

(2011) 09 DEL CK 0167

In the Delhi High Court

Case No : Writ Petition (C) No. 12272 of 2009

S.P. Parasher

APPELLANT

Vs

Rehabilitation Council of India and Others

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (2011) 09 DEL CK 0167

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sanjay Sharawat, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The writ petition was dismissed in default on 9th September, 2011. CM. No. 16095/2011 has been filed for restoration. None appears for the Respondents. However, the writ petition before dismissal was at the stage of notice to show cause only. This Court had on 11th July, 2011 after hearing the counsels formed a prima facie opinion that the petition was not maintainable and the counsel for the Petitioner had sought time to argue. Thereafter, as aforesaid, the petition was dismissed for non prosecution. In the circumstances it is deemed expedient to, without issuing a notice of the application for restoration, restore the writ petition to its original position and to hear the counsel for the Petitioner. The writ petition is accordingly restored to its original position and the counsel for the Petitioner has been heard.

2. The petition impugns the Memorandum dated 18th September, 2009 of the Respondent No. 1 Rehabilitation Council of India (RCI) and all consequential actions sought to be initiated pursuant thereto. The said Memorandum is as under:

Rehabilitation Council of India

B-22 Qutub Institutional Area

New Delhi

No. 6-27/98-RCI

18th September, 2009

Memorandum

On having noticed forged entries in the Original Service Book of Sh. S.P. Parashar, PS to chairperson, RCI, a preliminary inquiry was instituted vide office order No. 6-27/98-RCI dated 25.04.2007. the preliminary inquiry was conducted by Shri L.K. Ganguly, the then Deputy Director (Admin), RCI.

The preliminary inquiry has revealed that forged entries at page No. 6 and 14 of the Original Service Book were made/caused to have been made by Sh. S.P. Parasher, this is an act of gross misconduct which reflects adversely on the integrity of the official. After having gone through the preliminary inquiry report and taking into consideration the gravity of the misconduct, the chairman, RCI, has approved to reopen the matter. This is in super session to RCI office order No. 5-186/2007-RCI dated 03.10.2008.

Sh. S.P. Parasher is, hereby, asked to show cause as to why disciplinary action should not be taken against him. He may submit his reply within -3 days from the date of receipt of this memorandum.

(Dr. J.P. Singh)

Member Secretary.

3. The counsel for the Petitioner invites attention to an earlier office order dated 3rd October, 2008 of the Respondent No. 1 RCI as under:

REHABILITATION COUNCIL of INDIA

B-22, QUTAB INSTITUTIONAL AREA

NEW DELHI

5-186/2007-RCI

03.10.2008

OFFICE ORDER

The preliminary inquiry (fact finding) which was instituted in the matter of so called forge entries in the original service book of Shri S.P. Parasher, PS to Chairperson, RCI then deputed at Krishna Water Disputes Tribunal (KWDT) was conducted by Shri L.K. Ganguli, then Dy. Director (Admn) as Preliminary Inquiry Officer vide office order No. 6-27/98-RCI dated 25.04.2007.

The undersigned, as Disciplinary Authority after going through the preliminary

inquiry report and made its own inquiry of the facts, decided to disagree with the report and hereby orders the closure of the preliminary inquiry instituted with reference to the above office order.

The order is issued with the approval of the Chairperson, RCI.

(Dr. A.K. Sinha)

Member Secretary

4. The argument of the counsel for the Petitioner is that the order dated 3rd October, 2008 closing the inquiry against the Petitioner could not have been reviewed vide Memorandum dated 18th September, 2009 impugned in this petition.

5. Notice of the petition was issued though no interim relief granted.

6. The matter still being at the show cause notice stage only, it was during the hearing on 11th July, 2011 (supra) inquired from the counsel for the Petitioner as to why the Court should intervene at this stage and as to why the departmental proceedings against the Petitioner ought not to be allowed to be concluded and the challenge, if any required, be made against the final order only. Notice of a show cause notice is not entitled to impugn the show cause notice itself and can only respond thereto and the challenge if any, has to be only to the order passed in pursuance to the show cause notice.

