IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No. 330 of 2012
Decided on:18.6.2019

Sh. Dule Ram ...appellant

Versus

State of H.P. & others …respondents

Coram:
Hon'ble Mr. Justice Dharam Chand Chaudhary, Acting Chief Justice.
Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.
Whether approved for reporting?[1] Yes.

For the petitioner : Mr. H.K. Paul, Advocate.

For the respondents : Mr. Narender Guleria, Additional Advocate General with Mr. Kunal Thakur, Deputy Advocate General.

Jyotsna Rewal Dua, J. (oral)

The writ petition seeking quashing of disciplinary proceedings and consequent actions resulting in removal of the petitioner from service has been dismissed by the learned Single Judge vide impugned judgment dated 9.4.2012. Consequently, present appeal has been preferred.

2. The germane facts are:-

(i) The writ petitioner was engaged as Beldar on daily wages w.e.f 1.3.1984. At that point of time, his date of birth as recorded in the Parivar Register was 8.6.1952. It appears that the writ petitioner applied for correction of his date of

[1]**Whether reports of Local Papers may be allowed to see the judgment?**

birth and on such application, it was corrected to 12.5.1959 by the Executive Magistrate vide order dated 25.06.2001. Such modification was carried out on the ground that no objection within the prescribed period was received from anyone against the proposed change in the date of birth.

(ii) The service of the writ petitioner was regularized as Beldar on 31.01.2007. At that time during his medical examination, the writ petitioner gave his date of birth as 12.5.1959.

(iii) It appears that a complaint in respect of date of birth of the writ petitioner allegedly having been incorrectly entered in the service book, was made to the Authorities by one Sh. Devi Ram, son of Sh. Lal Dass. It was alleged in the complaint that age of the writ petitioner was above 65 years, but he was still serving on the basis of incorrectly recorded date of birth. It was asserted that actual date of birth of the petitioner as per school record was 8.1.1949. The respondents conducted a preliminary inquiry into the matter observing that there is a difference of 10 years in the age of the writ petitioner in different records.

(iv) Accordingly, the memo dated 1.6.2010 was issued to the petitioner under the provisions of Rule 14 of the Central Civil

Services (Clarification, Control and Appeal) Rules, 1965. The article of charge against the petitioner was that he had furnished false information/certificate regarding his date of birth and thereby had contravened the provisions in Article-3(I)(III) of CCS (Conduct) Rules 1964. The Inquiry Officer was appointed vide order dated 28.06.2010. The Inquiry Report was submitted on 28.9.2010, holding that the charge against the petitioner was proved and that petitioner had submitted false date of birth during his regularization. Based on this inquiry, the petitioner was finally imposed the penalty of removal from Government service vide order dated 28.2.2011. The Appellate Authority also did not find favour with the petitioner. His writ petition having been dismissed, writ petitioner has preferred present appeal.

3. We have heard the learned counsels for the parties and have gone through the complete record of the case. We have also gone through the original record of the inquiry proceedings.

4. After carefully perusing the entire record, we are of the considered view that the entire inquiry proceedings deserve to be quashed. These proceedings are required to be initiated afresh, post the stage of issuance of charge-sheet. We are saying so for the following reasons:-

(a) The charge-sheet/memo dated 1.6.2010, directed the writ petitioner to submit his written statement of defence to the charge-sheet. However, without waiting for his written statement to the charge-sheet, Inquiry Officer as well as Presenting Officer were appointed vide separate order dated 28.6.2010.

(b) The writ petitioner who was a mere Beldar and not educated, was not made aware of his right to have the defence assistance. No defence assistant was provided to him.

(c) The documents mentioned in the charge-sheet were apparently not supplied to the petitioner.

(d) The writ petitioner, in three hearings-which in all were conducted by the Inquiry Officer i.e. on 8.7.2010, 12.8.2010 and third final hearing on 25.8.2010, had all along been emphasizing the fact that he had never gone to the school and the School Leaving Certificate collected by the respondents was not his, whether it is of his brother named Dola Ram or of some one else, he didn't know and expressed his doubts. On 12.8.2010, petitioner sought time to collect documents in this regard for production before the Inquiry

Officer. The writ petitioner, who was more or less an illiterate Beldar had no knowledge either of the Rules or of the Procedure and the same were not even brought to his knowledge by the Inquiry Officer.

(e) The writ petitioner has also alleged that no witness was examined in his presence. The record also does not counter his allegation.

