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Court : Madhya Pradesh

Decided On : Feb-28-1957

Reported in : AIR1957MP118

Judge : A.H. Khan and ;Newaskar, JJ.

Acts : Madhya Bharat Civil Service Punishment and Appeal Rules - Rule 8; Constitution of India - Article 311(2); Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act, 1950 - Sections 2

Appeal No. : Civil Misc. Case No. 43 of 1956

Appellant : Benimadhav

Respondent : State

Advocate for Def. : Shivdayal, Dy. Government Adv.

Advocate for Pet/Ap. : G.P. Patankar, Adv.

Judgement :

Newaskak , J.

1. This is a petition under Article 226 of the Constitution submitted by petitioner Benimadhav s/o Brindaban Prasad of Gwalior for the issue of a writ of mandamus or certiorati against the State of Madhya Bharat and others.

2. The petitioner was employed as a Patwari in Pargana Gird-Gwalior. There were certain complaints received by the Revenue Commissioner, Gwalior, against the petitioner. The Commissioner thereupon directed the Collector Gird by his letter dated 19-6-1953 to make inquiries regarding the conduct of the petitioner in making wrong entries in the village-records and in issuing wrong certificates regarding the entries in the Khasras. The Collector asked the Sub-Divisional Officer to make the inquiry who is his turn asked the Superintendent, Land Records to investigate the matter. The last mentioned Officer deputed Sardar Kanoongo to investigate. After the preliminary investigation, in which the petitioner was only partially afforded opportunity to take part a report was made regarding several irregularities said to have been committed by the petitioner. Thereupon on 18-9-53 the Collector on a recommendation of the Sub-Divisional Officer Gird-Gwalior ordered him to be suspended and a regular departmental inquiry was ordered to be held. He was accordingly handed over a charge-sheet containing twenty-eight charges against him on 28-9-1953 and was called upon to submit his explanation in respect of the same.

3. The petitioner submitted his reply to these charges on 19-10-1953. The Deputy Collector then on 5-11-1953 ordered on the spot inquiry to find out what was the substance in the defence set up by the petitioner. The Assistant Superintendent of Land Records, Mr. Shevle then went to the village concerned in pursuance of this order. He found that fifteen out of these twenty-eight charges ought to be dropped. A final charge-sheet containing 13 charges was prepared and Mr. Shevle recommended that explanation ought to be called from the petitioner in respect of these finally settled charges and thereafter criminal proceedings might be started against him.

4. The Deputy-Collector Gird-Gwalior to whom this report of the Assistant Superintendent was submitted directed issue of the notice to the petitioner on 17-2-1954 intimating to him those thirteen charges which according to him indicated that he had issued wrong certificates, made wrong entries in the Government Revenue records giving rise to improper disputes amongst the cultivators and calling upon him to show cause why he should not be removed from service. This was served upon the petitioner on 2-3-1954. He submitted his explanation on 12-

3-1954. This was again sent to the Assistant Superintendent of Land Records for comment. The Assistant Superintendent Mr. Shevle gave his final report on 30-3-1954 and therein recommended that he should be criminally prosecuted or at least dismissed from service.

5. The Deputy Collector to whom this final report was submitted passed the following order below the report:

'I agree with your opinion. On proof of such serious charges such as are referred to in your report, Patwari Benimadhay is hereby ordered to be dismissed. Orders be issued accordingly.'

The petitioner was dismissed accordingly.

6. He first preferred an appeal against this order to the Collector, and after dismissal of that appeal he preferred a second appeal to the Revenue Commissioner. There too he was unsuccessful. He then moved the Revenue Board by means of a revision and a review petition but without success.

7. The petitioner challenges his dismissal, in the circumstances narrated above on the following grounds :

1. There was no proper departmental inquiry in this case, the petitioner was not given opportunity to cross-examine witnesses and to give evidence in rebuttal. Thus Madhya Bharat Civil Service Punishment and Appeal Rules were not duly complied with.

2. The order of dismissal was passed by the Sub-Divisional Officer. He had no jurisdiction to do so as the provisions of Gwalior State Land Manual ought to be held applicable in this case. Under those provisions it was the Collector alone who could order dismissal of a Patwari and not a Sub-Divisional Officer.

3. Even if provisions of the Madhya Bharat Land Records Manual were held applicable the petitioner could not have been dismissed as indicated in Rule 11. According to that Rule in proof of irregularities in the first instance he could only be warned and on his persistence in the conduct he could be dismissed.

(4) There was no proper compliance of the provisions of Article 311 of the Constitution.

8. As regards these grounds it was contended in the return that the order of dismissal of the petitioner was passed not on the basis of preliminary inquiry conducted by the Asstt. Superintendent Land Records, which was ex parte, but only cm the basis of the charges of deliberate false entries made by the petitioner and that the petitioner was fully intimated as to what these false entries were and how the charges were supported by Revenue records. In these circumstances the inquiry, as a result of which the petitioner was removed from service, is one in which he had full opportunity to meet the charges.

