

(2014) 09 MP CK 0189
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 502/2011

State of Madhya Pradesh

APPELLANT

Vs

B.P. Garg

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2014) LabIC 4491

Hon'ble Judges : Rajendra Menon, J;Anil Sharma, J

Bench : Division Bench

Advocate : R.P. Agrawal, Learned Senior Counsel and Rajesh Upadhyay, Rahul Jain, Learned Dy. Advocate General, Advocate for the Respondent

Judgement

Rajendra Menon, J.—This appeal has been filed by the appellants under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 calling in question tenability of an order dated 20.10.2010 passed by a learned Single Judge of this Court in W.P. No.14853/2007 (s) by which the respondent Dr. B. P. Garg has been directed to be reinstated with 50% backwages.

2. Respondent Dr. B. P. Garg was working as Ayurvedic Chikitsa Adhikari. It was alleged against him that while working as Ayurvedic Chikitsa Adhikari by presenting two documents in a fraudulent manner, he had managed to get compassionate appointment for his daughter Smt. Rakhi Shukla. Accordingly a charge sheet was issued to him making the aforesaid allegation and based on the finding of guilt recorded in the departmental enquiry, he was dismissed from service. Appeal filed before the Disciplinary Authority of the Department was also dismissed and therefore, the matter travelled to the Writ Court. The Writ Court examined the matter in detail and found that the allegations alleged are not established. Only on the basis of suspicion the action is taken and directed for reinstatement with 50% back wages after quashing the order of termination.

3. Shri Rahul Jain, learned Dy. Advocate General took us through the allegations levelled in the charge sheet, the findings of the Enquiry Officer, the observations made by the Public Service Commission in the recommendation made, the disagreement to the same by the Disciplinary Authority and the reasons which weighed with the disciplinary authority for imposing the punishment of dismissal from service and argued that finding of guilt having been proved in a properly conducted departmental enquiry, the writ Court cannot interfere into the matter by appreciating of evidence. It was emphasized that in appreciating the evidence and recording a finding to say that the allegations are not completely proved but it is only based on suspicion, the Writ Court has exceeded in its jurisdiction and therefore, Shri Jain argues that it is a fit case where appeal should be allowed and the order of Disciplinary Authority upheld.

4. On the contrary, Shri R. P. Agrawal, learned Senior Counsel refuted the aforesaid and argued that if a finding of guilt recorded by the Disciplinary Authority is based on a perverse finding of a Enquiry Officer the Writ Court has jurisdiction to interfere in the matter and if such a action is taken, the same does not call for any interference.

5. That apart, Shri R. P. Agrawal invites our attention to an order passed by a Coordinate Bench of this Court in W.A. No. 1063/2009 [Smt. Rakhi Shukla Vs. The State of M.P. & Others] on 17.12.2013 to say that the action of the State Government in dismissing the respondent's daughter Smt. Rakhi Shukla has also been quashed by this Court in the aforesaid case and therefore, when the basis for taking action against the respondent itself is not available, the appeal should be dismissed.

6. Shri Rahul Jain argued that in the case of Smt. Rakhi Shukla the Court has interfered with because departmental enquiry into the requirement of Discipline and Appeal Rules has not been held, there is no exoneration of the employee and therefore, the said judgment will not help the respondent.

7. We have heard learned counsel for the parties and we have gone through the records. It is seen from the records that respondent's daughter Smt. Rakhi Shukla was granted compassionate appointment in the department in accordance to a policy and scheme applicable. While seeking compassionate appointment, Smt. Rakhi Shukla is said to have submitted an affidavit and a Certificate and on the ground that these two documents have been procured in a fraudulent and illegal manner, they are forged document and the petitioner misusing his position as an Ayurvedic Chikitsa Adhikari has helped his daughter in getting employment, a charge sheet was issued to him. A preliminary enquiry was conducted by one Dr. L. R. Vyas and statement of various witnesses were recorded in this preliminary enquiry.

8. Even though the Enquiry Officer had held the charges proved, the matter was referred to the Public Service Commission and the Public Service Commission gave a recommendation proposing imposition of punishment of Censure.

However, the Disciplinary Authority disagreed with the same and dismissed the employee. Before the Writ Court in the petition filed, respondent employee raised a three fold contention. His first contention was that the decision of the Disciplinary Authority and the State Government to dismiss the petitioner inspite of the recommendation of Public Service Commission is unsustainable. The second ground canvassed was that the departmental proceedings were not held properly and the third ground was that the findings recorded holding the employee guilty of charges is not correct, it is a perverse finding. The Writ Court went into all the three questions and as far as the first question with regard to approval of the Public Service Commission and the binding effect of the recommendation of the Public Service Commission was rejected and it was answered in favour of the department after placing reliance on a judgment of the Supreme Court in the case of Union of India (UOI) and Another Vs. T.V. Patel, . As far as procedural infirmity in the conduct of the departmental enquiry is concerned, no such procedural infirmity is pointed out nor has the Writ Court interfered on such consideration. However, with regard to the third ground, the Writ Court has gone into detail with regard to evidence of parties and recorded a finding that only a suspicion can be made and based on the same punishment of dismissal is not warranted. The only question before us is as to whether in doing so, the Writ Court has acted in excess of its jurisdiction ?

9. To consider this question, we are required to take note of the reasons given by the learned Writ Court based on which such a conclusion has been arrived at.

