



RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 6869/2007

Sanjay Dadich

----Petitioner

Versus

1. The State of Rajasthan through the Secretary to Government, Secondary Education, Government of Rajasthan, Jaipur.
2. The Director, Secondary Education, Education Department, Bikaner.
3. Ms. Gayatri Vijay, Dy. Director, Secondary Education, Kota.

----Respondents

For Petitioner(s) : Mr. Kamlakar Sharma, Sr. Adv. with
Mr. Molik Purohit

For Respondent(s) : Mr. S.S. Raghav, AAG with Mr.
Mananjay Singh Rathore

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

RESERVED ON :: 03.10.2023

PRONOUNCED ON :: 17.10.2023

REPORTABLE

1. A challenge has been laid by the petitioner to the impugned order dated 11.07.2007 by which he was dismissed from service.
2. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has filed this petition with the following prayer:-

“(i) by issuance of writ or certiorary or any other appropriate writ, order or direction in the nature thereof, the order dated 11th July, 2007 passed by the respondent No.3 be quashed and be declared null and void ab initio and the respondents may be directed to take the petitioner back in service with all consequential benefits;



(ii) by issuance of writ of mandamus or any other appropriate writ, order or direction in the nature thereof, an appropriate direction may be issued so as to take necessary action against the respondent No.3 as she has acted willfully in a mala fide and revengeful manner against the petitioner and deprived him from his right to livelihood.

(iii) Interim Relief as prayed be granted.

(iv) Any other order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner."

Submissions by the petitioner.

3. Learned counsel for the petitioner submits that the petitioner participated for selection for appointment on the post of Physical Education Teacher Grade-II pursuant to the advertisement issued in the year 1998. Initially, the degree possessed by the petitioner was not considered by the respondents as valid degree for getting appointment on the advertised post. Counsel submits that the petitioner assailed the aforesaid action of the respondents before this Court by way of filing S.B. Civil Writ Petition No. 3023/2004 and the same was allowed by this Court vide order dated 18.11.2005 and a specific direction was issued to the respondents to re-assess the merit of the petitioner and take into account the bonus marks of the State level certificate and in case the petitioner is found in merit then consider his case for appointment on the said post. Counsel submits that after passing of the aforesaid order, the documents/sports certificate furnished by the petitioner were duly verified by the respondents and appointment was granted to him vide order dated 31.10.2006. Counsel submits that one fine morning i.e. on 14.02.2007, the services of the petitioner were dismissed by the respondents by recording a



finding that the sports certificate furnished by the petitioner were found to be forged and fabricated. Counsel submits that a miscellaneous application bearing No.20/07 was submitted by the petitioner before this Court wherein it was observed by this Court that the question of conducting separate enquiry with regard to sports certificates of the petitioner cannot be decided in the miscellaneous application and it was left open for the petitioner to challenge the same separately before this Court. But subsequently the dismissal order dated 14.02.2007 was withdrawn by the respondents vide order dated 18.05.2007 subject to conducting a separate inquiry against the petitioner. Counsel submits that in the meantime an FIR No. 27/2007 was registered against the petitioner with Police Station Kaithoon pol District Kota for the offence punishable under Sections 420, 467, 468 and 471 IPC but without issuing any notice and without holding any inquiry under the provisions contained under the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules of 1958'), the respondents have dismissed the service of the petitioner again vide order dated 11.07.2007 by holding that the sports certificate of the petitioner were found to be forged and fabricated. Counsel submits that the respondents have dismissed the services of the petitioner on the basis of letters issued by the authority way back in the year 2006. Counsel submits that subsequently in the said criminal case, the petitioner was acquitted from all the charges by the Court of Chief Judicial Magistrate, Kota vide judgment dated 26.08.2021. Counsel submits that violating the principles of natural justice, the order impugned has been passed against the petitioner with mala-fide





intention. Counsel has placed reliance on the following judgments/orders passed by this Court:-

(1) Chhoga Lal Vs. Rajasthan Jan Jati Kshetriya Vikas Sahkari Sangh, Udaipur & Another : S.B. Civil Writ Petition No. 877/1996 decided on 21.08.2009

(2) Chhotulal Vs. State of Rajasthan & Ors. : S.B. Civil Writ Petition No. 5725/1995 decided on 02.07.2009

(3) Shiv Prasad Sharma Vs. State of Rajasthan and Ors. : 2003(3) WLN 129.

