
(2015) 02 RAJ CK 0187
In the Rajasthan High Court
Case No : Civil Writ Petition No. 514 of 1998

Tara Chand Manth

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311, 311(2)

Citation : (2015) 02 RAJ CK 0187

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : Ankur Mathur for P.P. Choudhary, for the Appellant; Manish Patel, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Jaishree Thakur, J.—The present writ petition has been filed under Article 226 of the Constitution of India challenging the impugned order dated 17.1.1998 by which the services of the petitioner were terminated.

2. The petitioner applied for the post of Teacher Grade-III in response to an advertisement issued by the District Establishment Committee, Zila Parishad, Dungarpur. Along with the application form, the petitioner submitted the following documents:-

"(1) the certificate of Secondary School Examination and the marks-sheet issued by the Board of Secondary Education, Rajasthan, Ajmer.

(2) the Certificate of P.U.C. issued by the Rajasthan University, Jaipur

(3) P.U.C. Marks sheet issued by the Rajasthan University, Jaipur.

(4) B.Com. Marks sheet issued by the Rajasthan University, Jaipur.

(5) B.Ed. Marks sheet issued by Maharshi Dayanand University, Rohtak.

(6) Employment Registration Card issued by the Employment Exchange,

Jhunjhunu and

(7) School Leaving Certificate issued by the Seth G.V. Poddar College, Nawalgarh."

3. After scrutiny of the application form and documents annexed along with, the petitioner was called for an interview. At the time of interview, the petitioner was also asked to submit an affidavit in support of the documents submitted along with the application form. The said affidavit was duly submitted by the petitioner. On the basis of the recommendation of the Selection Committee, the petitioner was appointed on 24.7.1995 to the post of Teacher Grade-III. Thereafter, the petitioner received a notice dated 24.7.1997 issued by the Chief Executive Officer-cum-Secretary, Zila Parishad, Dungarpur calling upon him to bring the original documents of N.C.C. "C"-Certificate. A reply was filed to the said notice by the petitioner stating that he had never undergone or qualified the N.C.C. training for "C"-Certificate and that he had not submitted the said certificate at the time of submission of documents. Though the petitioner replied to the said notice, the services of the petitioner were terminated by the impugned order dated 17.1.1998. Aggrieved against the said order of termination, the present writ petition has been filed.

4. Notice was issued returnable within four weeks. By the same order, the respondents were restrained from interfering in the functioning of the petitioner as Teacher Grade-III pursuant to the impugned order dated 17.1.1998. Despite service, no one put in appearance for the respondents and on 12.10.1998 the interim stay granted was made absolute.

5. The matter remained pending in this Court and the respondent choose not to file a reply. Reply was filed only in July 2014 wherein respondents took the stand that the petitioner had wrongly been given three additional marks on account of his allegedly possessing the N.C.C. Certificate. On the same day, a co-ordinate bench opined that appropriate action ought to have been taken against the responsible officer who had awarded three extra marks to the petitioner.

6. It is has been contended by the counsel appearing for the petitioner that the impugned notice has been issued on the basis of a decision taken by the District Vigilance Committee and in total violation of Article 311 of the Constitution of India read with Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter after referred to as "the Rules of 1958"). It has been argued that no major penalty can be awarded without strict compliance of the procedure as envisaged in the rule. It is contended that the procedure contemplated under Rule 16 of the Rules of 1958 has not been complied with in so far as the Disciplinary Authority is required to frame charges on the basis of the allegations on which the enquiry is proposed to be held. Further more, charge together with the statement of allegations is to be communicated in writing to the government servant and he shall be required to submit a written statement to the said authority indicating whether he admits any of the charges

framed against him or explanation or defence, if any, he has to offer. None of the above said procedure was followed before the issuance of the impugned order.

7. It was further argued that the order of termination has been passed by the Chief Executive Officer who is not the competent authority to pass the termination order. The counsel for the petitioner would also contend that the impugned order has been issued at the instance of the decision taken by the District Vigilance Committee acting on a complaint received. The Chief Executive Officer thereafter issued the impugned order and thus there was no independent application of mind while issuing the impugned order terminating the services of the petitioners. Further more, even Rule 300 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as "the Rules of 1996") contemplates a procedure to be complied with before inflicting penalty. Being a civil servant and appointed after due selection, the services of the petitioner could not be terminated without complying with the provisions envisaged under Article 311(2) of the Constitution of India read with Rule 16 Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 and thus, the same deserves to be set aside.