9. As regards impropriety of show-cause notice it is contended that the said show-cause notice was included in the final charge-sheet and the petitioner got the 'opportunity to show cause against his proposed dismissal send that there was no prejudice by any omission or irregularity in the matter.

10. As regards the competency of the Sub-Divisional Officer to pass the order in question on 10-4-1954 it is contended that on the said date he was fully competent to pass the order. The inquiry as a result of which the petitioner was dismissed was not started under the procedure prescribed in Gwalior Land Records Manual but under the Madhya Bharat Land Records Manual which came into force on 11-2-1954 and which empowered the Sub-Divisional Officer to pass the order in question.

11. It was also contended that the Civil Service Punishment and Appeal Rules as well as Circular No. 7/1880/2, s. e. 7/52 Gwalior dated 31-7-1952 have no application to this case.

12. It was therefore prayed that the petition be dismissed.

13. Three main points emerge for consideration on the basis of these respective contentions of the parties in this case.

First--Had the Sub-Divisional Officer jurisdiction to pass the order of dismissal dated 10-4-1954?

This will involve consideration of questions :

Firstly as to whether the provisions of Gwalior Land Records Manual were applicable or those of Madhya Bharat Land Records Manual and

Secondly as to whether even under the Madhya Bharat Land Records Manual it is competent to order dismissal of a Patwari without his being initially warned.

Second--Whether there was proper departmental inquiry in which the petitioner was given opportunity to meet the charges against him?

This will involve consideration of the question whether the Madhya Bharat Civil Service Punishment and Appeal Rules are applicable in this case.

Third--whether the petitioner was given notice under Article 311(2) of the Constitution at a proper stage?

If not what is its effect?

14. It was contended by Mr. Patankar on behalf of the petitioner that the inquiry was actually started on the basis of the letter of the Revenue Commissioner dated 19-6-1953. The petitioner was ordered to be suspended on 18-9-1953 and a regular departmental inquiry was ordered to be held under the orders of the Collector dated 21-9-1953. A list of 28 charges was given, to the petitioner on 28-9-53 and he submitted his explanation to these charges on 19-10-1953. On 5-11-1953 the Sub-Divisional Officer ordered the Assistant Superintendent Land Records to verify how far the explanation given by him was correct. He examined the entries in the Khasras with reference to the state of affairs on the spot. It was at this- stage that the Madhya Bharat Land Records Manual came into force on 11-2-1954. Under Section 16 of the Gwalior Land Records Manual which was in force in the area in question orders for dismissal of a Patwari could be passed by Collector after an inquiry while under the Madhya Bharat Land Records Manual, Sub-Divisional Officer could have passed such an order.

15. In the present case as the inquiry was already in progress and had practically ended when the new provision came into force, it was the Collector alone who

could have passed the order of dismissal and not the Sub-Divisional Officer. Reference was also made by the learned counsel to Sections 2, 3 and 4 (7) of the Madhya Bharat Land Revenue and Tenancy Act for contending that this should be considered to be a case pending before a revenue Court when the new rules under Section 153 of the Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act known as Madhya Bharat Land Records Manual came into force and that therefore it ought to be governed by the law in force prior to its coming into force.

16. It was next contended that even if it be held that the Madhya Bharat Land Records Manual was applicable, still by reason of provisions of Section 11 (b) of Volume 1, Chapter I, he cannot be dismissed unless he is initially given a warning and he fails to improve.

17. As regards the second and the third ground it was contended that there was no proper departmental inquiry with fair opportunity to the petitioner to defend himself. Witnesses were examined behind his back and no opportunity was given to him to cross-examine them.

18. It was further contended that if it be assumed that the initial proceedings were of fact finding nature yet after the charge-sheet containing 28 charges was given and petitioner's reply elicited, there was no regular inquiry with reference to the defence set up by the petitioner. Further assuming that what is material is the final charge-sheet containing 13 charges there was no inquiry subsequent to the reply given by the petitioner on 19-10-1953. The ultimate finding was given by the Superintendent, Land Records, Mr. Shevle, on 30-3-1954. It was on the basis of this finding with which the Deputy Collector agreed that a final conclusion was arrived at. The notice under Article 311(2) of the Constitution ought to have been given to the petitioner after this date. A notice given to the petitioner in the charge-sheet cannot be said to be in compliance with Article 311(2) of the Constitution. Reliance was placed upon the decision reported in M. A. Waheed v. State of Madhya Pradesh, AIR 1954 Nag 229 (A), for the view that were that proceedings of departmental inquiry were not conducted as laid down in the rules, the matter becomes justiciable and a petition for the issue of writ is competent. This decision

was followed in Shrivastava v. I. G. of Police, AIR 1957 Nag 18 (B). Reliance further was placed upon the decision in High Commr. for India v. I. M. Lall, AIR 1948 PC 121 (C) and further on Joseph John v. State of Tra-vancore-Cochin, (S) AIR 1955 SC 160 (D), for the view that a notice under Article 311(2) of the Constitution ought to he given when as a result of regular departmental inquiry provisional conclusion is reached that the person concerned is guilty.

