

(2012) 08 MP CK 0257

In the Madhya Pradesh High Court

Case No : Writ Petition No : 1773 of 2003 (S)

Smt. Kiran Bala Sharma

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapak Tatha Anya Karmchari)
Appeal Rules, 1978 — Rule 10

Citation : (2012) 08 MP CK 0257

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : P.N. Pathak, for the Appellant; B.P. Pandey, Learned Deputy Govt. Advocate, for Respondent Nos. 1 and 4 and Shri. D.K. Dixit, Learned Counsel for Respondent Nos. 2, 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice Rajendra Menon

1 Challenging order dated 12-04-2003 (Annexure P-9) removing the petitioner from service, this writ petition has been filed. It is the case of the petitioner that she was appointed as a Head Mistress in Sanatan Dharam Middle School Gorakhpur, Jabalpur. Even though she was appointed as Head Mistress on 20-07-1980 but the pay scale and other benefits accruing on such appointment was not paid to her instead she was treated as a Prabhari Adhyapika. Challenging this action of the respondents in not treating her as Head Mistress, she filed a writ petition before this court being W.P. No. 5759/2000. The said writ petition was pending when with a malafide intention and to somehow frustrate the claim of the petitioner, it is stated that a charge sheet was issued to the petitioner on 09-04-2001. In the said charge sheet, 9 imputation of allegations were levelled. Annexure P-1 is the charge sheet and to conduct the inquiry into the said charge sheet, the District Education Officer appointed the Inquiry Officer. The Inquiry Officer conducted the inquiry and submitted a report Annexure P-2 exonerating

the petitioner from all the charges. However, inspite of the fact that the petitioner was exonerated of the charges in the report Annexure P-2, respondent No. 2 issued a letter on 25-11-2002 (Annexure P-3) intimating to the petitioner that an inquiry is being conducted into certain charges and the same charge sheet was issued to the petitioner again vide Annexure P-3, accordingly contending that for the same set of allegations a second charge sheet when inquiry has already been concluded and the Inquiry Officer has exonerated the petitioner, the petitioner has filed this writ petition mainly contending that for the charge sheet issued to the petitioner, an inquiry has already been conducted and the Inquiry Officer has exonerated the petitioner, further action to appoint Inquiry Officer to conduct the inquiry vide Annexure P-3 dated 25-11-2002 is illegal. In the meanwhile, it transpires that in a writ petition which was filed by the petitioner being W.P. No. 19/03, inquiry report Annexure P-2 was submitted directly by the Inquiry Officer to the District Education Officer and as the respondent institute had no knowledge about this inquiry W.P. No. 19/2003 was disposed of granting liberty to the institute in question to take a final decision on the inquiry report. In view of the above, a show cause notice proposing to differ with the finding of the Inquiry Officer was issued and the impugned action is taken after due approval of the District Education Officer.

2. Challenge to the impugned action is made mainly on the ground that for the same set of allegation, second inquiry could not be conducted, hence the second inquiry is illegal and even while differing with the finding of the Inquiry Officer, the documents and other material were not supplied to the petitioner and proper opportunity of hearing was not granted, therefore, the impugned action is unsustainable.

3. Shri P.N. Pathak, learned counsel for the petitioner took me through the allegations levelled in the first charge sheet, the report into this inquiry conducted by the First Inquiry Officer vide Annexure P-2 and the action of the respondents in proceeding again with the same inquiry and emphasized that the petitioner is being harassed because she approached this court in the earlier writ petition.

4. Shri D.K.Dixit, learned counsel for respondent nos. 2, 5 and 6 refuted each and every allegations and submitted that the petitioner has committed serious act of misconduct, her act was totally unbecoming of a teacher and by taking me through the evidence and material that came on inquiry, argued that the finding recorded by the first Inquiry Officer is wholly perverse. The Inquiry Officer without informing the institute submitted the inquiry report and the documents to the District Education Officer through the petitioner and as the respondent No. 2 was not aware of this act, they requested the District Education Officer to appoint another Inquiry Officer as the First Inquiry Officer was not conducting the inquiry and it was under these circumstances that second notice Annexure P-3 was issued. However, immediately when the petitioner filed inquiry report in W.P. No. 19/2003, no further inquiry was held but after following due process in

accordance to law, the impugned action is taken. It was emphasized by Shri D.K.Dixit, that the impugned action is taken after following the due procedure contemplated under Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ko Padchyt Karane/Seva Se Hatane Sambandhi Prakriya) Niyam 1983 and as the action impugned under this rule is appellable under Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapak Tatha Anya Karmchari) Appeal Rules, 1978, Shri Dixit, accordingly submits that the petitioner should have filed an appeal before the competent Appellate Authority and the Appellate Authority under Rule 10 of the Appeal Rules 1978 where the authority can go into the grounds indicated from Grounds 10(a) to 10(l), it is stated that this writ petition is not maintainable. Apart from the aforesaid preliminary objections raised, Shri D.K.Dixit took me through various allegations levelled in the charge sheet, statement of witnesses recorded in the departmental inquiry particularly the statement of Shri S.D. Anand, President of the society and tried to emphasize that the act of the petitioner was totally unbecoming of a teacher and therefore, impugned action does not warrant any interference.

5. Having heard the learned counsel for the parties at length and on perusal of the record, I find that in the present case action has been taken in accordance to the Niyam 1983 and against the aforesaid order passed, the petitioner has a right to file an appeal under the Appeal Rules, 1978 and under Rule-10, the Appellate Authority is given wide power to examine various aspect of the matter as detailed therein and thereafter record a finding, that being so, a efficacious statutory remedy of appeal is available to the petitioner

6. Keeping in view the nature of allegations levelled against the petitioner and the facts and circumstances of the case, I am of the considered view that interference into the matter directly by this court is not called for, as it is not a case where statutory rule or regulations are being violated instead it is a case where factual dispute exists between the parties and therefore, in the light of the wide powers available to the appellate authority, as is evident from Rule-10, it is a fit case where the appellate authority should be directed to decide the appeal after considering the rival contentions and disputes with factual aspect of the matter.

7. Even though during the course of hearing of the writ petition, rival contentions were raised with regard to allegations levelled and justification, the question is purely factual in nature and such a dispute can be very appropriately dealt with by the by the competent appellate authority.

8. In view of the above, without entering into controversy on merit, it is directed that on the petitioner's filing a proper appeal before the competent appellate authority in accordance to Appeal Rules, 1978 within a period of 45 days from today, the competent appellate authority shall hear and decide the matter in accordance with law after hearing all concerned within a further period of 60 days i.e. after filing of the appeal.

9. With the aforesaid observations, the writ petition stands disposed of. Original record be sent back to Shri D.K.Dixit, learned counsel for respondent nos. 2, 5 and 6.

W.P. No. 5759/2000

Shri P.N.Pathak, learned counsel for the petitioner.

Shri B.P.Pandey, learned Deputy Govt. Advocate, for respondent 4.

Shri D.K.Dixit, learned counsel for respondent nos. 1 to 3.

In view of the fact that the petitioner has been removed from and in W.P. No. 1773/2003, this court has granted liberty to the petitioner to take recourse to the remedy available, for the present this writ petition pertaining to the designation of the Head Mistress has been rendered infructuous. In case the petitioner succeeds in appeal and reinstate in service, liberty is granted to the petitioner to take up the matter afresh in accordance with law.

With the aforesaid liberty to the petitioner, for the present this petition is dismissed due to subsequent removal from service of the petitioner.

It is accordingly dismissed as having been rendered infructuous.