THE HIGH COURT OF MADHYA PRADESH

WP. No.5574/2010

Jabalpur, Dated: 15/11/2018

Shri Sanjay Singh, learned counsel for the petitioner.

Shri Rajesh Tiwari, learned Government Advocate for the respondents-State.

With the consent, finally heard.

This petition takes exception to the order dated 06-04-2009 (Annexure P/9) whereby the petitioner was terminated from service. The petitioner's representation dated 04-05-2009 was also rejected by order dated 21-08-2009 (Annexure P/12), which is also called in question.

Briefly stated, the relevant facts are that the petitioner has rendered 37 years of service with the respondents. The petitioner was served with a show-cause notice under Rule 16 of the M.P.C.S.(C.C.A.) Rules, 1966 dated 12-03-2009 (Annexure P/5). The petitioner filed his reply dated 19-03-2009 (Annexure P/6) and prayed for time to produce the relevant documents. Soon thereafter, on 23-03-2009 the petitioner was served with another notice (Annexure P/7). This notice was also issued under Rule 16 of the C.C.A. Rules,1966. The petitioner preferred his representation dated 30-03-2009 (Annexure P/8) praying for conducting an enquiry so that he can putforth his defence. The petitioner raised a specific objection that in an enquiry initiated by issuance of show-cause notice under Rule 16 of C.C.A. Rules cannot culminate with a imposition of punishment of dismissal/removal from service.

The respondents by order dated 06-04-2009 dismissed the petitioner from service. Aggrieved, the petitioner preferred WP. No.5062/09 before this Court, which was disposed of on 22-05-2009 by directing the respondents to decide the representation dated 04-05-2009 preferred by the petitioner. In turn, by order dated 21-08-2009, petitioner's representation was rejected.

The singular ground raised by Shri Sanjay Singh, learned counsel for the petitioner is that decision making process adopted by respondents in terminating service of petitioner is vitiated and a regular employee holding a substantive post cannot be terminated from service for allegation of misconduct without conducting an enquiry.

Prayer is opposed by Shri Rajesh Tiwari, learned Government Advocate. He contends that the petitioner was initially appointed as a daily rated employee. He secured employment on the basis of a forged Higher Secondary Certificate. After getting certificate verified from the Board, petitioner was rightly terminated.

No other point is pressed by the parties.

I have heard the parties at length and perused the record.

A conjoint reading of said show-cause notices and order dated 06-04-2009 shows that the respondents in clear terms stated that the petitioner was subjected to a disciplinary proceeding for an allegation of misconduct. The termination order is passed on the allegation of misconduct. Thus, the scope of judicial review in a case of this nature is related to the

validity and propriety of the decision making process. In other words, in a case of departmental enquiry, this Court is obliged to examine the decision making process and not the ultimate decision taken thereupon. ***[See (1999) 1 SCC 759 (Apparel Expert Promotion Council vs. A.K. Chopra), (2007) 7 SCC 236 (Bank of India vs. T. Jogram) and (2009) 8 SCC 310 (State of U.P. & Anr. vs. Manmohan Nath Sinha & Anr.)]***

So far as decision making process adopted by the respondents is concerned, it is clearly faulty and cannot result into termination of a permanent employee. Rule 16 of C.C.A. Rules makes it clear that it deals with minor penalty statutorily prescribed under the C.C.A. Rules. This does not cover the punishment of termination (dismissal/removal). Thus, in an enquiry initiated under Rule 16 of C.C.A. Rules, a regular employee cannot be terminated. More so, when no regular enquiry, as mandated in Rule 14 of the said rules, was conducted.

Apart from this, the petitioner in his reply dated 30-03-2009 putforth his defence *in extenso* on merits. No reasons are assigned in the impugned order dated 06-04-2009 as to why defence taken by the petitioner was not found trustworthy by the respondents. A bald conclusion is recorded that the petitioner's reply was not found satisfactory. Why it was not found satisfactory is not spelled out by assigning reasons. Reasons are held to be heart beat of conclusion. In absence of reasons, conclusion cannot sustain judicial scrutiny. The Apex Court in ***M/s Kranti Associates Pvt. Ltd. and another vs. Masood Ahmed Khan and others (2010) 9 SCC 496***

emphasized the need of assigning reasons in administrative, quasi judicial and judicial orders. The relevant portion of said judgment reads as under:-

> *51. Summarizing the above discussion, this Court holds:*
> *a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
> *b. A quasi-judicial authority must record reasons in support of its conclusions.*
> *c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
> *d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
> *e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
> *f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
> *g. Reasons facilitate the process of judicial review by superior Courts.*
> *h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*
> *i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for*

sustaining the litigants' faith in the justice delivery system.
j. Insistence on reason is a requirement for both judicial accountability and transparency. k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then M/S Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors on 8 September, 2010 it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.
m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737). n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

If the impugned order is examined as per principles laid

down in ***Kranti Associates*** (supra), it cannot be permitted to stand because it does not contain any reason whatsoever about the defence of the petitioner. For these cumulative reasons, impugned orders dated 06-04-2009 and 21-08-2009 are set aside. Liberty is reserved to the respondents to conduct an enquiry against the petitioner, if law permits.

The petition is allowed to the extent indicated above.

(Sujoy Paul)
Judge

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