7. The Division Bench of this Court in Hindustan National Glass and Industries Another Vs. Union of India (UOI) and Others, held that statutory proceedings pending at the stage of show cause notice ought not to be interfered with in exercise of discretionary jurisdiction under Article 226 of the Constitution and which proceedings ought not be to permitted to be bypassed by resort to writ proceedings under Article 226. Another Division Bench in Pepsico Restaurants International (I) (P) Ltd. Vs. Municipal Corporation of Delhi and Others, has also reiterated that the High Court should not entertain a writ petition against a mere show cause notice except in the case of patent lack of jurisdiction in the authority issuing the notice or violation of principles of natural justice. It was held that the High Courts should leave such a hasty Petitioner to pursue the remedy of showing cause against the notice raising all his contentions for the consideration of the statutory authority and then take appropriate remedy in the event of the result going against him. The Supreme Court also in The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, has deprecated entertaining the petition challenging the show cause notices.

8. On the same parity of reasoning, the Supreme Court in, D.P. Maheshwari Vs. Delhi Administration and Others, , The Cooper Engineering Limited Vs. Shri P.P. Mundhe, , National Council for Cement and Building Materials Vs. State of Haryana and Others, and this Court in Shops and Commercial Workers Union Vs. Management of Ayurvedic and Unani Tibbia College Board, have expressed anguish at entertaining challenges on preliminary issues and which challenges

take long to decide and held that in order to obviate undue delay in the adjudication of the real dispute, the preliminary issue as well as the main issue on merit should be decided together so that there are no multiple rounds of litigations. It was further held that owing to such challenges at the preliminary stage being entertained, the final adjudication is delayed.

9. The counsel for the Petitioner however has contended that in the present case the challenge would be maintainable at this stage itself inasmuch as the disciplinary authority of the Respondent No. 1 could not have reviewed the earlier order closing the disciplinary proceedings against the petitioner and thus the Memorandum dated 18th September, 2009 are without jurisdiction. Reliance in this regard is placed on

(i) The State of Madhya Pradesh Vs. Bani Singh and another, .

(ii) State of Punjab and Others Vs. Chaman Lal Goyal, ;

(iii) P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, . All the three cases however are on the aspect of effect of delay in initiating disciplinary proceedings and not relevant on the query which has been raised.

(iv) AIR 1937 27 (Privy Council) laying down that once duly competent and duly authorized officers have honestly arrived at a decision, their successors in office, after the decision has been acted upon and is in effective operation, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision.

(v) The State Vs. Mansinghrao, laying down that after a departmental inquiry is closed and a person is punished, then it is not proper to punish him again.

(vi) Dwarkachand Vs. State of Rajasthan, also laying down that in the absence of a specific provision for review, an order of exoneration pursuant to a departmental inquiry is not open to review.

(vii) P. Andrews v. District Educational Officer 1968 Lab.I.C. 756 (Mysore) (DB) laying down that where the first disciplinary proceeding was discontinued, it is not within the competence of the disciplinary authority to exhume those charges and to make them the subject matter of another disciplinary proceedings, unless there be a defect or other reason for discontinuance of the first proceeding.

(viii) Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, laying down that where a charge has been inquired into by a competent authority in a regular inquiry and that inquiry culminated in exoneration, a second inquiry on that very charge is not maintainable. However, on facts it was held that since the charges had not been inquired into earlier, the charge sheet could not be quashed.

(ix) Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, laying down that quasi judicial authority is not competent to review its own order in the absence of express statutory power to that effect.

10. The Respondent No. 1 RCI in its counter affidavit has pleaded that the Petitioner while getting appointment in the Respondent No. 1 concealed that he was not a regular employee of District Rehabilitation Centre Scheme (DRSC) despite knowledge that his name had been struck off from the roll of Indian National Scientific Documentation (INSDOC) in the year 1992 since DRCS was a project/scheme the status whereof was for specific period only and employees of which could not be considered as permanent. It is further pleaded that the preliminary inquiry referred to in the Memorandum / office order aforesaid was a fact finding inquiry to find out who was responsible for forging the entries in the original service book of the Petitioner and the Deputy Director (Administration) of the Respondent No. 1 RCI had submitted a report that the forged entries in the Petitioner's original service book had been made either by the Petitioner or by any other on his direct involvement and influence. It is further pleaded that the Member Secretary of the Respondent No. 1 RCI was on study leave from 10th October, 2007 and in his absence Dr. A.K. Sinha took over the charge as Member Secretary on deputation in February, 2008 and prior to his being relieved from the Respondent No. 1 RCI on 3rd October, 2008 hurriedly closed the inquiry without making any direction for further investigation of the wrong entries in the original service book of the Petitioner. Dr. A.K. Sinha is stated to have been relieved from the Respondent No. 1 RCI on 8th October, 2008. The Member Secretary of the Respondent No. 1 RCI has further pleaded that upon joining back he was surprised to know of such hurried closure of inquiry and thus reopened the same. It is further pleaded that forging of entries in the service book is a grave misconduct and closure thereof by a deputationist was ill conceived and predetermined.

