
(2003) 10 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2315 of 2003, and W.P. No's. 2316 and 2339 of 2003

Satya Narayan Pandey and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 30-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311(2)

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 19

Madhya Pradesh Police Regulations — Regulation 220 , 221, 223, 228

Citation : (2004) 1 MPHT 46

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : M.P.S. Raghuvarshi, for the Appellant; N.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.—As common questions are involved in all these three petitions, they are being disposed of by this common order.

1. In W.P. No. 2315/2003, petitioner Satya Narayan Pandey who was working as Head Constable in Police Station Gole Ka Mandir, Gwalior has been removed from service vide order dated 16th July, 2003 (Annexure P-I) passed by the Superintendent of Police, Gwalior. It is averred in the order that two Constables namely Rakesh Mishra petitioner in W.P. No. 2316/03 and Mahesh Kaurav petitioner in W.P. No. 2339/03 were transferred. In compliance to the order of transfer, these Constables were relieved in the afternoon of 13th of July, 2003 by Incharge Station House Officer, Gole Ka Mandir. Entry in this regard has made in Rojnamcha at Sr. No. 502. However, these Constables were not interested to go on transfer, they became annoyed and after having knowledge of their relieving, they abused the Incharge SHO on 13th July, 2003. It is stated that the Incharge SHO did not notice the same. Thereafter, on 14th of July, 2003 when Incharge SHO is said to be discharging his official duties at 22.15 hrs in the police station,

both these Constables entered the Police Station after consuming liquor, shouted and abused the Incharge SHO and manhandled him in the presence of other staff members. The Incharge SHO informed the matter on telephone to the Incharge CSP and asked for arranging their medical check-up. It was alleged that Constables Rakesh and Mahesh were not in their senses. They created an atmosphere of terror and nobody was prepared to catch-hold of them so that their medical check-up could be carried-out. It is alleged that petitioner Satya Narayan Pandey refused to obey the order of Incharge SHO and helped these Constables to run away from the Police Station.

2. The Superintendent of Police has recorded a finding that the atmosphere created in the police station by members of the force who are supposed to be well disciplined and maintain high standards in the matter of discipline acted in such a ridiculous manner keeping apart all the ethics and norms in utter disregard of maintaining good conduct. Considering the criminal activities, misconduct committed by them which was an act of indiscipline and insubordination and keeping in view the exigencies of the aforesaid situation and with a view to maintain discipline and to send a good message to other members of the Department and to upkeep the morale of the force and also for protecting the reputation of the force in the eyes of the general public, order was passed dismissing the petitioner Satya Narayan Pandey and Rakesh Mishra and Mahesh Kaurav without conducting any enquiry by exercising powers under Rule 19 of the M.P. Civil Services (Classification, Control and Appeal) Rules. Similar orders as Annexure P-I, dated 16th July, 2003 is passed in W.P. No. 2339/03 and W.P. No. 2316/03 in the cases of Rakesh Mishra and Mahesh Kaurav also.

3. Accordingly, the allegations in all the three cases against the petitioners are that petitioners Rakesh Mishra and Mahesh Kaurav refused to carry out the order of transfer, misbehaved and manhandled SHO and the petitioner Satya Narayan Pandey did not obey the orders of the superior authority. The order of termination has been passed without conducting enquiry for reasons indicated in the order and detailed hereinabove.

4. It is the case of the petitioners that they being Class-III employees in the police force, the provisions of M.P. Civil Services (Classification, Control and Appeal) Rules does not apply to them, their services are governed by the provisions of Madhya Pradesh Police Regulations and there is no provision in the aforesaid regulation for dismissing a Class-III employee without holding enquiry. Shri M.P.S. Raghuvanshi, learned Counsel appearing for the petitioners argued that exercise of power under Rule 19 of the Classification Rules and dismissing the petitioners by dispensing with the enquiry is unsustainable.

