

Poona Ram Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-12-1981

Reported in : 1981WLN(UC)194

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 796 of 1974

Appellant : Poona Ram

Respondent : The State of Rajasthan and ors.

Advocate for Pet/Ap. : Shri. M. Mridul, Shri. Mridul

Disposition : Petition allowed

Judgement :

M.C. Jain, J.

1. The petitioner initially was appointed as Lower Division Clerk by the Assistant Registrar, Co-operative Societies At the relevant time he was posted in the office of the Assistant Registrar, Cooperative Societies. Nagaur. He was suspended by the order of the Assistant Registrar, Cooperative; Societies, Nagaur, with effect from 2-4-1968. His suspension continued upto 31-8-1972. A Memorandum dated 20-4-1968 was served upon him by the Assistant Registrar informing him that it is proposed to hold an enquiry against him under Rule 16 of the Rajasthan Civil

Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as 'the Rules'). He was served with the charge-sheet to which reply was also submitted by the petitioner, but thereafter a fresh charge-sheet was served by the Registrar, Cooperative Societies. The petitioner gave reply to the charges levelled against him to the Registrar. The Registrar, vide order dated 21-3-1970 appointed the Deputy Registrar, Cooperative Societies, Jodhpur, as Enquiry Officer to enquire into the charges framed against the petitioner and the Assistant Registrar was appointed as the presenting officer to present the case in support of the charges before the Enquiry Officer. After recording evidence the Enquiry Officer submitted his report wherein he held that none of the three charges are proved against the petitioner. The report of the Enquiry Officer is Ex. 4. Thereafter a show cause notice was served upon the petitioner by the Registrar, wherein he stated that he does not agree with the finding of the Enquiry Officer with regard to charge No. 1. A punishment withholding of two annual grade increment without cumulative effect was proposed. That show cause notice is Ex. 5, to which the petitioner submitted his reply on 9-5-1972. Thereafter the Registrar vide order dated 16-1-1972 imposed punishment of stoppage of one annual grade increment without cumulative effect upon the petitioner and simultaneously directed that only subsistence allowance will be paid to the petitioner during the period of suspension. Against this Order Ex. 6, the petitioner preferred an appeal, but the same was rejected by the Government on 18-6-1973 vide order Ex. 7, a copy whereof was received by the petitioner on 5-11-1973. The petitioner has challenged the punishment awarded by the Registrar and upheld by the Government inter alia on the ground that in terms of Sub-rule (2) of Rule 16 of the Rules it is the Disciplinary Authority which was required to frame charges and the Disciplinary Authority is the Assistant Registrar. The Registrar, Cooperative Societies was not competent to serve the charge-sheet on the petitioner and to hold the enquiry and to award punishment. The Registrar was not competent to appoint the Enquiry Officer. Thus, the entire enquiry is without jurisdiction. The other contention is that the Deputy Registrar is the Appellate Authority of the Disciplinary Authority and the order of the Government passed in appeal, is also without jurisdiction.

2. The respondents submitted reply to the writ petition in which the contents of paras A and B(1) and B(2) were admitted. With regard to para B(3) it was stated that it is incorrect that the petitioner continued to remain suspended upto 31-8-1972. The order of re-instatement was passed on 21-8-1971. Further, it was stated that the Registrar cancelled the memorandum dated 20-4-1968 issued by the Assistant Registrar, Nagaur, on his request. The contents of other sub-paras of para B were admitted. With regard to the ground relating to jurisdiction it was averred that the petitioner submitted to the jurisdiction of the Registrar. The objection as to jurisdiction was nowhere raised by the petitioner. Neither it was raised before the Government in appeal. It was stated that if the petitioner felt aggrieved by the charge-sheet of the Registrar, he should have approached this Court at the very moment instead of submitting to the jurisdiction and taking chance before the authority. Even on merits it was denied that the Registrar was not competent to issue charge-sheet under the Rules. The Registrar is the superior authority and is entitled to exercise powers of the authority subordinate to him, particularly where it was to avoid any breach of the principles of natural justice. It was denied that the orders under challenge are without jurisdiction. The petitioner had waived and gave up this point from the very beginning of the proceedings and thereby in the writ of certiorari it is not open to the petitioner to take such ground for the first time. Replies to other grounds have also been submitted and in the end it is prayed that the writ petition be dismissed with costs.

