
(2000) 02 MP CK 0013
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3383 of 1989

R.C. Bansal

APPELLANT

Vs

Hon'ble High Court of M.P. and another

RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a), 7(1)

Citation : (2000) 3 MPLJ 464

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Rajendra Tiwari, for the Appellant; Ravindra Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this court under Article 226 of the Constitution of India, the petitioner has prayed for a writ of certiorari for quashment of the order imposing minor penalty upon him; a further writ of mandamus commanding respondent No. 1 to confer on him the benefit of promotion and other consequential benefits and also to readjust his place in the seniority list of Civil Judge, Class-I in accordance with Rule (2)(c) of the M.P. Civil Services (General Conditions of Service) Rules, 1961.

The facts as have been undraped are that the petitioner while working as a Magistrate First Class, Javra was charge sheeted vide Annexure P-4 on the ground that he has passed an illegal order in Criminal Case No. 164/77, (State vs. Ishwarlal) u/s 7(1) read with Section 16(1)(a) of the Prevention and Food Adulteration Act on 21-5-1977 inasmuch as though the accused had pleaded guilty to the charge the delinquent officer while noticing the same in paragraph 4 of the Judgment acquitted him of the charge. It was mentioned in the charge sheet that the act of the presiding officer amounted to gross negligence which

was a misconduct on his part.

A regular departmental enquiry was held and a penalty of withholding of two increments was passed. It is pleaded in the petition that the order of punishment dated 12-7-1982 was not communicated to him. He has also assailed the manner in which the enquiry was conducted. It has been set forth in the writ petition that the lone defence witness Shri Fida Hussain Qureshi who was the complainant himself had not given evidence and, therefore, the enquiry is vitiated. It is also highlighted that respondent No. 1 namely Registrar, High Court of M.P. had not served a copy of the charge sheet on the petitioner before initiation of the enquiry. According to the writ petitioner the action amounted to a minor lapse and cannot be equated with misconduct. Plea of honest error has been emphasized. While assailing the order of punishment and praying for quashing of the same, other consequential prayers have been made with regard to grant of promotion. Essentially the prayer is for quashing of the punishment and if the petitioner succeeds on that score other matters deserve consideration. Hence, narration of facts on that score need not be referred to in detail. The petitioner has also referred to many recommendations which relate to various periods.

A return has been filed by the answering respondents contending, inter alia, that the petitioner was charge sheeted because of his gross negligence and the enquiry was conducted in a fair, unbiased and impartial manner. It has also been put forth that the petitioner was fully aware of the order of punishment passed and the plea that he was not aware of the order is not a correct one. It is also put forth in the return that the petitioner's case for promotion was postponed in the court meeting held on 29/30th April, 1982 as he was not found fit for promotion. A stand has been taken that the petitioner's approach to this court is belated and on this ground alone the writ petition deserves to be dismissed.

I have heard Mr. Rajendra Tiwari, learned Sr. counsel along with Mr. Bipin Yadav for the petitioner and Mr. Ravindra Shrivastava, learned counsel for the respondent No. 1.

Mr. Tiwari learned senior counsel for the petitioner raised two fold contentions, namely, the petitioner's action is a bona fide, honest, judicial error and for the same he could not have been proceeded in a disciplinary proceeding. It is his submission that the innocent irregularity committed by the judicial officer does not entail such a punishment as that would mar the capacity to discharge the duties of a judicial officer. The learned senior counsel has also highlighted, the order of acquittal was not assailed before the high court and when there was no aggrieved party it was not open to the disciplinary authority to initiate a disciplinary proceeding and the second limb of attack is that the petitioner came to know about the punishment when his representation vide Annex.P-2 was rejected on 24-5-1988 and, therefore, his writ petition cannot be rejected on the ground of delay and laches.

