

(2004) 04 MP CK 0029
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3153/99

Ram Raj Maran and Others

APPELLANT

Vs

Disaster Management Institute and Another

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311(2)
Madhya Pradesh Fundamental Rules — Rule 54

Citation : (2004) 4 MPHT 447 : (2004) 2 MPJR 327

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : A.P. Shroti, for the Appellant; Girish Kekre, for the Respondent

Judgement

Dipak Misra, J.

Petitioners, three in number, were appointed as Gardener, Cook and Orderly respectively under the respondent No. 1, Disaster Management Institute, Bhopal, which functions in the department of the State Government. A document contained in Annexure P-1 has been brought on record showing the position of filled up posts and vacant posts against the sanctioned posts set up as on 31-3-1995. The name of the petitioners have been mentioned at Serial Nos. 24 to 26, The petitioners have brought on record the memorandum of association and regulations of the Disaster Management Institute (DMI). Though the petitioners were appointed vide orders contained in Annexure P-3 to Annexure P-5 in the year 1989 on different dates, the appointments are similar in nature. The appointments convey that the petitioners were appointed temporarily until further orders on the posts with effect from either July or September, 1989 in the pay scale of Rs. 725-10-735-12-835-15-900 with a further stipulation that the said appointments could be terminated by giving one month notice by either side or one month pay in lieu thereof. While the petitioners were serving in their respective posts vide orders contained in Annexure P-7 to Annexure P-9 their services were terminated on the ground that they were not appointed against

sanctioned posts; they were not holding skilled posts; and they were beyond set up.

It has been asserted in the petition that the orders passed vide Annexures P-7 to P-9 suffer from vitiation as there has been non-compliance of the principles of natural justice. It is contended that as the petitioners were enjoying temporary status for almost ten years they could not have been thrown over board without asking to show cause. It is urged that they were not daily wagers but appointed against sanctioned posts in a regular pay-scale and, therefore, compliance of the principle of natural justice was a pre-requisite for passing of any adverse order. It is also put forth that in the impugned orders they were treated to be in the staffing pattern as postulated by the State Government though the petitioners were never apprised of anything of that sort and they knew that they were appointed on temporary status in the regular pay scale and, therefore, the introduction of the new conception is impermissible.

A counter-affidavit has been filed by the respondents stating that after the Bhopal Gas Tragedy the DMI was constituted to help the victims and to avoid the future tragedy assistance of Royal Norwegian Embassy was sought as the scheme required skilled employees and not incompetent persons like the petitioners. It is also urged that the respondent No. 1 showed in the order of appointments that the petitioners' services would be liable to be terminated with one month's notice or one month's pay in lieu thereof and as the same has been done the order of termination putting an end to the services of the petitioners can not be found fault with. It is also submitted that initially the aid which was coming from the State Government was stopped and, therefore, the society (DMI) can not be regarded as aided society and, therefore, the claim of the petitioners against the society can not lie under Article 226 of the Constitution. That apart, it has also been highlighted that when the petitioners were working in non-existing posts, their right to claim to be reinstated in service on the ground that there has been violation of principle of natural justice is untenable inasmuch as they were appointed de hors the rules and against the concept of sanctioned or existing posts. It is also put forth in the counter-affidavit that the management of the society followed the principle of first come last go and as the petitioners were juniors, they were asked to leave being latter appointees. That apart, it has also been set forth that all the petitioners were appointed after 31-12-1988 and as per the circular dated 14-14999 of the State Government, petitioners services were terminated.

A rejoinder to the counter-affidavit has been filed answering to the return by stating that the petitioners were appointed against sanctioned posts and the posts are still in existence in the society in question. It is also put forth that there was no necessity by the Executive Council to terminate the services of the petitioners but the orders contained in Annexures P-7 to P-9 have been passed in a most arbitrary manner. Further it has been put forth that the conception of first come last go has not been followed in proper manner inasmuch as juniors have

been retained in service and the services of the petitioners have been terminated.

In the additional counter the facts stated in the rejoinder have been disputed. It is put forth that the society had requested the State Government to absorb the petitioners in some other departments and, therefore, no question of malice on the part of the society arises. An affidavit has been filed stating that one of the petitioners, Narayan Singh Manral, was shown against the sanctioned post as per Annexure R-2.

