

Dev Sharma Vs. M.P.E.B. and Others

Dev Sharma Vs. M.P.E.B. and Others

SooperKanoon Citation : sooperkanoon.com/507563

Court : Madhya Pradesh

Decided On : Oct-16-2000

Reported in : 2001(4)MPHT72; 2001(3)MPLJ202

Judge : Mr. J.G. Chitre, J.

Acts : Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 - Rule 9(5); [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition No. 1297/99

Appellant : Dev Sharma

Respondent : M.P.E.B. and Others

Advocate for Def. : Shri Surjeetsingh, Adv.

Advocate for Pet/Ap. : Shri S.M. Sanyal, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

J.G. Chitre, J.

1. The petitioner is hereby making a prayer to this Court to issue a Writ of Mandamus in his favour and against the respondents directing the respondents to

revoke the suspension order which' has been passed suspending him dated 16-4-99. The petitioner for substantiating this prayer is taking the shelter of provisions of Rule 9 (5) (a) of the M.P.E.B. Notification bearing No. 01-01/IV/ I-B-249/A/1989/16, Jabalpur, dated 5-8-89. The said 5 (a) reads :--

'An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so: Provided that the order of suspension shall stand revoked on expiry of the period of 45 days from the date of order of suspension in case a copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government Servant by the disciplinary authority (if it is not the State Government) without obtaining the orders of the State Government for extension of the period for issue of the said documents, as required under sub-rule (2-a): Provided further that the order of suspension shall stand revoked on expiry of the period of 90 days from the date of order of suspension, in case the copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant.'

2. Shri Sanyal pointed out that the respondents issued a letter to petitioner bearing No. SE/O & M/IND/CR/99/1992 on 16-7-99. It is the submission of Shri Sanyal that the said date be taken to be the date when the charge-sheet of Departmental Enquiry against the petitioner has been issued to him. He submitted further that the said charge-sheet has been issued against him after a period of 90 days and, therefore, the respondents need to be directed by the Writ of Mandamus to revoke the said order of suspension dated 16-4-99.

3. Shri Surjeetsingh submitted that the charge-sheet in respect of D.E. has been issued by the Competent Authority i.e., M.P. Electricity Board against the petitioner on 20th June, 1999 and that is well within the period of 90 days and, therefore, the Writ Petition deserves to be dismissed. Shri Surjeetsingh has placed reliance on the judgment of the Supreme Court in the matter of State of M.P. v. L.P. Tiwari, reported in AIR 1994 SC 2175, for substantiating his submissions. Shri Surjeetsingh further submitted that the petitioner was evading the service of the said charge-sheet on him and, therefore, there was no alternative left with the

respondents to issue a letter to him which is dated 16-7-99 when he was available for service for the first time. Shri Surjeetsingh pointed out that it has been held by the Supreme Court in the matter of L.P. Tiwari's case (supra) that when charges could not be served on the delinquent within the stipulated time as he became scarce, suspension does not become void.

4. In view of these submissions and as the matter is connected with the Electricity Board Officers and the suspension which is indirectly connected with public service, this petition has to be decided finally at Motion hearing stage.

5. Shri Sanyal by his submissions attracts the attention towards the procedure followed by respondents for suspending the petitioner and thereafter initiating a Departmental Enquiry against him. He submitted that the suspension needs to be revoked as the action of initiating the D.E, against him is beyond the period of 90 days which is contrary to the provisions of sub-rule (5) (a) second proviso. Countering that, Shri Surjeetsingh submitted that the Competent Authority is the M.P. Electricity Board and not the Superintending Engineer (O & M) and, therefore, no importance can be given to the letter dated 16-7-99. He submitted that it is at the most a communication and that was required to be so issued by the S.E., M.P.E.B., Indore, because the petitioner was avoiding the service on him and it was difficult to serve on him the Articles of charges in context with the said Department Enquiry.

6. When an officer-delinquent is avoiding to be served and becoming scarce, then his case would fall under four corners of the observations made by the Supreme court in L.P. Tiwari's case (supra). But if the documents filed on record and the action taken by the respondents (Electricity Board) are themselves showing that the action taken by them is suffering from delay and is bad in view of the provisions made for it, the Court will have to consider the prayer made by the petitioner with a serious view. Provisions of sub-rule (5) have been brought in existence for the purpose of ensuring a speedy action in respect of the action to be taken in context with the suspension which is to be effected on a delinquent employee of such Board and, therefore, the proviso has been provided to sub-rule (5) by which it has been made compulsory that the copy of the charges and other

documents connected with the D.E. should be issued within a span of 45 days if the delinquent happens to be a Government servant and within 90 days, if he is falling in other categories. The letter addressed to the delinquent and which has been signed by Addl. Secretary (P), M.P. Electricity Board is dated 22-6-99. It directs the petitioner that he happens to be at liberty to file the written-statement of defence if he wants to submit but that should be submitted to the under-signed, that means Addl. Secretary, within 15 days from the date of receipt of the said memo. The letter signed by the S.E. (O & M), M.P.E.B., Indore, dated 16-7-99 shows that he received the said letter of Addl. Secretary dated 22-6-99 on 7-7-99. This delay between 22-6-99 and 7-7-99 is unexplainable or has not been properly explained by the respondents. Apart from that, the letter signed by the Superintending Engineer dated 16-7-99 itself shows that the said letter has been received by petitioner on 7-7-99. If that was so, why there has been a delay of writing a letter addressing it to the petitioner till 16-7-99, Why action was not taken on 7-7-99, by writing the said letter. Even this Court could have understood the difficulty of M.P.E.B. had it been written on 8-7-99. There is no satisfactory explanation about this delay from 7-7-99 to 16-7-99.

7. Because these two documents are interrelated with each other, they speak themselves and as they are speaking themselves, this Court finds no necessity of giving importance to the affidavits filed by the respondents. The witnesses may speak lie but the documents generally do not. The lethargy shown by the respondents which has been indicated by these two letters runs across the spirit which has been indicated by second proviso to sub-rule (5). It smells of camouflage for cementing the delay. At least the respondents have not made out the case of proving that petitioner was avoiding the service and had become scarce. Thus, they are not entitled to get the advantage of the observations of the Supreme Court in L.P. Tiwari's case (supra).

8. The words which have been used in these two provisos 'are not issued to such Government Servant' will have to be read properly. The words will have to be read together and they will have to be read by keeping a correlation with each of those words used in the said sentence like 'are not issued to such Government Servant'. In cases of disciplinary actions, the authority has to act fairly and not callously.

Camouflage, whatsoever has to be deprecated. What is not just and fair, will have the smell of arbitrariness and, therefore, it will have to be erased. Therefore, it becomes incumbent on the respondents to satisfy the Court that they have done all their best for issuing the copy of charges and other documents referred to in sub-rule (2-a) to such delinquent. In this case the documents of the respondents speak against them and, therefore, this Court has to uphold the prayer made by the petitioner for granting the Writ of Mandamus directing the respondents to revoke the order of suspension passed against him on 16-4-99.

9. Thus, petition is allowed with cost. Respondents are directed to revoke the order of suspension passed against the petitioner. The respondents are at liberty to take appropriate action against the petitioner but that should be consistent with the Rules indicated by the Notification referred to above.

10. Writ Petition allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com