3. I have heard Shri M. Mridul learned Counsel for the petitioner, and Shri N.M. Lodha, learned Deputy Government Advocate, for the respondents.

4. The main contention advanced by Shri Mridul, learned Counsel for the petitioner, is that the orders of the Registrar as well as of the Government, both are absolutely without jurisdiction and so they are null and void, hence liable to be quashed. He urged that under the Rules the Disciplinary Authority is the Assistant Registrar and appeal against the Disciplinary Authority lies to the Deputy Registrar, as is evident from Schedule B, Item 8, columns 5 and 6, in case of office of Assistant Registrar. Shri Mridul submitted that the power in connection with holding of departmental enquiry, has been conferred on the Disciplinary Authority under the Rules having the force of law, so the power has to be exercised by the

Authority on whom it is confined in accordance with and in the manner in which the power is required to be exercised and not otherwise and the powers can be exercised by none else other than the authority empowered to exercise the power under the statutes or Rules. Reliance was placed by Shri Mridul on Commissioner of Police, Bombay v. Gordhandas Bhanji : [1952]1SCR135 , in which the order of cancellation was not an order by the Commissioner but it was merely an intimation by him of an order passed by the another authority, namely, the Government of Bombay. It was held that there was no valid order of cancellation, as the only person who could effect the cancellation, was the Commissioner of Police.

5. Shri Mridul, learned Counsel for the petitioner, also referred to a Division Bench decision of the Allahabad High Court in Nanak Saran Srivastava v. State of U.P. and Ors. 1971 (1) S.L.R. 168. In that case under Fundamental Rule 56, only the appointing authority was competent to issue notice of retirement to the Government Servant on his attaining the age of 55 years. It was held that when the power has been given only to the appointing authority, it cannot be exercised by anyone else on the ground he is superior in status or is the superior officer of the appointing authority. It is well settled that if a thing is required to be done in a particular manner it must be done in that manner alone. It was further observed that inasmuch as Fundamental Rule 56 provides that it is the appointing authority alone which can terminate the services of a Government servant by means of a notice on his attaining the age of 55 years, there is no scope for the argument that the superior authority can also issue that notice.

6. Shri Lodha, learned Deputy Government Advocate, on the other hand, submitted that in order to do away the possible objection of malice or bias, the Assistant Registrar, who initially issued the Memorandum and received the reply to the charge-sheet, submitted papers to the Registrar, and, the Registrar, being a higher authority, issued a fresh charge-sheet. The enquiry has been conducted by a higher authority and punishment too has been awarded by a superior authority. No objection was raised by the petitioner at the time of enquiry, nor at the time of appeal. If there has been any technical breach of the Rules, then the petitioner should not be heard in the extraordinary certiorari jurisdiction. He also referred to Rule 19 of the Rules, which makes a provision for special procedure in certain

cases and by reference to Rule 19, he submitted that even when action has been taken by the Registrar, there is no illegality involved in it. In support of his contention reliance has been placed by him on some case law.

7. Having heard the learned Counsel for the parties I may first consider the question as to who is competent under the Rules to issue Memorandum to hold enquiry and impose punishment and who is competent to hear the appeal against the punishment imposed against the delinquent Government Servant. It will be seen as to whether Rule 19 has any application.

8. Rule 16(1) of the Rules lays down the procedure for imposing major penalties. It is provided that no order imposing on a Government servant any of the penalties specified in Clauses (iv) to (vii) of Rule 14 shall be passed except after an inquiry held, as far as may be, in the manner provided in subsequent rules. Sub-rule (2) of Rule 16 lays down that the Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Then such charges together with the statement of the allegations on which they are based, shall be communicated in writing to the Government servant and the Government servant shall be required to submit a written statement in defence. Sub-rule (3) of Rule 16 provides for inspection and taking of extracts from official records by the Government servant for the purpose of preparing his defence, and under Sub-rule (4) it is provided that the Disciplinary Authority may itself inquire into the charges or if it considers it necessary, appoint a Board of inquiry or an Inquiring Authority for the purpose where the charges are not admitted. After conduct of inquiry, as provided in Sub-rules (4), (5) and (6), an inquiry report will be prepared recording the findings on the charges. Under Sub-rule (9) of Rule 16, the Disciplinary Authority, if it is not the Inquiring Authority, is required to consider the record of the inquiry and record its findings on each charge. Then under Sub-rule (10) of Rule 16 a show cause notice is required to be given by the Disciplinary Authority in respect of the proposed punishment and after consideration of the representation, final orders imposing punishment shall be passed. Under Sub-rule (1) of Rule 16, even minor penalties specified in Clauses (i) to (iii) of Rule 14 can be passed having regard to its findings. Rule 2 Clause (c) defines 'disciplinary authority'. It means in relation to the imposition of a penalty on a Government servant, the