I have heard Mr. A.P. Shrotri, learned Counsel for the petitioners, and Mr. Girish Kekre, learned Counsel for the respondents. Mr. Girish Kekre, learned Counsel appearing for the respondents, has raised a preliminary objection apart from the stand taken in the counter-affidavit that a writ can not be issued under Article 226 of the Constitution against a society of this nature as it does not come within the ambit and sweep of Article 12 of the Constitution of India. Apart from the preliminary issue the following points emerge for consideration in the present case:--

(A) Though the petitioners were appointed on temporary basis, they could not have been visited with the order of termination without following the principles of natural justice. In this regard he has placed reliance on the decisions rendered in the cases of Shrawan Kumar Jha and others Vs. State of Bihar and others, , Smt. Latika Shrivastava v. Managing Committee, 2002(1) MPLJ 549; Rajesh Singh Vs. M.P. Rajya Krishi Vipnan Board and Others, ; Yogendra Kumar Gangrade Vs. Municipal Corporation, Khandwa and Others, and Union of India (UOI) Vs. Madhusudan Prasad, .

(B) The documents brought on record would clearly show that there has been sanctioned posts and the petitioners were engaged in the said posts as is reflectable and projectable from Annexure P-1 and, therefore, the stand of the respondents that they were not appointed on sanctioned posts does not stand to reason.

(C) The respondents have not adopted the mode and procedure while passing the orders of termination and have introduced a new conception that the petitioners were not appointed in the staffing pattern of the Norwegian Govt. is without any reasonable basis and common sense does not give consent to it.

(D) Assuming for the sake of argument that they have been appointed de hors the rules, they can not be thrown away without following the principles of natural justice.

Mr. Kekre apart from raising the preliminary objection has also putforth the following contentions :--

(a) The mode and method of termination has to be upheld as the principles of natural justice are not attracted to a case of this nature as the appointments were made in violation of the rules. The appointments being ab-initio void the principles of natural justice are not attracted.

(b) There has been a decision by the highest body to terminate unskilled labourers and, therefore, the petitioners can not claim as a matter of right, to continue.

(c) The order of termination, even if found faulty should not be interfered with in exercise of jurisdiction under Article 226 of the Constitution.

(d) In the present case, there are 42 sanctioned posts and, therefore, to take the petitioners back in service would be extremely difficult.

Presently, I shall proceed to deal with the preliminary objection. Learned Counsel for the petitioners though has raised a stand that the respondents/society would be a State under Article 12 of the Constitution but there are no such pleadings in that regard except a bald statement in the rejoinder. Any one who asserts that a particular undertaking is a State under the conception of State as understood under Article 12 of the Constitution has to discharge the initial obligation to plead and satisfy many a facet. The burden can not be shifted but in the case at hand there being no pleading, it is absolutely unnecessary to advert to the law in that sphere.

At this juncture, Mr. Shrotri, learned Counsel for the petitioners, has submitted that the society is engaged in public duty and once the concept of public duty is attracted, a writ petition is maintainable. To bolster the said proponent the decisions rendered in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, *K. Krishnamacharyulu and Ors v. Shri Venkateswara Hindu* AIR 1998 SC 295 and *Federal Bank Ltd. Vs. Sagar Thomas and Others*, have been placed reliance upon. In the case of *V.R. Rudani (supra)* the Apex Court has held as under:--

"If the rights are purely of a private character no mandamus can issue, if the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus can not be denied. The law relating to mandamus has made the most spectacular advance. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226 writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much

relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus can not be denied. It may be pointed out that mandamus can not be denied on the ground that the duty to be enforced is not imposed by the statute. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226." (Quoted from the Placitum)

In the case of K. Krishnamachaiyulu (supra) in Paragraph 4 it has been stated thus :--

"4. The question is : when there is no statutory rules issued in that behalf, and the Institution, at the relevant time, being not in receipt of any grant-in-aid; whether the writ petition under Article 226 of the Constitution is not maintainable ? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an Institution to impart education, which is a fundamental right of the citizen, the teachers who teach the education gets and element of public interest requires to regulate the conditions of service of those employees on par with Government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government ? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent/Management paid the salaries on par with the Government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institution cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy."

Recently, in the case of Sagar Thomas (supra), Their Lordships have expressed the view as follows :--

"17. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt.); (ii) Authority; (iii) a statutory body; (iv) an

instrumentality or agency of the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function."

The present case has to be tested on the anvil of public duty. The Bhopal Gas Tragedy took place in the month of December, 1984. The tragedy shocked the international conscience. The disaster killed many a person and left them wounded. It has been regarded as a colossal man made disaster that has caused unimaginable cataclysm.

I have only stated so to show the magnitude of calamity. Because the catastrophe has been caused by men, the question arises with regard to the role of the State. Learned Counsel for the parties have brought on record the memorandum of association and regulations of Disaster Management Institute (in short "the DMI"). In the memorandum of Association in its General Clause the following has been stated as under :--

"In the recent years, rapid industrial growth in the country has increased the chances of various kinds of hazards considerably especially due to a greater use and handling of toxic and chemically highly reactive substances. This has been amply evidenced in the occurrence of various kinds of industrial disasters resulting in widespread destruction of life and property. Besides, there is frequent occurrence of floods and droughts leading to environmental degradation.

