
(2005) 12 MP CK 0001
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1766 of 1997

Raj Kumar Pandey

APPELLANT

Vs

Board of M.P. Secondary Education, Bhopal and others

RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 2 MPLJ 188

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Rajendra Tiwari and T.K. Khadka, for the Appellant; Paritosh Gupta, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is seeking the following relief's :-

- i) That by issuance of a writ in the nature of CERTIORARI the Hon''ble Court be pleased to quash order of compulsory retirement passed by the respondent Nos. 2 and 3 by (AnnEx. P-1 and P-2), to command the respondents to reinstate the petitioner in service w.e.f. the date of 17-10-1996.
- ii) That by issuance of a writ in the nature of MANDAMUS the Hon''ble Court may be pleased to quash the entire enquiry being prejudicial to the petitioner and having not been conducted in accordance with the principle of natural justice.
- iii) Issue any other writ, direction or order as may be deemed fit in the circumstances of the case together with awarding of cost of these proceedings.

After holding a departmental enquiry the petitioner was punished by retiring him compulsorily vide in Annexure-P-1 dated 15-10-1996 passed by respondent No. 2. Petitioner assailed the order by preferring a departmental appeal which has

also been rejected vide Annexure-P-2 dated 7-2-1997.

The petitioner at the relevant point of time was serving on the post of Lower Division Clerk under the employment of respondent No. 1. On the basis of some preliminary enquiry, since a prima facie case against him was found, a charge-sheet was issued to him and following charges were framed against him:-

The inquiry was directed to be conducted in accordance to the procedure as contemplated under M. P. Civil Services (Classification, Control and Appeal) Rules, 1966.

Petitioner denied the charges and thereafter the departmental witnesses were examined. In the departmental inquiry Bhim Bahadur, Sheikh Bazeer and Ganesh Ram, were examined. All these witnesses are the Chowkidars. Apart from these witnesses, two more witnesses Brijbhushan Saitode and V. K. Dixit were also examined. The inquiry officer found that the charges are not found proved 100%, but came to the conclusion that petitioner cannot be exonerated and according to the report of the inquiry officer (AnnEx. P-8) it is found that the petitioner was indulged in some illegal activities. The inquiry report was forwarded to the disciplinary authority, who on perusal of it vide AnnEx. P-1 passed the impugned order retiring the petitioner compulsorily. The departmental appeal which was filed by the petitioner was also dismissed. Hence this petition has been filed.

It has been contended by the learned senior counsel appearing for the petitioner that the orders which were passed by the respondents 2 and 3 are based on conjectures and surmises. Learned Counsel has invited my attention to the reasonings assigned by the inquiry officer and has submitted that they are also based on conjectures and surmises. It has been thus contended that a delinquent cannot be punished merely on the basis of conjectures and surmises. In that regard learned senior counsel has placed reliance on the decision of the Supreme Court in the case of State of Assam v. Mohan Chandra Kalita and another, AIR 1972 SC 2535. It has also been canvassed that if the impugned orders are read in proper perspective, it is difficult to uphold that after marshalling the evidence placed on record, the punishment order has been passed. On these premised submissions, it has been submitted by the learned senior counsel that this petition be allowed and the impugned orders be quashed.

On the other hand, Shri Paritosh Gupta, Learned Counsel appearing for the respondents argued in support of the impugned orders and has submitted that the petitioner was found indulged in some illegal activities and, therefore, he has been rightly punished. According to the Learned Counsel looking to the limited scope of judicial review, this Court should not exercise the jurisdiction under Article 226 of the Constitution of India and this petition be dismissed.

After having heard Learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

On bare perusal of inquiry report AnnEx. P-8 dated 9-4-1996 it is gathered that

the inquiry officer specifically held that the charges are not found to be proved 100%. Upto what extent and which of the charge is partially proved, there is nothing in this report. The inquiry officer has specifically held that there is no clinching evidence that petitioner after obtaining the illegal gratification manipulated the mark-sheet of the students. True, the punishing authority is not bound accept the opinion given by inquiry officer. But it is equally true that the punishing authority is required to marshal the evidence and come to the definite conclusion that the charges are proved. On bare perusal of AnnEx. P-1 it is gathered that disciplinary authority has simply stated that the charges are grave in nature. But there is no finding that how and on what basis and which is the evidence proving the charges against the petitioner. The charges levelled against the petitioner have already been quoted hereinabove.

The department has not examined any witness in order to prove that the letter Annexure-R-VIH was written by the petitioner. Even if the letter Annexure-R-Vin on the basis of which needle of suspicion has been pointed towards the petitioner, is considered in proper prospective, it is difficult to uphold that the petitioner was indulged in manipulating any mark-sheet. On going through Annexure-R-VIII which is a letter sent by Rajendra Kumar Tiwari it is gathered that the petitioner has only assured him that he will send the mark-sheet. Said Rajendra Kumar Tiwari also requested the petitioner to send his mark-sheet by the end of August so that he may take admission in the school. Merely because such a letter was found, it cannot be said that petitioner was indulged in accepting illegal gratification. There is nothing in this letter Annexure-R-VIII accusing the petitioner. The inquiry officer has also held that it is not proved that the petitioner has taken any illegal gratification from any student. The punishing authority did not marshal the evidence and arrived at a finding that illegal gratification was taken by the petitioner. Similarly, there is no evidence placed on record that the petitioner disclosed any confidential document of the respondents. Thus the ratio decidendi of the decision in the case of Mohan Chandra (supra) is applicable in the present case. It is true and well settled in law that the provisions of Evidence Act are not applicable in the departmental proceedings in its entirety. It is the preponderance and probability that matters. But the preponderance and probability cannot be stretched upto the extent of conjectures and surmises. Merely by adding here and there some evidence and come to hold that there is some suspicion, the view of this Court is that it will not rope a delinquent employee in order to pass severe punishment like compulsorily retiring him from the services. Indeed, the proving of charge should be based on the scrutiny of the evidence and reasonableness. Since there is no evidence in that regard, the view of this Court is that the findings arrived at by the disciplinary authority are perverse in nature and, therefore, the order of the disciplinary authority cannot be allowed to remain stand. On the same ground the order of the appellate authority cannot be allowed to remain stand.

Ab judicata, this petition is allowed. The impugned orders Annexure-P-1 dated 15-10-1996 passed by the respondent No. 2 and Annexure-P-2 dated 7-2-1997

passed by the respondent No. 3 are hereby quashed. The petitioner be reinstated in service with full backwages. No costs.