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Court : Madhya Pradesh

Decided On : Feb-25-2004

Reported in : 2004(4)MPHT337; 2004(4)MPLJ20

Judge : Arun Mishra, J.

Acts : Madhya Pradesh Legal Services Authority Rules, 1996 - Rule 16(2) and 16(4); [Constitution of India](#) - Articles 14, 16 and 311; Service Law

Appeal No. : Writ Petition No. 5493/2001

Appellant : Manish Kumar Shrivastava

Respondent : State of M.P. and ors.

Advocate for Def. : Samdarshi Tiwari, Panel Lawyer for the Respondent No. 1 and ;Ashish Shroti, Adv. for the Respondent Nos. 2 and 3

Advocate for Pet/Ap. : Sharad Verma, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Arun Mishra, J.

1. In this writ petition the petitioner has assailed the order (P-5) of termination of his services passed by the Secretary, M.P. State Legal Services Authority.
2. Briefly stated the facts indicate that petitioner was appointed as Asstt. Grade III on compassionate basis. Appointment order (P-1) was passed on 28-7-^99. Petitioner worked with dedication, devotion and honesty and no adverse remark was communicated. On 14-5-2001 respondent No. 3, District Legal Services Authority, Raigarh, passed an order (P-2) and relieved the petitioner from Raigarh and directed him to report the Secretary, M.P. State Legal Services Authority, Jabalpur. Petitioner reported to the Secretary on 19-5-2001, no posting was given so that he could get the salary. An application (P-4) was submitted on 21-6-2001, An order (P-5) terminating his services was passed on 21-8-2001. No reason has been mentioned to terminate the Service. Neither inquiry has been held nor any show-cause notice was issued, thus, the order is illegal, arbitrary and deserves to be quashed.
3. A return has been filed by respondent No. 2, M.P. State Legal Services Authority. It is contended in the return that District Legal Services Authority, Raigarh, has reported vide memo (R-2/3) dated 14-5-2001 that during the period petitioner worked, he had taken 21 days of casual leave, 41 days of earned leave, 10 days of commuted leave and 118 days of leave without pay. It was further reported that petitioner was habitual of remaining absent and leaving the headquarter without permission. He has also not passed Hindi Typing Examination nor did he make any effort to pass the said examination. He did not carry out the routine work and failed to carry out the orders given to him by superior authority. It is further reported that he did not remain on his seat and is found near Panthelas. It was also reported that petitioner was issued show-cause notice and was given character roll warning for unauthorised absence, leaving the headquarter without permission. Respondent No. 3 was fed up with the functioning of the petitioner as he did not improve at all, thus, passed an order (R-4) dated 14-5-2001 relieving the petitioner from his office with direction to report in the office of respondent No. 2, M.P. State Legal Services Authority, Jabalpur. Petitioner did report for duty on 19-5-2001 but left the office without any information. He submitted an application on 21-6-2001 for payment of his salary and allowances but then he again

remained absent from the office and did not attend the office thereafter. Under sub-rule (2) and sub-rule (4) of Rule 16 of the M.P. Legal Services Authority Rules, 1996, disciplinary matters shall be governed by the State Govt. Rules and under sub-rule (4) of Rule 16, the employees of District Legal Services Authority shall be under general control of State Authority. Petitioner's service was purely temporary, liable to be terminated at any time without notice, thus, the services were dispensed with as per order (P-5) dated 21-8-2001. Since the petitioner was temporary employee it was not necessary to hold any inquiry in respect of his irregular functioning. The respondent has already stated the reasons behind his termination, a person who takes leave of and on remains absent without permission and does not work, can not be kept in the employment at the cost of public exchequer.

4. Shri Sharad Verma, learned Counsel appearing for the petitioner, has submitted that impugned order (P-5) is illegal, arbitrary and violative of principles of natural justice, no inquiry was held; petitioner was not given posting order when he had reported in the office of M.P. State Legal Services Authority at Jabalpur and Secretary has terminated the service outrightly. When the appointment was made on compassionate ground and misconduct is the foundation of the order, inquiry ought to have been held. He has further submitted that respondent No. 3 has unauthorisedly relieved the petitioner from Raigarh, thereafter joining was not allowed at Jabalpur and outrightly termination order was passed without any notice or hearing opportunity, thus, reinstatement of the petitioner be directed with back wages.

5. Shri Ashish Shroti, learned Counsel appearing on behalf of the respondent Nos. 2 and 3, has submitted that the conduct of the petitioner was not proper. His services were temporary and could have been dispensed with as per the conditions mentioned in the order of appointment at any time without any notice, thus, no interference is called for in this writ petition.

6. It is clear that petitioner was offered compassionate appointment in the year 1999. It appears that respondent No. 3, Chairman, District Legal Services Authority, Raigarh (Chhattisgarh), has relieved the petitioner without any order

passed by respondent No. 2, M.P. State Legal Services Authority, petitioner was asked to report to the Secretary, M.P. State Legal Services Authority at Jabalpur and to obtain orders. When petitioner reported at Jabalpur, was not given any posting order by the Secretary, M.P. State Legal Services Authority. Petitioner submitted an application (P-3) on 19-5-2001 and it has not been disputed in the return filed by respondent No. 2 that petitioner did submit the joining, he was present in office at Jabalpur. Petitioner has prayed in the application (P-3) for giving posting order, however, no posting order has been filed by respondent No. 2 along with its return. It appears-that .petitioner was not given the posting order. Thereafter petitioner has submitted yet another representation (P-4) for giving posting order to him so that he was able to obtain salary. Thereafter no posting appears to have been issued. Outrightly petitioner was given termination order (P-5) dated 21-8-2001. No reason has been mentioned in the order (P-5) for termination of service of the petitioner. The stand taken that petitioner absented himself after submitting the joining on 19-5-2001, can not be accepted as petitioner was not given any posting order where he has to render the duty. He was asked by the District Chairman, Raigarh to report to the Secretary of State Legal Services Authority, posting order was required to be issued which was not issued, petitioner was not allowed joining nor given any posting is clear and outrightly without issuance of any show-cause notice his services were terminated as per order (P-5).

