
(1977) 10 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 858 of 1972

Tikaram Windwar

APPELLANT

Vs

Registrar, Co-operative Societies, M.P., Bhopal and Another

RESPONDENT

Date of Decision : 27-10-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 226
Police Act, 1861 — Section 34(6)

Citation : (1980) ILR (MP) 624 : (1978) JLJ 201 : (1978) MPLJ 57 : (1978) MPLJ 54

Hon'ble Judges : G.P. Singh, Acting C.J.; Raj Krishna Tankha, J

Bench : Division Bench

Advocate : H.C. Kohli, for the Appellant; S.L. Saxena, Government Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, Actg C.J.

The Petitioner was in Government service as a Sub-Auditor. The Petitioner was declared quasi-permanent from 25th January 1966. While posted at Sanda in District Sagar, the Petitioner was twice convicted u/s 34(6) of the Police Act. By order dated 24th February 1972, passed by the Deputy Registrar, Co-operative Societies, Madhya Pradesh, the Petitioner was dismissed from service on the ground that he was twice convicted by the criminal Court. No inquiry was held before the order of dismissal was passed and no notice was issued to the Petitioner for hearing him. The Petitioner filed an appeal which was dismissed by the Registrar, Co-operative Societies. The Petitioner then filed this petition under Article 226 of the Constitution challenging the order of dismissal.

The learned Government Advocate relies upon Rule 19 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, for the proposition that as the Petitioner was convicted by the criminal Court, no inquiry was necessary and it was also not necessary to notice the Petitioner. Rule 19 reads as

follows:

19. Special procedure in certain cases.-Notwithstanding anything contained in Rule 14 to Rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

Rules 14 to 18 lay down elaborate procedure holding regular departmental enquiry against a Government servant. Rule 19 provides for those cases where the inquiry under Rules 14 to 18 is not necessary. The language of Rule 19 is identical with Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968. Rule 14 of the Railway Servants Rules was construed by the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, It was held that although no elaborate inquiry is necessary, yet the words "may consider the circumstances of the case" postulate consideration of all aspects after hearing the aggrieved party in a summary inquiry. The following passage from the judgment of the Supreme Court is relevant on this point:

The word "consider" has been used in contradistinction to the word "determine". The rule making authority deliberately used the word "consider" and not "determine" because the word "determine" has a much wider scope. The word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction of a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, "the term consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be summary inquiry to be held by the disciplinary authority after hearing the delinquent employee.

The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair-play.

Rule 19 of the Madhya Pradesh Civil Services (Classification, Control and Appeal)

Rules must bear the same construction as was put upon Rule 14 of the Railway Servants (Discipline and Appeal) Rules by the Supreme Court in Challappan's case. Therefore, even in a case where penalty is imposed on a Government employee on the ground of conduct which has led to his conviction on a criminal charge, there should be a summary inquiry after noticing the Government employee concerned in the way pointed out by the Supreme Court in Challappan's case. Conviction on a criminal charge does not necessarily mean that the employee concerned should be removed or dismissed from service. The nature of penalty will naturally depend upon the gravity of the offence for which the employee is convicted. It is, therefore, necessary for the disciplinary authority to decide even in such cases whether in the facts and circumstances of a particular case, what penalty, if at all, should be imposed on the delinquent employee. In determining this question, the delinquent employee should be noticed to put forward his point of view and the circumstances of the case why no penalty or a lesser penalty should be imposed on him. As in the instant case no inquiry was at all held, the order of dismissal cannot be sustained.

The Petition is allowed. The order terminating the services of the Petitioner is quashed. There shall, however, be no order as to costs. The amount of security deposit be refunded to the Petitioner.