

Opinder Mohan Vs. State of Himachal Pradesh and ors.

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Court : Himachal Pradesh

Decided On : Apr-29-2009

Reported in : 2009(2)ShimLC154

Judge : Sanjay Karol, J.

Appellant : Opinder Mohan

Respondent : State of Himachal Pradesh and ors.

Advocate for Pet/Ap. : Mr. Ajay Sharma

Disposition : Petition dismissed

Judgement :

Sanjay Karol, J.

1. The petition filed before the erstwhile Himachal Pradesh Administrative Tribunal on 4.4.1996, was admitted on 11.4.1996. The same stood transferred to this Court in view of the provisions of The Himachal Pradesh Administrative Tribunal (Transfer of decided and pending cases and applications) Act, 2008 (No. 14 of 2008).

2. Petitioner has prayed for the following relief:

(i) to quash and set aside the orders A-1 to A-3 with all consequential benefits of service, pay, seniority etc.

(ii) records of the case may very kindly be summoned for.

Annexure A-1 is the office order dated 2.2.1993 putting the petitioner under suspension w.e.f. 8.9.1992. Annexure A-2 is the show-cause notice dated 5.2.1993 issued by the District Primary Education Officer, Una to the petitioner proposing to impose major penalty of dismissal from service. Annexure A-3 is the order dated 24.2.1993 issued by the District Primary Education Officer, Una, dismissing the petitioner from service w.e.f. 24.2.1993.

3. Mr. Ajay Sharma, learned Counsel for the petitioner has assailed the impugned order on the ground mentioned in the petition as under:

That the respondents vide letter dated 5.2.1993, copy of which is being annexed herewith as Annexure A-2, issued show-cause notice to the applicant. The said show-cause notice was served while in Central Jail Nahan. The said letter was duly replied by the applicant vide his representation dated 20.2.1993. It is submitted that applicant represented to the respondents that he being in jail is unable to meet the show-cause notice.

4. Petitioner was serving the State as JBT teacher and was posted as such at Government High School, Haroli, in the year 1993. The Sessions Judge, Una in Session Case No. 19 of 1987 titled as State of H.P. v. Opinder Mohan, vide his judgment dated 8.9.1987 charged and convicted the petitioner for an offence under Section 306 IPC and awarded sentence of three years rigorous imprisonment with a fine of Rs. 1000/- or in default to further undergo imprisonment for six months.

5. The said decision was upheld by this Court in Original Appeal No. 370/87 vide decision dated 8.9.1992. That the said decision has attained finality is not in dispute.

6. Based on the conviction the petitioner was put under suspension vide orders dated 26.2.1993. Keeping in view the provisions of Rule 19 of the Central Civil

Services (Classification, Control and Appeal) Rules, 1965 and taking into account the gravity of the criminal offence, he was served with the show-cause notice dated 5.2.1993 proposing to impose a penalty of dismissal from service from the date when his matter stood decided by this Court in the appeal filed by the petitioner. Petitioner submitted his representation dated 20.2.1993 which was considered and the order of dismissal from service w.e.f. 24.2.1993 was passed in terms of Annexure A-3.

7. Representation dated 20.2.1993 has not been placed on record. The only defence taken is that 'he being in jail is unable to meet the show-cause notice.' It is undisputed and admitted case that the petitioner's conviction and sentence has attained finality. Petitioner was serving the sentence when he was served with the show-cause notice. The ground on which the disciplinary action was initiated against him cannot be factually disputed by him. It is not his case that he had requested for legal aid or that he was prevented from replying to the show-cause notice due to his conviction and sentence. In fact he did respond to the same and the explanation furnished did not find favour with the respondents authorities. Petitioner was afforded reasonable opportunity of representing his case. It is not that the petitioner was an illiterate person coming from the lower strata of the society, with a rural background and. thus did not understand the implication of the disciplinary proceedings. He was a teacher and fully conscious and aware of his right. Keeping in view the provisions of Rule 19(1) as also Article 311 (2) of the Constitution of India, cannot be said that the action of the authorities is bad in law.

8. Noticeably inspite of the dismissal of criminal appeal by this Court on 8.9.1992, he continued to be in service. Respondents initiated the disciplinary action and put him under suspension only in February, 1993. Simply because petitioner was serving the sentence in jail that by itself cannot be a reason for delaying the disciplinary proceedings. It is also not that the petitioner was either denied or did not have access to legal aid. In fact he had engaged Counsel to defend himself in the criminal prosecution.

9. Noticeably the petition assailing the order of dismissal from service dated 24.2.1993, was filed only in the year 1996. Even within this period, the petitioner

did not make out any grievance to the disciplinary authority of having inadequate opportunity of meeting the show-cause notice.

10. Mr. Ajay Sharma, learned Counsel for the petitioner has invited my attention to the decisions rendered by the Himachal Pradesh Administrative Tribunal in O.A No. 1365/1990, titled as Bhagat Singh v. State of H.P. and Anr. decided on 7.7.1992, wherein under similar circumstances, the action initiated against the petitioner therein was quashed. The decision was based on the several rulings of the Apex Court including Union of India and Ors. v. Tulsiram Patel : (1985) 3 SCC 398, Divisional Personnel Officer v. T.R. Chellappan : (1976) 3 SCC 190 and Satyavir Singh and Ors. v. Union of India and Ors. : (1985) 4 SCC 252.

11. The said decision is clearly distinguishable on facts as it was based on the concession made by the learned Additional Advocate General that no opportunity of hearing had been granted to the applicant therein before passing of the impugned order dismissing him from service. That is not the case in hand.

12. In my considered view, the ratio of law laid down by the Apex Court in the aforesaid decisions is also not applicable to the facts of the present case. The relevant provisions of the applicable Rules stand fully complied with as the petitioner was afforded reasonable opportunity to respond to the show-cause notice.

For all the aforesaid reasons, I find no merit in the petition and the same is accordingly dismissed.

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