
(1998) 07 MP CK 0060
In the Madhya Pradesh High Court
Case No : M.P. No. 79 of 1988 (J)

Shyam Sunder Prasad

APPELLANT

Vs

Municipal Council, Pathalgaon Distt. Raigarh and Others

RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2000) 1 MPJR 327

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Manindra Shrivastava, for the Appellant; Ravish Agrawal and Mr. Sanjay Agrawal, Advocates for Respondent No. 1 and None for respondents No. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.

By this petition under Article 227 of the Constitution of India, the Petitioner seeks quashment of the termination order dated 1.4.86 (Annexure-A), the 1st appellate order dated 31.3.87 (Annexure-M) and IInd appellate order dated 25.11.87 (Annexure-N).

The Petitioner was appointed as Secretary of Pathalgaon on 16.5.69 and later on was absorbed as Head Clerk/Accountant in the Notified Area Committee which was later on constituted. After constitution of Municipal Council Pathalgaon, the Petitioner continued to work with the said Municipal Council as Head Clerk/Accountant. On 15.2.82, on some inspection by the Administrator it was found that two recovery agents were making recovery of the market fees and were issuing forged receipts. On interrogation, shifting the entire responsibility on the shoulders of the Petitioner, they submitted to the authority that the said receipt books were given to them by the present Petitioner. Finding a foul play, vide Annexure-B, dated 19.2.82, the Petitioner was suspended and vide Annexure-C

dated 28.2.82 and Enquiry Officer was appointed. The Charge-sheet under Annexure-D was supplied to the Petitioner on the same day. The Petitioner filed his reply under Annexure-G. The Petitioner makes a submission that neither proper opportunity to defend was granted to him nor was he heard. According to him in an ex parte inquiry 3 or 4 witnesses were examined. Thereafter no orders were passed in the said departmental enquiry. Meanwhile, the Petitioner moved an application for release of the subsistence allowance but instead of passing any order on the said application on 14.3.85 a meeting was convened to take action against the Petitioner. In the said meeting dated 14.3.85 a resolution was passed by the Municipal Council that in view of the objections raised by the audit party, recoveries be made from the subsistence allowance and looking to the gravity of the charges services of the Petitioner be terminated. By order dated 12.4.85, services of the Petitioner were terminated. Petitioner moved an application to the Collector purported to be u/s 323 of the Municipalities Act and made a request that his termination was patently illegal. The Collector, by his order dated 19.6.85 (Annexure-J) suspended the termination order and further observed that the inquiry should be continued. Even thereafter the enquiry proceedings were not continued. On 3.1.86 vide Annexure-K fresh show cause notice was issued to the Petitioner. The said show cause notice contained the charges already levelled against the Petitioner in the earlier inquiry and also contained some fresh charges. The Petitioner thereafter, moved an application vide Annexure-L on 12.2.86 that the original records be made available for inspection and he be permitted to file the reply thereafter. It appears that nothing further was done in the matter and by order dated 1.4.86 (Annexure-A) services of the Petitioner were terminated. Being aggrieved by the said order, the Petitioner preferred appeal No. 17B-121/85-86 (Pathalgaon) and appeal No. 64B-121/85-86 (Pathalgaon) to the Collector, Raigarh. The Collector took up those appeals under Rule 56 of the Rules and decided the same by his order dated 31.3.87 (Annexure-M). Without making any reference to the arguments of the Petitioner that a major penalty was awarded against the Petitioner and without following Rule 52 read with Rule 49 of M.P. Municipal Employees (Recruitment and Conditions of Services) Rules, 1968 he found that the order of termination was proper. He also found that as the Municipality had resolved for termination of the services on 4.3.85, 29.3.85 and 24.3.86 there was no substance in the appeal. Being dissatisfied by the said order, the Petitioner took up the matter to the Court of the Commissioner in Appeal No. 233/Nagar Palika/86-87. The Commissioner, Bilaspur Division, Bilaspur by his order dated 25.11.87 (Annexure-L) dismissed the appeal holding that the facts made out a case for termination because the charges of corruption were of grave nature. Being aggrieved by the said orders Annexure-A, M and L, the Petitioner has preferred this petition under Article 227 of the Constitution of India.

Shri Manindra Shrivastava, learned Counsel for the Petitioner referring to 1968 Rules placing his reliance on Rules 49 and 52 submits that without following the procedure for imposing minor and major penalties, the services of the Petitioner

could not be terminated. He further submits that according to Rule 52 the procedure for imposing major and minor penalties is to be regulated according to the procedure laid down in M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and if the said rule has not been observed in its true spirit and the intention of the legislature behind enacting the Rule, the whole inquiry is vitiated and deserves to be quashed. He submits that as a consequence of the bad inquiry all the orders deserve to be quashed.

Shri Agrawal, learned Counsel for Respondent - Municipal Council submits that in view of the resolution made by the Municipality, it was not necessary to hold an inquiry and even otherwise proper opportunity was given to the Petitioner who instead of taking advantage of the said concession went on filing frivolous applications. He submits that the orders passed by the municipality and the appellate authority are in accordance with law. I have heard the parties.

