
(2011) 02 MP CK 0072

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15130 of 2005 (S)

Ram Bhuwan Shukla

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

General Financial Rules, 2005 — Rule 53, 53(5), 53(7)

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 23

Citation : (2011) 02 MP CK 0072

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Challenging the order-dated 8.11.2005 - Annexure P/1, whereby the appeal filed by the Petitioner under Rule 23 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 has been rejected, Petitioner has filed this writ petition. Challenge is also made to the order of punishment dated 20.7.2001 - Annexure P/2, by which penalty of compulsory retirement, confirmation of the period of suspension and recovery of Rs. 1,19,796=50 has been ordered against the Petitioner.

2. Records indicate that Petitioner was holding the post of Accountant in the office of Divisional Ayurveda Officer, Rewa. On 4.7.1989, while working as Accountant, the Drawing and Disbursing Officer, one Shri Ram Sharan Shrivastava, is alleged to have directed the Petitioner and one cashier - Shri Rampal Pandey, to go to the bank and withdraw a sum of Rs. 2,39,593=00. Petitioner is said to have gone to the Bank and while returning from the Bank it seems that the aforesaid amount was looted by certain unsocial elements from the scooter in which the Petitioner and Shri Rampal Pandey were travelling, as a result of the aforesaid Petitioner was suspended, a charge-sheet was issued to him and after enquiry into the matter, Petitioner has been punished as indicated

hereinabove. Apart from the Petitioner, the cashier - Shri Rampal Pandey has also been punished and the entire amount of Rs. 2,39,593=00 is being recovered - half from the Petitioner and half from Shri Rampal Pandey.

3. Records indicate that earlier Petitioner had filed an application before the State Administrative Tribunal challenging the penalty order, but the petition was disposed of directing the Petitioner to file an appeal and the appellate authority to decide the appeal. The appeal having been decided, Petitioner has now filed this writ petition.

4. Shri Rajneesh Gupta, learned Counsel for the Petitioner, inviting my attention to the General Financial Rules and Instructions, for handling of cash as contained in Annexure P/14, argued that under Rule 53(5), it is the Drawing and Disbursing Officer who is the competent authority, directing for withdrawal of cash and it is stated that if the amount to be withdrawn is more than Rs. 10,000/-then a Police Escort has to be provided for disbursement of the amount. Referring to the note appended to the Rule, which reads as under:

Note 1-The responsibility for the money entrusted to a peon or messenger is that of the drawing and disbursing officer and he is personally responsible for any loss of Government money occurring in non-observance of this rule. He should, therefore, use his discretion in selecting the person or persons and take the following precautions:

(a) xxx xxx xxx (b) xxx xxx xxx (c) When the amount to be handled exceeds Rs. 10,000 the Nazir, or the Accountant, or the Cashier, as the case may be should go to Bank/Treasury/Post Office, accompanied by a police escort, as laid down in Home (Police) Department, Notification No. 190 4703-II-B(8), dated 16.1.1974.

Shri Rajneesh Gupta, learned Counsel, argued that the entire fault in this matter rests on the Drawing and Disbursing Officer, who has not provided adequate police protection and has breached the statutory rule. In spite thereof the Drawing and Disbursing Officer has been exonerated of all the charges and no punishment is imposed upon him. Accordingly, contending that the Petitioner is being punished with the harsh punishment of compulsory retirement and recovery of the entire amount alongwith confirmation of suspension for no fault of his, Petitioner seeks interference into the matter.

5. Inviting my attention to an order of Division Bench of this Court, in Writ Petition M.K. Malviya v. State of MP (S) No. 432/2003, decided on 6.11.2003 - Annexure P/15, Shri Rajneesh Gupta argued that under similar circumstances when the Drawing and Disbursing Officer was found to have been negligent in discharge of his duty, the amount of recovery has been reduced by this Court by 50% and, therefore, Petitioner seeks interference into the matter.

6. Further, inviting my attention to the provisions of Rule 53(viii) and the judgment of another Bench of this Court, in the case of Shrinivas Sharma v. State of MP and Ors. Writ Petition No. 640/1994, decided on 29.10.2008, Shri

Rajneesh Gupta, learned Counsel for the Petitioner argues that when the provisions of Rule 53 are breached, then recovery from the Petitioner is unsustainable and as done by the learned Single Judge in the case of Shrinivas Sharma (supra), Shri Gupta prays for interference into the punishment on the ground that the punishment is too harsh and not warranted. Finally, Shri Rajneesh Gupta argued that even if the entire allegation against the Petitioner is held to be correct, then the same would only amount to negligence in the discharge of duty or error of judgment on the part of the Petitioner and the same may not be a "misconduct" for which such a harsh punishment should be imposed. Inviting my attention to the principles laid down by the Supreme Court, in the case of Union of India (UOI) and Others Vs. J. Ahmed, , followed in the case of Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, , Shri Rajneesh Gupta argues that at best it would be only a case of negligence on the part of the Petitioner and not a case of "misconduct". Accordingly, he submits that the penalty imposed and the punishment is too harsh and, therefore, the same be interfered with.

7. Smt. Sheetal Dubey, learned Government Advocate for the State, taking me through the findings of the enquiry and the enquiry report submitted that the Petitioner did not carry out his duties properly, Petitioner alongwith the cashier - Shri Rampal Pandey and a peon were sent to get the amount from the Bank, but the Petitioner after getting the amount from the Bank took the briefcase in which the cash was taken from Shri Rampal Pandey, sent the peon to office in a rickshaw and came back with Shri Rampal Pandey in a scooter, driven by Shri Rampal Pandey. Accordingly, contending that the Petitioner is responsible for the entire loss to the government and in ordering recovery the Respondents have not committed any error, prayer made is that the petition be dismissed.