In order to educate Government officials, personnel of Public and Private sector industries, NGOs, community, etc. about the importance of preventive measures and preparedness, promote research oriented studies, conduct appropriate training programmes, and to establish a central library to collect and disseminate information on all aspects of disasters, both natural and man-made, there is a need to establish an Institute of national importance for promoting the efficient management of disasters. With this view we, the signatories to this Memorandum of Association, have agreed to form a society by the name of "Disaster Management Institute", hereinafter called "the DMI" and to register it under the M.P. Societies Registration Act, 1973."

The aims and objectives and Board of Governors (Executive Council) of the Society are reproduced below:--

"The aims and objectives of the Society shall be to :--

(1) Conduct training in Disaster Management and related subjects for the officials and executives of Government Departments, Public and Private Sector undertakings and others with a view to make them aware of the potential hazards, way to control them and equip them to conceive and prepare emergency plans and execute them effectively in case of crises arising due to natural disasters or disasters caused as a result of human activities.

(2) Run Postgraduate Diploma and Degree courses in Disaster Management and

Industrial Safety.

(3) Carry out research oriented studies in matters concerning causes and effects of disasters, their mitigation, management and other state-of-art techniques.

(4) Collect and store information on all matters concerning hazards and disasters and disseminate the same effectively.

(5) Offer consultancy services to industries and others.

(6) Institute awards, scholarships, fellowships, prizes and medals etc. for furtherance of the aims and objectives of the society.

Board of Governors (Executive Council) :

There shall be an Executive Council called the Board of Governors under the rules of the society. The following persons shall constitute the Board of Governors and manage the affairs of the Society as required under M.P. Societies Registration Act, 1973.

(2) Member of the Executive Council of serial numbers 1 to n shall hold office for a period of 2 years.

(3) The Executive Council may co-opt either generally or for a particular meeting, persons not exceeding two if it so considers necessary for efficient disposal of business. The co-opted members shall have all the rights of a member.

(4) The Executive Council shall meet at such intervals, and at such times and places, as it may deem fit but in any case not less than two times in a year.

(5) One third of the members of the Executive Council shall form the quorum.

(6) The powers and duties of the Executive Council shall, in general, include all such powers necessary for the day-to-day discharge of the activities of the DMI in pursuance of its aims and objects. The Executive Council may delegate any of its powers to the Executive Director or to any other officer of the DMI."

The memorandum of association has been brought on record to show how the society is to run. If the duties that are performed and the long term operations that are to be carried through and from their very nature there can be no scintilla of doubt that it has a public element and a public duty to see that the citizens live under shelter and protection and further there is imparting of education in the specified field. The DMI has been constituted to save the lives of the people and to guide the people. In my considered opinion, it has a sacrosanct duty to see that life is protected. In my considered opinion, if the background is understood in proper perspective, it has an inescapable nexus with Article 12 of the Constitution and it can irrefragably be held that it has a deep nexus with public duty. The conclusion that its functions have real element of public duty is irresistible and inescapable and, therefore, Article 226 of the Constitution can be invoked in the present case.

Once Article 226 of the Constitution of India is invoked, the appointments having been made before ten years the principle of natural justice would be attracted. In the case of Rajesh Singh (supra) the learned Single Judge placing reliance on the case of Smt. Usha Yadav Vs. State of M.P. and Others, has held that when persons have worked for nearly 12 years, their services could not have been terminated. In the case of Latika Shrivastav v. Managing Committee (supra) the learned Single Judge placed reliance in Scooters India Ltd. v. M. Mohammad Yaqub and Anr. (2001) 1 SCC 61, and held that order of termination of the petitioner was violative of principles of natural justice.

In the present case no show-cause notice was issued to the petitioners. In the absence of any show-cause notice services of the petitioners could not have been terminated. Hence, the orders contained in Annexure P-7 to Annexure P-9 deserve quashment and accordingly they are axed. Learned Counsel for the petitioners has submitted that the petitioners should be reinstated with full back wages. In the case of Union of India (UOI) Vs. Madhusudan Prasad, , the Apex Court has held that when there was a fault on the part of the employer in not following the principles of natural justice, the Fundamental Rule 54 can not be invoked by the authorities to deny back wages. The concept of grant of back wages depends" on facts of each case. However, taking into consideration the totality of facts and circumstances, I am inclined to direct the respondents to reinstate the petitioners with 40% back wages within three months from the date of receipt of the order passed today. The aforesaid direction is given on consideration of the totality of facts and circumstances.

The writ petition is allowed to the extent indicated above without any order as to costs.