5. Respondents have filed the reply and it is admitted by them that the provisions of M.P. Civil Services (Classification, Control and Appeal) Rules does not apply in the case of the petitioners. However, it is mentioned in Para 3 of the return that in the impugned order Annexure P-I, it is nowhere mentioned that the order has been passed under the said Rules. It only contemplates that

departmental enquiry as provided under sub-rule (2) of Rule 19 of the Discipline and Appeal Rules is dispensed with. It is the case of the respondents that action has been taken as per the provisions of Police Regulations 214 to 217 and as specific remedy of filing appeal under Regulation 262 is provided for, petition directly before this Court without exhausting remedy of appeal is not maintainable. In support of the aforesaid contention, Shri N.K. Gupta, learned Counsel for the respondents invited attention of this Court to a judgment of the Supreme Court in the case of Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, , and in the case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , to argue that when a statutory remedy of appeal is available, writ petition directly before this Court is not maintainable. It was, therefore, submitted that there is no merit in the claim made by the petitioners and no relief can be granted to them. That apart, referring to the allegations contained in the impugned order and statement of various witnesses recorded before passing the order it was submitted by Shri Gupta, learned Counsel for the State that action has been taken after recording statement and, therefore, there is no illegality in the procedure followed which warrants interference by this Court.

6. I have heard learned Counsel for the parties and perused the records.

7. A perusal of the order impugned which is identical in all the cases indicates that because of serious allegations of mis-behaviour, misconduct as mentioned therein, the Superintendent of Police decided to dismiss the petitioners from services after dispensing with enquiry. The reasons given for dispensing with the enquiry is that the atmosphere created is of violence and it is not expedient to conduct the enquiry. Accordingly, exercising power under Rule 19 of the M.P. Civil Services (Classification, Control and Appeal) Rules for dispensing with enquiry, dismissal has been ordered. A perusal of the Schedule to the Appeal and Revision Rules indicates that the said rule does not apply to members of Class III Non Ministerial members in the police force who are governed by the Madhya Pradesh Police Regulations. That apart, respondents themselves admitted in the reply that in the case of all the three petitioners, the Classification, Control and Appeal Rules are not applicable. That being so, exercising of power of dispensing with the enquiry under Rule 19 of the Appeal and Revision Rules is not tenable. The Superintendent of Police having specifically mentioned in the impugned order that he is exercising power for dispensing with enquiry under Rule 19 of the M.P. Civil Services (Classification, Control and Appeal) Rules, it is to be held that exercise of power under the aforesaid rule is clearly unsustainable, as the said rule is not applicable in the case of the petitioners.

8. Even if it is assumed for the sake of the argument that a wrong rule was quoted for dispensing with enquiry, still if there is any other provision analogous to Rule 19 of the M.P. Civil Services (Classification, Control and Appeal) Rules which empowers the Superintendent of Police to dispense with the enquiry and dismiss the petitioners from services, the action could be upheld but nothing has

been pointed out in the Police Regulation which empowers the Superintendent of Police to dismiss an employee without conducting enquiry. Regulations 213, 214, 215 and 216 and 216 to 218 of the Police Regulation prescribes various punishments that can be imposed, thereafter Regulations 220 to 223 enumerates the powers to be exercised by various authorities, procedure to be followed for taking action is provided in Regulation 228 which contemplates that in every case of removal compulsory retirement, reduction in rank or for imposing any other penalty, evidence based on the charges are to be set forth, thereafter, defence of the accused is to be obtained, statement of the witness are to be recorded and then a finding has to be recorded by the Superintendent of Police and then only a final order can be passed and communicated. There is nothing in the Police Regulation which provides for dismissing an employee from service, even in emergent cases by dispensed with a departmental enquiry. That being so, it is to be held that the procedure followed in the present case for dismissing the petitioners from services is one which is not contemplated under the rules.