Hence, interference of this Court is warranted.

Submissions by the respondents:

4. Per contra, counsel for the respondents-State opposed the arguments raised by the counsel for the petitioner and submitted that on the basis of fake and fabricated documents, the petitioner has got appointment and when this fact was verified by the competent authority it was found that the petitioner was not in possession of the genuine sports certificate. Counsel submits that during the course of inquiry a written statement was submitted by the petitioner on 08.01.2007 wherein the petitioner has admitted that he has never participated in the State level sports competition. Counsel submits that under these circumstances, the principles of natural justice were duly followed and accordingly the order impugned has been passed by which the services of the petitioner have been dismissed. Counsel submits that under these circumstances interference of this Court is not warranted.

5. Heard and considered the submissions made at the bar and perused the material available on the record.

Analysis and Reasoning:



6. The tests to be applied to find out whether a departmental enquiry was conducted in accordance with the principles of natural justice and whether the delinquent had given reasonable opportunity or not are as follows:-

(i) Whether an opportunity to deny the guilt and establish his innocence had been given by framing definite charges and by disclosing the allegations on which the charges were based?

(ii) Whether opportunity to defend himself by cross-examining the witnesses produced against him and examined in his presence and to examine himself or any other witnesses in support of his defence was given?

(iii) Whether any material had been relied on against the delinquent in the enquiry without him being given an opportunity to explain the same?

(iv) Whether opportunity to make his representation as to why the proposed punishment should not be inflicted upon him, had been given?

7. What is a reasonable opportunity, has not been defined in the Constitution of India or the General Clauses Act. But the words have acquired a legal meaning and it cannot be left to the vagaries of each individual. The word 'reasonable' must therefore mean according to rules of natural justice which are rules of law. Where orders are to be made against a person it becomes duty of the authority to hear judicially that is to say, in an objective manner, impartially and after giving reasonable opportunity to the person concerned to place his case before it. Passing an order which affects a person, without giving him an opportunity of being heard would be held to be vitiated as being contrary to principles





of natural justice. If the safeguards provided by Article 311 of the Constitution are not to be rendered illusory, the words "reasonable opportunity" must be deemed to mean a real and adequate opportunity which is not merely nominal or a shame one. It is well settled principle of law that an order of removal from service which denied the person reasonable opportunity of defending himself in disregard of protection afforded by Article 311(2) of the Constitution, is a nullity and non-existent in the eye of law. Conclusions of Enquiry Officer and Disciplinary authority based on statements recorded behind the back of delinquent officer are vitiated on the ground of denial of reasonable opportunity.

8. A careful look of the impugned order dated 11.07.2007 reveals that no notice or charge sheet was served upon the petitioner. No documents were supplied to the petitioner to seek his explanation that the sports certificates furnished by him were fake and fabricated. No opportunity was afforded to the petitioner to file his reply to the allegations levelled against him.

9. The background of the case indicates that the petitioner was given appointment vide order dated 01.09.2006 and he was dismissed from the service vide order dated 14.02.2007 on the ground that he got appointment on the basis of forged sports certificates. These facts were brought into notice of this Court by way of filing S.B.Civil Misc. Application No.20/2007. However, the said application was decided by this Court on 25.05.2007 granting liberty to the respondents to conduct separate enquiry with regard to sports certificates of the petitioner. Hence, on 18.05.2007, the respondents withdrew the dismissal order dated 14.02.2007 and



restored the appointment order of the petitioner subject to conducting enquiry with regard to the sports certificates of the petitioner.

10. The respondents lodged FIR No.27/2007 against the petitioner on 13.03.2007 under Section 420, 467, 468 and 471 IPC with Police Station Kaithooni pol District Kota wherein the petitioner was charged for the above offences before the competent Court of law.

