HIGH COURT OF MADHYA PRADESH

BENCH AT INDORE

JUSTICE SUJOY PAUL.

Writ Petition No. 835/2015

Smt. Hemlata Rawat
Vs.
State of M.P. & others

Shri Praveen Pal, Advocate for the petitioner.
Shri Romesh Dave, Deputy Govt. Advocate for respondents/State.

O R D E R
(30 / 11 /2015)

The petitioner has challenged the order dated 16.12.2014 (Annexure P/5), whereby she is dismissed from service on account of her conviction by Chief Judicial Magistrate, Jhabua in Criminal Case No. 469/2003. The petitioner is convicted under Section 409 and 201 of IPC.

2. Learned counsel for the petitioner contended that against said judgment an appeal is preferred and appellate court has suspended the sentence. It is contended that before inflicting the punishment, no opportunity of hearing was provided to her. Reliance is placed on the judgment of this Court in *Tikaram Windwar Vs. Registrar, Co-operative Societies, M.P. reported in 1978 MPLJ 57*.

3. In addition, reliance is placed on circular of GAD dated 26.05.1998 (Annexure P/3), wherein it is held that after the conviction a brief enquiry be conducted before inflicting the punishment in the disciplinary proceedings.

4. The prayer is opposed by the respondents.

5. They contended that punishment is in consonance with M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. They also relied on a subsequent circular of GAD dated 08.02.1999. They relief on certain judgment of Supreme Court.

6. No other point is pressed by learned counsel for the

parties.

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

8. The bone of contention of petitioner is based on the ratio laid down by this Court in *Tikaram Windwar (supra).* The said judgment is of no assistance to the petitioner for the simple reason that correctness of the said judgment was considered by a Full Bench in *2004 (4) MPLJ 555 (Laxmi Narayan Hayaran vs. State of M.P. and another)*. Para 10 and 11 of Full Bench judgment reads as under:-

> "10. Rule 19 of the State CCA Rules is similar to Rule 14 of Railway Rules considered in *Challappan (supra)* and unamended Rule 19 of Central CCA Rules considered in Tulsiram Patel, which did not provide for any opportunity of hearing in regard to the penalty to be imposed. In *Tulsiram Patel (supra)*, the Supreme Court has categorically held that no opportunity need be given to the employee concerned, but the disciplinary authority, on consideration of the facts and circumstances (in the manner set out in *Challappan* and *Tulsiram Patel*) may impose the penalty. It was also clarified that if the penalty imposed was whimsical or disproportionately excessive, the same was open to correction in judicial review. The subsequent decision of the Supreme Court in *Sunil Kumar Sarkar (supra)* dealt with the amended Rule 19 of the Central CCA Rules which provided for a hearing. Therefore, the principle laid down in *Sunil Kumar Sarkar (supra)* can not be of any assistance in interpreting Rule 19 of the State CCA Rules in the absence of an amendment in the State CCA Rules corresponding to the amendment made in the Central CCA Rules. As the State CCA Rules stand today, the law applicable is as laid down in *Tulsiram Patel (supra)* and not as laid down in Sunil Kumar Sarkar.
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> 11. We accordingly overrule the decisions of the Division Bench in *Tikaram (supra)* and *Sheetal Kumar Bandi (supra)*, in so far as they hold that the delinquent employee should be given a notice giving an opportunity to put forth his views as to the penalty proposed to be imposed."

9. Para 10 aforesaid makes it clear that Rule 19 do not contemplate any opportunity of hearing in regard to the penalty to be imposed. The punishment inflicted may be subject to judicial review only on the doctrine of proportionality. In the considered opinion of this Court, CCA Rules nowhere prescribes for grant of any opportunity before inflicting the punishment or for conducting a summary enquiry. In the subsequent circular dated 08.02.1999, it was made clear that the conduct of government employee which led to her conviction is the basic criteria on which punishment can be decided. In the present case, the allegations against the petitioner are grave. She was convicted for serious offences. In *(1997) 7 SCC 514 (Union of India and others vs. Ramesh Kumar)*, it was held as under:-

> "Under Rule 19 of the CCS (CCA) Rules, 1965, the Disciplinary Authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate court, the order of dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under suspension till disposal of appeal by the appellate court. The rules also do not provide the Disciplinary Authority to await disposal of the appeal by the appellate court for taking action against him on the ground of misconduct which has led to his conviction by a competent court of law. Having regard to the provisions of the rules, the order dismissing respondent from service on the ground of misconduct leading to his conviction by a competent court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the appellate court has suspended the execution of sentence and enlarged the respondent on bail."

10. In view of the judgment of *Ramesh Kumar (supra)*, it is clear that merely because sentence is suspended in appeal, no interference can be made on the punishment order. The

disciplinary authority was well within its right to proceed with the matter and inflict the punishment.

11. In view of the conduct of the petitioner which had led to conviction, I am unable to hold that punishment is harsh or excessive.

12. The petitioner has relied on the executive instruction dated 26.05.1998. The said instruction cannot be enforced in this petition filed under Article 226 of the Constitution, more so, when the Statutory Rule (Rule 19 of CCA Rules) holds the field. It is apposite to quote a passage from *(2007) 8 SCC 212 (Chief Commercial Manager, South Central Railway vs. G. Ratnam and others),* which reads as under:-

> "It is well settled that the Central Government or the State Government can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government by some statute or under some provision of the Constitution providing therefor. Therefore, even if there has been any breach of such executive instructions that does not confer any right on any member of the public to ask for a writ against the Government by a petition under Article 226 of the Constitution of India.

13. Considering the totality of circumstances, I find no reason to interfere in this matter at this stage. However, it goes without saying that if petitioner succeeds in appeal and judgment is set aside by the appellate court, it will be open for the petitioner to seek appropriate relief from the department because the impugned punishment is solely based on her conviction.

14. With the aforesaid observation, petition is dismissed.

(Sujoy Paul)
Judge

(alok)