

Deepak Nagle Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-20-2014

Judge : Alok Aradhe

Appeal No. : Writ Petition No. 10120 of 2013

Appellant : Deepak Nagle

Respondent : State of M.P.

Judgement :

1. With the consent of learned Counsel for parties, matter is heard finally.
2. In this writ petition, the petitioner inter alia has assailed the validity of the orders dated 28-12-2012 and 22-1-2013.
3. Facts giving rise to filing of the writ petition briefly stated are that the petitioner was appointed as Sub-Engineer on contract basis vide order dated 9-1-2008. The petitioner got executed the work of construction of 500 meters of drain in Gram Panchayat Bada Gaon, Janpad Panchayat, Teonthar, District Rewa. The work of construction of drain was commenced on 3-7-2010 and the completed on 31-8-2010 and a completion certificate was also issued on the same day. It is the case of the petitioner that drain of 500 meters in length was constructed with total expenditure of Rs.2,82,393/-. The Sub-Divisional officer issued two show-cause notices dated 5-10-2011 and 25-1-2011 contained in Annexures P-6 and P-7, respectively to the petitioner in which inter alia, it was alleged that the Gram

Panchayat, Badagaon had got the sanction of construction of drain of 250 meters in length under the guidance of the petitioner. In respect of the aforesaid work a complaint was received which was investigated into and it was found out that a sum of Rs.2,83,393/- was spent against sanctioned amount of Rs.2,84,000/- for construction of 225 meters drain in length against the sanctioned length of 250 meters. It was alleged that the petitioner had done excess valuation in respect of the work in question to the tune of Rs.1,53,759/-. The petitioner was accordingly asked to show cause as to why his services be not dispensed with. The petitioner submitted reply to the aforesaid show-cause notice. It was inter alia pointed out in the reply that total length of drain, which was constructed was 500 meters but the investigating team has got the inspection done behind the back of the petitioner and therefore, half of the length was measured whereas the entire work was done and the completion certificate in this regard was also issued. Thereafter, again a show-cause notice, dated 3-12-2012 was issued to the petitioner by the Collector. The petitioner submitted reply to the aforesaid show-cause notice, however, by an order dated 20-12-2012 the services of the petitioner were dispensed with on the ground that his reply was not found satisfactory. Being aggrieved by the aforesaid order, the petitioner preferred an appeal. The aforesaid order was affirmed in appeal by the Additional Commissioner vide order dated 22nd January, 2013. In the aforesaid factual background, the petitioner has approached this Court.

4. Learned Counsel for the petitioner submitted that services of the petitioner, who was a contractual employee have been terminated by a non-speaking order without affording him proper opportunity of hearing. It was further submitted that the investigation was carried out behind the back of the petitioner. In support of his submission learned Counsel for the petitioner has placed reliance on order dated 20th November, 2012 passed in the case of Makhan Lal Ahirawar Vs. State of M.P., W.P. No. 5098/2012. On the other hand, leaned Panel Lawyer has submitted that the opportunity of hearing was afforded to the petitioner and since the reply submitted by the petitioner was not found satisfactory, therefore, his services were dispensed with.

5. I have considered the respective submission made by learned Counsel for the parties and have perused the record. The petitioner was appointed on contract

basis. Clause 15 of the contract of appointment provides that in case the petitioner is found guilty of any misconduct or is involved in any criminal activities, the Competent Authority shall afford an opportunity of hearing to the petitioner and can terminate the appointment. Thus, it is evident that before terminating the services of an employee, who is employed on contract basis, an opportunity of hearing has to be afforded to the delinquent employee.

6. In *S.N. Mukherjee Vs. Union of India*, (1990) 4 SCC 594, the Supreme Court has held that people must have confidence in the judicial or quasi-judicial authorities. While emphasising the need for assigning reasons. It was held that giving of reasons minimising the chances of arbitrariness and hence, it is an essential requirement of the rule of law. In *Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and others*, (2010) 3 SCC 732, it has been held by the Supreme Court that reason is the heartbeat of every conclusion. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a Higher Forum. It has further been held that recording of reasons is a principle of natural justice. It ensures transparency and fairness in decision making. Similar view has been expressed by a Bench of this Court in *Makhan Lal Ahirwar* (supra).

7. In the instant case, the inspection on the basis of which the show-cause notice was issued to the petitioner was not carried out in the presence of the petitioner. Besides that from perusal of the order of termination of the petitioner, it is evident that reply submitted by the petitioner has not been considered and no reasons have been recorded and merely conclusion has been recorded. The order of termination of the petitioner, which is stigmatic in nature has been passed in violation of principles of natural justice. The impugned orders, therefore, cannot be sustained in the eye of law. Accordingly, the orders dated 28-12-2012 and 22-1-2013 are hereby quashed. Needless to state, the respondents would be at liberty to take action against the petitioner, if so advised, in accordance with law.

8. Accordingly, the writ petition is disposed of.