11. In the meantime, the respondents wrote letters to the authorities to verify the genuineness of the sports certificates of the petitioner and found the same as fabricated and it was found that the petitioner had not participated in these sports events. The respondents have relied on a written statement dated 08.01.2007 by the petitioner wherein it was alleged that the petitioner has admitted that he had not participated in sports event and a decision was taken to dismiss the petitioner from service.

12. It is worthy to note here that before passing the impugned dismissal order, no explanation was sought by the respondents, no notice of charge sheet was given to him and no enquiry was conducted against him, no affording opportunity given to rebut the allegations levelled against him.

13. When the order impugned in this petition is scanned and considered in the light of and by applying the aforesaid principles, even without lifting the veil, it could be concluded that the order casts stigma. The order was manifestly stigmatic action taken to terminate petitioner's service. Such action could not have been



taken against the petitioner without giving him a full fledged opportunity of hearing to defend and after holding regular departmental enquiry. The employer is not allowed to hire and fire, even if allegations are there against the employee with regard to any misconduct. The services cannot be given a go-bye by one stroke of pen on the ground of misconduct by casting stigma, without holding regular enquiry in accordance with the principles of natural justice.

14. The effect of removal has been explained by the Hon'ble Supreme Court in the matter of **Shyam Lal v. State of U.P.** reported in **AIR 1954 SC 369** wherein it has been held by their Lordships that there can be no doubt that removal generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. It has further been held that dismissal or removal is a punishment and this is imposed on an officer as a penalty. It involves loss of benefit already earned.

15. At this stage, it would be appropriate to notice the safeguard and protection guaranteed to the Government servant under Article 311(2) of the Constitution of India, which provides as under:-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State – (1) xxx xxx xxx



(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

16. Article 311 basically aims at providing security of tenure to Government servants and guarantees constitutional protection to persons employed in civil capacities under Union and States against arbitrary dismissal, removal and reduction in rank. The protection is two fold -

(a) against removal or dismissal by an authority subordinate to that by which employee was appointed, and

(b) against dismissal, removal and reduction in rank without giving the employee a reasonable opportunity of being heard in an enquiry without complying with the principles of natural justice.

17. The enquiry contemplated by Article 311(2) of the Constitution of India is what is generally known as a departmental



enquiry and the constitutional requirement for a proper enquiry within the meaning of Article 311(2) are basically two fold-

- (i) The civil servant must be informed of the charges against him, and
- (ii) He must be offered a reasonable opportunity of being heard in respect of those charges.

18. The scope of the words "dismissed" and "removed" employed under Article 311 of the Constitution of India came up for consideration before the Constitution Bench of the Hon'ble Supreme Court in the matter of **Moti Ram Dheka v. General Manager, North Easter Frontier Railway** reported in **AIR 1964 SC 600** in which it has been held that the effect of dismissal or removal of one from his office is to discharge him from that office i.e. to bring about cessation of service. Thus, the said words comprehend every termination of service of a Government servant. Article 311(2) in an effect therefore lays down that before the services of a Government servant are so terminated, he must be given a reasonable opportunity of showing cause against such a termination. Their Lordships further held that there is no decision for placing any limitation on the said expression. The attempt to imply the said limitation is neither warranted by the expressions used in the Article or by the reason given. If such limitations are imported, then it would lead to an extraordinary result that a Government servant, which has been guilty of misconduct would be entitled to a reasonable opportunity, whereas an honest Government servant could be dismissed without any such protection. A Government servant holding a substantive lien to a permanent post cannot be removed from the



said post without affording a reasonable opportunity, as is contemplated under Article 311(2) of the Constitution of India. It is therefore evident that the right held by a Government employee to hold a post cannot be interfered lightly in case any such proceeding is required to be undertaken, necessary care and caution has to be ensured by the Government, which in order to safeguard the interest of a Government employee, as is contemplated under Article 311(2) of the Constitution of India. It has been observed as under in paragraphs 67 and 68 :-

“67. Therefore, whether the natural and dictionary meaning of the words “dismissal” and “removal” were adopted or the limited meanings given to those words by R. 49 were accepted, the result, so far as a permanent employee was concerned would be the same, namely, that in the case of termination of services of a Government servant outside the three categories mentioned in the explanation, it would be dismissal or removal within the meaning of Art. 311 of the Constitution with the difference that in the former the dismissed servant would not be disqualified from future employment and in the latter ordinarily he would be disqualified from such employment.

