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Court : Rajasthan

Decided On : Mar-05-1998

Reported in : 1998(3)WLC484; 1998(1)WLN223

Judge : R.R. Yadav, J.

Appeal No. : S.B. Civil Writ Petition No. 376 of 1998

Appellant : Smt. Ruby Joyce Charles

Respondent : Air Force School and ors.

Disposition : Petition allowed

Judgement :

R.R. Yadav, J.

1. The present writ petition has been filed by the petitioner impugning order of her removal from service dated 9.12.1997, Annx. 4 to the writ petition, on the ground, inter alia, of violation of principles of natural justice and fair play.

2. It is averred in the writ petition that Appointing Authority of the petitioner is Senior Education Officer OIC Education whereas the order for her removal from service has been passed by the respondent No. 3, who is not authorised under the Education Code (Revised) (hereinafter referred to as 'the Education Code') to pass such order. It is also averred that her services are governed by the Education

Code (Revised) for Air-Force Schools.

3. It is noticed that these schools are run by a registered society, registered under the Societies Registration Act, 1860. These schools are on the list of Grant-in-aid of the Central Government as is evident from Chapter VII of para 9 (c) of the Education Code and appointments are made on the post of Principals and Teachers at Command level and Station level by air Force authorities who are officers of the Central Government and they are also exercising powers of disciplinary authorities by constituting School Managing Committees.

4. It is urged by the learned Counsel for the petitioner that it is evident on the face of record that charge-sheet dated 3.11.1997 Annx. 1 to the writ petition which was served to the petitioner, was not in conformity of Para 7 (a) of Chapter IV of the Education Code, wherein it is provided that for imposing major penalty, the disciplinary authority is required to frame definite charges on the basis of the allegation on which enquiry is proposed to be held and a copy of the charges together with statement of allegations on which they are based shall be furnished to the employee and he/she shall be required to submit within such time as may be specified by the disciplinary authority but not later than two weeks, a written statement of his/her defence and also to state whether he/she desires to be heard in person.

5. Learned Counsel for the respondents Mr. M.R. Singhvi refuted the aforesaid argument and urged before me that article of charges mentioned in Annx. 1 to the writ petition are definite charges. According to him, the material to be supplied to the petitioner in support of each charge is not mandatory.

6. I have given my thoughtful consideration to the rival submissions made by learned Counsel for the parties and perused the materials available on record.

7. It is clearly averred in paragraph 4 of the writ petition that the petitioner was never asked to participate in the disciplinary enquiry nor statement of any person was recorded in her presence nor she was given opportunity to cross-examine any of the witness nor any document was proved. The answering respondents have not given any reply to this paragraph of the writ petition after service of show

cause notice to them in their reply, which means admission of this paragraph. In my humble opinion, if this paragraph is held to be admitted in absence of reply then it is sufficient to set aside the impugned order of removal.

8. I am of the opinion that if the Rules are specific that while serving a charge-sheet, article of charges should be supported with material evidence on which they are based then making a departure would be fatal to the validity of the disciplinary enquiry. As a matter of fact, definite article of charges served on a delinquent together with definable materials on which they are based always give reasonable opportunity to the delinquent to defend against such charges effectively. If material in support of each charge is disclosed then delinquent can easily make a request for inspection of record and supply of materials on which article of charges are based. The delinquent can also produce documents or oral evidence in his/her defence if materials on which each charge is based, is disclosed and copies thereof are enclosed with the charge-sheet. To my mind, non-disclosure and non-enclosure of such definable materials in support of article of charges in the present case tantamount denial of reasonable opportunity of hearing to the petitioner. Since materials in support of charges levelled against the petitioner were not supplied to her, therefore, it is held that she was denied reasonable opportunity of hearing while imposing major penalty of her removal from service. It is further held that denial of giving reasonable opportunity of hearing before imposing major penalty of removal or dismissal from service amounts violation of principles of natural justice and fair play. It is well to remember that reasonable opportunity of hearing is one of the most important component of the principles of natural Justice and fair play, denial of which is fatal in disciplinary proceedings, imposing major penalty of removal or dismissal.

9. A close scrutiny of the impugned order of removal from service of the petitioner Annx. 4 to the writ petition reveals that the disciplinary authority has not discussed what charges were framed against the petitioner, what evidence was led in support of these charges against her. It is apparent on the face of record that disciplinary authority laconically passed a non-speaking removal order against the petitioner, whereas under the service Jurisprudence he was required to record a positive findings of delinquency of the petitioner with reference to definable

materials produced during disciplinary enquiry in support of her delinquency, before passing an order of her removal from service.