11. The Respondent No. 1 RCI has vide Memorandum impugned in this petition merely issued notice to show cause to the Petitioner as to why the disciplinary action should not be taken against him. It is open to the Petitioner to respond to the said notice and to take all these pleas as taken in the present writ petition. The Petitioner however by preferring the present petition has pre-empted the Respondent No. 1 RCI from deciding on the said pleas and/or on the aspect as to whether disciplinary action is to be taken against the Petitioner or not. The process of this Court cannot be allowed to be abused in such manner. The judgments relied upon by the Petitioner also absolute do not lay down any principle. In the present case, if it is to be found to be true that the earlier office order dated 3rd October, 2008 is a collusive order, the same alone would be a reason to disregard the same. The report of preliminary inquiry admittedly was against the Petitioner. Though the signatory of the order dated 3rd October, 2008 states that he had made his own inquiry of facts for deciding to disagree with the report of the preliminary inquiry but does not give any reasons. RCI is a statutory body and all its actions have to be guided by reasons and logic and cannot be at ipse dixit of its officials.

12. I am even otherwise of the opinion that the Respondent No. 1 RCI cannot on such technical pleas be compelled to have Petitioner on its roll if had indulged in

forgery. The allegation of forgery cannot be permitted to be scuttled in the manner as has been done. Moreover, it is also evident that the office order on the basis whereof the challenge is made was not of the regular Member Secretary of the Petitioner but of a deputationist for a short period. All these aspects will have to be weighed by the Respondent No. 1 in taking a decision whether to initiate disciplinary proceedings against the Petitioner or not.

13. The present is not a case of re-adjudication. There has in fact been no adjudication till now; only a preliminary inquiry was held; ordinarily such inquiries are only to arrive at a decision whether to initiate disciplinary proceedings or not; the suspect is not even involved in such preliminary inquiry, decision pursuant to such preliminary inquiry cannot be said to be a quasi judicial decision which cannot be reopened. It would be an administrative decision.

14. The Supreme Court in, *Parmanand Dass Vs. State of Andhra Pradesh, and State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, held that the order of sanction of prosecution under the Prevention of Corruption Act is an administrative act and there is no legal bar for reconsideration or revocation of the order by the sanctioning authority. The Division Bench of this Court also in *Delhi Energy Development Agency v. Abha Tyagi* 2002 III AD (Del) 641 held that the sanctioning authority can reconsider its order and even revise it but only when some reasonable rationale and valid basis exists therefore i.e. when the earlier order is found to be suffering from some material infirmity, irregularity or perversity or where fresh investigation material becomes available to the authority to dictate a reversal of the first order. The Supreme Court recently in *State of Punjab and Another Vs. Mohammed Iqbal Bhatti*, also held that in the matter of grant of sanction for prosecution u/s 197 of the Code of Criminal Procedure., for exercising jurisdiction at a subsequent stage the express power of review may not be necessary as such a power is administrative in character. I am therefore of the opinion that the judgments relied upon by the counsel for the Petitioner are not applicable in the facts of the present case.

15. The present case cannot be thus said to be fall in the category of "without jurisdiction".

16. The counsel for the Petitioner has lastly contended that inspite of this Court having not stayed the proceedings pursuant to the Memorandum aforesaid, no proceedings have been taken and the Petitioner is being kept on the tenterhook indefinitely. I may record the contention of the counsel for the Respondent No. 1 on 11th July, 2011 was that the Petitioner had not even replied to the notice to show cause issued to him.

17. In the circumstances, while dismissing the petition, the Petitioner is granted time till 15th November, 2011 to reply to the show cause notice vide Memorandum impugned in this petition and the Respondent No. 1 is directed to take a decision thereon on or before 31st January, 2012 and if decide to initiate disciplinary proceedings against the Petitioner, to conclude the same also as

expeditiously as possible.

No order as to costs.