68. If so, it follows that if the services of a permanent servant, which fall outside the three categories mentioned in the explanation, were terminated, he would be entitled to protection under Art. 311 (2) of the Constitution.”

19. The petitioner was a permanent Government servant. He had a right to his substantive rank. The Hon’ble Supreme Court in the matter of **Parshotam Lal Dhingra v. Union of India** reported in **AIR 1958 SC 36** has held that mere termination of service, without more, of such an employee, would constitute his 'removal' or 'dismissal' from service attracting Article 311(2) of the Constitution of India. As such, the constitutional protection and



safeguard guaranteed under Article 311(2) cannot be taken away by a side wind without following the provisions contained under Article 311(2) of the Constitution of India.

20. In the matter of **Jai Shanker v. State of Rajasthan** reported in **AIR 1966 SC 492**, the question that fell for consideration before the Constitution Bench of the Supreme Court was, whether the provisions contained under the Jodhpur Service Regulations was sufficient to enable the Government to remove a person from service without giving him an opportunity of showing cause against that punishment, if any, and it was answered in negative holding that the regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause and the Government cannot order a person to be discharged from service without at least telling him that they propose to remove him and without giving him an opportunity of showing cause as to why he should not be removed. It has further been observed as under:-

"6. ... A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here.

7. In our judgment, Jai Shankar was entitled to an opportunity to show cause against the proposed removal from service on his overstaying his leave and as no such opportunity was given to him, his removal from service was illegal. He is entitled to this declaration."

21. Similarly, in the matter of **Deokinandan Prasad v. State of Bihar** reported in **(1971) 2 SCC 330**, another Constitution Bench



of the Supreme Court has held that an order of termination of service passed under Rule 76 of the Bihar Service Code on account of the servant's continuous absence for five years without giving an opportunity to the servant under Article 311(2) of the Constitution of India would be invalid.

22. The aforesaid principles of law laid down in **Jai Shanker (supra)** and **Deokinandan Prasad (supra)** have been followed with approval by their Lordships of the Supreme Court in the matter of **State of Assam v. Akshaya Kumar Deb** reported in **(1975) 4 SCC 339** wherein the question that required consideration was as under :-

“7. The only question that falls for determination is whether the services of the respondent could be terminated under Rule 18 of the Assam Fundamental and Subsidiary Rules, without complying with the procedure prescribed in Article 311(2) of the Constitution of India?”

23. Turning back to the facts of the present case in the light of the decisions rendered by Supreme Court in the case of **Jai Shanker (supra)**, **Deokinandan Prasad (supra)** and **Akshay Kumar Deb (supra)**, it is quite vivid that the petitioner was a permanent government employee and he has constitutional safeguard and protection under Article 311 (2) of the Constitution of India, as such it was absolutely imperative on the part of the respondents to give him an opportunity to defend his proposed dismissal from service. But without doing so, the respondents have terminated the services of the petitioner without holding any enquiry against him.



Conclusion:

24. Having regard to the facts and circumstances of the case observed hereinabove, this petition is partly allowed. The order dated 11.07.2007 is quashed and set aside with directions to reinstate back the petitioner in service. The respondents are granted liberty to hold fresh enquiry against the petitioner, in accordance with law. Such enquiry shall, however, be concluded within a period of six months from the date of receipt of certified copy of this order.

25. Stay application and all pending applications (pending, if any) also stand disposed of.

26. There shall, however, be no order as to costs.

(ANOOP KUMAR DHAND),J

MR/pcg/280