
(2023) 08 MP CK 0156

In the Madhya Pradesh High Court

Case No : ?Writ Petition No. 10032 Of 2022

Rohini Prasad Pandey

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 31-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 20(2)

Citation : (2023) 08 MP CK 0156

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : K.C. Ghildiyal, Pradeep Kumar Dwivedi, Ritwik Parashar

Final Decision : Allowed

Judgement

Sujoy Paul, J

1. With the consent, finally heard.

2. The brief facts necessary for adjudication of this matter are that the petitioner was served with a charge-sheet on 03.04.2012. The departmental enquiry initiated pursuant to said charge-sheet culminated with imposition of punishment dated 27.05.2017, whereby two increments of petitioner were withheld without cumulative effect. The petitioner although preferred an appeal, appellate authority did not decide the same till date.

3 . Subsequently, by order dated 04.01.2020 for the same misconduct/lapse, the department passed an order of recovery which was called in question by petitioner in W.P. No.3402 of 2020. This Court by order dated 16.12.2021 set aside the recovery by holding that :-

"Respondents had conducted departmental enquiry against petitioner regarding misconduct of petitioner and on same facts minor penalty was imposed on him. No order of recovery was passed in said departmental enquiry. Subsequently, respondent cannot impose minor penalty of recovery by separate order.

Impugned orders dated 04.01.2020 and 01.02.2020 contained in Annexure-P/5 and Annexure-P/7 so far it relates to petitioner are quashed. Hence, writ petition filed by petitioner is allowed."

(Emphasis supplied)

4. The department did not challenge the order dated 16.12.2021 passed in W.P. No.3402 of 2020 and hence, this order had attained finality.

5. The department then issued the impugned charge-sheet dated 04.04.2022. This charge-sheet is subject matter of challenge mainly on the ground that for the same misconduct, charge-sheet was previously issued on 03.04.2012 and petitioner has already been punished. Thus, for the same misconduct, another charge-sheet cannot be issued. This action hits Article 20(2) of the Constitution and amounts to double jeopardy. In fact, once recovery order aforesaid could not sustain judicial scrutiny in W.P. No.3402 of 2020, the question of issuance of subsequent charge-sheet does not arise.

6. Shri Ritwik Parashar, learned Government Advocate supported the charge-sheet and submits that because of petitioner's misconduct, the department suffered financial loss and therefore, if said loss was not recovered while imposing previous punishment dated 27.05.2017, nothing prevents the department to take appropriate action by issuing another charge-sheet for recovering the loss. This Court, in the opinion of Shri Parashar, interfered in W.P. No.3402 of 2020 because no charge-sheet was issued and penalty of recovery was directly imposed. In other words, learned Government Advocate submits that recovery order was interfered with only because it was issued without following the principles of natural justice. The principle analogous to *res judicata* is not applicable in departmental enquiry proceedings.

7 . Learned Government Advocate further urged that as per the return, it is clear that department of Lokayukt was satisfied and dropped the query from the respondent department because respondent department has taken steps to issue the charge-sheet dated 04/04/2022 in order to recover the amount of loss from the petitioner.

8. Parties confined their arguments to the extent indicated above.

9. I have heard the parties at length and perused the record.

10. On a specific query from the Bench, learned Government Advocate fairly admitted that the impugned charge-sheet dated 04/04/2022 (Annexure P/9) is based on the same misconduct for which charge-sheet dated 03/04/2012 was issued, which ended with imposition of punishment dated 27/05/2017. Thus, pivotal question is whether petitioner can be subjected to another disciplinary proceeding for the same misconduct. The answer is a big 'NO'. It was open to the department to impose the punishment of recovery in the first disciplinary proceeding itself. The disciplinary proceeding cannot be permitted to be held in succession for the same misconduct. Putting it differently, it was open to the

department to recover the amount of loss by imposing the punishment of recovery in the first disciplinary proceeding itself. Inquiry and charge-sheet for same misconduct cannot be permitted to be issued in easy installments. For this reason, in W.P.No.3402 of 2020 the recovery was interfered with by the coordinate Bench.

11. It is profitable to refer the judgment of Apex Court in (2004) 13 SCC 342 Lt. Governor, Delhi and others vs. HC Narinder Singh, wherein it was held that :-

"4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule."

(Emphasis supplied)

12. Ratio decidendi of above judgment was followed in (2006) 12 SCC 28 Union of India and another vs. Kunisetty Satyanarayana by holding thus :-

"18. We agree with the learned counsel for the respondent that if the charge which has been levelled under the memo dated 23-12-2003 had earlier been enquired into in a regular enquiry by a competent authority, and if the respondent had been exonerated on that very charge, a second enquiry would not be maintainable."

13. In nutshell, in the opinion of this Court, it was no more open to the department to issue another charge-sheet dated 04/04/2022 for the same misconduct for which petitioner has been punished. This, certainly amounts to double jeopardy as per Article 20 (2) of the Constitution.

14. Thus, impugned charge-sheet dated 04/04/2022 is illegal and impermissible and deserves to be jettisoned. The charge-sheet is accordingly set aside.

15. The Writ Petition is allowed.