

Gaurav Agarwal Vs State of MP and another

Court: MADHYA PRADESH HIGH COURT

Date of Decision: Feb. 27, 2017

Acts Referred: [Indian Penal Code, 1860](#), [Section 307](#), [Section 307](#), [Section 307](#), [Section 148](#), [Section 148](#), [Section 148](#),

Hon'ble Judges: Vandana Kasrekar

Bench: Single Bench

Advocate: Udayan Tiwari, Manoj Kushwaha

Judgement

1. The petitioner has filed the present petition challenging the orders dated 07.03.2007 passed by respondent No. 3 as well as the order dated

17.04.2012.

2. The petitioner was appointed on the post of Lower Division Clerk (LDC) vide order dated 28.02.1986 on adhoc basis for a period of 89 days.

This period was extended by the respondents from time to time. Thereafter, the petitioner was appointed on probation for a period of two years

on 17.03.1988. After completion of two years of probation period he was regularized vide order dated 28.02.1991. Thereafter, the petitioner was

promoted to the post of Assistant Grade-II (UDC) vide order dated 23.11.1995. Thereafter, a criminal case was registered against the petitioner

under Section 307 read with Section 148 & 149 of the IPC at Police Station Cantt., Sagar. The petitioner was convicted by the trial Court vide

judgment dated 30.11.1990 with imprisonment of two years. Against the said judgment the petitioner has preferred a Criminal Appeal No.

1170/1990 before this Court. This Court also by passing a judgment dated 12.09.2006 has maintained the order of conviction. The petitioner,

thereafter, preferred a Criminal Appeal No. 849/2007 before the Apex Court and the same is still pending for adjudication, however, the Apex

Court has enlarge him on bail vide order dated 10.07.2007. In the meanwhile, the In-charge Joint Director issued an order dated 21.02.2007

thereby placing the petitioner under suspension. Thereafter, his services have been terminated vide order dated 07.03.2007 on the ground of his

conviction. Being aggrieved by that order the petitioner has filed a Writ Petition No. 3123/2011. The said writ petition was dismissed as

withdrawn with liberty to raise the grievance before the authority concerned and if occasion arise, then he may take recourse of law, if any vide

order dated 21.04.2011. The petitioner, thereafter, again filed a Writ Petition No. 7740/2011 and the said writ petition was dismissed as not

pressed by the petitioner in view of the order dated 21.04.2011 passed in W.P. No. 3123/2011. The petitioner, thereafter, submitted a

representation to respondent No. 1 against his order of termination. The representation submitted by the petitioner is rejected by the respondent

vide order dated 17.04.2012. Being aggrieved by this order the petitioner has filed the present petition.

3. Learned counsel appearing on behalf of the petitioner submits that the order of termination dated 07.03.2007 as well as the order dated

17.04.2012 by which his representation is rejected are illegal, arbitrary and in violation of principle of natural justice. He submits that before

passing the order of termination, the petitioner was not given any opportunity of hearing. It has further been stated that no enquiry what so ever has

been held before passing the order of termination. He further argues that respondent No. 3 has no authority to pass the impugned order. He also

submits that the appointing authority of the petitioner is Joint Director, Public Instructions. Thereafter, on 23.06.1999, upon abolition of the

divisional office, the power of appointment was given to the Collector vide order dated 04.04.2003. Thereafter, vide order dated 22.08.2008 the

State Government has transferred the said powers to the Joint Director, Public Instructions from the Collector. Thus at the relevant time the

appointing authority of the petitioner was the Collector and, therefore, the Joint Director was not competent authority to terminate the services of

the petitioner. He further submits that even if it is found that the appointing authority of the petitioner is Joint Director even then the order of

termination has been passed by respondent No. 3 who was In-charge Joint Director, Public Instructions, Sagar and his substantive post was

Principal Higher Secondary School. He, therefore, submits that as respondent No. 2 was not holding the post of Joint Director of Public

Instructions substantively and, therefore, he is not competent to pass the order of termination and for the said purpose he relied on the judgment

passed by the Division Bench of this Court in the case of Shyam Narayan Sharma Vs. State of M.P. & others passed in Writ Appeal No.

1005/2011 and similar other writ petitions.

4. The respondents have filed their return and in the return, the respondents have stated that the order is passed by the competent authority. It has

been further submitted that respondent No. 3 was holding the charge of Joint Director and the persons holding the charge is having all the

administrative powers. So far as, the contention of learned counsel for the petitioner that he was not granted any opportunity of hearing before

passing the impugned order is concerned, the learned counsel for the respondents submits that as per Rule 19 of the Madhya Pradesh Civil

Services (Classification, Control and Appeal) Rules, 1966 there is no statutory requirement to provide any opportunity of hearing before passing

the order of penalty because the order of termination has been passed on the basis of conviction in a criminal case. He further relied on the

judgment passed by the Full Bench of this Court in the case of Sheel Chand Jain Vs. State of M.P. and another, 2010 (2) MPLJ 689. He further

argues that the said writ petition is not maintainable on the ground that earlier the petitioner has filed two writ petitions challenging the same

termination order and the same was withdrawn subsequently.