10. Learned Counsel for the petitioner invited my attention to Para 7(d) of Chapter IV of the Education Code, which clearly provides that the disciplinary authority shall consider the record of the enquiry and record its finding on each article of charges and if the disciplinary authority is of the opinion that any of the major penalties should be imposed, the detailed procedure prescribed under Paras 7 (d)(i) to 7 (d)(vi) of the Education Code are to be followed. None of them have been followed in the case on hand in Judicious spirit for the reasons best known to the disciplinary authority. It is not difficult for this Court to understand its reason but it is difficult to approve it.

11. It is provided under Para 7 (d)(v) of the said Code that after considering the representation made by the employee against the penalty, the disciplinary authority is to record his findings on each charge and award the penalty. There is some anomaly in Para 7 (d) and Para 7 (d)(v). It appears to me to be a simple repetition by over-sight. However, nonetheless it is clear that after inquiry is concluded the disciplinary authority is required to follow detailed procedures provided in Para 7(d)(i) to Para 7(d)(vi). There is no dispute between, the parties that a representation was made by the petitioner before the disciplinary authority on 9.12.1997 Annx. 3 to the writ petition wherein she had denied all the charges levelled against her yet it is mentioned in the impugned order of removal that no explanation was submitted by her.

12. It is submitted by the learned Counsel for the respondents that recording of findings on each charge by the disciplinary authority with reference to evidence where he was concurring with the findings of the Inquiry Officer would be an empty formality. For the reasons given hereinbelow. the aforesaid contention of the learned Counsel for the respondents is not acceptable.

13. Firstly, once under the Education Code, a duty is cast upon the disciplinary authority to consider the representation of the petitioner and record his own findings on each article of charges before imposing any major penalty either removal or dismissal from service then it cannot be said that it is empty formality.

In the present case, it is requirement of the Code itself mandating the disciplinary authority himself to record his findings on each charges therefore, it is held that disciplinary authority was bound to record his own findings on each article of charges. In the case on hand he has committed manifest error of law in passing the impugned removal order without recording his own findings on each article of charges levelled against the petitioner.

14. Secondly, it is to be imbibed that punishment of removal or dismissal is not awarded on the basis of inquiry report but on the findings of mis-conduct recorded by the disciplinary authority after applying his mind to the evidence adduced during inquiry by the administration and the delinquent. It is true that disciplinary authority has Jurisdiction to cancel vary and differ with the inquiry report after applying his mind to the facts and circumstances of the case. Enquiry report is not binding on the disciplinary authority as argued by the learned Counsel for the petitioner.

15. Thirdly, reasons are link to the conclusion and also indicate about application of mind. From perusal of Annx. 4, I am satisfied that the disciplinary authority has not applied his mind to the facts and circumstance of the case nor to the evidence adduced during the disciplinary inquiry against the petitioner. I am of the view that disciplinary authority has mechanically passed the impugned removal order by non-speaking order which is per se illegal and deserves to be quashed.

16. Fourthly, whenever and wherever it is found by the Courts that a disciplinary authority normally performing executive functions while exercising his quasi-Judicial powers passed an order of removal or dismissal against an officer or employee, the Courts will insist upon disclosure of reasons in support of the order of removal or dismissal, so that, an officer or an employee aggrieved from his/her removal or dismissal order could be able to demonstrate before higher Courts that the reasons which persuaded to the disciplinary authority to pass order of removal or dismissal are based on non-existent ground or erroneous.

17. Fifthly, obligation to record reasons by the disciplinary authority while passing an order of removal or dismissal would operate as a deterrent against the possible arbitrary action of the disciplinary authority invested with quasi-judicial powers in removing or dismissing an officer or an employee from his/her service.

18. Lastly, I am of the view that it is order of removal or dismissal passed by the disciplinary authority and his positive findings on charge/ charges relating to mis-conduct of a delinquent officer or employee based on definable material attains status of quasi-judicial order and amenable to writ petition not the enquiry report. It is to be remembered that legality and validity of a removal or dismissal order depends on such removal or dismissal order passed by the disciplinary authority and not on the enquiry report submitted to him by the enquiring officer.

