
(1999) 04 AHC CK 0046
In the Allahabad High Court
Case No : C.M.W.P. No. 14257 of 1999

Ajay Kumar Tiwari

APPELLANT

Vs

Allahabad District Co-op. Bank Ltd. and others

RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

Citation : (1999) 3 AWC 1817 : (1999) 3 AWC 1816 : (1999) 2 UPLBEC 1485

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : K.K. Singh, for the Appellant; Anil Tewari, for the Respondent

Judgement

D. K. Seth, J.—The petitioner was suspended by an order dated 19th July, 1996. A charge-sheet was issued on 19th May, 1997. Mr. K. K. Singh, learned counsel for the petitioner relying on Regulation 85 (x) of the U.P. Co-operative Societies Employees' Service Regulation, 1975 contends that ordinarily an employee cannot be kept under suspension for more than 6 months but in this case, the petitioner has been kept under suspension for about 4 years. Though a charge-sheet has been issued but the enquiry has not been concluded.

2. Mr. Anil Tewari, learned counsel for the respondents on the other hand contends that according to him, case is pending as against the petitioner. Regulation 85 (x) of the said Act will not apply in cases where the suspension has been made on criminal charges on the direction of the Court. Mr. Tewari has relied on the said provision in order to resist the contention of K. K. Singh.

3. Mr. Singh had also relied on a decision in the case of Mahendra Kumar Pandey v. Allahabad District Co-operative Bank and others. In Civil Misc. Writ Petition No. 3060 of 1999 disposed of on 25th February, 1999.

4. I have heard both the learned counsel at length. Regulation 85 (x) of the said Act provides as follows :

"No employee shall ordinarily remain under suspension for more than 6 months :

Provided that this condition shall not apply to such cases where the suspension is made on criminal charge on the direction of the Court."

5. A perusal of the said provision shows that ordinarily a suspension shall have a life of six months with the exception where the suspension is on criminal charges or on the direction of the Court. It seems that the law as printed in the U.P. Co-operative Societies Employees' Service Regulation, 1975 published by Eastern Book Company, 1996 Edition presupposes some misprint. On a comparison of the Notification No. 7515 (c) XII-C-37-74, dated 31.12.1975 published in U.P. Gazette on 6.1.76 it appears that the word "or" in between the words "criminal charge" and "on the directions" have been omitted. Therefore, the suspension on criminal charges or on the direction of the Court shall be exception to the general rule. Then again, the clause applies to ordinary cases which conceives of exceptions. Though ordinarily suspension would be of six months' duration but in cases which are not ordinary, or other than ordinary, the same may continue beyond 6 months. There may be several instances where this exception ordinary may be excepted. Such as : if it is felt by the disciplinary authority or the appointing authority that the continuity or presence of the delinquent in the office may affect the enquiry or affect the administration or otherwise influence the inquiry or the administration. In such cases, it may exceed 6 months but then it requires passing a fresh order or indication thereof may be expressed in the order itself that the suspension is to be continued beyond six months since it was necessary in the exigencies of the situation. Mr. Singh had drawn my attention to the order of suspension, wherein it appears that the order of suspension was issued only in contemplation of an enquiry.

6. Mr. Anil Tewari has led me through the charges which are indicated in the order of suspension and points out that those are grave irregularities. On the face of such charges, it appears that the charges are of criminal in nature. He also points out that F.I.R. has since been lodged, which is Annexure-2 on the face whereof, a criminal case has since been initiated pursuant to which the petitioner was arrested and was lodged in Jail. Since thereafter been out of bail. Thus on the facts and circumstances of the case, Mr. Tewari contends that the suspension was on criminal charges, though in his usual fairness, he has admitted that there was no direction of the Court to keep the petitioner under suspension.

7. In view of the explicit law as discussed above, in the present case, it appears that the order of suspension was issued in 1996 and we are in 1999. It is almost three years and even after the issue of the charge-sheet, almost two years have passed. Unless it is specifically indicated in the order of suspension that it should be an exception to the ordinary rule specifying the reasons or grounds and unless the suspension is on criminal charges, it should not continue beyond 6 months, unless a fresh order or an order justifying the continuation is passed.

8. So far as the decision in the case of Mahendra Kumar Pandey v. Allahabad District Co-operative Bank and others (supra) is concerned, Mr. Singh had alleged that Mahendra Kumar Pandey was the co-accused of the petitioner in

criminal case as well as in the charges. In the said decision, Mahendra Kumar Pandey was directed to be reinstated. Therefore, Mr. Singh contends that in view of the said decision the petitioner, in this case should also be reinstated and the order of suspension should be revoked.

9. I have perused the said order, which is Annexure-IV to the writ petition. It appears that in the said order or judgment reference has not been made to Regulation 85 (x) of the said Act. It has not considered the question of suspension on the ground of criminal charges or on the question of direction of the Court as has been dealt with in this case. The said decision proceeds on the simple reason that the petitioner was kept under suspension by an order dated 19th July, 1996. But only reason that has been given is that a decision of the Division Bench in the case of Girja Shankar Srivastava v. Managing Director Co-operative Bank, in Writ Petition No. 34115 of 1998 is applicable and held that the suspension cannot continue beyond 6 months. The said decision has not been produced before this Court as to whether the said decision has dealt with the question since has been raised by Mr. Tewari in this case. Therefore, I am unable to persuade myself to agree with the contention of Mr. Singh raised in this case.

10. In view of the above discussion, having heard the learned counsel for the parties and perusing the materials and having regard to the charges levelled and the pendency of the criminal case, this writ petition is disposed of with the following direction :

The order of suspension shall continue for a period of 4 weeks from the date a certified copy of this order is produced before respondent Nos. 2 and 3. Unless either respondent Nos. 2 or 3 passes an appropriate order for continuation of the suspension in the light of the observations made above, the order of suspension shall come to an end and shall automatically stand revoked. In case any order is passed, the order of suspension shall be subject to such order that might be passed by the respondents within the said period. This order, however, shall not influence the criminal case nor the inquiry proceedings of any.