
(2008) 04 RAJ CK 0138
In the Rajasthan High Court

Prahlad Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 4 RLW 2901

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—In this petition, petitioner is challenging the impugned order Annex. A/7 dated 22.3.1993, whereby, petitioner was dismissed from service so also it is prayed that respondents may be directed to decide the appeal Annex. A/8.

2. The petitioner was initially appointed as Cattle Guard/Chowkidar in the Forest Department at range Desuri on 16.6.1982 and vide Annex. 1 he was declared semi permanent in accordance with Work Charged Rules, 1964 and pay was fixed in pay scale of Rs. 350.5.430. Thereafter, on 1.5.1991 he was placed under suspension on the ground that he was arrested in connection recovery of 240 bottles of liquor from him by Police Station Rani District Pali and he remained in custody for more than 48 hours. The suspension order was lateron revoked vide Annex.3 dated 23.3.1992 during pendency of inquiry. Vide order dated 20.6.1992 petitioner was transferred from Range Pali to Range Desuri by the Deputy Conservator of Forest, Pali.

3. A communication was sent by the Assistant Conservator of Forest to the petitioner on 12.2.1993, whereby, he was directed to file his explanation for alleged recovery of 240 bottles of liquor. Petitioner filed his reply to the said communication and submitted that the allegation levelled against him is totally false so also the place of recovery does not belong to him. However, without holding proper inquiry the Deputy Conservator of Forest, Pali on the ground of registration of case for recovery of 240 bottles of liquor passed an order

whereby, petitioner was dismissed from service and it is observed in the order of dismissal dated 22.3.1993 that this order has been passed in accordance with Forest Department's Standing Order 1973 which is applicable upon the work charged employees of Forest Department.

4. The petitioner is challenging the said order on the ground that no inquiry in accordance with the disciplinary Rules was conducted against the petitioner so also in criminal trial he was acquitted from the charges levelled against him vide judgment dated 1.8.2001, it is pointed out by the petitioner that learned Judicial Magistrate (First Class), Desuri gave finding that there is no material on record to connect the petitioner with the so called agricultural field where from 240 bottles of liquor were recovered but respondent department without waiting for conclusion of criminal case and only on the basis of registration of case against the petitioner, in which after investigation challan was filed, has passed the order of dismissal, therefore, the order of dismissal is totally illegal, unconstitutional and contrary to law.

5. Learned Counsel for the petitioner vehemently argued that before terminating the service of an employee it is the duty of the employer to issue charge sheet and to conduct proper inquiry in accordance with Rules but here in this case no charge sheet was served upon the petitioner only fact finding inquiry was conducted as per the instructions of Deputy Conservator of Forest, Pali and upon submission of report of fact finding by the Assistant Conservator of Forest, the petitioner was dismissed from service, such type of inquiry is totally illegal and have no foundation to stand before eye of law. Further it is submitted that in full fledged trial before competent criminal court conducted against petitioner, he was acquitted vide judgment dated 21.8.2001, therefore, an appeal was filed before the respondents for taking him on duty, vide communication dated 30.5.2003 the petitioner was directed to file copy of the judgment of criminal case and that too was submitted by the petitioner but till filing of writ petition respondents did not decide the appeal filed by the petitioner so also they are sitting over the decision for taking him back on duty after acquittal.

6. As per contention of petitioner after completion of ten years of service, a work charged employee is required to be made permanent in accordance with Rule 3(3) of the Work Charged Rules though he was declared semi permanent w.e.f. 16.6.1984, therefore, as per judgment in case of Sujjan Singh Yadav v. State of Rajasthan reported in 1991 WLR (Raj.) 340, the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 are applicable, therefore, proper inquiry was to be conducted before passing an order of dismissal, and admittedly no such inquiry was conducted by the respondents in this case and straightway on the basis of fact finding report sent by Assistant Conservator of Forest, Pali in which it is stated that a criminal case has been registered against the petitioner for recovery of 240 bottles of liquor, the impugned order of dismissal was passed without holding any inquiry, therefore, order impugned dated 22.3.1993 deserves to be quashed because it is violative of principle of natural justice.