9. The contention of the respondents that the petitioners being members of a disciplined force are expected to maintain a high standard of discipline, they can not be permitted to indulge in acts which results in damaging the reputation of the force and consequential action has to be taken for upkeeping the morale and discipline of the force can not be disputed but if a member of the force acts in a manner and commits serious acts of misconduct, the competent authority has to take action in accordance with the statutory rules and he can not formulate his own procedure for taking action on the ground that immediate action is warranted without there being any provisions in the rule for following such procedure dispensing with enquiry. In the opinion of this Court even if the allegations levelled in the impugned order were correct, the competent authority had to proceed in accordance with the procedure contemplated under the Police Regulations for taking action against the petitioners. The procedure followed for taking action under Rule 19 of the Classification, Appeal and Revision Rules was not a proper procedure in the facts and circumstances of the present case as the said rule is not applicable to the petitioners. Merely because the allegations levelled against the petitioners are serious in nature, this Court can not give its stamp of approval. Procedure followed in the present case is contrary to the statutory provisions as is apparent from the face of the record. That being so, the action of the Superintendent of Police in dispensing with the enquiry and dismissing the petitioners from services is clearly unsustainable being contrary to the statutory provisions of law. A Division Bench of this Court in the case of *Manohar Singh Marwaha v. State of M.P. and Ors.*, 2003(1) MPJR 12, has held that when power is given to an authority to do certain thing in a certain manner, the same must be done in that manner. An act done contrary to the rules would amount to procedural ultravires. In Paras 11 and 12, it has been observed as under :--

"11. On a juridical analysis of the rival pleas on facts as well as in law, it is clear that they have different emphasis and different consequences but the main

thrust thereof is essentially directed towards the validity of resolution No. 70 dated 21-10-97 passed by the Standing Committee of the Corporation as also the notification dated 19-3-99 issued by the Municipal Corporation, Jabalpur, towards implementation of the said resolution. The issue in question is squarely covered by a time-tested rule, adopted and reiterated in various judicial pronouncements that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. A three Judge Bench of the Apex Court in the matter of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, Para 25) held as under :--

"25. A century ago, in Taylor v. Taylor, (1875) 1 Ch D 426, Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in AIR 1936 253 (Privy Council) and later by this Court in several cases, Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, ; Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, ; Deep Chand Vs. The State of Rajasthan, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies where, indeed the whole aim and object of the legislature would be plainly defeated if the command to do the thing in particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn. PP. 362-363." The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b)."

The decision while reiterating the old rule is a timely reminder that an act done in a manner contrary to the rule would amount protecloral ultravires."

"12. The Apex Court further in the matter of Myurdhwaj Cooperative Group Housing Society Ltd. Vs. The Presiding Officer, Delhi Cooperative Tribunal and Others, , has again reiterated the principle propounded in the case of Taylor v. Taylor."

10. That apart, as a alternate argument even if it is assumed that the power to dispense with the enquiry as provided for under Article 311(2) is applicable, in that case also the authority must record reasons which ex facie shows that it was not reasonably practicable to hold an enquiry, the same should not be vague or on irrelevant considerations as held by the Supreme Court in the case of Chief Security Officer and Others Vs. Singasan Rabi Das, , and in the case of Union of India and Another Vs. Tulsiram Patel and Others, . The power has to be exercised bonafide having regard to relevant considerations. In the case of Workmen of Hindustan Steel Ltd. and Another Vs. Hindustan Steel Ltd. and Others, , it was

