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Court : Rajasthan

Decided On : May-17-2002

Reported in : 2002(4)WLC179; 2002(4)WLN533

Judge : Arun Kumar, C.J. and; Prakash Tatia, J.

Appeal No. : D.B. Civil Special Appeal (Writ) No. 758 of 1997

Appellant : Krishan Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Prakash Tatia, J.

1. The appellant has preferred this appeal under Section 18 of the Rajasthan High Court Ordinance challenging the judgment and order of this Court dated 23.5.1997 by which the learned Single Judge dismissed the writ petition of the petitioner.

2. Brief facts of the case are that petitioner was posted as Naib Tehsildar at Bilara. The memorandum dated 24.8.1981 was served upon the petitioner informing him that it is proposed to hold enquiry under Section 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules') on the charges mentioned in the statement of charge. The petitioner submitted reply on

24.9.1981. The Additional District Magistrate, Jodhpur submitted enquiry report which is placed on record as Annex. 7. Thereafter, a show cause notice dated 5.12.1986 was served upon the petitioner informing the petitioner that, after consideration of the enquiry report, it is proposed that it is a case of major punishment, therefore, before proceeding, the petitioner was permitted to make representation within 15 days and he was also permitted personal hearing. The enquiry report was provided to the petitioner. The petitioner submitted reply to the show cause notice.

3. It is relevant to mention here that the petitioner was served with one more memorandum dated 3.1.1984 for proposed enquiry against him under Rule 16 of the Rules, for which the petitioner submitted reply on 11.4.1984 and the Additional District Magistrate, Kota was appointed as enquiry officer who, after completion of the enquiry, submitted the enquiry report. Thereafter, in this enquiry also a show cause notice dated 14.10.1986 was issued to the petitioner stating therein that the Board of Revenue does not agree with the finding recorded by the enquiry officer on charge Nos. 1 and 2 and the petitioner was informed that it is proposed to impose upon him a major punishment, therefore, the petitioner was asked to show cause why proposed punishment may not be imposed upon the petitioner. Ultimately, by common order dated 4.4.1987, the petitioner was punished with dismissal from service. This order dated 4.4.1987 of dismissal of the petitioner from service is placed on record by the petitioner in the writ petition which is Annex. 15. The petitioner's appeal was dismissed by the State Government by order dated 25.4.1989 (Annex. 17). The review petition of the petitioner under Rule 34 of the Rules was also dismissed vide order dated 7.6.1990 (Annex. 19). Therefore, the petitioner preferred this writ petition challenging the order of removal dated 4.4.1987 (Annex. 14), appellate order dated 5.4.1989 (Annex. 17) and order dated 7.6.1990 (Annex. 19) passed in the review petition with a prayer against the respondents to reinstate the petitioner with all consequential benefits. Reply was filed by respondents No. 1 and 2 and rejoinder was also filed by the appellant-petitioner to the reply of respondents No. 1 and 2.

4. The learned Single Judge, after hearing the parties, dismissed the writ petition of the petitioner. The learned Single Judge held that it is evident from the record

that the reply which was submitted by the petitioner was duly considered by the authorities. It was also held that the orders of the disciplinary authority, appellate authority and reviewing authority cannot be considered to be non-speaking orders. The learned Single Judge held that each of the charge along with evidence have been considered. So far as non-cross-examination of Noor Mohd., the witness of the department, is concerned, the learned Single Judge observed that if the petitioner has not cross-examined him, it was his option and, thereafter, the learned Single Judge held that in such type of misconduct of grave nature, no interference can be made in extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5. The learned Counsel for the appellant submitted that oral as well as written arguments and relied upon various judgments. We perused the record of the writ petition and considered the arguments of the learned Senior Counsel Shri Mridul.

6. One of the charge against the appellant-petitioner was that he issued identity cards-cum-certificate on 14.9.1973 in favour of 28 persons by putting seal of the Tehsildar under his signature which is contrary to the circular issued by the Deputy Commissioner (Colonisation), Bikaner dated 12.6.1973. For this charges, the learned Counsel for the appellant submitted that the appellant issued these certificates because of the fact that the concerned Tehsildar was on leave on that date and, as per the circular dated 13.2.1958, the petitioner was authorised to discharge the duties of Tehsildar in absence of Tehsildar. Therefore, there is no dispute with respect to the fact of issuance of identity cards-cum-certificates to 28 persons by the petitioner. This aspect was considered by the Enquiry Officer (Additional Collector, Jodhpur) in detail which is clear from Annex. 7. The circular dated 12.6.1973 was issued is not in dispute. The Enquiry Officer found from above circular dated 12.6.1973 that there is a clear mention in Para 4(3) that these certificates will be issued by the Tehsildar and in Para 4(7) it is specifically made clear that these certificates are required to be verified only by the Tehsildar and this direction was issued to prevent forgery in the certificates. Even the Tehsildar is required to send his verified signatures to the authorities under the Colonisation Act to check the forgery even of the signature of the Tehsildar over the certificate. Despite clear instruction in the above circular/order the identity cards-cum-

certificates were issued to large number of persons is an admitted fact. The order dated 12.6.1973 is not under challenge. Therefore, issuance of identity cards-cum-certificates by the petitioner in violation to the order dated 12.6.1973 is fully proved fact.