7. The case of the petitioner has not been properly dealt with in consonance of the principles of natural justice, Articles 14 and 16 of the [Constitution of India](#). In the return it is alleged that foundation of the order was the various misconduct of taking leaves, remaining unauthorisedly absent and leaving the headquarter without permission and not passing Hindi Typing Examination and inefficiency, inquiry has to be held in such allegations against an employee, in case his services are to be terminated on the basis of alleged misconduct, inquiry has not been held, is not in dispute, no show-cause notice was given before terminating the services. The services of the petitioner have been dispensed with on the ground of misconduct without framing charges against him, thus, the impugned order can not be allowed to sustain.

8. In *Ku. Neelima Misra v. Dr. Harinder Kaur Paintal and Ors.* (AIR 1990 SC 1402), the Supreme Court held that the order having civil consequences should be passed consistently with the observance of principles of natural justice. They are inherent in every administrative civil action carrying civil consequences. 'The shift now is to a broader notion of 'fairness' or 'fair procedure' in the administrative Action. In *Shridhar son of Ram Dular v. Nagar Palika, Jaunpur and Ors.* (AIR 1990 SC 307), the Supreme Court has held that it is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. In *Union of India and Ors. v. Jaykumar Parida*, (1996) 1 SCC 441, the Supreme Court held that when an incumbent had rendered three years service, there was allegation of having secured appointment by producing false income certificate, it was held that prior opportunity of hearing is a must. In *Director General of Police and Ors. v. Mrityunjay Sarkar and Ors.*, AIR 1997 SC 249, the allegation was of securing the appointment on the basis of fake list of employment exchange. It was held that hearing opportunity should be provided before passing an adverse order; opportunity of representation should be afforded and thereafter speaking order should have been passed. Principles of natural justice can not be fitted in a strait jacket as held by Their Lordships in *Ashwani Kumar and Ors. v. State of Bihar and Ors.*, AIR 1997 SC 1628. In *Uptron India Ltd. v. Shammi Bhan and Anr.*, AIR 1998 SC 1681, the Supreme Court held that automatic termination clause in the event of over-staying the leave can not be invoked without holding an enquiry into the causes of such overstay. In *Basudeo Tiwary v. Sido Kanhu University and Ors.*, AIR 1998 SC 3261, the Supreme Court held that if appointment is contrary to rules, it can not be set aside without hearing even though rule provides that such an appointment can be terminated without notice.

9. In *Anoop Jaiswal v. Government of India and Anr.*, AIR 1984 SC 636, it has been laid that when there is allegation made against the probationer of misconduct it has to be inquired into before taking punitive action in accordance with the principles of natural justice. The Apex Court has laid down thus :- 'On behalf of the Union of India reliance has been placed on *State of Punjab v. Sukh Raj Bahadur*,

(1968) 3 SCR 234: (AIR 1968 SC 1089). Union of India v. R.S. Dhaba, (1969) 3 SCC 603, State of Bihar v. Shiva Bhikshuk Misra, (1971) 2 SCR 191: (AIR 1971 SC 1011), R.S. Sial v. State of UP., {191 A) 3 SCR 754 : (AIR 1974 SC 1317), State of UP. v. Ram Chandra Trivedi, (1977) 1 SCR462: (AIR 1976SC2547) and V. Saxena v. State of Madhya Pradesh, (1967) 2 SCR 496 : (AIR 1967 SC 1264). We have gone through these decisions. Except the case of Ram Chandra Trivedi (supra) all other cases referred to above were decided prior to the decision in Samsher Singh's case (AIR 1974 SC 2192) (supra) which is a judgment delivered by a Bench of seven Judges. As pointed out by using all these cases including the case of Ram Chandra Trivedi (supra) the principle applied is the one enunciated by Parshotam Lal Dhingra 's case (AIR 1958 SC 36) (supra) which we have referred to earlier. It is urged relying upon the observations in Shri Sukh Raj Bahadur's case (supra) that it is only when there is a full scale departmental enquiry envisaged by Article 311(2) of the Constitution / . e., an enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any termination made thereafter will attract the operation of Article 311(2). It is significant that in the very same decision it is stated that the circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial. As observed by Ray, C.J. in Samsher Singh's case (supra) the form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2). 12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the-Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.'

10. From the return filed by the respondent No. 2, it is clear that order is not simpliciter of termination, it has the foundation of misconduct behind curtail, thus,

the services could not have been terminated without holding enquiry.

11. In the facts and circumstances of the case, I find that order is not sustainable and is hereby quashed. This writ petition is allowed. Petitioner is directed to be reinstated without back wages and it would be open to the respondents to take action in accordance with law against the petitioner if it is considered necessary. Parties to bear their own costs as incurred.

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