

Shokat Ali Vs. State and ors

Shokat Ali Vs. State and ors

SooperKanoon Citation : sooperkanoon.com/973396

Court : Rajasthan Jodhpur

Decided On : Dec-19-2012

Appellant : Shokat Ali

Respondent : State and ors

Judgement :

(1) IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER S.B. CIVIL WRIT PETITION NO.7569/2012 Shokat Ali Versus State of
Rajasthan & Ors. Date of Order :

19. 12.2012 PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR Mr. Rajesh Shah for the petitioner BY THE COURT : To question correctness of the order dated 06.03.2012 passed by the disciplinary authority, i.e. the District Education Officer (Elementary Education), Sirohi, this petition for writ is preferred. By the order aforesaid, the disciplinary authority imposed a penalty of withholding of one annual grade increment with cumulative effect upon the petitioner. This court while admitting the writ petition under the order dated 16.08.2012 stayed effect and operation of the order impugned. No reply to the writ petition has been filed so far despite service. However, looking to narrow amplitude of the controversy involved in this petition for writ, I am deciding the same without further waiting for the reply to the writ petition (2) on behalf of the respondents. The factual matrix necessary to be noticed is that a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short, hereinafter referred to as 'the Rules of 1958') was served upon the petitioner alleging a misconduct on

his part. An explanation was submitted by the petitioner, but the disciplinary authority without taking into consideration the explanation submitted, while relying upon the report of the preliminary enquiry officer dated 31.10.2011 held the petitioner guilty for the allegation of misconduct and imposed the penalty. It is submitted by learned counsel for the petitioner that the order impugned dated 06.03.2012 has been passed by the disciplinary authority in flagrant violation of the mandatory provisions prescribed under Rule 16 of the Rules of 1958 to impose a major penalty. It is asserted that after issuing the memorandum under Rule 16 of the Rules of 1958, the disciplinary authority, if was not satisfied with the explanation submitted, then should have proceeded with regular enquiry at its own or by appointing a regular enquiry officer and a regular enquiry should have been conducted, but in the instant matter, the disciplinary authority without (3) proceeding with regular enquiry passed the order impugned by placing reliance upon the report given by the preliminary enquiry officer. The report given by the preliminary enquiry officer was foundation for framing definite charges, but that has been used by the disciplinary authority to award punishment without conducting a regular enquiry. I have considered the arguments advanced and also pondered over the facts of the case. From perusal of the order impugned dated 06.03.2012, it is apparent that after serving charge-sheet as per the provisions of Rule 16 of the Rules of 1958, no regular enquiry was instituted against the petitioner. The disciplinary authority just relied upon a report submitted by the preliminary enquiry officer on 31.10.2011 and passed the order impugned. As per Rule 16 of the Rules of 1958, the disciplinary authority, if was not satisfied with the explanation submitted by the petitioner, would have proceeded with a regular enquiry or would have appointed a enquiry officer to enquire into the allegations made against the petitioner. No such mode at all was adopted. The disciplinary authority in violation of the procedure given under Rule 16 of the Rules of 1958 relied upon the available ex parte material, i.e. a preliminary enquiry report, which was submitted to him prior (4) to framing of definite charges and imposed a penalty of stoppage of one annual grade increment with cumulative effect. The order impugned is also not containing any reason to hold the petitioner guilty for the allegation of misconduct alleged, as such the same is bad on this count too. The violation of mandatory provisions of the Rules of 1958 and also in general,

principles of nature justice and reasonable opportunity in the instant case is on face. Accordingly, this petition for writ is allowed. The order impugned dated 06.03.2012 passed by the District Education Officer (Elementary Education), Sirohi, therefore, is declared bad, hence, quashed. The petitioner shall be entitled for all benefits consequential to quashing of the order aforesaid. No order as to costs. [GOVIND MATHUR],J.

Pramod

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com