8. The counsel appearing on behalf of the respondents has vehemently argued that the order dated 17.1.1998 should have been challenged in an appeal under Rule 23 of the Rules of 1958 and as such the writ petition itself is not maintainable. It is argued that the appointment of the petitioner was bad in the eyes of law for the reasons that he did not possess the requisite qualification and marks for the appointment to the said post. Last cut-off marks for appointment to the said post was 72 but the petitioner only got 69 marks and with the manipulation of three marks for possessing a NCC certificate by the then officers, he got selected to the post. It is only on the basis of the three additional marks given on the basis of allegedly possessing a N.C.C. Certificate, that he qualified for appointment. It was argued that a complaint was received regarding the manipulation of marks by the petitioner and on receipt of the complaint an enquiry was initiated by the District Committee (Vigilance),Dungarpur, who came to the conclusion that the complaint seems to be true. Thus, on coming to know of the mistake, the services of the petitioner were rightly terminated. The stand of the respondent is that in view of the fraud, the initial appointment of the petitioner was itself void ab initio, therefore there was no need to conduct any formal enquiry by the respondent. Relying upon several pronouncements of the Hon"ble Supreme court in (1) Pritpal Singh and others Vs. State of Haryana and others, AIR 1995 SC 414 : (1994) 5 JT 245 : (1994) 3 SCALE 627 : (1994) 5 SCC 695 : (1994) 2 SCR 326 Supp : (1995) 1 SLJ 23 : (1994) 2 UJ 359 (2) Bank of India and Another Vs. Avinash D. Mandivikar and Others, AIR 2005 SC 3395 : (2005) 107 FLR 610 : (2005) 8 JT 326 : (2005) 7 SCC 690 : (2005) SCC(L&S) 1011 : (2005) 3 SCR 170 Supp : (2006) 1 SLJ 47 : (2005) 2 UJ 1332 , and Binod Kumar Gupta and Others Vs. Ram Ashray Mahoto and Others, (2005) 4 SCC 209 , the counsel for the respondents has argued that an appointment which has been obtained by fraud and misrepresentation is liable to be set aside. It has

been further submitted that the petitioner should not be allowed to draw any benefit of continuing in service on the basis of an interim order passed by this court and the impugned order dated 17.1.1998 should be upheld.

9. It has also been brought to the notice of this court by the counsel appearing for the respondents that an additional affidavit has been filed, wherein it has been stated that pursuant to the order passed by a coordinate bench of this Court on 3.7.2014, a Committee was constituted to look into the matter regarding awarding of extra marks to Tara Chand and, based on the report of the Committee, the State has already decided to take appropriate action against the persons mentioned in the said report.

10. I have heard the counsel for the parties and I have gone thorough the record of the case.

11. Admittedly, the petitioner was appointed for the post of Teacher Grade-III. He applied for the said post pursuant to an advertisement. He was called for an interview and at the time of interview, he was asked to submit affidavit in support of the documents submitted along with the application form. A perusal of the application form and the list of documents submitted clearly show that the N.C.C. Certificate was not a part of the said documents submitted with the application. The petitioner was allowed to continue in service and it was only in the year 1997 that he was called upon to submit the N.C.C. Certificate. In response to the said notice, the petitioner duly replied submitting that he was not in possession of any N.C.C. Certificate nor he had undergone any such training. In the said reply, he has also stated that he would not be in a position to give any details about the invalid N.C.C. Certificate without seeing the original record. The respondents, however, terminated the services of the petitioner on 17.1.1998. A perusal of the record and the pleadings of the parties shows that the said order has been passed without following the procedure as laid down under Rule 16 of the Rules of 1958.

12. Rule 16 of the Rules of 1958 provides for the procedure to be followed for imposing major penalties. It is clearly mentioned in the said rule that no major penalty can be imposed without holding an enquiry. The Departmental Enquiry under this rule is not an empty formality but enshrines the rules and principles of natural justice of giving an opportunity to the government servant to defend himself and are to be followed strictly. In the present case, the enquiry has been conducted by the Vigilance Department constituted on receipt of a complaint stating that the petitioner had manipulated his marks. Based on the report of the Vigilance Department, the order of termination has been issued. There is nothing on record to show that on receipt of the report of the vigilance enquiry, the authorities concerned have formed an independent view, whether or not, further action is to be taken. The government servant is also to be served a copy of the full statement of charge on the basis of allegations on which the enquiry is proposed to be held. Such charges together with statement of allegations is to be communicated in writing to the government servant who is to be given an

opportunity of filing his defence. In the present case, there has been a total disregard of Rule 16 of the Rules of 1958 in so far as no opportunity of hearing was ever afforded to the petitioner. The impugned order of termination is unsustainable as there has been an utter violation of the procedure as set out in the Rules 16 of the Rajasthan Civil Services (Classification, Control and Appeal Rules) 1958.

