
(2014) 09 MP CK 0012
In the Madhya Pradesh High Court
Case No : W.P. No. 6535 of 2014

Pawan	Vs	APPELLANT
State of M.P.		RESPONDENT

Date of Decision : 08-09-2014

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2015) LabIC 3151 : (2015) 3 MPLJ 413

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : Akash Rathi, Advocate for the Appellant; V. Phaye, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Prakash Shrivastava, J.

1. Heard finally with consent. This writ petition has been filed by the petitioner challenging the order dated 16-8-2014 whereby the petitioner who was working as Sub Inspector has been dismissed from service invoking the provisions contained in Article 311(2) of the Constitution of India.
2. On the previous date Counsel for State was granted time to examine the matter in the light of the earlier judgment of this Court, therefore, though no formal notice has been issued in the matter but considering the pure legal issue involved herein, the counsel for the State without seeking time to file reply has advanced argument in the matter.
3. Learned counsel for petitioner submits that the impugned order has been passed without conducting any departmental enquiry and in the Police Regulations, there is no provision to dispense with the departmental enquiry, therefore, the case of petitioner is covered by the judgment of this Court in the matter of Satya Narayan Pandey and others vs. State of M.P. and others, reported in 2003 (5) MPLJ 450 : (2004) MPHT 46.

4. Counsel for respondent/State has not disputed the above position in law but has sought liberty to conduct departmental enquiry against the petitioner in accordance with the Rules and Regulations.

5. Having heard the learned counsel for the parties and on perusal of the record it is found that undisputedly time impugned order dated 16-8-2014 imposing the punishment of dismissal from service has been passed without conducting any departmental enquiry but invoking the provisions of Article 311(2) of the Constitution of India.

6. Similar issue was involved in the matter of Satya Narayan Pandey's case (supra), wherein this Court has held that M.P. Police Regulations do not provide for dismissing an employee from service by dispensing with departmental enquiry. While considering Article 311(2) of the Constitution, this Court has taken the view that while the source of the authority of particular officer to act as a disciplinary authority and to dispense with the enquiry is derived from the service rule, the source of his power to dispense with the enquiry is derived from the second proviso to Article 311(2) and not from the service rule and there is a well established distinction between the source of authority to exercise a power and the source of such power and this being so, unless power as per the service rule or regulation is conferred on the authority to dispense with enquiry, the authority cannot order for dispensation with enquiry without there being any such power or authority in the statutory rule or regulation governing the service conditions of the delinquent employee.

7. This Court in the above case while placing reliance upon the judgment of the Supreme Court in the matter of Union of India and Another Vs. Tulsiram Patel and Others, has held as under:--

"11. In the case of Union of India vs. Tulsiram Patel (supra) it has been held by the Supreme Court that while the source of the authority of particular officer to act as a disciplinary authority and to dispense with the enquiry is derived from the service rule, the source of his power to dispense with the enquiry is derived from the second proviso to Article 311(2) and not from the service rule. It has been held that there is a well established distinction between the source of authority to exercise a power and the source of such power. That being the legal position even though in the preceding para this Court has examined the case in accordance with the requirement of Article 311(2) of the Constitution but unless power as per the service rule or regulation is conferred on the authority to dispense with enquiry, the authority cannot order for dispensation with enquiry without there being any such power or authority in the statutory rule or regulation governing the service conditions of the delinquent employee."

In view of the aforesaid position in law, and in view of the stand of counsel for State before this Court, the impugned order dated 16-8-2014 is set aside with liberty to the respondents to take action against the petitioner for the alleged misconduct in accordance with law.

C.C. as per rules.