19. On the other hand the Deputy Government Advocate Mr. Shivdayal contended that the order of dismissal was practically based on facts admitted by the petitioner. There were 28 charges, 25 out of which related to making of incorrect entries. The petitioner gave his explanation to these 28 charges and in view of that explanation certain charges were dropped and finding was given with respect of 13 charges against him and it was at this stage that he was given notice under Article 311(2) under the orders of the Deputy Collector who was at that stage authorised to pass an order of dismissal, the Madhya Bharat Land Records Manual, Vol. 1, Ch. 1, Section 11, having become operative from 11-2-1954.

20. The learned counsel contended that the expression final charge-sheet used for the document which gave the findings and called upon the petitioner to show cause why he should not be dismissed from service is unhappy but it is urged that the petitioner cannot be said to have been misled by the use of this expression or any way prejudiced.

21. As regards the first question it appears that the Madhya Bharat Land Records Manual which by its provision contained in Vol. 1, Ch. 1, Section 11, empowered the Sub-Divisional Officer to pass orders of dismissal in the cases of Patwaris working under him, came into force on 11-2-1954. The order of dismissal in this case passed by the Sub-Divisional Officer was dated 10-4-1954. It is thus clear that he was fully competent to pass the order on that date. Mr. Patankar's reference to Sections 2, 3, 4 of the Madhya Bharat Land Revenue and Tenancy Act, is clearly inapt. Section 2 only refers to the cases which were pending when that Act came into force on 15-8-1950. That section has no reference to the matter pending when any rules are newly framed under that Act. Moreover it is not disputed in the return that the inquiry' prior to the formulation of 28 charges was ex

parte and was in the nature of investigation. According to the return the inquiry which was material was on the basis of the final charge-sheet which was given to the petitioner on 2-3-1954 and that at that time the Sub-Divisional Officer was fully competent to order an inquiry and, on finding the petitioner guilty to dismiss him. It therefore follows that inasmuch as no reliance is placed upon the inquiry anterior to the final charge-sheet, there is no impropriety involved in the order of the Sub-Divisional Officer directing the inquiry or ordering dismissal so far as this part of the contention is concerned.

22. As regards the second contention it is clear that the inquiry conducted by the Assistant Superintendent of Land Records, Mr. Shevle, prior 'to the formation of 28 charges was admittedly ex parte and no proper opportunity was given to the petitioner in that inquiry. At the second stage when the 28 charges were framed and delivered to the petitioner and his reply elicited, no definite findings of the Inquiry officer or of Sub-Divisional Officer with regard to the individual charges are brought out to notice nor was the petitioner made aware of what these findings were. All that appears from the record and particularly Annexure 'G' dated 16-3-1954 (which contains a brief report of Mr. Shevle) is that according to his opinion 15 out of 28 charges ought to be dropped and that a final charge-sheet containing 13 charges should be served again upon the petitioner and his explanation sought.

23. The learned Deputy Government Advocate says that what the petitioner was served with under this order were the findings of the department and that the use of expression charge-sheet was unhappy. This contention is clearly not in line with the statements contained in the return. It was never contended in the return that what was termed 'final' charge-sheet were the findings as a result of a regular departmental inquiry. In paras 7 and 8, page 5 of the return, it was stated:--

'The A. S. L. R. verified the entries in the light of the Pattas referred to by the petitioner and in the light of the Tahsildar's orders on which he relied, he recommended, by his report dated 16-2-54 (Annexure G/Ex. P/l) that some of the charges be dropped and he recommended amended charge-sheet (Annexure 'H') containing only 13 charges in which 12 items were in respect of clearly wrong revenue entries based on revenue-papers only and one item was in respect of the

entry connected with Chiman Singh.'

'As to para 8 of the petition it is admitted that a final charge-sheet containing 14 charges was given to the petitioner by the Sub-Divisional Officer, Shri Chada as alleged."

24. It is thus clear from the above that the second charge-sheet was never to be the provisional conclusion of the department as regards those charges. The inquiry really began by serving this charge-sheet and had not ended when it was prepared. It also does not appear that during the period when the first charge-sheet was given and before the order for giving of second charge-sheet was passed, there was any regular departmental inquiry held. In fact Annexure 'G' indicates that all that was done was that the Inquiry-officer went to the spot along with the petitioner on 21-11-1053 and on 22-1-1954 he went to the Tehsil to verify the statements of the petitioner put forward in his defence and ultimately dropped 15 out of 28 charges. It docs not appear that any opportunity was given to the petitioner to cross-examine the persons connected with the impugned entries or lead such evidence as he wanted to.