13. The contention as raised by the counsel for the respondents that the writ petition is not maintainable since there is a remedy of appeal has not been availed of as specified in Rule 23 of the Rules of 1958 is noted to be rejected in the facts of the present case. The writ petition was filed in the year 1998 and for the reasons best known to it, the respondent choose not to file its written statement in the intervening period. The written statement taking a plea of maintainability of the writ petition and other grounds has been filed only in July, 2014 and it would be unfair to dismiss the writ petition on the ground that an appeal should have been preferred. A period of 16 years have lapsed since the writ petition had been filed. The impugned order passed is in total violation of the rules of natural justice and the principles as enshrined in the Constitution of India under Article 311(2) read with Rule 16 of the Rules of 1958. It is well settled principle of law that the rules of natural justice and audi alteram partem have necessarily to be followed. The contention of the counsel for the respondents that Annex.P.3 a notice was served upon him and the petitioner was given an opportunity to defend himself is unfounded as, the said notice was issued asking the petitioner to produce the NCC certificate and not a notice as contemplated under the rules. Admittedly, after the vigilance report, the letter of termination was issued without any opportunity being afforded to the petitioner to defend himself.

14. There is also no dispute with the proposition that an appointment obtained by fraud or misrepresentation is liable to be set aside. However it has been held in Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others, AIR 2006 SC 2571 : (2006) 5 JT 352 : (2006) 5 SCALE 273 : (2006) 11 SCC 356 : (2007) 1 SCC(L&S) 444 : (2006) 1 SCR 772 Supp : (2006) AIRSCW 3346 : (2006) 4 Supreme 8 that the State is required to satisfy itself with sufficient material about a tainted selection and such satisfaction to be gathered by reason of a thorough investigation in a fair and transparent manner. It has been held as under:

"We at the outset would furthermore notice that having regard the submissions made before us by Mr. Dwivedi and Mr. Rao that the services of the appellants before us were terminated not in terms of the Rules but in view of the commission of illegality in the selection process involved, we need not consider the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution of India. An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. [See Secretary, State of Karnataka and Others Vs. Umadevi and

Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415] But before such a finding can be arrived at the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, the legal principles can be applied.

If the services of the appointees who had put in few years of service were terminated; compliance of three principles at the hands of the State was imperative, viz., to establish (1) Satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) Whether the sufficient material present enabled the State to arrive at satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt.

Once such findings were arrived at, all appointments traceable to the officers concerned could be cancelled."

15. In the present case no show cause notice was ever served upon the petitioner nor has there been a transparency in the procedure adopted in the termination of services of the petitioner. The entire process as established under the Rules of 1958 has not been adhered to. Thus in view of thereof, the order dated 17.1.1998 is vitiated, illegal and is hereby set aside.

16. The counsel for the respondents alternatively prayed that in case the writ petition is allowed, the proceedings that have been initiated during the pendency of the present writ petition based on an order of this Hon"ble High Court, should be allowed to continue. This prayer has been vehemently opposed by the counsel for the petitioner stating therein that the proceedings have now been initiated at the behest of an order passed by this Hon"ble High Court and that too after a period of 15 years. He has relied upon, (1) State of Andhra Pradesh Vs. N. Radhakishan, (1998) 3 AD 581 : AIR 1998 SC 1833 : (1998) 3 JT 123 : (1998) 2 SCALE 672 : (1998) 4 SCC 154 : (1998) SCC(L&S) 1044 : (1998) 2 SCR 693 : (1998) 1 UJ 693 : (1998) AIRSCW 1629 : (1998) 3 Supreme 584 , (2) P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, AIR 2006 SC 207 : (2005) 4 CTC 403 : (2005) 7 JT 417 : (2005) 3 LLJ 527 : (2005) SCC(L&S) 861 : (2005) 2 SCR 474 Supp : (2006) 1 SLJ 67 : (2005) AIRSCW 5690 : (2005) 5 Supreme 611 and (3) The State of Madhya Pradesh Vs. Bani Singh and another, AIR 1990 SC 1308 : (1990) CriLJ 1315 : (1990) 60 FLR 824 : (1990) 2 JT 54 : (1990) LabIC 1488 : (1990) 2 LLJ 529 : (1991) 2 SCALE 744 : (1990) 1 SCC 738 Supp : (1990) SCC 738 Supp : (1990) 1 UJ 583 to contend that delay in institution of a Departmental Enquiry would be unfair. I am of the opinion that this is not a matter of the present writ petition. The petitioner has an independent remedy to challenge the said proceedings and defend himself. This Court is not going to set

aside or quash the proceedings that have already been initiated.

17. With the above observations, the writ petition is allowed to the extent that the order dated 17.1.1998 is hereby set aside. No order as to costs.