

(2018) 09 RAJ CK 0145

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1585 of 2017

State Of Rajasthan @APPELLANT@Hash Shri Narain Raigar

Date of Decision : 27-09-2018

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 19(2)

Citation : (2018) 09 RAJ CK 0145

Hon'ble Judges : Pradeep Nandrajog, CJ;Inderjeet Singh, J

Bench : Division Bench

Advocate : Shyam Arya, Madhukar Tiwari, Ajay Kumar Bajpai

Judgement

D.B. Civil Misc. Application No.912/2017:

1. For the reasons mentioned in the application delay in filing the appeal is condoned.
2. The application is allowed.

D.B. Special Appeal Writ No.1585/2017:

1. Heard learned counsel for the parties.
2. The facts are not in dispute.
3. A charge-sheet was issued against the respondent on 29.4.1997. The misdemeanour alleged was of submitting a forged transfer certificate issued by Rajkiya Madhyamik Vidhyalya, Manpur Machedi, Jaipur. Relevant would it be to highlight that the said transfer certificate was by way of proof of age and educational qualifications.
4. Surprisingly, the charge-sheet was not taken to its logical conclusion. The department changed the track mid route. Acting under sub-Rule (2) of Rule 19 of the Rajasthan Civil Services (CCA) Rules, 1958, opining that it was not reasonably practicable to follow the procedure prescribed in the

Rules for holding an enquiry, order was passed terminating the service of the respondent.

5. Writ petition filed challenging the order dated 19.12.1997 terminating the service has been allowed by the learned Single Judge.

6. Learned counsel for the appellant states that it is not necessary in every case to hold an enquiry. Learned counsel relies upon the decision reported

as 2007(13) SCC 352, Secretary Andhra Pradesh Social Welfare Residential Educational Institutional Vs. Pindiga Sridhar & Ors. Said decision

evinces that the respondent took employment on compassionate basis on death of his father withholding relevant information of his mother being

employed as a teacher in a High School under the Zila Parishad as also his wife being appointed as an Extension Officer in the Rural Development

Office. Said fact was not disputed by the respondent. In said facts i.e. admission of the respondent that his mother and wife were in gainful

employment in service the Supreme Court held that there was no necessity to hold an enquiry.

7. The reasoning of the decision is clear. If a fact is not in dispute, enquiry need not be held. But where a fact is in dispute enquiry has to be held to prove the fact.

8. Learned counsel also relies upon the decision of the Supreme Court reported as 2007 (2) SCC 335, Superintendent of Post Offices & Ors. Vs.

R.Valasina Babu. Said decision shows that the respondent took appointment on strength of being member of a scheduled caste known as Mala.

Information was received that he was a Christian and thus was not a member of the Mala community. A charge-sheet was issued by the Disciplinary

Authority. Enquiry Officer was appointed. Simultaneously a complaint was made to the Collector who had issued the Scheduled Caste Certificate.

After making enquiry the Collector cancelled the certificate. The said order was produced before the Enquiry Officer who opined that the subsequent

order cancelling the original certificate was not in existence when the charge memo was issued and thus did not rely upon the same. The Disciplinary

Authority disagreed. The Supreme Court held that termination was valid.

9. The decision cited is not applicable in the instant case.

10. As noted above, the Rule in question allows the Disciplinary Authority to dispense with an enquiry by recording reasons that it is not reasonably

practicable to hold the enquiry. In the instant case the only reason to dispense with the enquiry is that the delinquent did not appear before the Enquiry

Officer. This would be no ground to hold that it is not reasonably practicable to hold an enquiry. The department could have held an ex-parte enquiry.

11. We find no infirmity in the view taken by the learned Single Judge.

12. At this stage counsel for the appellant prays for permission to be granted to the department to continue with the disciplinary proceedings.

13. Needless to state the appellant would be permitted to continue with the disciplinary proceedings pursuant to the chargesheet which was issued and

served upon the respondent.