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Court : Madhya Pradesh

Decided On : Jul-09-2008

Reported in : 2008(5)MPHT146

Judge : Shantanu Kemkar, J.

Appellant : Jitendra

Respondent : State of Madhya Pradesh and ors.

Disposition : Petition allowed

Judgement :

ORDER

Shantanu Kemkar, J.

1. By this petition filed under Article 226/227 of the Constitution of India, petitioner has challenged the order dated 18-6-05 (Annexure P-9) by which his services have been terminated by the 3rd respondent.

2. The petitioner was appointed initially vide order dated 30-1-1996 on contract basis on the post of District Project Coordinator, Dhar under 'Rajeev Gandhi Prathmik Shiksha Mission' (for short, 'RGPSM'). The period of his appointment was extended from time to time up to 30-4-05. The 3rd respondent, Mission Director Jila Shiksha Kendra, Dhar issued an order dated 25-5-2005 (Annexure P-

6), directing the 4th respondent to take the additional charge of the post of District Project Coordinator Dhar from the petitioner. Aggrieved, the petitioner submitted a representation and filed a Writ Petition No. 1041 of 05 before this Court. The said writ petition was disposed of by this Court vide order dated 2-6-05, directing the respondents to consider and decide the petitioner's representation within four weeks. However, the respondents had passed the impugned termination order dated 18-6-05 (Annexure P-9) informing therein that the decision has been taken on 14-6-2005 by State Level Appointment Committee, not to extend his period of appointment. Feeling aggrieved by the said order dated 18-6-2005; the petitioner has filed this petition.

3. Case of the petitioner is that he was working since 1996 on the post of District Project Coordinator at Dhar. His work was satisfactory and as such the impugned order of termination as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

4. The respondent Nos. 1 to 3 filed reply and have stated that petitioner was appointed on contract basis. He was found indulged in undesirable activities amounting to degradation of the dignity of the RGPSC, and in the circumstances his services have rightly been terminated. It is further stated that a notice dated 7-5-04 (Annexure R-1) was issued to the petitioner to show cause about the alleged illegalities in purchases. His reply Annexure R-2 was not found satisfactory by the Mission Director and as such a letter dated 9-8-04 (Annexure R-3A) was sent by the Mission Director to the Commissioner, Rajya Shiksha Kendra, Bhopal for taking disciplinary action against the petitioner. Thereafter a three member Committee enquired into the illegalities and irregularities in the purchases and submitted its report dated 2-3-2005 (Annexure R-4) to the 3rd respondent. Thereafter by the State Level Appointment Committee in its meeting held on 14-6-2005 took a decision to terminate the petitioner's services being unsatisfactory. Accordingly, the impugned order has been passed which is perfectly justified.

5. Petitioner had filed rejoinder pointing that the impugned termination order is stigmatic in nature and is based upon an enquiry which was conducted without affording an opportunity of hearing to him and behind his back.

6. Heard learned Counsel for parties and perused the documents filed by them,

7. After going through the impugned order; averments made in the petition; reply and rejoinder; it is clear that the respondents had issued a show-cause notice to the petitioner alleging the irregularities committed by him in purchasing various articles. Thereafter a three member Committee enquired and found illegalities and irregularities in the purchases. The decision of the Committee was on the basis of enquiry conducted behind the back of the petitioner. On the foundation of such report, the State Level Appointment Committee held the petitioner's services to be unsatisfactory and took decision to terminate him from service.

8. True, it is that in the impugned order no allegation about unsatisfactory record or misconduct has been mentioned. However, a reference has been made in the said order of termination about the decision dated 14-6-05 taken by the said State Level Appointment Committee in an enquiry conducted behind the back of the petitioner. Having regard to this and the stand taken by the respondents in reply as referred to above it is graphically clear that foundation of the impugned order of termination is punitive in nature. On scrutiny of the entire factual scenario leading to the termination of the petitioner's services, there remains no doubt that order of termination passed against the petitioner is stigmatic in nature and cannot be regarded as termination simpliciter. The foundation of impugned order is decision of the State Level Appointment Committee, which is based upon the enquiry report of the three Member Committee, which had conducted the enquiry behind the back of the petitioner.

9. In the case of *Shamshersingh v. State of Punjab* : (1974)ILLJ260SC it has been held by the Supreme Court that form of the order is not conclusive and innocuously worded order can be passed on a foundation of grave charge.

10. In the case of *State of U.P. v. Ramchandra Trivedi* : (1977)ILLJ200SC , it was held by the Supreme Court, that the motive in passing an order of termination is not a relevant factor. What is determinative is the foundation on which it is based. It is foundation which makes the order punitive in nature.

11. In the case of Dipti Prakash Banerjee v. Satyendra Nath Bose, National Centre for Basic Sciences, Calcutta and Ors. : [1999]1SCR532 , it has been held by the Supreme Court that the material which amounts stigma need not be mentioned in the order of termination of the Probationer but might be contained in any document referred in the termination order or in its annexures. Obviously such a document could be asked for or called for by any future employer of the probationer. In such case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted.

12. In the case of Radheshyam Gupta v. U.P. Industries Agro : (1999)ILLJ432SC , the Supreme Court has held that where the termination is preceded by an enquiry and evidence is received and findings as to misconduct or a definitive nature are arrived at behind back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive.

13. In some what identical situation, learned Single Judge of this Court in the case of Rahul Tripathi v. Rajeev Gandhi Shiksha Kendra 2001 (3) M.P.H.T. 397 : 2001 (3) MPLJ 616, has quashed the termination order and held that petitioner shall reap all the consequential benefits.

14. Having regard to the aforesaid legal position there remains no iota of doubt that the impugned termination order dated 18-6-05 (Annexure P-9) though, innocuously worded but is founded upon the enquiry conducted behind the back of the petitioner about the alleged misconduct, in the circumstances, the same deserves to be and is hereby quashed.

15. As a result, the petitioner shall be entitled for reinstatement with all consequential benefits.

16. The petition is allowed, but with no order as to costs.

