
(2005) 04 MP CK 0035

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12975 of 2003

Smt. Poona Bai and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 MPHT 268

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : D.K. Dixit, for the Appellant; Harish Agnihotri, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—The petitioners are legal representatives of one late Ganesh Prasad Sahu who was served with a charge-sheet vide memorandum dated 14-8-1997 whereby he was required to submit his reply within seven days. Without waiting for the reply the disciplinary authority, as set forth, appointed an inquiry officer on 30-8-1997. Late Ganesh P. Sahu submitted his reply on 25-4-1998 and thereafter the inquiry was conducted. Inquiry Officer submitted the report holding the charges to have been proved. A notice to show cause was served on him proposing the punishment of removal and after submission of the show cause the disciplinary authority being not satisfied with the same awarded the punishment of compulsory retirement with effect from 11-6-1998.

2. According to the writ petitioners, in the reply to the show cause it was specifically pleaded by the employee that he was a heart patient and scheduled to retire on 31-8-1998. After coming to know about the order of compulsory retirement he breathed his last after expiry of seven days. It is contended that there was no evidence against him and the finding recorded by the inquiry officer and charges levelled against him were not proved. It is contended it was not proved that the said Ganesh P. Sahu had consumed liquor at the relevant time

and misbehaved with the complainant inasmuch as he could not have consumed the being a heart patient and the treatment was in continuance. It is also putforth that there was no justification of awarding the punishment of compulsory retirement two months before his retirement as it did cast a stigma without any reason. Many an ascertain has been made relating to malafide in issuing the charge-sheet on extraneous pressure. In addition, it is urged that the respondent No. 3, namely, Superintendent of Police has no jurisdiction or authority to serve a charge-sheet to the Head Constable and, therefore, entire initiation of proceeding was ab initio void. It is also putforth that an appeal could not have been preferred because of the death of Ganesh Pr. Sahu and hence, the legal representatives preferred the present petition before the M.P. Administrative Tribunal. A prayer has been made to issue a direction for quashment of the impugned order contained in Annexure A-7 and further to treat the said Ganesh Prasad Sahu deemed to have been served till the date of his death with all consequential benefits.

3. A counter affidavit has been filed by the answering respondents contending, inter alia, that the present petition has been filed on misconceived and misleading facts without any substance inasmuch as adequate opportunity was provided to late delinquent employee for submitting the reply to show cause and thereafter the inquiry officer recorded the finding. It is also putforth that the employee was afforded fullest opportunity for examination and cross-examination of the witnesses during the inquiry and hence, there is no violation of principles of natural justice. The disciplinary authority scanned the inquiry report in proper perspective and after being satisfied with the findings concurred with the same and accordingly proceeded to punish the employee and eventually punishment of compulsory retirement was imposed. It is the stand of the respondents that the disciplinary authority took a lenient view by imposing the punishment of compulsory retirement and, therefore, no fault can be found with the same. Criticism has been advanced against the said Ganesh P. Sahu that he had not availed the opportunity of preferring of appeal which was an alternative and efficacious remedy.

4. A rejoinder affidavit has been filed by the petitioners stating, inter alia, that as the present petition has been filed after the death of the employee, the plea putforth that appeal could have been preferred by the dead employee is absolutely unsustainable and more so when the employee was at the death bed he could not have thought to prefer an appeal within a specified period. The grievance has been raised with regard to the nature of misconduct in the year 1996 and type of complaint submitted after lapse of one year. Various documents have been annexed to show that the petitioner was suffering from heart ailment and, therefore, he could not have involved himself in the misconduct as putforth by the respondents. It is asserted that the report of the inquiry officer is based on the conjectures and hence, the same can not be regarded as unimpeachable.

5. This Court at the time of hearing of the writ petition had directed the

Department to produce the file relating to the departmental proceeding and the same has been made available to this Court.

6. I have heard Mr. D.K. Dixit, learned Counsel for the petitioner and Mr. Harish Agnihotri, learned Government Advocate for the State.