8. I have heard learned Counsel for the parties and perused the records.

9. As far as the facts are concerned, there is no dispute with regard to the same. It cannot be disputed that under Rule 53 of the General Instructions for handling Cash, the sole responsibility for ensuring proper withdrawal of cash and its transportation is on the Drawing and Disbursing Officer. When the cash amount to be withdrawn is more than Rs. 10,000/-, it was the duty of the Drawing and Disbursing Officer to ensure that proper police protection is given to the employees, who are sent to the Bank or Treasury for withdrawal of the amount. In this case, the Drawing and Disbursing Officer has been negligent in the discharge of his duties in as much as he did not provide adequate police protection for bringing the cash from the Bank. Respondents' contention that the Petitioner did not ask for police protection cannot be accepted for the simple reason when the statutory rule mandates the Drawing and Disbursing Officer with the aforesaid responsibility. That being so, it is a case where there is initial breach of rule by the Drawing and Disbursing Officer and the Drawing and Disbursing Officer is exonerated without any action being taken against him. This is a discriminatory attitude of the Respondents and cannot be upheld by this

Court.

10. That apart, the allegation against the Petitioner is not with regard to any malafide act or ill-will or ill motive on his part for usurping the amount withdrawn from the Bank. Records indicate that for the loot in question a First Information Report was lodged and the Police after investigation did not find involvement of the Petitioner in the incident of looting of the amount. That being so, there is no ill-will or ill motive on the part of the Petitioner in dealing with the money. If the entire allegations levelled against the Petitioner on the fact of it is accepted, it would be nothing but a case of gross negligence or error or judgment on the part of the Petitioner in as much as for coming back from the Bank on the scooter of Shri Rampal Pandey, the cashier, Petitioner took the briefcase from the cashier and asked the peon to go back in the rickshaw and came to the Bank on the scooter. In the absence of any ill motive or malafide intention on the part of the Petitioner, this could be an act of negligence or error of judgment on the part of the Petitioner.

11. In the case of Inspector Prem Chand (supra), the meaning of the word "misconduct" and the act of "negligence or carelessness" is taken note of and the matter is so dealt with from paragraphs 9 to 12:

9. Before advertng to the question involved in the matter, we may see what the term "misconduct" means.

10. In State of Punjab and Others Vs. Ram Singh Ex. Constable, , it was stated:

5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

Misconduct in office has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

11. In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term "misconduct" has been defined as under:

The term "misconduct" implies, a wrongful intention, and not a mere error of judgment.

* * * Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word "misconduct" is a relative term, and has to be construed with reference

to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct.

[See also Chairman and M.D., Bharat Pet. Corpn. Ltd. and Others Vs. T.K. Raju,]

12. It is not in dispute that a disciplinary proceeding was initiated against the Appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the Appellant was guilty of an unlawful behavior in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India (UOI) and Others Vs. J. Ahmed, , whereupon Mr. Sharan himself has placed reliance, this Court held so stating:

II. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (See: Pierce v. Foster 17 Q.B. 536). A disregard of an essential condition of the contract of service may constitute misconduct See: Laws v. London Chronicle (Indicator Newspapers) (1959) 1 WLR 698. This view was adopted in Sharda Prasad Tiwari and Others Vs. Divisional Superintendent, Central Railway, Nagpur Division, ; and, Satubha K. Vaghela v. Moosa Raza (1969) 10 Guj LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

[Emphasis supplied]

12. If the act of the Petitioner is analysed in the backdrop of the aforesaid, it can be safely construed that the admitted act of the Petitioner is not an act of misconduct, but is only an act of negligence on his part and, therefore, it was not a case where he could be punished for the act of misconduct. As the action of the Petitioner does not amount to any misconduct, the punishment of compulsory retirement cannot be imposed upon the Petitioner because the alleged misconduct against the Petitioner is not made out.

13. For the negligence on the part of the Petitioner and the careless manner of doing duty, Petitioner is already punished by ordering recovery of 50% of the amount and further a punishment of stoppage of one increment without cumulative effect will meet the ends of justice, for the act of commission and omission on the part of the Petitioner. Normally a writ court is not supposed to interfere with the orders of punishment imposed by the disciplinary authority, but in this case the Petitioner has already retired from service, he is more than 69

years of age and he is litigating the matter since 1989. In the initial round of litigation, the matter was remanded back to the Respondents for reconsideration, the Respondents after reconsideration have rejected his appeal vide Annexure P/1, on 8.11.2005 and this petition is pending for more than six years and not it is not proper to remand the matter back for further reconsideration by the authorities concerned. Instead, in the totality of the facts and circumstances of the case and taking note of the special features that are available in the case, it is a fit case where this Court should interfere and modify the punishment or the action taken against the Petitioner.

14. Accordingly, this petition is allowed. The order of compulsory retirement is quashed so is the order of suspension. Respondents are directed to treat the Petitioner to have worked till he completed the age of superannuation and treat him to have retired on attaining the age of superannuation. All salary and allowances, including the pay for the suspension period, be paid to the Petitioner after deducting the pension and subsistence allowance already paid. However, recovery of Rs. 1,19,796=50 ordered from the Petitioner is not interfered with, the recovery is upheld as the Petitioner is negligent for having caused this loss to the Government and a substituted penalty of stoppage of one increment without cumulative effect for the act of commission and omission of the Petitioner is sufficient to meet the ends of justice.

15. Respondents are directed to comply with the order passed and grant the benefit consequent thereof to the Petitioner within a period of two months from the date of receipt of certified copy of this order.

16-With the aforesaid observations, the petition stands allowed and disposed of.