5. I have heard learned counsel for the parties and perused the record. The petitioner was working on the post of Assistant Grade-II (UDC). The

criminal case was registered against him and he was convicted by the trial Court. The conviction was maintained by the High Court and the criminal

appeal is pending before the Apex Court. After his conviction the respondents have passed an order dated 07.03.2007 thereby terminating the

services of the petitioner. Being aggrieved by that order the petitioner has preferred a writ petition before this Court. The said writ petition was

withdrawn by the petitioner with a liberty to raise the grievance before the authority concerned. Accordingly, the petitioner has preferred a

representation in the nature of an appeal on 16.06.2011 to the Principal Secretary School Education Department, who referred the matter to the

Director, Public Instructions for taking decision.

6. The order of termination has been challenged by the petitioner on the ground that the same has been passed by the In-charge Joint Director,

Public Instructions who is not a competent authority under the rules and, therefore, the said order is being without any jurisdiction authority and,

therefore, void ab initio. Without being influenced by the earlier order passed by the Joint Director, the Director, Public Instructions by applying his

mind and after affording adequate opportunity of hearing to the petitioner has passed the impugned order. The petitioner has been convicted by the

Sessions Court and the punishment has been upheld by the High Court and the appeal is pending before the Apex Court, however, the Apex

Court has not stayed the conviction of the petitioner and has only enlarge the petitioner on bail thus, the punishment against the petitioner still

stands.

7. So far as, the competency of respondent No. 3 in passing the impugned order is concerned, as in the present case, although the termination

order was passed by the Incharge Joint Director but, a representation has been preferred by the petitioner before the higher authority i.e. Principal

Secretary School Education Department who referred the matter to the Director and the Director after considering all the aspects of the matter has

rejected the representation/appeal submitted by the petitioner vide order dated 17.04.2012. Thus, the order dated 07.03.2007 has been merge

with the order passed by the Director. The Full Bench of this Court in the case of Sheel Chand Jain (supra) in para 11 has held as under:-

.....If a wrong is committed instead of passing a correct and justified order then the moment wrong is set aside or

quashed then the order setting aside the wrong would replace the first wrong order. In a case like this, the principles of merger would also apply.

Whenever, the higher authority passes an order either confirming or setting aside the order passed by the subordinate authority, then the order

passed by the subordinate authority would merge in the order passed by the higher authority. In case of concurrence and confirmation, it would

always be said that the higher authority has found the order of the lower authority to be correct, however, in case of reversal, it would always be

said that the higher authority has corrected the wrong which was committed by the lower authority on the date of passing the wrong

order.....

8. Thus, as per the Full Bench judgment passed by this Court, the order passed by the In-charge Joint Director is merge into the order passed by

the Director, Public Instructions who is the competent authority to pass the order.

9. The judgment relied on by the learned counsel for the petitioner would not be applicable in the present case as in the present case the services of

the petitioner have been terminated on the ground of his conviction in a criminal case. Thus, even if, the order is set aside on the ground that the In-

charge Joint Director is not competent to pass the order of termination then the petitioner could not be reinstated as his services were terminated

on the ground of his conviction in a criminal case and the said conviction is maintained by this Court.

10. So far as, holding of regular departmental enquiry is concerned, the Rule 19 of the Madhya Pradesh Civil Services (Classification, Control and

Appeal) Rules, 1966 provides for special procedure wherein if the conduct of the Government servant has lead to his conviction on a criminal

charge, then the disciplinary authority can imposed him with the order of penalty notwithstanding anything contends in the Rule 14 to 18 which

provides for conducting a regular departmental enquiry, and, therefore, as per Rule 19 of the Madhya Pradesh Civil Services (Classification,

Control and Appeal) Rules, 1966, the respondents are not required to hold the regular departmental enquiry. The rule 19 also does not provide for

giving any opportunity of hearing before passing the order of penalty. However, from the record it reveals that respondent No. 2 has given

sufficient opportunity of hearing to the petitioner including the personal hearing before passing the order dated 17.04.2012.

11. Thus, in light of the aforesaid, as the services of the petitioner have been terminated on the ground of his conviction in criminal case which is

maintained by this Court, I do not find any reason to entertain in the said writ petition.

12. Accordingly, the writ petition stands dismissed.