authority competent to impose on him that penalty. Further. Rule 15 provides in respect of the Ministerial Services and Class IV Services, the Head of Office shall be authorised to inflict all penalties specified in Rule 14. 'Head of Office' is further defined in Rule 2, Clause (h) as the authority specified in Schedule 'B' as the Head of Office in respect of each Office under the Administrative control of Government. In Schedule 'B', under Item 8, for the Office of the Assistant Registrar, Head of Office is the Assistant Registrar and his next higher authority is Deputy Registrar in columns 5 and 6. Under Rule 23 there is provision for appeals against orders imposing penalties in respect of Ministerial Service. It is provided that an appeal against an order imposing any of the penalties specified in Rule 14 shall lie to the authority to which the authority imposing the penalty is immediately subordinate unless the Government by a general or special order specified any other authority. It is not in dispute that so far as the present petitioner is concerned the Assistant Registrar shall, be the Disciplinary Authority and the Deputy Registrar as the Appellate Authority. Thus the competent authority under the Rules to take any disciplinary action in respect of the penalties provided in Rule 14 in case of the petitioner, is the Assistant Registrar, and the Deputy Registrar is the Appellate Authority. Admittedly in the present case disciplinary action has not been taken by the Assistant Registrar. The inquiry has been initiated by the Registrar, whatever be the reason of it and similarly the appeal has been decided against the order of the Registrar by the Government. Thus, both the orders appear to be in contravention of the Rules and so are without jurisdiction, as the power has not been exercised by the authorities on whom the same has been conferred or invested. Reference to Rule 19 of the Rules, in my opinion, is not at all relevant. It does not provide that in any particular situation action can be taken by any other authority, other than the Disciplinary Authority or an authority superior to the Disciplinary Authority. Rule 19, Clause (ii) lays down that notwithstanding anything contained in Rules 16, 17 and 18, where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules, then the Disciplinary Authority may consider the circumstances of the case and pass such orders as it deems fit. This provision does not lay down that any other authority, other than the Disciplinary Authority, may take any action It only lays down that if the prescribed procedure

cannot be followed then in that situation, the Disciplinary Authority may pass such orders as it deems fit. Thus, reference to Rule 19 is of no avail. I have not been referred to any other rule, provision of law, where power can be exercised by authority superior to the Disciplinary Authority to initiate disciplinary proceedings.

9. Reference was made by Shri N.M. Lodha, learned Deputy Government Advocate, to a Division Bench decision of Punjab and Haryana High Court in State of Haryana v. Baldev Krishan Sharma and Ors. 1970 S.L.R. 500. That case turned on Rule 14 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. In that case the respondent Baldev Krishan Sharma was dismissed from service by the Governor of Haryana. It was challenged on the ground that the competent punishing authority was the Chief Engineer and that the order of the Governor is without jurisdiction and is liable to be set aside. The learned Single Judge relying on an earlier judgment of Gurdev Singh J. in Roshanlal Gopia v. Financial Commissioner, Haryana and Ors. 1968 S.L.R. 650 allowed the writ petition and quashed the order which was challenged in the latter's patent appeal. The appeal was allowed and the judgment of the learned Single Judge was set aside. It may be mentioned that Rule 14 of the said 1952 Rules empowered the Government as well as the Department to act as an original Disciplinary Authority. It was observed in that case that the Rules framed under Article 309 specifically permit the State Government to pass an original order inflicting any of the penalties. No statutory rule has, therefore, been violated.

