition of the contract/appointment. Thus, his appointment could be cancelled in view of Clause 15 of the contract, which in clear terms prescribes that in the event petitioner violates any condition of contract, his service could be terminated. So far reliance on O.K.Bharadwaj (supra) is concerned, it is not a case of contractual employee. It is a case of a civil post holder. For civil post holders the disciplinary action needs to be taken in consonance with statutory Discipline and Appeal Rules. The service conditions of contractual employees are governed by the terms of contract. As discussed above, as per petitioner's own reply, it is clear that he has violated condition No.5 of the appointment/contract, which is sufficient to invoke termination/cancellation of appointment clause. Thus O.K.Bharadwaj (supra) is of no assistance to the petitioner.

9. It cannot be forgotten that natural justice is after all "no unruly horse, no lurking land mine" as characteristically stated by Krishna Iyer, J. in The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, . Its unnatural expansion without reference to these realities can be "exasperating" as observed by the learned Judge. It is also worthwhile to remember, as stated in Juwarsingh and Others Vs. State of Madhya Pradesh, that where on admitted or indisputable facts only one conclusion is possible, the Court may not compel the observance of natural justice, as it would be futile to do so.

10. As analyzed above, in my opinion, in view of clear accusation and specific stand of the petitioner, no interference is warranted in the discretionary jurisdiction of this Court under Article 226 of the Constitution. I find no illegality which warrants interference by this Court in exercise of writ jurisdiction.

11. Petition fails and is hereby dismissed. No cost.