
(2014) 02 MP CK 0108
In the Madhya Pradesh High Court
Case No : W.A. No. 773 of 2006

Ratan Chandra Jain

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Citation : (2014) LabIC 1895

Hon'ble Judges : Shantanu Kemkar, J; M.C. Garg, J

Bench : Division Bench

Advocate : Vivek Dalal, for the Appellant; Mini Ravindran, learned Dy. GA for the State, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard. This writ appeal arises out of the order dated 17.12.2004 in writ petition No. 346/2003 whereby, the learned Single Judge was pleased to dismiss the writ petition filed by the appellant in limine. As against the impugned order initially the LPA was filed. The matter went up to Hon"ble Supreme Court as to the question of maintainability of the LPA in the case of Jamshed N. Guzdar Vs. State of Maharashtra and Others, , Hon"ble the Supreme Court after coming into force of M.P. Uchcha Nyayalaya (Khand Nyayapith Ko Appeal) Adhiniyam, 2005 vide order dated 8.9.2005 directed finding of all those appeals, which were pending before this Court as LPA as appeal in the light of section 2(e).

The basic issue before us in this writ appeal is the punishment awarded to the appellant, who was working on the post of Accountant and as per the punishment imposed upon him as one increment was directed to be withheld as it was held that no appeal lies against such order before State. It was later upheld in appeal. It was the case of the appellant that no such punishment could have been imposed because the charge leveled against him in the departmental inquiry was not proved on facts.

Learned Single Judge however, did not agree with the aforesaid submission made

on behalf of the appellant and dismissed the writ petition with the following observation:--

6. I do not agree to the attack made in the petition as also re-iterated in the submission by the learned counsel for the petitioner. Firstly, this Court can not become an appellate court to examine each and every factual charge with a view to find out whether on facts it is made out, or not? Secondly, even though it is held in departmental inquiry that the charges leveled against the petitioner was not fully proved on facts then the State has a right to go into the issues of their own and come to their own conclusion. Thirdly, in the absence of any perversity and/or illegality in procedure shown in the proceedings, the finding of State recorded in the impugned order can not be set aside and lastly, the imposition of punishment can not be interfered with once the State says that charge is proved. In other words, looking to the gravity of charges, the quantum of punishment can not be regarded as excessive in nature. It is indeed commensurate with the nature of charge.

7. Learned counsel for the petitioner placing reliance on the decision reported in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, contended that impugned order is violative of law laid down in this case. The submission has no merit. Firstly, the petitioner was afforded an opportunity to defend the charge. Secondly, he did avail of an opportunity. Thirdly, he filed reply. Fourthly, the imposition of punishment being not major, no interference in such matter is called for. In this view, reliance placed on the authority is distinguishable in the sense that principles of natural justice were followed prior to imposing punishment on the petitioner.

2. Before us, it has been submitted on behalf of the appellant that the approach of the learned Single Judge was not correct and was contrary to the judgment of Hon"ble the Supreme Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, . In the aforesaid judgment, it has been held that if the enquiry officer comes to the finding that the charges were not proved and the Disciplinary Authority wishes to proceed further in the matter by not agreeing with the finding of the enquiry officer then the Disciplinary Authority has to issue a show cause notice alongwith reasons as to why they were not agreeing with the report of the Disciplinary Authority and then has to pass an appropriate order after hearing the delinquent. The relevant observation in Kunj Bihari's case are reproduced for the sake of reference here as under:--

These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when

the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

3. Since in this case, the enquiry officer exonerated the appellant of the alleged charges leveled against him, the Disciplinary Authority having taken a different view but without giving an opportunity of hearing to the appellant, proceeded contrary to the principle of natural justice and the law laid down by Hon"ble the Supreme Court in Kunj Bihari's case (supra).

4. The appellant stand retired, however, considering the law as discussed upon, we set aside the punishment imposed upon him by the Disciplinary Authority and direct that all retiral benefits of the appellant shall be re-fixed as if, the punishment was not imposed upon the appellant.

Let the needful be done within two months from the date of passing of this order. Accordingly, the writ appeal stands disposed of.

C.c. as per rules.