7. In this petition reply has been filed by the respondents and it is contended that proper inquiry was conducted by the department and petitioner was provided an opportunity to defend his case but no witness or evidence was produced by the petitioner to prove his innocence, therefore, in inquiry he was found guilty for alleged misconduct and accordingly as per provisions of Rule 15 of the Rules of 1973 petitioner was dismissed from service. Respondents have placed on record so called inquiry report, which is said to be conducted by Assistant Conservator of Forest, Pali as Annex. A/1 dated 1.3.1993 and submitted that order impugned has been passed on the basis of said inquiry.

8. According to respondents, acquittal from the criminal court does not give any right to the petitioner to come back in service nor it is mandatory for the respondents to take petitioner back on duty on the ground that he was acquitted by the criminal Court, therefore, merely acquittal from criminal court in criminal case registered against him does not give any right to petitioner to claim reinstatement.

9. With regard to pendency of appeal, it is submitted by respondents that petitioner has filed the appeal after ten years on being acquitted by criminal court, therefore, there is no question of reinstatement of petitioner in service. According to respondents the order of dismissal of petitioner is in consonance with the provisions of law and petitioner is not entitled to any relief from this Court. In reply respondents have referred to certain judgments of Hon''ble Apex Court.

10. As per respondents in case of Bhagat Ram Vs. State of Himachal Pradesh and Others, , Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, it has been held by Hon''ble Apex Court that under Article 226 of the Constitution of India the High Court has no jurisdiction to go into truth of the allegations/ charges unless they are perverse, so also respondents relied upon the judgment of Apex Court reported in Union of India (UOI) and Others Vs. Narain Singh, in which Apex Court held that it is not the function of the High Court to arrive at an independent finding, if an inquiry has been properly held then question of adequacy or reliability of evidence cannot be canvassed before the High Court. While inviting attention towards above judgments, it is contended that petitioner''s services were terminated after holding due inquiry into the misconduct committed by him, therefore, no interference is required in this case merely on the ground that petitioner is acquitted of charges levelled against him by the criminal court.

11. I have heard learned Counsel for the parties. From the perusal of entire proceedings, it is obvious that no charge sheet whatsoever was issued to the petitioner nor any disciplinary inquiry for alleged misconduct was conducted. The decision of imposing penalty of dismissal was taken on the basis of fact finding report submitted by Assistant Conservator of Forest in pursuance of letter dated 29.2.1992 sent by Dy. Conservator of Forest, Pali, which is evident from communication Annex. R/1 dated 1.3.1993, which reads as under:

dk;kZy; miou laj{kd] e:lhy oujksi.k ,oa pkjxkg fodkl ikyh

i=kad@tkap fnukad 1-3-93 izs"kd & lgk;d ou laj{kd]

ikyh

izsf"kr & mi ou laj{kd

ikyh

fo"k;%& Jh izgyknflag dsVy xkMZ ls voS/k "kjc cjken gksus ds laca/k ess tkap

izlax%& vkidk i= la- 1673 fnukad 29-2-92 ds dze esa A

egksn;]

fo"k;kUrxZr tkap dze esa rF;kRed fooj.k fuEukuqlkj gS%&

1- fnukad 25-3-91 dks Fkkukf/kdkjh jkuh Jh ohjkjke }kjk Jh izgyknflag dsVyxkMZ+ ds dCts ls 240 cksrys ns"kh "kjc cjken dh tks fd voS/k :i ls yk;h tkdj vius csjs mn;lkxj jk;M+s dh Qksrfj;ksa ds uhps Nqikdj j[kh gqbZ Fkh A tCrh dk;Zokgh ds nkSjku gsekjke iq= Jh Hkwjkjke es?koky Hkksekjke iq= Jh Hkhdkjke nekeh] pUnuflag] jes"kpUn dkaLVscy rFkk Qrsgflag M?kbZoj ds lkFk Fks A ekSds ij gh iapukek ,oa QnZ tCrh cuk;h x;h rFkk Jh izgyknflag ds fo:) vkcdkj vf/kfu;e dh /kkjk 16@54 ds vUrZxr vijk/k ik;k tkus ij ,Q-vkbZ-vkj- ntZ dh x;h A eqfYte Jh izgykn flag ds QnZ tCrh ,oa QnZ fxjrkjh ,oa tekryk"kh ij Loa; ds gLrk{kj gS rFkk izgykn flag dsVyxkM+Z ds dCts ls 240 cksrys voS/k "kjc tks fd 12 dV~Vks esa izR;s des 20&20 cksrys Hkjg gqbZ Fkh 5 ih-,e- ij cjken djuk fl) gksrk gS A