10. In Fateh Singh Lodha v. State of Rajasthan 1978 (1) SLR 3641 the notice of de novo inquiry as well as the charge-sheet and the statement of allegations were issued by the Deputy Inspector General of Police, Jodhpur Range, Jodhpur, who was not competent to initiate the Disciplinary proceedings. It was only the Inspector General of Police, who could initiate a fresh inquiry and appoint the Enquiry Officer in respect of the petitioner. It was held that although there was no contravention of the provisions of Article 311 of the Constitution, yet there was a breach of the provisions of Rules 15 and 16 of the Rules. It was further observed that it is not the case of the State of Rajasthan that the Deputy Inspector General of Police was specifically empowered by the Inspector General of Police with the approval of the State Government to initiate the enquiry against the petitioner. In

that view of the matter, the notice issued to the petitioner under Rule 16 of the Rules by the Deputy Inspector General of Police along with the charge-sheet and the statement of allegations was invalid and was quashed. It is true that the Deputy Inspector General Police is an authority lower in rank and in the present case an authority higher in rank initiated the disciplinary proceedings, but that will not make any difference. What is material is whether there has been a breach of the provisions of the Rules. In my opinion there is clear contravention of Rules 15 and 16 in the present case in view of the fact that Registrar had no authority to initiate the disciplinary proceeding under the above Rules.

11. Shri Lodha's main emphasis is on this submission that the petitioner should not be allowed to raise the question of jurisdiction in this Court for the first time, as the same has been waived by him in view of the fact that this objection was not raised by him earlier at any stage. He refers to the decision of this Court in *Nehru Motor Transport Cooperative Society Ltd. Sardarpura, Jodhpur v. The Deputy Registrar, Cooperative Societies Jodhpur and Ors.* 1977 W.L.N. 84. In that case it was observed that a question of jurisdiction cannot be allowed to be raised on a petition when no objection to the jurisdiction had been taken before the Tribunal whose order or proceedings are being challenged. In that case the question was as to whether the arbitrator appointed under Section 75 of the Rajasthan Cooperative Societies Act, 1965, had jurisdiction to adjudicate the claim. The claimant's case was that it was he who deposited money in the Society in his own name and in the name of his relations. The jurisdiction vested was only in respect of claims between the members and the Society, so an objection as to jurisdiction was raised for the first time in the writ petition. It may be pointed out that as to whether the money belonged to respondent No. 4 Ramchandra in that case or not and whether claim by him was maintainable or no was a question of fact and so in that situation these observations appear to have been made. It is not a case where a question of jurisdiction may be a pure question of law.

12. I have not been referred to any direct authority where a question of jurisdiction which may be a pure question of law, is involved and in respect of which it might have been observed that such a pure legal jurisdictional question cannot be allowed to be raised for the first time under Article 226 of the Constitution. In my opinion,

there can be no conferment of jurisdiction by submission or consent, where the authority does not possess any jurisdiction, nor there can be any waiver as to jurisdiction. The question of knowledge or want of knowledge with regard to the jurisdiction of particular authority or Tribunal is again immaterial. Where there is patent lack of jurisdiction, the law is well settled that an order of such an authority having patent lack of jurisdiction, is no order in the eye of law, is non est and ab initio void. If it is so, then such an objection as to jurisdiction can be raised for the first time in certiorari jurisdiction and the question of non-exercise of certiorari jurisdiction, when there is no failure of justice, does not arise, as when an authority has acted without jurisdiction, there has been a failure of justice.

13. In view of what I have considered above, both the orders dated 14-7-72 (Ex. 6) and another dated 18-6-1973 (Ex. 7) of the Registrar. Cooperative Societies, Rajasthan, Jaipur, and the Assistant Secretary to Government of Rajasthan (Cooperative Department), Jaipur, respectively deserve to be quashed.

14. Shri Mridul, however, submitted that more than a decade has passed, it would not be just and equitable to allow to conduct a fresh enquiry. It is true that more than a decade has passed. On the charges levelled, what view may be taken is entirely the look out of the Disciplinary Authority and it would not be proper for this Court to bar holding of the fresh inquiry, although it may be observed that the petitioner has suffered in litigation. This may be kept in view whether it would be worth while to institute a fresh inquiry.

15. In the result, the petition is allowed, the impugned orders of the Registrar and the Government are quashed and set aside. In the circumstances of the case the parties are, however, left to bear their own costs.