5. It is thus, apparent that the mandatory procedure required to be followed in holding disciplinary proceedings under the CCS (CCA) Rules, was not adhered to by the Inquiry Officer while conducting the inquiry. Prejudice has thus been caused to the writ petitioner on account of contravention of the procedure. The Inquiry Officer is a quasi judicial authority. He had to act as an independent adjudicator and not as a representative of the Department/Disciplinary Authority/Government. This has been held to be so by Hon'ble Apex Court in **State of UP vs. Saroj Kumar Sinha (2010) 2 SCC 772** and relied upon in **(2018) 7 SCC page 670 titled as Union of India and Ors. vs. Ram Lakhan** whereby it was held as under:-

> *"**27**. In State of U.P. v. Saroj Kumar Sinha, this Court had laid down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department /disciplinary*

authority/Government. In paras 28 and 30 the following has been held: (SCC P. 782)

> *"28. An Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department /disciplinary authority /Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*
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> *30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conduced with a closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that the government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."*

The inquiry proceedings reflect as if the Inquiry Officer had also adorned the job of Prosecutor as well. This approach was not legal.

We thus, do not find the inquiry to have been conducted in accordance with the mandatory provisions of CCS(CCA) Rules. It is vitiated.

6. Surprisingly, while forwarding the report of the Inquiry Officer for inviting the comments of the writ petitioner thereupon, the Disciplinary Authority, at that stage itself has given its positive mind about having arrived at the conclusion that writ petitioner could not be retained in Govt. service and, therefore, penalty of removal/dismissal from service has been proposed to be imposed on him. Petitioner was asked to give representation on such proposed penalty vide Show Cause Notice dated 5.2.2011. This Show Cause Notice was wholly misconceived. Any penalty on an employee can be imposed only after following the provisions as per CCS(CCA) Rules. In **(2016) 12 SCC 204 titled as Chamoli Distt. Cooperative Bank vs. Raghunath Singh Rana & ors.,** reliance was placed upon a decision in **ECIL vs. B. Karunakar (1993)(4)SCC727**, which is extracted hereinafter:

> "(1)Where the enquiry officer is other than the disciplinary authority, he disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusion on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusion. If the

disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz. before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposed to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although he conclusion regarding he guilt is accepted. It is the second right exercisable at the second stage which was taken away by he Forty-second Amendment. The second stage consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz. the stage of considering he penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the

> penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report could be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at it conclusion with regard to his guilt or innocence in respect of the charges". (emphasis supplied).

The Disciplinary Authority illegally combined both the stages into one final stage. Consequently, the writ petitioner practically got no right to defend himself and to represent against the inquiry report, which was treated as final report. The only opportunity given to the petitioner was to represent in respect of proposed penalty, about which the Disciplinary Authority had made up its mind to impose, as is revealed by the Show Cause Notice.

7. In **(2013) 6 SCC 515, titled as Anant R. Kulkarni vs. Y.P. Education Society and others**, it was held:

> "Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while he delinquent employee was in service, it

> would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed."

8. Though, the charges against the writ petitioner in respect of submitting false date of birth are very grave, so much so that there are three dates of birth of the writ petitioner in the record of case i.e., 8.1.1949, 8.6.1952 and 12.5.1959, yet the procedure as per law was required to be followed in conducting disciplinary proceedings. The petitioner was actually removed from service in 2011 after putting in four years of regular service. He has now completed more than 60 years of age even after taking the date as 12.6.1959.

9. Therefore, considering all the above aspects, we are of the considered opinion that the mandatory procedure prescribed under CCS(CCA) Rules has been completely flouted in the instant case. The inquiry proceedings, the inquiry report dated 28.9.2010 (Annexure P-10) and all subsequent actions thereupon are vitiated and are accordingly set aside. The order of imposition of penalty of removal from Govt. service imposed upon the petitioner vide order dated 28.2.2011 (Annexure P-11), the orders dated 2.9.2011 and 1.11.2011, passed by the Appellate Authority confirming the same (Annexure P-14 & Annexure P-16) are accordingly set aside. The judgment passed by the learned Single Bench on 9.4.2012 in CWP No. 10382 of 2011, which has not looked into this aspect of non-

compliance of mandatory procedure prescribed under CCS(CCA) Rules is also set aside. Consequently, the respondents are directed to hold a fresh inquiry into the matter in accordance with applicable Rules from the stage post the issuance of charge-sheet/memo dated 1.6.2010 (Annexure P-5) and to take the same to its logical conclusion. Respondents are further directed to complete the same preferably within a period of three months from today.

10. The appeal is disposed in terms of above directions. Pending application (s), if any, also stand disposed of.

(Dharam Chand Chaudhary)
Acting Chief Justice

(Jyotsna Rewal Dua)
Judge

18th June, 2019
(reena)