

High Court of Sikkim
Record of proceedings

WP (C) No. 61 of 2016

Chandra Prakash Sharma vs. State of Sikkim and Others

BEFORE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

30.10.2017

Present: Mr. B. Sharma, Sr. Advocate with Mr. Bholu Nath Sharma, Advocate for the Petitioner.

Mr. J. B. Pradhan, Addl. Advocate General with Mrs. Pollin Rai, Asst. Govt. Advocate and Mr. D.K. Siwakoti, Advocate, for the State-Respondents No.1 to 3.

Mr. J.K. Kharka, Advocate for the Respondent No.4.

1. Heard.
2. Learned Senior Counsel for the Petitioner submits that the records would reveal that the Inquiry Report is not in consonance with the Sikkim Government Service (Discipline and Appeal) Rules, 1985, as the said Report being Annexure P-20, bearing Reference No. 730/Exam/HRDD dated 07/12/2015, has been submitted both by the Inquiring Officer and the Presenting Officer.
3. It was next contended that no memorandum or articles of charge had been issued to the Petitioner pertaining to concealment or suppression of facts but only pertained to his alleged attendance at the "Rolu Picnic" and the article that appeared in a News Daily "HAMRO Prajashakti" dated 11.1.2010. Therefore, the inquiry is vitiated firstly for non

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framing of article of charge pertaining to suppression of facts and secondly, because the Inquiry Report has been submitted contrary to the provisions of Law.

4. On the other hand, learned Additional Advocate General submits that if the challenge is to the non compliance of the Sikkim Government Service (Discipline and Appeal) Rules, 1985, it is conceded that the relevant provision has not been followed. That, should this Court be inclined to set aside the finding of the concerned Authority and the consequent order thereof, it may permit the State-Respondents to conduct inquiry from the stage it stood vitiated. To buttress his submissions, reliance was placed on ***Chairman, Life Insurance Corporation of India and Others vs. A. Masilamani : (2013) 6 SCC 530.***

5. I have considered the submissions of learned Counsel and examined the documents on record.

6. On perusal of the records relied on by the Petitioner, it is evident that the Inquiry Report (Annexure-20) was submitted and signed by the Inquiring Officer as well as the Presenting Officer. It is also apparent that this is not envisaged in Rule 5(10) of the Sikkim Government Service (Discipline and Appeal) Rules, 1985, which provides as follows;

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"5. Procedure for imposing penalties. –

.....
(10) The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the government servant pleads guilty."

Thus, it is only the Inquiring Authority who is required to return a finding of guilt in respect of the articles of charge to which a government servant pleads guilty. It is evident that there is contravention of the aforesaid Rules, thereby vitiating the proceedings.

7. In view of the aforesaid circumstance, the Inquiry Report dated 07.12.2015 is set aside and quashed. Consequently, so is the dismissal Order bearing No. 993/ADM/HRDD dated 17.11.2016, being Annexure P-27.

8. In this situation, it would be apposite to refer to the ratiocination in **Chairman, Life Insurance Corporation of India and Others vs. A. Masilamani** (supra), wherein it is held as follows;

"15.1. *When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds i.e. non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority to take up and complete the proceedings from the point that they stood vitiated; and*

15.2. *If the answer to Question 1 is that such fresh opportunity should be given, then whether the same may be denied on the ground of delay*

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in initiation, or in conclusion of the said disciplinary proceedings.

16. *It is settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30]."*

9. On the bedrock of the settled position of Law, the State-Respondent is at liberty to take up the matter *de novo* from the stage it stood vitiated i.e. from the submission of the Inquiry Report, uninfluenced by any observation made by this Court. The said steps shall be concluded within 6 months from today.

10. Accordingly, WP(C) No. 61 of 2016 stands disposed of, as also I.A No. 1 of 2016.

Judge
30.10.2017

Index : ~~Yes~~ / No
Internet : Yes / ~~No~~

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