Rule 49 of M.P. Municipal Employees Recruitment and Conditions of Service Rules, 1968 (hereinafter referred to as 1968 Rules) provides for certain penalties. The first part of the said rule refers the minor penalties while later part Clause-5 to Clause-9 refers to the Major Penalties. Undisputedly dismissal from Municipal service is a major penalty under clause-9. At this stage, it would be necessary to refer to part 5 of M.P. Civil Services (C.C.A.) Rules 1966. Rule 10 of 1966 Rules provides for the penalties. Clause 1 to 4 refer to the minor penalties which are *pari materia* with the minor penalties as provided in Rule 49 of 1968 Rules. Clause 5 to 9 of 1966 Rules refers to major penalties. Clause-9 relates to dismissal from service. The language employed in Clause 9 of Rule 10 of 1966 Rules and of Clause-9 of Rule 49 of 1968 are *pari materia* with the only distinction that 1966 Rule provides that the dismissal from service which shall ordinarily be a disqualification for future employment under the Government and Clause-9 of Rule 49 of 1968 Rules refers to disqualification for future employment in Municipal Service.

Rule 52 of 1968 Rules reads as under -

Procedure for imposing minor and major penalties: Without prejudice to the provisions of the Act and these rules the procedure for imposing major and minor penalties shall be regulated according to the procedure laid down in the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 and the General Book Circulars applicable to the Government servants subject to the modification that if the report of the Enquiry Officer is received by the disciplinary authority or if the enquiry has been carried out by the disciplinary authority itself, after he has completed the enquiry, the delinquent shall be heard on merits as well as punishment and a formal notice to show cause need not be served on him.

According to Rule 52, the procedure for imposing minor and major penalties shall be regulated according to the procedure laid down in M.P. Civil Services (Classification Control and Appeal) Rules, 1966 and the General Book Circulars

applicable to the Government servants. It further provides that after the report of the Enquiry Officer is received by the disciplinary authority or after he has completed the enquiry, the delinquent shall be heard on merits as well as punishment and a formal notice to show cause need not be served on him. Rule 52 itself provides that an enquiry has to be made either by the Enquiry Officer or by the disciplinary authority, After the report is received or is prepared, the delinquent is required to be heard on merits and also on question of quantum of punishment.

Rule 14 of 1966 rules provides that no order imposing any of the penalties specified in clauses 5 to 9 (1966 Rules) shall be made except after an inquiry is held, as far as may be, in the manner provided in the said rule and Rule 15. Rule 14 further provides that the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which article of charge is proposed to be sustained and shall require the employee to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person. Undisputedly, no inquiry was made in the matter. On the first charge-sheet, issued on 28.2.82 no report was prepared. It appears that the said inquiry was abandoned. It is not the case of me Respondents that on the strength of the charge-sheet dated 28.2.82 an inquiry was conducted, the report was received or prepared or/and thereafter the delinquent was given a proper opportunity of hearing. It is not a case of conclusion of the first inquiry. If that was so it has to be held that the first inquiry did not culminate into an inquiry report. The second charge-sheet/show cause notice was issued on 31.1.86. The said document is available on record as Annexure-K. The procedure for inquiry and awarding major and minor penalties is required to be regulated by 1966 Rules. Rule 14 in the statute book clearly shows that the disciplinary authority shall be bound to deliver or cause to be delivered to the government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which article of charge is proposed to be sustained. Annexure-A by no stretch of imagination meets the mandatory requirement of law. Annexure-K is a show cause notice. It runs into as many as 20 pages. It refers to certain audit objections and other charges. It nowhere provides that on the charges or the imputations made in the said show cause notice, the Respondent -Municipality had decided to launch a departmental enquiry against the Petitioner. Assuming the Petitioner did not file any reply to this show cause notice, the requirement of the law could not be sacrificed. If the disciplinary authority was not satisfied either with the conduct of the delinquent or his reply then it could direct initiation of the disciplinary enquiry. But either under 1966 Rules or under 1968 Rules, it could not proceed to pass a final order. The requirement of law is mandatory. When the law says that something is to be done in accordance with law/rules then it has to be done in accordance with law or the rules or not at all. Anything done contrary to 1966 or 1968 Rules cannot

have the sanctity of law behind them. The present is a case which clearly shows the utter violation of Rule 52 of 1958 Rules and violation of Rule 14 of 1966 Rules. The Respondent-Municipality had no authority to pass order Annexure-A without holding any enquiry against the delinquent.

Even otherwise, it would appear that the disciplinary authority has violated all canons of law and principles of natural justice. Referring to the Petitioner's application dated 12.2.86, disciplinary authority had observed that as the Petitioner had inspected the records on an earlier occasion it was not necessary to permit him inspection of the records. It would be necessary again to refer that show cause notice dated 31.1.86 was not in continuation of the earlier notice. It was based on fresh imputation of charges and was simply a show cause notice. From Annexure-A it would appear that the disciplinary authority was unnecessarily influenced by the resolutions made by the Municipal Council and the Administrator.

As the first inquiry was abandoned and second inquiry was not made after issuance of the show cause notice the termination of the present Petitioner is patently illegal and in violation of the rules. The order dated 1.4.86 (1/Sthapana/86) terminating the services of the Petitioner deserves to and is accordingly quashed. Consequently both the appellate orders are also quashed.

The petition is allowed. It is held that the order terminating the services of the Petitioner is bad and cannot be given any effect.

It is however made clear that if the Respondents propose to continue the first inquiry initiated under charge-sheet dated 28.2.82 then they shall be free to do so. It is further observed that if the Respondents are not satisfied by the conduct of the Petitioner then they shall be free to hold an inquiry against the Petitioner on the allegations well mentioned in show cause notice dated 31.1.86.

The Petitioner is out of the services from the date of the termination order, he shall immediately be reinstated by the Respondent No. 1. The Petitioner shall also be entitled to all consequential benefits.

The petition is allowed. No costs. Security amount, if any, be refunded to the Petitioner after due verification.