

(2017) 07 MP CK 0010

MADHYA PRADESH HIGH COURT

Case No: 1635-2014

Gyanichand

APPELLANT

Vs

Radhelal

RESPONDENT

Date of Decision: July 17, 2017

Acts Referred:

- Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Hon'ble Judges: SUJOY PAUL

Bench: Single Bench

Final Decision: Dismissed

Judgement

1. In this petition filed under Article 226 of the Constitution, petitioner has prayed for following reliefs :-

I. To call for entire relevant record.

II. To direct the respondents to consider the name of the petitioner for promotion on the post of ACF without influence of pending disciplinary proceedings.

III. To direct the respondents to provide all consequential benefits to the petitioner accordingly.

IV. Any other relief together with cost of the petition which this Hon'ble Court deem fit and proper under the facts and circumstances of this case may also be awarded in favour of the petitioner.

V. To quash the charge sheets dated 2.2.2000, 25.10.2007, 09.12.2009, 06.02.2010 and 18.02.2010 pending against the petitioner with a direction to open the sealed cover in respect of recommendations of the DPC on assessment of the petitioner

and to act thereon without any delay.

2. The stand of the petitioner is that he is facing various departmental inquiries which were instituted by issuance of different charge-sheets. The petitioner is not responsible for the delay caused in the said inquiry. The inquiries are pending against him for the reasons solely attributable to the department. In the meantime, the petitioner was considered for promotion on the post of Assistant Conservator of Forest but because of pendency of departmental inquiries, his fate was kept in the sealed cover. The sealed cover may be directed to be opened by the respondents.

3. Shri Ghildiyal, learned counsel for the petitioner placed reliance on the case of State of Punjab Vs. Chaman Lal Goyal- (1995) 2 SCC 570 to bolster his submission that because of unreasonable delay in conducting and completing the inquiries, the sealed cover may be directed to be opened. He also relied on State of Andhra Pradesh Vs. N.Radhakishan-(1998) 4 SCC 154. During the course of arguments, Shri Ghildiyal fairly submitted that in this petition, petitioner is not challenging the charge-sheets and validity of departmental inquiries. His singular prayer is confined to open the sealed cover. He further admitted that the departmental inquiries based on the charge-sheets dated 2.2.2000, 25.10.2007, 9.12.2009, 6.2.2010 and 18.2.2010 are pending. Since inquiries are being delayed by the respondents, as directed in the case of Chaman Lal Goyal (supra), the respondents may be directed to open the sealed cover.

4. The respondents have filed the return and opposed the said prayer. It is submitted that the petitioner is responsible for the delay caused in the departmental inquiries. He filed various writ petitions challenging the departmental inquiries. In certain writ petitions, ad interim orders were passed. Because of interim orders also, inquiries could not be concluded. This court in certain writ petitions ordered for completing the inquiry within reasonable time. Those orders are filed by the petitioner as Annexure P/3 along with the amended petition. The allegations mentioned in certain charge- sheets are very grave including the allegation that the petitioner had taken Rupees One Lakh as bribe and, in view of seriousness of the allegations and on account of settled legal position, the sealed cover cannot be directed to be opened.

5. No other point is pressed by learned counsel for the parties.

6. I have heard learned counsel for the parties at length and perused the record.

7. The settled legal proposition is that if an employee is facing departmental inquiry or criminal trial or undergoing punishment, during such period, the sealed cover cannot be opened and the recommendations of DPC cannot be given effect to. In the peculiar facts of that case in Chaman Lal Goyal (supra), the Apex Court issued the directions for opening the sealed cover. In para-12 of the judgment, in no uncertain terms it was made clear that "This direction is made in the particular facts and circumstances of the case . We are aware that the rules and practice normally

followed in such cases may be different." Thus, I am unable to hold that the ratio decidendi of the case of Chaman Lal Goyal (supra) is that where inquiries are being delayed by the employer, as a straight jacket formula, direction can be issued for opening the sealed cover. As noticed, in Chaman Lal Goyal (supra) itself, the rule and practice prevailing on this point for not opening the sealed cover unless employee is exonerated from the charges is taken note of. The ratio decidendi of Chaman Lal Goyal (supra) is that the delay alone will not vitiate the departmental inquiries. The courts have to apply balancing test or balancing process. Delay alone cannot be a ground to quash the proceedings if allegations are very grave.

8. This is trite law that "precedent" is what is actually decided by the Supreme Court and not what is logically flowing from it. The single factual difference may change the precedential value of a judgment. This is also settled that there is no precedence on facts, on the contrary, only legal propositions are binding. {See : Ram Prasad Sarma Vs. Mani Kumar Subba and others (2003) 1 SCC 289, Rekha Mukherjee Vs. Ashis Kumar Das-(2005) 3 SCC 427 and Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd.-(2003) 2 SCC 111}.

9. In my view, the singular point raised by the petitioner is devoid of substance. He is facing various inquiries in which serious allegations are made against him. The petitioner has challenged certain charge-sheets in connected matters which were heard and decided by separate orders today. However, in the present case, in view of settled legal position pending disciplinary inquiries against the petitioner, no mandamus can be issued for opening the sealed cover. Petition sans merit and is hereby dismissed.