7. Now question arises that whether the petitioner had power and authority to issue such identity cards in view of Rule 7 of the Rajasthan Land Revenue (Tehsildars and Naib Tehsildars) Rules, 1958 For this, a look at the Rules makes it clear that during the absence of Tehsildar the Naib Tehsildar will be incharge of the Tehsil Office but at the same time Section 29 of the Rajasthan Land Revenue Act, 1956 provides that when an officer is temporarily absent from his duties and if there is no officer of equal grade and of superior grade then the officer of inferior grade will assume charge of that office and while in such charge, shall be empowered to perform routine duties only. Issuance of such cards by the delinquent petitioner while holding charge cannot be said to be 'performing routine duty'. Statutory provision permitting an officer to hold charge of post, itself will not empower the officer to discharge all the functions and duties of that post when statute itself permits officer to perform 'routine duties' only. When delinquent officer wants to take a stand against an order of the Government acting in contravention of the order by taking shelter of earlier order or rule then it is at his own risk. We do not find any justification in acting in violation of the order of 12.6.1973 by the petitioner.

8. It was also submitted by the learned Counsel for the appellant in his written arguments that other officers were also doing the same practice of giving certificates to the persons and no body else was proceeded against nor any action was taken against the Patwari who gave the report on the basis of which the appellant made order. The petitioner is not entitled to raise this plea based upon factual aspect which he has not raised before the disciplinary authority. Even otherwise if a wrong is committed by one officer, it will not authorise other officer to do the same wrong. It is not the case of the petitioner that he was not aware of the order of 1973. Another contention of the petitioner that the Patwari who gave the report should also have been subjected to the same treatment is concerned, it also deserves to be rejected only on the ground that it is not the case of the petitioner

that the Patwari was not authorised to submit report. If any report was submitted by the Patwari then also it is not the case that the Patwari was not competent to submit report. Only dispute was that who was competent to issue identity cards-cum-certificates and it is found that the petitioner issued the certificates in violation to the order passed by the Deputy Commissioner (Colonisation), Bikaner. Therefore, there is no force in the submission of the learned Counsel for the petitioner in this regard.

9. Next contention of the learned Counsel for the appellant is that the appellant was not permitted to cross-examine Noor Mohd. and the learned Counsel for the appellant also submitted that there is no specific denial of the facts mentioned in the writ petition with respect to not giving opportunity to the petitioner to cross-examine Noor Mohd. This objection was raised by the petitioner for the first time in writ petition. The petitioner did not raise this objection in his reply to show cause notice Annex. 8, in his departmental appeal which is clear from the copy of the memo of appeal (Annex. 16) submitted by the petitioner himself. Even in the review petition (Annex. 18) no such ground was taken by the petitioner. In Annex. 8, Annex. 16 and in the review petition the petitioner only submitted that witness Noor Mohd was examined during the course of enquiry and the documents were got produced by him during the course of enquiry. Copies of the documents produced by Noor Mohd. were not supplied to the petitioner. It is also submitted in the review petition that the petitioner was neither given notice of summoning such documents nor he was given a reasonable opportunity to meet the contents of these documents and all these documents have been taken into consideration while recording finding against the appellant and only on this ground, the petitioner submitted that the enquiry conducted against the petitioner deserves to be set aside. The entire record was before the authorities where this aspect could have been answered by the authorities concerned but objection was not raised, therefore, it is clear that the contention of the petitioner is only an result of afterthought and therefore, this contention deserves to be rejected only on this ground alone.

10. It is also submitted by the learned Counsel for the appellant that the disciplinary authority imposed punishment upon the petitioner on a charge which

was never levelled against the petitioner-appellant, for this, the learned Counsel for the appellant referred the finding recorded by the disciplinary authority in the order dated 4.4.1987 (Annex. 15) wherein the disciplinary authority held that the delinquent officer-petitioner in a well planned manner and without any lawful authority, misused the office and done the illegal activities for his personal gain. A look at the charge clearly shows that charge No. 1 was with respect to the issuing wrong identity cards and certificates in favour of 28 persons. Charge No. 2 is for issuing certificates and identity cards to 21 person. Charge No. 3 is with respect to not recording transfer of land of 8 persons and in Sub-para of charge, it is clearly mentioned that above all was done by the petitioner for personal gain in contravention of the orders beyond the jurisdiction illegally and irregularly. Therefore, the contention of the petitioner is factually wrong that the disciplinary authority has imposed the punishment without there being any charge.

