
(2000) 09 MP CK 0071
In the Madhya Pradesh High Court
Case No : Second Appeal No. 198/95

Shivcharan Lal

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 60, 60(2), 60(5)

Citation : (2001) 1 JLJ 106 : (2001) 5 MPHT 85 : (2001) 1 MPLJ 663

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : R.A. Roman, for the Appellant; P.D. Agrawal, for the Respondent

Judgement

Arun Mishra, J.

This appeal has been filed by the appellant aggrieved by the judgment and decree dated 4-5-95 passed by IIIrd ADJ Gwalior affirming the judgment & decree of Trial Court.

The factual matrix leading to the filing of this appeal indicate that plaintiff was appointed on the post of patwari in Municipal Corporation, Gwalior. His services were terminated on 6-8-80. He challenged the order of termination. As a matter of fact civil suit was amended so as to incorporate the relief of challenge to the dismissal from service. Initially the order was passed retiring the petitioner from service on completion of 58 years of age. This order was issued on 18-1-80. His retirement was ordered w.e.f. 1-11-80 but before the date of his retirement could be attained by the plaintiff, he was suspended and ultimately on 31-1-80 instead of retirement, dismissal order was handed-over to him. The plaintiff's allegation was that he was served with the show-cause notice based on inquiry report. In order to submit a representation he required certain documents and also copy of inquiry report. For that purpose an application was moved which was not attended to and documents were not supplied to him. Hence there was serious prejudice caused to the plaintiff/appellant. It is further submitted that

there was violation of the principle's of natural justice. Hence the order of dismissal deserves to be set aside. The Municipal Corporation, Gwalior though denied the original pleading made in the plaint but did not file any reply to the amended plaint by which the plea of illegal dismissal was incorporated. However, pursuant to the amendment additional issues 8-A and 8-B were framed by the Trial Court as to validity of dismissal.

The Trial Court in the initial judgment and decree did not consider any evidence and outrightly recorded the finding in two line that burden of proof as to illegality of dismissal was on plaintiff which he has failed to discharge. The first appeal was filed and the matter was remanded to the Trial Court, which was decided again by Trial Court on 25-3-92. Again the suit of the plaintiff met with the same fate.

The Trial Court dismissed the suit on the ground that due to non filing of the departmental appeal against dismissal order suit was not maintainable. In the appeal filed by the plaintiff, the Appellate Court affirmed the judgment and decree. Learned Appellate Court came to the conclusion that opportunity of cross examination of witnesses was given to the plaintiff during course of inquiry. Relying upon the decision in case of U.S. Tomar v. M.P. State Ware Housing Corporation 1991(11) MPWN 123 it has been held that appeal has not been filed against order of dismissal as such the suit was not maintainable in Civil Court. Hence the present appeal has been filed before this Court which has been admitted on the following substantial questions of law :

(i) Whether non-supply of the documents and the inquiry report vitiated the order of punishment passed against the appellant/plaintiff?

(ii) Whether in facts and circumstances the punishment of dismissal from service is too harsh?

Learned counsel submitted that opportunity of due representation against the show-cause notice has been denied to the plaintiff. Vide Ex. P-4 plaintiff had asked for material document and inquiry report which were not supplied to him. It is his further submission that inquiry was conducted with undue haste that is why the documents were also not supplied to him. It is also his further submission that the dismissal order has been passed on the date of retirement of the plaintiff. He had long unblemished record for several decades service. In view of the charges levelled against the plaintiff punishment of dismissal was wholly unwarranted. It was a case of victimisation. It is his submission that the order of dismissal is bad in law on that count alone. He has placed reliance on the decision reported in Kartar Singh Gerwal Vs. State of Punjab, in which the order of dismissal was converted into the compulsory retirement, order of dismissal was passed 3 days before the date of retirement. He has further placed reliance on decision in the case of Kashinath Dikshita Vs. Union of India (UOI) and Others, in order to contend that non supply of material documents caused serious prejudice. In the said case the statements of witnesses were required for cross-

examination of other witnesses which opportunity was denied hence inquiry was set-aside.

Learned counsel for the respondent has made serious efforts to sustain the judgment and decree passed by the two Courts below. He has placed reliance on the decision of this Court in the matter of H.S. Tomar (Supra) to the effect that punishment which was awarded is not open for interference by this Court. He also placed reliance on the single bench decision of this Court in the matter of State of M.P v. Oriental Paper 1995 (II) MPWN 65 in which the damages were assessed by the divisional office of forest department and the departmental appeal was available hence suit was held to be not maintainable. He also relies upon a decision of the Apex Court in the case of S.K. Singh v. Central Bank of India, 1997(1) Vidhi Bhasvar, 195 so as to contend that if copy of the inquiry report has not been supplied, it is not enough to vitiate inquiry until the prejudice is shown due to non supply thereof. His submission is that no prejudice has been caused by non-supply of the document as demanded by the plaintiff. He further relied upon a decision of this Court in the case of Murlidhar v. Bank of India 1996(I) MPWN S.N. 168. In the said decision this court has considered the decision of in the case of Union of India and others Vs. Mohd. Ramzan Khan, . It has been held that non supply of inquiry report should not lead to setting aside of the punishment. The Court should examine each case on its merits and record a finding that non-supply of the report of the inquiry officer has really caused a prejudice to the delinquent. Learned counsel for the respondent further submits that the High Court can not interfere in the finding of fact recorded by the Trial Court. He relied upon the decision of this Court in Ram Bali Ram v. Union of India AIR 2000(I) MPLSR 98.

