
(2020) 08 MP CK 0189

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8938 Of 2020

Smt. Sheela Prajapati

APPELLANT

Vs

State of M.P. & Ors.

RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Citation : (2020) 08 MP CK 0189

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : D.K. Tripathi, Jubin Prasad

Final Decision : Allowed

Judgement

1. As per the order-sheet dated 02.07.2020, the Counsel for the State was directed to seek instructions and the matter was directed to be listed on 20.07.2020. Again on 20.07.2020, the Counsel for the State was directed to seek instructions for confirming the statement of the petitioner that the departmental enquiry against her is pending since 2008 but nothing has been done by the State. The Court also observed that if the instructions are not sought on the next date, the prayer for interim relief shall be considered and the matter was directed to be listed on 04.08.2020. This Court on 04.08.2020 directed the matter to be listed on 17.08.2020 as the counsel for the State did not get the instructions from the respondents and it was further observed that if the State does not file a reply or seek instructions, the Court would be at liberty to dispose of the petition finally in the backdrop of the Supreme Court judgment cited by the learned counsel for the petitioner on the said date.

2. On 17.08.2020, the matter was listed before the Court but the Bench declined to hear the matter and directed that the same be placed before some other bench in the next week.

3. Today the matter is listed before this Court but still the counsel for the State is unable to apprise this Court about the factual position and stated that he did not

receive any instructions. On the contrary, the learned counsel for the petitioner relied upon a decision reported in 2011 (1) MPLJ 666 (Pramod Kumar Gupta v. State of M.P. and others) contending that the High Court has quashed the departmental enquiry as there was inordinate delay of 10 years and there was no sufficient explanation given by the State.

4. Considering the order passed by this Court on earlier occasion and the conduct of the State that even after repeated opportunities, they failed to comply with the directions of this Court to apprise the factual position, this Court has no option but to decide the case finally in view of the law laid down by the High Court in case Pramod Kumar Gupta (supra).

5. The relevant facts of the case are required to be mentioned and those are that in pursuance to a complaint made in the year 2008 an enquiry was initiated against the petitioner and an enquiry report was submitted on 28.02.2008 (Annexure-P/1) showing there were six issues on which report was submitted. In pursuance to the report, a fact finding enquiry was conducted and on 03.08.2011 a charge-sheet was issued to the petitioner, levelling four charges. Copy of the charge-sheet is available on record as Annexure-P/2. The petitioner submitted reply to the said charge-sheet vide Annexure-P/3 on 20.08.2011 and thereafter the Enquiry Officer was appointed by order dated 10.05.2012 (Annexure-P/4) and the enquiry report was submitted on 26.11.2012 vide Annexure-P/5. As per the enquiry report out of four charges, charge Nos.1, 2 and 3 have not been found proved and in respect of charge No.4 finding was given by the Enquiry Officer that the said charge is correct as the petitioner has misappropriated an amount of Rs.6500/-. On 20.03.2014 a notice was issued to the petitioner for submitting her reply to the enquiry report then the petitioner submitted the reply on 04.04.2014 vide Annexure-P/7. However, no final order was passed by the disciplinary authority. The petitioner thereafter submitted various representations asking the authority to pass final order because in absence of conclusion of enquiry and for not passing the final order therein, the petitioner was being deprived from other service benefits like Kramonnati, promotion and annual increments. As per the internal communication (Annexure-P/10) of the respondent/department on 13.02.2020 the Additional Collector cum Chief Executive Officer, Zila Panchayat Chhatarpur asked the District Project Coordinator, Chhatarpur to apprise him as to whether any departmental enquiry is pending against the petitioner and also explain the reason for causing delay in passing the final order but nothing has been done. The petitioner thereafter filed this petition on 23.06.2020 asking relief for quashment of disciplinary proceeding initiated in pursuance to the charge-sheet dated 03.08.2011.

6. In view of the aforesaid unrebutted facts, this Court has no hesitation to say that there is inordinate delay in concluding the departmental enquiry. The petitioner in this regard relied upon a Circular issued by the General Administration Department on 29.12.1988 asking all the departments to expedite the proceedings of departmental enquiry if initiated against the government

employees and instructed them to avoid any such situation in which because of the delay in concluding the departmental enquiry, the employee goes retired during the pendency of the enquiry. A Circular has also been filed dated 16.04.1987 whereby the General Administration Department instructed all the government departments to conclude the departmental enquiry within a period of one year. Undisputedly, the General Administration Department of Madhya Pradesh issued circulars time and again instructing the departments for expediting the departmental proceedings and its conclusion within the specific period.