Mr. Ravindra Shrivastava, learned counsel for the respondent No. 1 has

highlighted that the order of punishment Annex. P-3 dated 26-4-1982 was communicated to the petitioner on 14th May, 1982 and this was communicated to the petitioner as is apparent from Annex. R1. It is also his submission that when there was a punishment for stoppage of two increments for a period of two years without affecting his future increments, there would have been less payment of salary and the petitioner would have been very much aware of this fact but he has taken a plea of non receipt of this order of punishment which is factually incorrect and unsound. It is also put forth by Mr. Shrivastava that the petitioner's conduct is clearly perceptible from the order passed by him and the order cannot be regarded as an honest error but a sheer act of negligence and recklessness which amounts to misconduct.

I shall deal with the first contention first. On a perusal of the pleadings, I find the order of punishment was passed on 14th May, 1982 and a copy thereof was communicated to the petitioner who was Civil Judge, Class-II through District Judge, Sagar. When there was an official communication, presumption arises in its favour. That apart it was quite expected that the petitioner was aware of the said order inasmuch as he must have been getting lesser pay than what he was getting before hand.

Mr. Tiwari, learned senior counsel for the petitioner has urged with vehemence that if the said order was communicated to the petitioner there was no justification to communicate the order vide Annex.P-3. To appreciate the submission of Mr. Tiwari, I have carefully perused Annex.P-2 and on a close scrutiny it appears that it deals with the disposal of representation of the petitioner and not with the original punishment. In any view of the matter, it cannot be accepted that the petitioner was not aware of the punishment of stoppage of two increments without cumulative effect. The order of punishment pertains to the year 1982 and after suffering the punishment when the promotion was stopped because of the punishment and some other reasons, the petitioner approached this court in 1989 claiming quashing of punishment and promotional benefits and seniority. In my considered opinion such an approach is absolutely belated. In this context, I may profitably refer to a decision rendered in the case of P.S. Sadasivaswamy Vs. State of Tamil Nadu, wherein Aligiriswami, J. speaking for the Court expressed thus:-

A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle matters.

In view of the aforesaid, I am of the considered opinion that the petition is not entertainable on the ground of delay and laches.

Ordinarily, I would not have dealt with the merits of the case but as the learned counsel for both the sides had addressed at length in that regard, I think it apposite to deal with the merits of the case.

Submission of Mr. Tiwari is that the error committed by the petitioner is a bona fide error and such errors are rectifiable by higher Courts and, therefore, such an act would not amount to misconduct. The aforesaid argument looks quite attractive at a first flush but on a closer scrutiny and deeper probe the same does not hold water. It is not a case where the learned Magistrate has taken an erroneous view of the law. It is also not a case where the learned Magistrate has failed to marshal evidence in proper perspective. This is a classical case where the accused pleaded guilty and the Magistrate recorded the plea of the accused in paragraph 4 of the Judgment but instead of proceeding to find him guilty of the offence in question he later on after giving, the accused opportunity to show cause about the proposed sentence acquitted the accused. This cannot by any stretch of imagination be construed to be an honest or bona fide error. If I may say so, the word "bona fide" has its own limitations. In this context, I may profitably refer to the decision rendered in the case of *Osmania University represented by its Registrar, Hyderabad, A.P. Vs. Abdul Rayees Khan and Another*, wherein the Apex Court held that "an officer is performing judicial, quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings can be taken". Of course their lordships sounded a word of caution. In the case of *Union of India and Others Vs. K.K. Dhawan*, A three Judge Bench of the Apex Court after scrutinising various aspects held "that an officer in taking decision in exercise of quasi judicial function not immune from disciplinary proceedings". In this context, I may profitably quote paragraph 28 of the Judgment which reads as under:-

28. Certainly, therefore, the officer who exercises judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:-

- (i) where the officer had acted in a manner as would reflect on his reputation or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the

discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great.

Similar view has been expressed in the case of Government of Tamil Nadu Vs. K.N. Ramamurthy, . Testing the present factual matrix on the anvil of aforesaid enunciation of law it can irresistibly be concluded that the act of the delinquent officer exhibits prima facie gross recklessness which amounts to misconduct. Thus, I find submission of Mr. Rajendra Tiwari, learned Senior Counsel sans substance.

In view of the foregoing premises, I do not find any merit in the writ petition and the same is accordingly dismissed. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs. The amount of security, if any in deposit, be refunded to the petitioner.

Writ petition dismissed.