It is true that non-supply of inquiry report by itself can not be said to vitiate an order of dismissal. Further prejudice is required to be shown, It is also true that the punishment need not be interfered until and unless it is shocking to judicial conscience.

Both the Courts below have non suited the plaintiff on the ground that he has not preferred the departmental appeal against the order of dismissal. The learned Court in order to come to the conclusion has relied upon the decision in the case of H.S. Tomar (supra) but the ratio of this case is totally different and was not attracted. The question considered in that case was whether the quantum of punishment awarded is open for interference by this Court and not the filing of Civil Suit without filing departmental appeal under the service rules.

Section 60 of the M.P. Municipal Corporation Act Sub-section (5) reads thus :-

"No penalty mentioned in Sub-section (2) above shall be imposed upon any municipal officer or servant by order of any authority subordinate to that which makes appointment to the post he holds at the time of the order and unless he has been given a reasonable opportunity of showing cause against the imposition of penalty."

From the bare reading of Section 60 (5) it is clear that reasonable opportunity has to be afforded of showing cause against dismissal.

The plaintiff has categorically stated that he applied for the documents as per Ex. P-4, such as statement of B.S. Parihar, Rajendra Jain, Prakash Garg, Mr. Gupta (Patwari) and the statement of himself also. Copy of the inquiry report and the order dated 1-3-80 were also applied for by the plaintiff. Application Ex. P-4 was moved on 6-8-80. Thereafter, no documents were supplied to the him as per his own deposition. Significantly no cross examination has been made on this part of deposition that copies were not supplied as demanded as per Ex. P-4. Matter of cross examination is a matter of substance not merely a matter of procedure. The statement as plaintiff has gone unchallenged in cross hence has to be accepted as held in the case of Maroti Band Teli v. Radhabai AIR 1945 Nag 60, Kamidan Sarda and Anr. v. Sailaja Kanta Mitra AIR 1940 Pat 683, A.E.G. Carapiet Vs. A.Y. Derderian, , Kuwarlal Amritlal v. Rekhlal Koduram and Ors. AIR 1950 Nag 83. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. and Anr. AIR 1958 Pun 440.

Defendant has led the evidence of Dr. Hari. He has admitted that he has not supplied the copy of inquiry report to the plaintiff. He has not supplied the copy of statement as they were not demanded. If application dated 6-8-80 was moved by the applicant, he was not aware. Shiv Mohan has also been examined by the defendant. He deposed that no such application as contained in Ex P-4 was moved. But this witness has admitted that such applications are entered in the different register which has not been produced by him. Thus the evidence of Shiv Mohan is of no avail to the Corporation.

As per Section 60 (5) of M.P. Municipal Corporation Act, 1956 due opportunity has to be afforded for showing cause. Such opportunity means that plaintiff should be supplied with the copies of various depositions of the witnesses recorded during the course of inquiry and also copy of the inquiry report which were demanded by him. As a matter of fact, the decision in the case of Ramzan (supra) is prospective in nature. As such it was incumbent upon the defendant to supply the documents. The statements were not supplied which were necessary in order to submit the proper representation in an effective manner against the penalty. This Court places reliance on the decision of the Supreme Court in the case of Kashinath Dixit (supra) wherein the copies were not supplied to cross examine other witnesses hence inquiry was held to be vitiated. As a matter of fact it appears that copies were not supplied to plaintiff during the course of inquiry or even after its conclusion. It is a case where the plaintiff has been denied the opportunity to submit the representation in an effective manner. The facts also indicate that inquiry was proceeded in undue haste. Initially an order of retirement with effect from 1-11-80 was issued but on 31-10-80 order of dismissal was passed without giving due opportunity to the plaintiff and without supplying the requisite documents which were essential and asked for by him. Thus the dismissal of the plaintiff is unsustainable and the same deserves to be

set- aside on this ground alone.

There is yet another flaw in the order of dismissal. The representation which was submitted was not as a matter of fact duly considered and by a laconic order simply it was observed that charges 1 to 4 have been found proved. The reply was not satisfactory hence the termination was ordered. It appears that the authority had not applied its mind to the charges, representation and gravity of misconduct and as such the order of dismissal dt. 31-10-80 deserves to be set-aside.

Faced with the situation the alternative submission of the learned counsel for the defendant/respondent is that it is a case where compulsory retirement should be ordered instead of dismissal of plaintiff from services as this is also submission of plaintiff/appellant that dismissal is disproportionate to the charges levelled however I am not inclined to consider that. Since the order of dismissal has been set-aside, it is not necessary to go into the question whether penalty was disproportionate or excessively high. The order of dismissal passed against the plaintiff is set-aside. 20 years have passed from the date of dismissal. As a matter of fact the date on which the order of dismissal was passed, the plaintiff was supposed to retire. It is expected that Corporation shall settle the retiral benefits and retiral dues of the appellant/plaintiff to which he may be found entitled in accordance with law expeditiously.

In the result, appeal is allowed. Judgment and decree are set-aside. Dismissal order dt. 31-10-80 is declared illegal. Parties to bear their own costs.