2- Jh izgyknflag dsVyxkMZ ds ikl bruh Hkkjh ek=k es "kjc j[kus dk ykbZlsal ;k ijfeV ugh Fkk cfYd ftyk vkcdkj vf/kdkjh tks/kiqj ds i= la- 962 fn- 4-5-90 ds vuqlkj vkcdkj BsdK esatjflag iq= Jh jruflag fuoklh Vsokyh ds uke dk BsdK Lohd`r gqvK Fkk A

3- Jh izgyknflag dsVyxkMZ+ fnukad 25-3-91 dks fcuk fdLh izdkj dk vodk"K Lohd`r djK;s dk;Z LFky ls LosPNk ls vuqifLFkr jgs RkFkk fnukad 3-10-92 ,oa 25-1-93 dks Hkh dk;Z LFky ls v/kksGLrk{kjdrkZ ds fujh{k.k nkSjku vuqifLFkr ik;s x;s rFkk dslwyh o`{kkjksi.k es O;kid Lrj ij ikS/kks es pjkbZ uqdlku ik;k x;k tks fd dk;Z izHkkfor deZpkjh dk M;wVh ds izfr ykijokgh ,oa LosPNk ls vuqifLFkr jguk fl) djrk gS A

4- Jh izgyknflag dsVyxkMZ+ ds yksd lsod gksrs gq, voS/k "kjc j[kuk nqjpkj dk nks"kh gksuk fl) djrk gS A

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lgk;d ou laj{kd

ikyh

12. Upon perusal of above, so also the inquiry report it is clear that in this communication which is only basis for terminating the service of petitioner, it is observed by the Assistant Conservator of Forest, Pali that a criminal case was registered against the petitioner in which challan has been filed, meaning thereby, above communication can be termed as fact finding report and it cannot be defined as an inquiry report conducted under the disciplinary rules. For taking disciplinary action under the Rules against the employee the basic requirement is that charge sheet should be given to the delinquent and specific charges are required to be made against him and delinquent is required to be given an opportunity to file reply and lead evidence.

13. In this case, upon perusal of reply it is nowhere stated that any charge sheet was issued to the petitioner or he was given an opportunity to lead evidence with regard to alleged misconduct. Obviously, the termination order has been issued on the basis of Annex. R/1 which is only fact finding report given by the Assistant Conservator of Forest, Pali. In these circumstances, the whole basis of terminating the service of petitioner is lacking. Similarly the services were terminated on the ground of alleged recovery of 240 bottles of liquor against the petitioner and for remaining absent from duty then obviously regular inquiry was to be conducted. But in this case, without initiating departmental inquiry against the petitioner impugned order has been passed on the basis of registration of criminal case in which after investigation challan was filed by the police under Excise Act.

14. The contention of respondents cannot be accepted that petitioner was work charged employee, therefore, as per Work Charged Regulation, 1973 his services were terminated. Upon perusal of Rajasthan Work Charged Rules, 1964, it is obvious that Work Charged Rules, 1964 were made applicable upon the employees of Forest Department also by way of issuing notification dated 18.1.1989 and in the Work Charged Rules there is a provision of inflicting penalties. Misconduct is defined under Rule 27 of the Rules of 1964 and penalties are enumerated under Rules 28 and 29 but no charge sheet under Rule 27 was given nor any inquiry was conducted against the petitioner for inflicting such punishment. The whole basis of terminating the service of petitioner vide order Annex.7 is the criminal case registered against him which is evident from order impugned dated 22.3.1993 and Annex. A/7 and Annex. R/1 dated 1.3.1993. The contention of petitioner with regard to finding of criminal case is also having force because after full fledged trial the learned Magistrate gave its finding at page 6 and 7 of the judgment, which reads as under:

n.M izfdz;k lafgrk dh /kkjk 165 dks ;fn ge ns[ks rks iqfyl vf/kdkjh }kjk ryk"kh fdl izdkj yh tk,xh dk mYys[k djrs gq, crk;k x;k gS fd ^^tc dHkh iqfyl Fkkus esa Hkkjlk/kd vf/kdkjh ;k vUos"k.k djus okys iqfyl vf/kdkjh ds ikl ;g fo"okl djus ds mfpr vk/kkj gS fd fdlh ,sls vijk/k ds vUos"k.k ds iz;kstuks ds fy,] ftldk vUos"k.k djus ds fy, ;g izkf/kd`r gS] vko;"d dksbZ pht ml iqfyl Fkkus dh] ftldk og Hkkjlk/kd gS ;k ftlls og layXu gS] lhekvs ds vUnj fdlh LFkku esa ikbZ tk ldrh gS vkSj

mldh jk; esa ,slh pht vuqfpr foyEc ds fcuk ryk"kh ls vU;Fkk vfHkizkr ugh dh tk ldrh] rc ,slk vf/kdkjh vius fo"okl ds vk/kkjks dks ys[kc] djus vkSj ;FkkIEHko ml pht dks] ftlds fy, ryk"kh yh tkrh gS] ,sls ys[k esa fofufnZ"V djus ds i"pkr~ ml Fkkus dh lhekvs ds vUnj fdLh LFkku esa ,slh pht ds fy, ryk"kh ys ldrk gS ;k ryk"kh fyok ldrk gS A

bl izdkj Li"V :Ik ls ;g izko/kku fn;k x;k gS fd ryk"kh ysus ls iwoZ mls ,sls fo"okl djus ds vk/kkjks dk mYys[k djuk pkfg, tks fd vuqfpr foyEc dks jksdrh gks ijUrQ bl izdj.k esa vuqla/kku vf/kdkjh }kjk ugh fd;k x;k gS A ckenxh LFky [kqyk LFkku gS A vfHk;qDr ds vuU; :i ls og LFkku dCts dk jgk gks] dksbZ ,slh lk{; i=oyh ij is"n ugh dh x;h gS A ;gka rd fd vfHk;qDr dk ckenxh LFky edku jgk gks ,slh dksbZ lk{; i=koyh ij izLqr ugh dh x;h gS A ;gka rd fd xkao ds ljiap ;k vU; fdLh O;fDr dks is"n djdj ;g lkfr ugh djok;k gS fd ckenxh LFky ls vfHk;qDr dk dksbZ laca/k Hkh jgk gks A bl fcUnq ij miyC/k lk{; esa ihM&6 Loa; us Li"V :i ls Lohdkj fd;k gS fd jsdkM+Z esa izgyknflag ds uke dk csjk gS ;k ugh ;g mlus ugh ns[kk A ckenxh LFky [ksr gS ftldh pkjks rjQ ckM+ gS A bl izdkj vuqla/kku vf/kdkjh us fooknr ckenxh LFky dk [ksr fdlds uke gS ,slh dksbZ lk{; izkIr djus dh ps"Vk iVokjh ;k ljiap us ugh djh A