7. As per the judgment of this Court relied upon by the petitioner in the case of Pramod Kumar Gupta (supra), the High Court relying upon various decisions of the Supreme Court has observed as under:-

"15. In view of the foregoing discussion, it is apparent that there is massive delay of 10 years in issuance of the charge sheet from the cause of action, and more than six years from the date of proposal (Annexure R-1) of the Urban Administration Department. The explanation of delay as submitted is not convincing in the opinion of this Court. It is further seen that after issuance of the charge sheet more than three and half years have been spent by GAD in permitting inspection of the documents, to which also no convincing explanation is on record. During such period the incumbent juniors have been allowed Senior Selection Scale keeping the recommendation of the petitioner in sealed cover. It causes serious prejudice for no fault of the petitioner. As per GAD circulars the departmental enquiry ought to have been completed maximum within a period of 14 months. The said instructions have been issued with a view to avoid protracted enquiry proceedings. In the facts it is apparent that GAD had itself decided to not to hold departmental enquiry until found guilty by the Lokayukt Establishment. Now after 15 years again the enquiry has been started arbitrarily. It is not disputed by the respondents that the SAS officers up to the year 1985 has been considered for grant of IAS cadre and the petitioner is of the year 1986, however, continuation of enquiry may seriously prejudice to his promotion prospects. Thus, inference can be drawn, of biased attitude of the GAD for the reasons best known to them. The said action is against their own circulars of avoiding protracted enquiry. The apex Court in the cases of P. V. Mahadevan Vs. MD. T. N. Housing Board (supra) State of Madhya Pradesh Vs. Bani Singh and another (supra) and State of Andhra Pradesh Vs. N. Radhakishan (supra) has held that if there is a delay in initiation of departmental enquiry and is not convincingly explained, such action is seriously prejudicial to the employee then the departmental enquiry may be quashed, on the ground of delay and laches.

16. In view of the foregoing discussion in the opinion of this Court there is an inordinate delay of 10 years in initiation of departmental enquiry and the explanation in this regard is not convincing; further the delay in continuation of the said enquiry for 4½ years has also not been properly explained, which cannot be attributable to petitioner, in view of the aforesaid facts. In the opinion of this

Court at this stage continuation of the departmental enquiry causes serious prejudiced to petitioner, however, the charge sheet and the departmental enquiry is liable to be quashed. In view of the aforesaid discussion rejection of the representation for grant of Senior Selection Scale dated 15.6.2009 (Annexure P-19) is also liable to be quashed.

17 Accordingly, this petition is allowed and the Charge Sheet dated 18.7.2005 (Annexure P-6) is quashed, consequentially, the departmental enquiry is hereby quashed. The order of rejection of representation for grant of Senior Selection Scale dated 15-6-09 Annexure P-19 is also quashed, with a direction to the respondents to reopen the seal cover and to pass appropriate orders in the matter of grant of Senior Selection Scale to the petitioner. It is made clear here that if the petitioner found fit for grant to such benefit, it be extended to him at par to the incumbent juniors within the period of three months. In the facts and circumstances of the case there shall be no order as to costs."

8. Taking note of the view of the High Court in the case of Pramod Kumar Gupta (supra) it clearly indicates that the present case is also a glaring example of carelessness and irresponsible attitude of the government officers putting its employee under harassment and their conduct is seriously prejudicial to the petitioner depriving her from getting service benefits like kramonnati, promotion and annual increments. In the present case, it can also be seen that despite giving proper opportunity to the State to explain and to apprise this Court as to why the enquiry has not been concluded, but even they did not come forward to file any explanation. Thus, an inference can be drawn that they did not have any convincing explanation and as such their action is seriously prejudicial to the petitioner and in such circumstances, the pending departmental enquiry deserves to be quashed on the ground of delay and laches.

9. Accordingly, this petition is allowed. The charge-sheet dated 03.08.2011 (Annexure-P/2) is set aside. Consequentially, the departmental enquiry initiated against the petitioner is hereby quashed. The respondents are directed to consider the legitimate claim of the petitioner for granting her kramonnati, promotion, etc. for which she is legally entitled.