Chandadevi Shrivastava Vs State Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Feb. 16, 2024

Acts Referred: Constitution of India, 1950 â€" Article 226, 309
Madhya Pradesh Leave Rules, 1977â€" Rule 24, 24(1), 24(2)
M.P. Civil Services (Conduct) Rules, 1965 â€" Section 7

Hon'ble Judges: Rajani Dubey, J

Bench: Single Bench

Advocate: Vinod K. Sharma, Beenu Sharma

Final Decision: Allowed

Judgement

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India for setting aside the order dated 13.3.2012

(Annexure P/1) issued by respondent No.3/CMHO, Narayanpur whereby she has been denied salary for a period from June, 2002 to February, 2003.

2. Brief facts of the case, as narrated in the petition, are that the petitioner is working as ANM under Primary Health Center, Orcha. On 8.9.2003 a

charge sheet was issued to her alleging that she is absent from headquarters Kohkameta and is residing and doing work from Narayanpur. Salary of

the petitioner from May, 2002 to February, 2003 was withheld and departmental enquiry was initiated. The petitioner in her detailed reply denied the

allegations, however, after departmental enquiry,Ã, onÃ, 12thÃ, Ã, August,Ã, 2010Ã, (AnnexureÃ, P/4)Ã, Ã, anÃ, orderÃ, passed withholding one

increment of the petitioner without cumulative effect. SinceÃ, afterÃ, departmental enquiry, thereÃ, was noÃ, order Ã, for withholding salary, the

petitioner requested the respondent authorities for grant of withheld salary from May 2002 to February 2003 but the same was denied to her stating

that during the said period, she was absent and this charge has been proved in the enquiry. Hence this petition for the following reliefs:

Ã¢â‚¬Å“10.1 That, the HonÃ¢â‚¬â„¢ble Court may kindly be pleased to quash the impugned order dated 13/3/12 (Annexure P/1) for not granting the salary as

it is against the order passed in departmental enquiry and withheld salary from May 2002 to February 2003 and earned leave may kindly be granted in

the interest of justice.

10.2 That HonÃ¢â‚¬â„¢ble Court may kindly be pleased to direct the Respondents to provide the cost of the petition and other expense suffered by the

petitioner.

10.3 That, any other writ, directions or relief which this HonÃ¢â‚¬â„¢ble Court may deem fit may kindly be passed in favour of the petitioner.Ã¢â‚¬â€‹

3. Learned counsel for the petitioners submits that the action of the respondents is arbitrary, unconstitutional and not sustainable in the eye of law. The

impugned order is bad as in the departmental enquiry, there is no order of withholding salary of the petitioner and only there is order to withhold one

increment without cumulative effect. Even if for the sake of argument, any charge was found proved, then also only final order passed in the enquiry

will be operative and not the other observations made therein. In her reply, the petitioner had also requested for grant of withheld salary but the same

was not considered. Therefore, the impugned order/letter dated 13.3.2012 (Annexure P/1) is liable to be set aside and the petitioner be granted the

relief claimed in this petition.

4. On the other hand, learned counsel for respondents/State strongly opposes the contention of the petitioner and submits that the petitioner who was

working as Female Health Worker and posted at Sub Health Centre, Kohkameta, CHC,Orcha was charge-sheeted for remaining absent from the

headquarters during execution of various schemes such as Pulse Polio etc. from 1st June, 2002 onwards and was negligent towards her work. In the

departmental enquiry, in which she duly participated, the charges of misconduct and negligence was duly proved vide enquiry report filed as Annexure

R/1. Pursuant thereto, the disciplinary authority passed order on 12.8.2010 withholding one annual increment without cumulative effect. She submitted

an application seeking salary from June, 2002 to February, 2003, on which she was informed that in the departmental enquiry, her unauthorized

absence from duties during the said period was proved and therefore, she is not entitled for any salary during this period. Pursuant to the order dated

12.8.2010 passed by the Collector, Narayanpur imposing punishment of withholding one annual increment without cumulative effect, the Chief Medical

and Health Officer, Narayanpur vide order dated 27.8.2010 (Annexure R/2) also passed order to this effect. The petitioner has not preferred any

appeal against the said order and therefore, it has attained finality. Hence the instant petition being without any substance is liable to be dismissed.

5. Heard learned counsel for the parties and perused the material available on record.

6. It is not disputed in this case that the petitioner was working as Female Health Worker and was charge-sheeted for remaining absent from the

headquarters and in the departmental enquiry, the disciplinary authority passed an order on 12.8.2010 withholding her one annual increment without

cumulative effect. Thereafter, when the petitioner filed application for her salary from June, 2002 to February, 2003, by the impugned order dated

13.3.2012 (Annexure P/1), she was informed that she is not entitled for salary of the aforesaid period due to unauthorized absence from duties during

this period.