bl izdkj mijksDr foospukuqlkj i=koyh ij tks lk{; izkIr gq;h gS mlls Li"V gS fd vuqla/kku fu;ekuqlkj ugh fd;k x;k uk gh ckenxh fu;ekuqlkj gS o fof/k ds izko/kku ds vuqlkj ugh dh x;h gS A cken"knk "kjk dk vfHk;qDr ls dksbZ IEcU/k jgk gks ;k rFkdfFkr ckenxh LFky vfHk;qDr ds dCts@ekfyduk gd es jgk gks vfHk;sktu lkfr djus es vlQy jgk gS A vuqla/kku vf/kdkjh dks LoPN vuqla/kku djus ds fy, ;g vko;"drk gS fd og T;ks gh mls eq[kfcj ls "kjk ds j[ks tkus dh bryk izkIr gq;h og bl bryk dks vafdr dj jkstukekps esa viuh jokuxh n"kkZrk gqvK Loa; lk{khx.k dks bl gsrq ryc dj vius lkFk yst tkrk ;k jkLrs es iM+us okys xkao@LFkyks [ksrks ls xokgu dks izkIr dj mUgs lkFk pyus gsrq fuosnu djrk tSlk fd mlus ukMksy pkSdh ls iqfyl dks ekSr fcjku dks fy;k] ,slh gh ;fn og Loa; IEekuh; O;fDr;ks dks vius lkFk ys tkrk rks ckenxh LoPN o fu;ekuqlkj ekuh tk ldrh Fkh ijUrQ ,slk mlus ugh fd;k tks fd mldh fof/kd Hkwy gS vr% ckenxh vfHk;qDr ds dCts ls gq;h gks ;k vfHk;qDr dk bl tCrlqnk "kjk ls dksbZ laca/k jgk gks] vfHk;kstui{k mijksDr foospukuqlkj lkfr djus es vlQy jgk gS A

vU; izLqr lk{khx.k esa ihM&1 Hkksekjke lSEiy dks ,Q,l,y esa ys tkus dh lk{; c;ku djrk gS ,oa ihM&2 gsejke eky[kkuk bapktZ fnukad 25-3-91 dks iqfyl Fkkuk jkuh esa rSukr gksus o 12 cksrys o 12 dV~Vs lhy can gkyr es eky[kkuk esa tek djkus o lSEiy "kjk ,Q,l,y esa Hkstus dh lk{; c;ku djrk gS tks fd vkSipkfjd lk{; gS tcfd vfHk;qDr ls ckenxh vfHk;kstu i{k lkfr djus es vlQy jgk gS rks ,slh lk{; dk dksbZ ykHk vfHk;kstu i{k dks feyuk "ks"n ugh jg tkrk] vr% vfHk;kstu i{k vfHk;qDr ds fo:) vkjksfir vij/k varxZr /kkjk 19@54 jkt- vkcdkj vf/kfu;e lkfr djus es iw.kZr;k vlQy jgk gS A vr% vfHk;qDr izgyknflag lansg dk ykHk izkIr djus dk vf/kdkjh gS A

15. Upon perusal of above finding of the criminal court it is clear that investigating officer has falsely implicating the petitioner in criminal case. The said liquor was recovered from agricultural field but there is no material on

record with regard to ownership of petitioner over said agricultural field, therefore, it is obvious that petitioner was falsely implicated in a criminal case and as per finding of criminal court, the place where from recovery of liquor made was not belonging to the petitioner.

16. In these circumstances, I am of the opinion that order of termination was passed without holding any inquiry and in haste manner when criminal case was registered against him. Once the petitioner was placed under suspension and thereafter reinstated in service by the respondents then respondents were under obligation to wait till the conclusion of criminal case but instead of waiting for decision of criminal case the petitioner was terminated from service by the respondent No. 2 only on the basis of fact finding report submitted by Assistant Conservator of Forest, Pall, therefore, upon perusal of entire pleadings it is clear that the order impugned is totally arbitrary, illegal and without any foundation of law to stand before eye of law.

17. The Hon''ble Supreme Court in recent judgment reported in G.M. Tank Vs. State of Gujarat and Another, . held that if termination order has been passed prior to conclusion of criminal trial without holding proper inquiry and later on upon same set of evidence delinquent is acquitted then he is entitled to reinstatement and order of termination is required to be set aside. Accordingly, while following the adjudication made by Hon''ble Supreme Court in case of G.M. Tank's case (supra) the order impugned dated 22.3.1993 is hereby set aside. The petitioner shall be reinstated in service but he will not be entitled for back wages w.e.f. 22.3.1993 till the date of acquittal by the trial court however, he will be entitled for continuity of service with all consequential benefits.