

(2012) 07 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15978 of 2010 (S)

Rashmi Gangra (Jain)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : (2013) 2 MPLJ 718

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Advocate : P.R. Bhawe, with Bhanu Yadav, for the Appellant; S.K. Shrivastava, Panel Lawyer for Respondent Nos. 1 to 3 and Sanjay Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

R.S. Jha, J.—The petitioner has filed this petition being aggrieved by order dated 20-9-2010 passed by the District Project Co-ordinator, District Education Centre, Damoh whereby the additional charge of the post of Warden of Kasturba Gandhi Girls Hostel, Khaderi has been taken away from her. It is submitted by the learned senior counsel appearing for the petitioner that the substantial post of the petitioner is Shiksha Karmi (Assistant Teacher) and she was initially posted at Naveen Girls Primary School, Harrai. Subsequently, the State Government floated Kasturba Gandhi Girls School Scheme in the year 2008-09 proposing to establish Kasturba Gandhi Girls School with hostel facilities and thereafter issued detailed instructions regarding selection and appointment of the wardens and other staff.

2. Undisputedly, the petitioner was selected for appointment as warden of the Kasturba Gandhi Girls School, Hostel, Khaderi District Damoh pursuant to which she was given additional charge of the post of warden of Kasturba Gandhi Girls School, Hostel by order dated 2-7-2007 along with the charge of the post substantially held by her.

3. It is stated that the petitioner was served with the impugned order dated 20-9-2010 removing her from the charge of warden of the hostel alleging that

she had committed certain irregularities enumerated therein without giving any opportunity of hearing and without the charges being substantiated.

4. Learned senior counsel for the petitioner submits that the petitioner had filed a complaint against the then District Project Co-ordinator/respondent No. 5, pursuant to which the action was initiated against him. It is pointed out that the respondent No. 5 had infact been suspended by the authorities, however, as the order of suspension was quashed on a petition being filed by him by order dated 20-10-2009 passed in W.P. No. 9934/09 (S) as it was stated by him that the charge-sheet was not served upon him within the stipulated period of 45 days as required by law. However, the petitioner by filing W.P. No. 11510/09 had placed the fact before this Court that the respondent No. 5 had obtained the order by suppressing the fact that the charge-sheet infact had been served upon him within the stipulated period. It is stated that subsequently the State had also filed a Review Petition No. 70/10 seeking recall of the order passed in the writ petition filed by the respondent No. 5 which was allowed and the order quashing the suspension has been recalled. It is submitted that in view of the aforesaid the respondent No. 5 harbours ill will against the petitioner and was instrumental in getting the impugned order issued against her.

5. Apart from the above, it is stated that the allegation made by the petitioner regarding her absence and absence of the girls in the hostel is absolutely incorrect and misconceived inasmuch as the girls who are residing in the hostel were permitted to go home for two days on account of the festival of the Rakhi and infact the hostel was also open on that date and the Choukidar and other staff were present in spite of which a wrong report has been prepared against the petitioner. The petitioner in support of her contention has filed several documents, affidavits to establish the aforesaid fact including the affidavits of the girls, staff and the others.

6. The petitioner has also brought on record the proceedings of the parents teacher association held on 3-9-2010 wherein the issue regarding inspection by one Smt. Tanuja Shrivastava, O.I.C. from Bhopal was discussed and the stand of the petitioner has categorically been endorsed and affirmed in the aforesaid meeting.

7. It is submitted that in view of the aforesaid fact as the petitioner has been victimized and as the additional charge of warden has been taken away without affording any opportunity of hearing to her, the impugned order deserves to be set aside. It is also pointed out by the learned senior counsel for the petitioner that the petitioner had previously filed W.P. No. 14006/10(8) against the impugned order dated 20-9-2010, however, as an assurance was given by the respondents to the effect that if she withdraws the petition, she would be reinstated, therefore, she withdrew the petition with a liberty to file a fresh petition on 26-10-2010 but as the respondents did not restore the charge of warden to the petitioner she has been compelled to file the present petition.

8. The learned senior counsel for the petitioner fairly states that as on date the petitioner, in compliance of the impugned order, has given her joining at Harrai and she is no longer holding the post of warden of the concerned hostel.

9. The learned Government Advocate for the State per contra submits that the petitioner was throughout negligent in performance of her duties. It is stated that previously on 3-1-2008 the petitioner was also served with a similar show cause notice pursuant to which she had filed a reply and thereafter again similar notices were issued to her but as the petitioner did not improve her conduct and performance, therefore the respondents/authorities issued the impugned order Annexure P/1 withdrawing the charge of the warden of the Hostel from the petitioner. It is stated that in view of the previous proceedings taken up by the respondents, that the petitioner was well aware of the allegations against her and therefore her contention that the order has been passed without giving her an opportunity of hearing or without intimation and information is factually incorrect and misconceived. It is also pointed out by the learned Government Advocate for the State that the petitioner was selected for being given charge of warden by order dated 2-7-2007 with a specific stipulation and condition mentioned in the order itself to the effect that the charge would be taken away in case her performance is found unsatisfactory or any irregularity is committed by her and in such circumstances, no fault can be found in the impugned order.

10. Learned counsel for the respondent No. 4 submits that she has merely complied with the order Annexure P/1 in taking over the charge and supports the submissions of the learned counsel for the State.

11. I have heard the learned counsel for the parties at length.

12. From a perusal of the record it is clear that the petitioner was selected for being given charge of warden of the hostel in accordance with the procedure prescribed by law. It is further undisputed that while certain notices were issued to the petitioner in the year 2008 and thereafter also, no action was taken against her pursuant thereto and that the aforesaid notices are not the basis on which the impugned order dated 20-9-2010 has been issued. The complaint filed by the petitioner against the respondent No. 5 and the order passed by this Court are all matters of record and have not been disputed by the respondents.

13. It is also clear from a perusal of the impugned order Annexure P/1 that the minute of the parents teacher association, affidavits of the students and staff of the hostel have not been taken note of by the respondents prior to passing of the impugned order Annexure P/1. In fact perusal of the pleadings of the parties clearly establishes that no notice was ever issued to the petitioner prior to issuance of the impugned order dated 20-9-2010.

14. In the circumstances, it is evident that the impugned order dated 20-9-2010 has been issued without any application of mind, without enquiry and without establishing the charges levelled against the petitioner which is apparently in violation of the procedure prescribed by law and the principle of natural justice.

In view of the aforesaid undisputed facts and circumstances, I do not find any reason to sustain the impugned order dated 20-9-2010 Annexure P/1 which is accordingly quashed and the petition is allowed. Consequently, it is directed that the petitioner shall be given additional charge of the warden of the Kasturba Gandhi Girls Hostel, Khaderi District Damoh by restoring the position as existing prior to issuance of the impugned order.

In the circumstances, there shall be no order as to the costs.