

Jagdish Prasad Vs. State

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Court : Madhya Pradesh

Decided On : Nov-29-1956

Reported in : AIR1957MP226

Judge : Dixit and ;Khan, JJ.

Acts : [Constitution of India](#) - Articles 133(1) and 311

Appeal No. : Civil Misc. Appln. No. 46 of 1956

Appellant : Jagdish Prasad

Respondent : State

Advocate for Def. : Shivdayal, Deputy Government Adv.

Advocate for Pet/Ap. : Puttupal Dubey, Adv.

Disposition : Petition rejected

Judgement :

Dixit, J.

1. This is an application for leave to appeal to the Supreme Court from a decision of this Court in Civil Miscellaneous Case No. 12 of 1935 by which an application filed by the petitioner under Article 226 of the [Constitution of India](#) for the issue of a writ quashing an order passed by the Madhya Bharat Government on 3rd December 1953, dismissing the petitioner from service, was rejected.

2. The petitioner was employed in the Custom and Excise Department as a Distillery Inspector. A departmental inquiry was held against him with regard to certain illegal and unauthorised issue of liquor from Burwah Distillery, while the petitioner was posted there as an Inspector. The inquiry was Conducted in the presence of the petitioner and as a result thereof on 17th October 1951, a charge-sheet in respect of his acts of omission and commission was framed against him. He gave his reply to the charges which was considered by the Deputy Commissioner holding the inquiry.

Thereafter the petitioner was served on 25th November 1952, with a notice to show cause why he should not be removed from the service. He then asked for inspection of certain records. While this request was under consideration of the Government, the petitioner submitted a reply setting out fully his defence against the proposed action of dismissal. After considering this reply and the reply which the petitioner gave in answer to the charges in the departmental inquiry, the Government decided to

remove him from service and passed accordingly an order of dismissal. At the hearing of the petition under Article 226 of the Constitution, the applicant's main contention was that he had not been given an adequate opportunity to meet the charges framed in the departmental inquiry and for showing cause against his removal from service.

On a consideration of the nature of the departmental inquiry and the replies which the petitioner gave in the inquiry and to the notice asking him to show cause why he should not be removed from the service, this Court came to the conclusion that adequate and reasonable opportunity was given to the applicant for meeting the charges against him and for showing cause against the notice of his removal from the service. The applicant now seeks leave on the ground that he was not given any such reasonable opportunity. The question whether the petitioner was or was not given a reasonable opportunity at the two stages is a question of fact depending on the facts, circumstances and nature, of the inquiry held against the applicant and on his replies thereto. That being so, the case cannot be certified under Article 133(1)(c) as a fit one for appeal to the Supreme Court for the purpose of canvassing the question of fact.

2. Mr. Puttupal Dubey, learned counsel for the petitioner, also submitted that the applicant was, as of right, entitled to the leave under Clause (a) or Clause (b) of Article 133(1) of the Constitution inasmuch as 'the amount involved in the proposed appeal to the Supreme Court is Rs. 90,376-10-0'. It was said that the petitioner was of forty-one years of age when he was dismissed from the service and that if he had been continued in service, then he would have received upto the age of retirement Rs. 45,376-10-0 on account of pay and allowances and he would have also received after retirement Rs. 45,000 as the commuted value of his pension.

Learned counsel for the applicant was not able to show us as to how the question of the applicant's dismissal from service is a subject-matter capable of valuation for the purposes of Article 133(1)(a) or as to how the order of this Court sought to be appealed against involves directly or indirectly some claim or question respecting property of a value not less than Rs. 20,000 at the time of the order. Clause (3) or (b) of Article 133(1) has clearly no applicability here.

3. For these reasons this petition is rejected.

Khan, J.

4. I agree.