7. At the very outset it is apposite to state that though question of jurisdiction with regard to the authority of the respondent No. 3 has been urged in the petition, the learned Counsel for the petitioner did not think it appropriate to press the said aspect. The charges that have been framed against the petitioner are that on 6-9-96 the delinquent officer in a drunken state went to the house of Dillu Kaul and abused him and threatened to put him in custody; on 20-9-1996 he had abused one Ram Kumar Sevhare and made him sit at the Police Station; and further on 26-3-97 he demanded Rs. 500/- (Rupees five hundred only) from Dadulal Dhurve for giving death certificate and also abused him. Before the inquiry officer the department examined the following witnesses, namely, R.C. Verti, Dill Kaul, Kasturi Bai, Batsiya, Ramma, Ramkumar, Rakesh, Bhuvan Soni, Dadulal Dhurve and the report writer.

The delinquent employee on his behalf examined himself and further examined Ajay Singh and Sanad Kumar.

8. The inquiry officer after analysis of the evidence and other material on record came to hold that on 6-9-96 the employee Ganesh P. Sahu in a drunken state had abused and threatened Dillu Kaul and on 20-9-96 the employee accused Ram Kumar Sihare. Accordingly the inquiry officer found these two charges to have been proved. As regards the third charge the inquiry officer has taken note of the fact that the allegations related to illegal demand of Rs. 500/- to give the death certificate. The inquiry officer narrated the facts, scanned the evidence of Dadulal Dhurve and held that late Ganesh P. Sahu demanded Rs. 500/- and on denial of money abused him and threatened to put him in custody. The inquiry officer has also expressed the opinion that witnesses examined in the defense of the delinquent officer was not worthy of credence as he was not present at the spot. It has come out in the evidence that no death certificate was issued in favour of Dadulal Dhurve. There is no evidence that late Ganesh P. Sahu asked for Rs. 500/- to be deposited. Inquiry Officer has drawn an inference that if the sum of Rs. 500/- was asked for purpose of complying any kind of formalities, Dadulal would not have made a complaint. There is no animosity between Ganesh Prasad and Dadulal. I have carefully perused the findings recorded by inquiry officer in this regard. The only piece of material that has weighed with the inquiry officer is that in the absence of any kind of hostility, Dadulal would not have complained to the President of Jila Janpad. Submission of Mr. Dixit is that the complaint could have been made before the Superintendent of Police and there is no justification to make a complaint before the President, Zila Janpad. It is submitted by Mr. Agnihotri that the said Dadulal thought it appropriate to complain before the President. Be that as it may, as far as this charge is concerned there is only a bald statement and the requirement which

was not taken cognizance for a long period. It is not appropriate on the part of the disciplinary authority to concur with the finding of the said charge. Evidence in this regard being sketchy and scanty, in my considered opinion, the said charge is not proved. I am conscious, while scanning the evidence of witnesses, the inquiry report or the material brought on record under Article 226 of the Constitution of India this Court is not to sit in appeal or reappraise the evidence. This Court can interfere when there is no evidence or perversity of approach. In the instant case, true it is, some evidence has been adduced but what is noticeable is that intrinsic credence has been given to the same though there has been total non-appreciation of the factual scenario. The finding reached by the inquiry officer is founded on conjectures. True it is, the proof required in a criminal trial is not the requisite in a departmental proceeding but it is also simultaneously true that what has been made available can not be equated with the proof. The inquiry officer has drawn certain inferences. Hence, I am inclined to hold that as far as charge No. 3 is concerned, it has not been proved. Once I have held that the charge No. 3 not to be proved what remains is that the first two charges have been proved. In the absence of third charge which related to demand of illegal gratification the matter would stand on a different footing. The petitioner has already breathed his last. Considering the totality of facts and circumstances of the case, I am inclined to direct the disciplinary authority to impose any other punishment other than removal, dismissal or compulsory retirement as the third charge has been held not to be proved. Exercise in this regard shall be completed within a period of three months from the date of receipt of the order passed today. This Court hopes and trusts that the disciplinary authority shall keep in view the doctrine of proportionality in mind and impose the punishment.

9. Accordingly, the writ petition is allowed to the extent indicated above without any order as to costs.