11. It is also submitted that note of disagreement given by the disciplinary authority contains no reasons and, therefore, it is a case of violation of Sub-rule 19(ii)(b) of Rule 16 of the Rules. The learned Counsel for the appellant relied upon the judgments of the Hon'ble Apex Court. given in : (1) *Voginath D. Bagde v. State of Maharashtra and Anr.* : AIR 1999 SC3734 and (2) *Ram Kishan v. Union of India and Ors.* 0065/1996 : (1996)ILLJ982SC . It is clear from the law laid down by the Hon'ble Apex Court that note of disagreement need not to be in detail and only reason for disagreement is required. Even the petitioner himself admitted that there are reasons of disagreement recorded by the disciplinary authority which is clear from the contention of the petitioner himself given in Para D/VI/b wherein the petitioner stated that the note of a disagreement given by the disciplinary authority contains no reasons although it purports so to do. There is a clear mention of the reason for disagreement that the Tehsildar had no jurisdiction to declare the land as escheat land and for declaration of the successor, the matter should have been referred under the Escheat Act to the Additional Collector and it was not done by the delinquent officer, therefore, charges No. 1 and 2 were found proved against the petitioner.

12. The learned Counsel for the appellant, in addition to above, submitted that reply to show cause notice has not been considered by the disciplinary authority

which vitiates the order of the disciplinary authority. In support of this, the learned Counsel for the appellants relied upon the judgments given in : (1) Nathi Lal Saraswat v. State of Raj. and Anr. (1993) 1 WLC 64, (2) G.S. Rqjawat v. Rqjasthan Financial Corporation and Ors. (1993) 1 WLC 117, (3) HariNarain Goyal v. Rqjasthan State Ware Housing Gorpn. and Ors. 1983 RLR 520 and (4) Dr. R.K. Sharma v. State of Rqjasthan (1989) 1 RLR 659. The learned Single Judge held that reply of the petitioner was duly considered and we also find that all the contentions raised by the petitioner were considered, therefore, the judgment cited by the learned Counsel for the appellant has no application to the facts of this case.

13. The learned Counsel for the appellant also contended that issuing of certificates-cum-identity cards by the petitioner, in the facts and circumstances of the case, cannot amount to misconduct as there is no allegation of this being done by oblique/corrupt motive for which the learned Counsel for the appellant submitted that there must be mens rea behind the act. Mere error of judgment cannot be treated as malafide or a misconduct. At the most it can be a case of lapse in discharge of duties and, therefore, the petitioner cannot be held guilty. The learned Counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in the cases of : (1) C. Ravichandran Iyer v. Justice A.M. Bhattacharjee and Ors. : (1995)5SCC457 , (2) Union of India and Ors. v. J. Ahmed : (1979)IILLJ14SC , (3) N.J. Prahakar v. State of Andhra Pradesh : (1988)ILLJ231SC , (4) Union of India and Anr. v. R.K. Desai : (1993)2SCC49 , (5) D.P. Chadha v. Triyugi Narain Mishra and Ors. 2001 2 SCC 221, (6) P.C. Joshi v. State of U.P. and Ors. : (2001)IILLJ 1249 SC , (7) V. Mahadevan and Ors. v. D.C. Aggarwal (1993) Suppl. 4 SCC 4 and (8) In R/o Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission : [2000]2SCR688 and the judgment of this High Court in the case of : High Court of Judicature for Rqjasthan v. Raton Lal Agarwal and Ors. (1995) 1 RI.R 549. At the cost of repetition, we may mention here that there was a clear charge against the petitioner and even in the statement of allegations (Annex. 2) it is clearly mentioned that the above acts were done by the petitioner for his own personal gain. The fact of issuing of large number of identity cards-cum-certificates to facilitate allotment of land to the persons in violation to clear restriction by order dated 12.6.1973. speaks about the conduct of the

delinquent officer. Therefore, the judgment relied upon by the learned Counsel for the appellant has no application to the facts of the present case.

14. It was also submitted by the learned Counsel for the appellant that since the order of dismissal was passed on 4.4.1987 and more than 15 years have passed, it should not weigh with the Court for not annulling the order of dismissal. Since we found that no case for interference is made out by the petitioner, therefore, there is no question of examining the effect of passing of 15 years from the order of dismissal in this case.

15. Hence, there is no force in this appeal and the same is hereby dismissed.

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