19. It is to be further imbibed that much water has run under the bridge after the land-mark decision given by the Hon'ble Supreme Court in case of Olga Tellis and other v. Bombay Municipal Corporation and Ors. reported in : AIR 1986 SC180 , holding that right to life includes the right to livelihood. According to their Lordships, the sweep of right to life conferred under Article 21 of the Constitution of India is wide and far reaching. In the case on hand, my judicial conscience is pricking to see the manner and procedure adopted by the disciplinary authority in depriving the petitioner from her source of livelihood in utter violation of principles of natural justice and fair play.

20. It is next contended by the learned Counsel for the respondents Mr. M.R. Singhvi that respondent No. 1 does not fall within the ambit of 'Authority' as contemplated under Article 12 of the Constitution of India, therefore, the present writ petition is not maintainable.

21. I am of the view that as regards falling of respondent-institution within the meaning of 'authority' as envisaged under Article 12 of the Constitution of India, is concerned, an identical question came up for consideration before Constitutional Bench of the Supreme Court in case of Ajay Hasia v. Khalid Mujib Sheravardi and Ors. reported in : (1981)ILLJ103SC , wherein it is ruled by the Apex Court that the inquiry has to be not as to how the juristic person is born but why it has been brought into existence. Concept of instrumentality or agency of the Government, is not limited to a Corporation created by a statute but is equally applicable to a Company or Society and in a given case, it would have to be decided on a consideration of the relevant factors whether Company or Society is an instrumentality or agency of the Government so as to come within the meaning of

expression 'authority' in Article 12 of the Constitution. It is true that a Juristic entity which may be 'State for the purpose of Parts III and IV would not be so for purpose of Part XIV or any other provision of the Constitution.

22. Indisputably, in the present case, the Society which is running the institution is a registered society, registered under the Societies Registration Act, 1860 and it is managed by the Air Force Officers and Air Force authorities, who are officers the Central Government by constituting School Managing Committees, at Command level and Station level. Thus, the institution where the petitioner is functioning as a Teacher is controlled by the officers of the Central Government. The institution is on the list of Grant-in-aid of the Central Government, as evident from para 9 (c) of Chapter VII of the Education Code. The appointments on the post of Principal and Teachers are made by the officers of the Central Government and they are authorised to take disciplinary action against a delinquent Principal and Teacher and are made entitled to pass orders for removal and dismissal of Principal and Teachers. The Managing Committee which is incharge of general superintendence, direction and control of the affairs of the Society and of its income and property, is also largely controlled by the Air Force Officers of the Central Government.

23. In my considered opinion, for the reasons stated in the preceding paragraph of this judgment, it can be safely held that Society in the present case falls within the expression of 'authority' used under Article 12 of the Constitution of India and an order of removal and dismissal passed by the Air Force authorities who are officers of the Central Government against Principal or Teacher or employee of the Society, is amenable to writ jurisdiction and an argument contrary to is devoid of merit and as such, it is hereby repelled.

24. Lastly, it is contended by the learned Counsel for the respondents that since the order of removal dated 9.12.1997 Annx. 4 to the writ petition passed by respondent No. 3 is appealable, therefore, writ petition is not maintainable under Article 226 of the Constitution of India. Suffice it to say in this regard that alternative remedy is not an absolute bar to entertain a writ petition under Article 226 of the Constitution of India but it is a self-imposed limitation by the High

Courts. Ordinarily, the writ petitions are not entertained by the High Courts unless it is proved that all the alternative remedies available to the petitioner have been exhausted by him but there are few exceptions to the plea of alternative remedy; firstly, if the Court is satisfied that the order impugned passed by the authority is without jurisdiction then alternative remedy is no bar to entertain a writ petition. Similarly, if it is found by the Courts that the order impugned has been passed against the principle of natural Justice then again an alternative remedy is no bar to entertain a writ petition. Rest of exceptions which are evolved by higher Courts on the subject of alternative remedy are left open to be considered in an appropriate case as the present case is covered under two exceptions mentioned above.

25. In view of discussion made in the preceding paragraph of this judgment it is established in the case on hand that impugned order of removal dated 9.12.1997 Anx. 4 to the writ petition has been passed in utter violation of the principles of natural Justice and fair play, therefore, alternative remedy is no bar to entertain the present writ petition under Article 226 of the Constitution of India.

26. As a result of the aforesaid discussion, the writ petition is allowed. The order impugned dated 9.12.1997 Annx. 4, removing the petitioner from her service is hereby quashed. Cost is made easy.

27. After dictation of the judgment, learned members of the Bar present in Court made a request to make the judgment 'Reportable'. Request is allowed and the judgment is made 'Reportable'.

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