held that when a decision of the employer to dispense with enquiry is questioned, the employer must be in a position to satisfy the Court that holding of enquiry will be counter protective or may cause such irreparable and irreversible damage which can not be suffered. The facts in the present case, if viewed in the backdrop of the law laid down in the above cases clearly indicates that the reasons given are not only irrelevant but are based on presumptions and petitioner Satya Narayan Pandey (in W.P. No. 2315/2003), there is no allegation of misbehaviour or threat by him, allegations against him are that only that he helped the two constables in running away. Similarly in the case of Rakesh Mishra and Mahesh Kaurav also there is nothing to indicate as to how the situation created by them resulted a proper enquiry becoming impossible. To demonstrate that the terror created by the petitioners were so grave that witnesses were not coming forward to give evidence. It is impossible to accept that senior officers take the SHO Incharge of the Police and C.S.P. were frightened by two Head Constables to such an extent that they were not willing to give evidence in a departmental enquiry. It has been the consistent view in such cases that the reasons for dispensing with enquiry should not be vague or just a repetition of the language of the relevant rules. Even on merit the reasons given for dispensing with enquiry if viewed in the light of the well settled legal principles that emerges from a perusal of the judgments referred to hereinabove, it has to be held that the same is unsustainable.

11. In the case of Union of India v. Tulsiram Patel (supra) it has been held by the Supreme Court that while the source of the authority of particular officer to act as a disciplinary authority and to dispense with the enquiry is derived from the service rule, the source of his power to dispense with the enquiry is derived from the second proviso to Article 311(2) and not from the service rule. It has been held that there is a well established distinction between the source of authority to exercise a power and the source of such power. That being the legal position even though in the preceding para this Court has examined the case in accordance with the requirement of Article 311(2) of the Constitution but unless power as per the service rule or regulation is conferred on the authority to dispense with enquiry, the authority can not order for dispensation with enquiry without there being any such power or authority in the statutory rule or regulation governing the service conditions of the delinquent employee.

12. Having come to the aforesaid conclusion, the next question that requires determination is as to whether the petitioners should be relegated to the remedy of filing of departmental appeal in accordance with the Police Regulations or this Court could intervene in the matter and grant relief to them. These judgments referred to by learned Counsel in this regard are clearly distinguishable. Those judgments are not applicable in the facts and circumstances of the present case. The judgment in the case of Harbanslal (supra) dealt with cancellation and dealership of petroleum products and even in the aforesaid judgment the Supreme Court has observed that the rule of exclusion of jurisdiction on the ground of availability of alternate remedy is a rule of discretion and not one of

compulsion. It has been observed in Para 7 of the aforesaid judgment that when fundamental rights are violated, when basic principles of natural justice have been violated and when orders are passed by ignoring the statutory provisions of law, High Court can exercise its writ jurisdiction and interfere in the matter. That apart, a Full Bench of this Court in the case of M/s. P.C.C. Construction Company and Ors. v. Debts Recovery Tribunal and Anr., 2003(1) MPJR 260, has been held that even if the statutory remedy of appeal is provided, this Court can exercise its power of interference in case it is found that the action impugned and the order passed is in violation of basic principles of natural justice and contrary to the statutory provisions of law. In the present case, as has been held hereinabove, dispensing with enquiry under Rule 19 is clearly unsustainable as the aforesaid rule does not apply in the present case. There being no analogous provision in the Police Regulation for dispensing with enquiry. The normal rule of conducting enquiry and taking action after following the principles of natural justice was the only course open to the competent authority for taking action against the petitioners for the allegations levelled against them. The same having not been followed, this is a case where action has been taken in gross violation of the fundamental principles of law and by ignoring the statutory provisions. That being so, I am not inclined to relegate the petitioners to the alternate remedy of filing appeal or revision keeping in view the observations made by the Supreme Court in the case of Harbans (supra) and a Full Bench of this Court in the case of P.C.C. Construction Company (supra).

13. Accordingly, in view of the discussions and findings recorded hereinabove, the petitions are allowed. Orders impugned (Annexure P-I), dated 16th July, 2003 passed in case of each of the petitioners is quashed. However, it is made clear that respondents are free to proceed in the matter for taking action against the petitioners for the alleged misconduct in accordance with law. A copy of the order be placed on the record of other petitions.

14. Petitions stand allowed and disposed of with aforesaid.