7. This Court in paras 8 & 9 of its judgment dated 16.6.2022 passed in the matter of Dr. Gourishankar Patel Vs. State of CG and others (WPS

No.89/2013), observed as under:

Ã¢â‚¬Å“8. In the case of Dr. N.S. Patel v. State of Chhattisgarh and others passed in WPS No.4922/2010, this Court considering the judgment passed by

High Court of Madhya Pradesh in the matter of Ali Hussain Asgar Ali v. State of M.P. and another reported in 1984 JLJ 67 and in Battilal v. Union of

India and others reported in (2005) 3 MPHT 32 (DB) has held thus:

Ã¢â‚¬Å“12. In the matter of Ali Hussain Asgar Ali v. State of M.P. and another, 1984 JLJ 67, the M.P. High Court while dealing with Rule 24 of the

Madhya Pradesh Leave Rules, 1977, held as under: -

Ã¢â‚¬Å“It is clear that sub-rule (1) provides that when a Government servant remains absent after expiry of leave he is entitled to no leave salary but it

has been further provided that such period shall be debited against his leave account as though it were half pay leave to the extent such leave is due

and the period in excess of such leave due being treated as extra-ordinary leave. Sub-rule (2) further provides that willful absence from duty after the

expiry of leave renders a Government servant liable to disciplinary action. It is, therefore, clear that on the facts as they stand that the petitioner

remained absent without the leave being sanctioned to him, and the only course open to the Government was either to act under sub-rule (1) or under

sub-rule (2) of Rule

24. It could not be contended that the orders which were passed could be passed under sub-rule (1) and the learned Government Advocate could not

refer to any rule which could justify an order as has been passed in this case, i.e. the order dated 21-7-1979. It is also not in dispute that if the State

Government has chosen to act under sub-rule(2) of Rule 24, then it was necessary to follow the procedure of inquiry, which admittedly has not been

done in this case. If it was chosen to act under sub-rule (2) then disciplinary action could only be taken after following the proper procedure.

Admittedly, before passing of this order dated 21-7-1979 even a notice was not issued to the petitioner to pass such an order. It is, therefore, plain that

this order which was passed by the State Government against the petitioner could not be justified under any of the rules framed under Article 309 of

the Constitution of India.Ã¢â‚¬â€‹

13. Similarly, in a decision rendered in the matter of Battilal v. Union of India and others, 2005 (3) MPHT 32(DB), which appears to have been taken

into consideration in earlier decisions, the High Court of Madhya Pradesh while considering the meaning of dies-non pertinently held as under: -

Ã¢â‚¬Å“3.....When the Authority directs that the period will be treated 'dies-non', it means that continuity of service is maintained, but the period treated

as 'dies-non' will not count for leave, salary, increment and pension. In fact, F.R. 54 (1) casts such a duty on the authority. It provides that when a

Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review, the authority competent, to

order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the government servant for the period of his absence from duty including the period of suspension

preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.Ã¢â‚¬â€‹

14. Thus, from perusal of the Rules and the law laid down by the Madhya Pradesh High Court in Battilal's case (supra), it would appear that to

declare the period of absence from duty of a public servant in violation of Rule 7 of the Conduct Rules, 1965 and further to declare the period of

absence as dies-non are punitive order and it cannot be passed without proceeding departmentally in view of the procedure laid down under the

provisions of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. In the case in hand, the State Government straightway

passed the order holding the petitioner guilty of Rule 7 of the Conduct Rules, 1965 and declaring the period of absence as dies-non without affording

opportunity of hearing to him. The consequence would be, the order of the State Government dated 7-5-2005 becomes vulnerable and it is hereby

quashed. However, liberty is reserved in favour of the respondent authorities to initiate departmental enquiry against the petitioner and proceed to take

appropriate action against him in accordance with law and on its own merits.Ã¢â‚¬â€‹

9. In case of Basanti Joshi v. State of Chhattisgarh and others passed in WPS No. 375/2010, this Court considering the case of Battilal (supra) of

High Court of Madhya Pradesh has held thus:

Ã¢â‚¬Å“7. A similar view has also been taken by this Court in the case of Bal Krishna Tamrakar v. State of Chhattisgarh and others, W.P. 4328/2004

decided on 31.03.2010, referred to by the Petitioner so also in the case of Smt. Mrudula Rishi v. State of Chhattisgarh & Ors., decided on 30.10.2013

in W.P. No. 101/2006.

8. In view of the afore cited authoritative decisions of this Court so also the Division Bench decision of the Madhya Pradesh High Court, in the opinion

of this Court the order of dies-non which has an effect of major punishment and also adversely affects the pensionary benefits so also the retiral

benefits payable to the Petitioner on her retirement. The least that is expected from the Government is that on an order of such nature which has an

adverse civil consequence on the Government employee, an opportunity of hearing ought to had been provided to the employee. In the absence of any

such proceeding being drawn the impugned order of the Government treating the period between 6.12.2005 to 25.4.2007 as dies-non is not sustainable

and the same deserves to be is accordingly set aside/quashed.Ã¢â‚¬â€‹

8. In the present case also, it is clear that no show cause notice was issued to the petitioner before passing the impugned order declaring the period of

her absence from duties as dies non. The effect of the impugned order is having an adverse civil consequences upon the petitioner. Being so, before

passing any such order against the delinquent employee, an opportunity of hearing ought to have been provided. It is not disputed that the disciplinary

authority by the order dated 12.8.2010 imposed penalty on the petitioner of withholding one annual increment without cumulative effect. So after one

year and seven months, the impugned order passed by respondent No.3 without any show cause notice to the petitioner, is not in accordance with law

and is liable to be set aside.

9. Thus, having regard to the facts and circumstances of the case, the principles of law laid down in the afore-cited decisions, the manner in which the

impugned order dated 13.3.2012 has been passed, this Court is of the opinion that it is not sustainable in law. Accordingly, the impugned order dated

13.3.2012 (Annexure P/1) treating the period from June, 2002 to February, 2003 as dies non, is hereby set aside with consequences to follow.

10. With the aforesaid observations and directions, the writ petition stands allowed.