10. From para 19 to para 31 of the order passed, the Writ Court has dealt with this aspect of the matter and if we analysis the same, we find that the preliminary enquiry was conducted by Dr. L. R. Vyas and in the light of the statement of witnesses recorded in the preliminary enquiry, the charge sheet was issued to the petitioner. As already indicated herein above, in the charge sheet only one allegation was levelled with regard to producing two forged document, one affidavit and another a Certificate.

11. In the Departmental Enquiry, Dr. L. R. Vyas was examined as witness No.1 and thereafter, statement of Smt. Parvati Devi, Dr. R. V. Sohgaure, Shri Arvind Kumar Gautam, Shri Shreedhar Mishra, Smt. VEDIWATI Mishra and and one Shrimani Pandey were recorded. The Writ Court examined each and every aspect of the matter and found that neither in the statement recorded before the Preliminary Enquiry Officer nor in the Statement recorded in the enquiry, the allegation with regard to forging of the documents by the respondent employee is proved. The writ Court has discussed the statement of each witness and it is found that only statement available in the departmental enquiry to hold the petitioner guilty of charges is the statement of Shri Shivmani Pandey. However, the writ Court found that in the preliminary enquiry this witness Shri Shivmani Pandey did not say anything against the petitioner but in the departmental enquiry he changed his stand completely and gave a statement against the petitioner. The Writ Court found that statement being different in nature and

there being no explanation for the change, it cannot be believed and after having held so, finding recorded by the Writ Court is that only on the basis of assumption that petitioner is working as Ayurvedic Chikitsa Adhikari he is held guilty. This elaborate finding recorded by the learned Writ Court and the reasons given by the Writ Court for recording this finding as is evident from para 19 to para 31 of the impugned judgment indicates that the learned Writ Court has considered each and every aspect of the matter and has found that the charges are not proved and only on the basis of presumptions and assumptions, the finding recorded. We see no error in the same.

12. Even though Shri Rahul Jain had argued that the Writ Court is not entitled to analysis the evidence and record a finding which amounts to exercising the jurisdiction of Appellate Authority, but we are not inclined to accept such a contention. If a finding of guilt recorded in departmental enquiry by the Enquiry Officer is based on no evidence or is based on such material which cannot be legally accepted as proper evidence, then such a finding is a perverse finding and any action taken on the basis of such a perverse finding is in violation to the principles of natural justice.

13. In the case of Anil Kumar Vs. Presiding Officer and Others, Hon''ble Supreme Court has laid down the principle that finding of guilt in a departmental enquiry has to be recorded on the basis of due appreciation of the evidence that come on record and merely based on the ipse dixit of the Enquiry Officer a finding of guilt cannot be recorded and if finding of guilt is so recorded on the basis of ipse dixit of a Enquiry Officer, the said enquiry and finding is not a enquiry in the eyes of law, it is in violation of principles of natural justice and all consequential action taken on the basis of such a finding is unsustainable. The relevant portion of the law laid down by the Supreme Court in this regard in the case of Anil Kumar (supra) is reproduced herein under for ready reference :-

?5.... It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer . It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well- settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India , this Court observed that a speaking order will at best be a reasonable and at its worst be atleast a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad v. State of Uttar Pradesh , this Court reiterated that

satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character....

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable."

(Emphasis Supplied)

14. If the case in hand is analyzed in the backdrop of the aforesaid legal principle, it would be seen that none of the witnesses who have been examined in the enquiry have given anything with regard to the respondent's involvement in the preparation of the documents. It is only one Shivmani Pandey who had testified with regard to the respondent employee obtaining his signature in a blank paper and an assumption has been drawn that this signature is used for preparation of the documents. However, the Enquiry Officer found that in the statement given before the Preliminary Enquiry Authority, namely, Dr. L. R. Vyas, the witness Shivmani Pandey does not say anything about this and it is for the first time that he has made such a statement before the Departmental Enquiry his statement has been disbelieved by the Enquiry Officer due to discrepancy in his statement.

15. Accordingly, we are of the considered view that the learned Writ Court has not acted in a manner which can be termed as perverse or in excess of its jurisdiction. The learned Writ Court has applied its mind on the evidence to find out as to whether the finding recorded by the Enquiry Officer is reasonable finding and having found the same to be arbitrary decision, the impugned action is taken.

16. In doing so, we are of the considered view that the Writ Court has not committed any error warranting reconsideration.

17. During the course of hearing Shri Rahul Jain tried to emphasize that once the charges are found to be proved and without there being any specific finding by the Writ Court that the charges are not proved, the relief granted by the Writ Court was unsustainable.

18. We may observe that even though the Writ Court in the finding recorded has not in specific term held that the charges are not proved, but if we analyze the findings recorded by the Writ Court from para 19 onwards, we find that the Writ

Court has held that the charges against the petitioner that he got two forged documents prepared to get employment against the petitioner is based on assumptions and suspicion and that itself shows that it has not been proved. The Writ Court has found that it is not the case against the petitioner that he influenced or pressurized the authorities to get employment for his daughter. The allegation against the petitioner that he was instrumental in getting the two documents prepared. However, this allegation having not been proved and there being no material to show that he misused his position as an Ayurvedic Chikitsa Adhikari to get employment for his daughter, Writ Court has interfered into the matter. This analysis of the Writ Court goes to show that the Writ Court has in fact, come to the conclusion that the charges of forging the documents have not been proved. That being so, we see no error in the order passed by the Writ Court warranting reconsideration.

19. Appeal is accordingly, dismissed.