It was contended in this connection that the thirteen charges were such that they needed no further inquiry in the shape of taking oral evidence and that the fact that the petitioner failed to make correct entries was quite plain from the various revenue-papers examined by the Inquiry-officer and the position noticed on the spot. I am unable to appreciate this argument. The position on the spot was known on the basis of statements made by some one. It was incumbent upon the Inquiry-officer to record their statements and permit the petitioner to cross-examine them. Rule 8 of the Madhya Bharat Civil Service Punishment and Appeal Rules which is not shown to be inapplicable in this case requires the holding of inquiry as regards the allegations which are not admitted.

25. Then there were allegations that somebody else was asked to work in place of the petitioner and some of the entries were made by him and that he had too much work and found little time to check. He also had alleged in his defence that some land entered as 'Kabrastan' was under cultivation and persons entered were in actual occupation, that Chaturbhuj was known as Daru Maharaj and that Chiman

Singh was not in actual occupation. May be all these defences were ultimately liable to be rejected but he was entitled to have an opportunity to establish what he said. Where there is failure to follow the rules of procedure the matter becomes justiciable as held in AIR 1954 Nag 229 (A).

26. It further appears front the decision of the Commissioner in appeal that according to his view it was the report dated 30-3-1954 submitted by the Superintendent, Land Records, which contained the findings in respect of the final charge-sheet. It was therefore incumbent at this stage to give to the petitioner a show-cause notice as required by Article 311(2) of the Constitution.

27. In AIR 1948 PC 121 (C), it was observed by their Lordships of the Privy Council:--

"It is when a stage is reached when definite con-elusions have been 'come to as to the charges, and the actual punishment to follow is provisionally determined on, that the statute gives the civil servant an opportunity for which Sub-section (3) of Section 240 of the Government of India Act, 1935 (which corresponds to Article 311) makes provision and that at that stage a reasonable opportunity has to be afforded to the civil servant concerned. It was also held that there was no anomaly in the view that the statute contemplates a reasonable opportunity at more than one stage.'

This view is approved by their Lordships of the Supreme Court in (S) AIR 1955 SC 160 (D).

28. It therefore follows that the petitioner was entitled to a notice under Article 311(2) of the Constitution only after ultimate findings of the Superintendent, Land Records, dated 30-3-1954 were arrived at. The notice included in the final charge-sheet cannot be said to be one in compliance with that provision. This fact seems to have been appreciated by the opponents. It was contended by them in 12 (III) of their return as follows:--

'The show-cause notice clause was incorporated in the final charge-sheet and the petitioner got opportunity of showing cause against the orders of removal from

service and no prejudice is caused to him by omission or irregularity in the matter.'

29. Notice under Article 311(2) is a constitutional right of the petitioner under Article 311(2) and the protection afforded by this provision cannot be allowed to be whittled down on considerations of immaterial irregularity or absence of prejudice.

30. In my opinion therefore when the department after preliminary investigation decided to hold a regular departmental inquiry against the petitioner it ought to have followed the provisions contained in Rule 8 of the M. B. Civil Service Punishment and Appeal Rules, and it is only on arriving at a finding on the basis of such an inquiry that a notice under Article 311(2) ought to have been given to satisfy the constitutional requirement. It is to meet such a view that the Privy Council and the Supreme Court clarified by saying that there is no anomaly in the view that the statute contemplates a reasonable opportunity at more than one stage.

31. As I have held in favour of the petitioner on these questions I do not consider it necessary in this case to examine his fourth contention that under Rule 11 of the Madhya Bharat Laud Records Manual, he was entitled to a warning in the first instance. In this respect it was stated by the learned Deputy Government Advocate that that would apply where there is a single mistake and not number of them and the dismissal was more for fraud, misconduct and inefficiency on the discharge of his duty.

32. The counsel for the parties have tried to address on the details of charges and the findings thereon of the Revenue Courts, but I have refrained from referring to the same as that would not be within the scope of jurisdiction exercisable by this Court under Article 226 of the Constitution.

33. I therefore hold that the order dated 10-4-1954 dismissing the petitioner is illegal, both on the ground that there was no proper departmental inquiry in compliance with Rule 5 of the Madhya Bharat Civil Service Punishment and Appeal Rules and on the ground that there was no proper notice under Article 311(2) of the Constitution, and ought to be quashed. It is hereby quashed accordingly.

34. The petitioner will be entitled to costs of this petition. Counsel's fee may be taxed at Rs. 50.

A.H. Khan, J.

35. I agree.

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