
(2004) 05 AHC CK 0020
In the Allahabad High Court
Case No : Special Appeal No. 311 of 1998

Akhlaq Ahmad

APPELLANT

Vs

District Judge and Another

RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

Uttar Pradesh Subordinate Courts Staff (Punishment and Appeal) Rules, 1976 — Rule 5

Citation : (2004) 3 AWC 2777

Hon'ble Judges : Umeshwar Pandey, J; S.P. Srivastava, J

Bench : Division Bench

Advocate : R.N. Singh, P.N. Saxena, G.K. Singh, Amit Saxena and V.K. Singh, for the Appellant; Sudhir Agrawal and K.R. Sirohi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S. P. Srivastava, J.—Heard the learned counsel for the appellant.

2. The learned counsel representing the respondents has also been heard.

3. Perused the record.

4. The appellant has come up in this intra-court special appeal feeling aggrieved by the impugned judgment and order passed by the learned single Judge of this Court dismissing the writ petition filed by him and thereby affirming the order passed by the District Judge, Etah, dated 29.11.1995 removing the name of the appellant from the list of approved candidates and dismissing him from service with immediate effect.

5. The facts in brief shorn of details and necessary for the disposal of this writ petition lie in a narrow compass.

6. The appellant who was an approved candidate was appointed on purely temporary basis as a copyist in the Police Copying Department in the time scale of pay of Rs. 950-1,500 on a vacant post. In his appointment letter dated 4.11.1989 it was clearly indicated that his services were purely temporary and

were liable to be terminated, at any time without any notice. On 8.8.1995 the District Judge, Etah, had issued an order requiring the appellant to show cause as to why the disciplinary action be not taken against him and as to why he be not ceased to work. This order as is apparent from the perusal thereof, was based upon the evidence indicating that the appellant had misrepresented various class III and class IV employees of the judgship and extorted from them huge amounts on various grounds and had failed to return those amounts and further that he had been regularly absenting from duties without any information and without obtaining prior permission.

7. The District Judge, Etah, the appointing authority had filed a counter-affidavit sworn by him in opposition to the writ petition. In the aforesaid counter-affidavit he had given details of the proceedings taken by him against the appellant culminating in the impugned order dismissing him from service dated 29.11.1995. It had been asserted in the aforesaid counter-affidavit that the disciplinary authority himself had recorded the statements of various employees and had summoned the appellant in his chamber and had given him full opportunity to test the veracity of those employees. It had been asserted that the appellant neither cross-examined the statement of those persons which had been recorded in his presence nor he had filed any written statement stating his defence in reply to the show cause notice. It had been found that the present appellant, who was a temporary employee, had absented from the duties for a long period of about 2 years without any permission and intimation.

8. The District Judge, the appointing authority had also found that the petitioner appellant had given his home address at Fatehpur but his whereabouts could not be known. The petitioner had left the office without any address and without any intimation and was absconding for more than 2 years. He was, however, present in the office of the appointing authority on 7.8.1995 and had applied for medical leave for the period of his absence which had been rejected and from the evidence which had been brought on record it was clear that the appellant had extorted money from various persons. In paragraph 18 of the counter-affidavit, it had been asserted that the inquiry against the petitioner-appellant had been conducted by the appointing authority himself after giving him full opportunity to defend himself.

9. The learned single Judge, after detailed consideration of the evidence and the materials brought on record, came to the conclusion that the petitioner-appellant was a temporary Government servant and disciplinary authority had not committed any procedural irregularity while dismissing the petitioner from service. It was also found that the inquiry held earlier or prior to the passing of the order dated 8.8.1995 was sufficient to enable the District Judge to form an opinion in regard to the suitability of the petitioner for being retained in service.

10. Taking into consideration the materials brought on record the findings of the disciplinary authority to the effect that the petitioner was wholly negligent in the discharge of his duties and he was not suitable for being retained in service were

not disturbed by the learned single Judge while upholding the order striking off his name from the list of approved candidates and dismissing him from service.

11. Learned counsel for the appellant has strenuously urged that even though the petitioner was a temporary servant still since the impugned order dismissing him from service did cast a stigma, the disciplinary authority ought to have held a regular disciplinary inquiry which is a must in the case of a confirmed employee.

12. Learned counsel for the respondents has, however, urged that so far as the procedure to be followed the matter relating to the imposition of major punishment, the provisions contained in the Uttar Pradesh Subordinate Courts Staff (Punishment and Appeals) Rules, 1976 are very clear. The Rule 5 of the aforesaid Rules regulates the procedure in respect of cases involving inflicting of major punishments. However, the Explanation II of the said Rule clearly provides that the aforesaid Rule will not apply where it is proposed to terminate the employment of a temporary Government servant. In such cases the simple notice of termination, which in the case of temporary Government servant, must conform to the conditions of his service, will be sufficient.

13. The contention is that in view of the Explanation II to Rule 5 of the Rules of 1976, the procedure adopted by the disciplinary authority in the present case cannot be held to be prejudicial to the appellant and taking into consideration the nature of his appointment and the conditions subject to which the said appointment had been granted, the order striking off the name of the petitioner from the list of the approved candidate and dismissing him from service cannot be held to be in excess of the jurisdiction vesting in the disciplinary authority or vitiated on account of any such procedural irregularity resulting in any prejudice to the appellant so as to warrant an interference in the present proceeding under Article 226 of the Constitution of India specially when the petitioner had not submitted his defence in reply to the show cause notice and had not been prejudiced on account of any material having been utilised without bringing the same to his notice.

14. We have given our anxious consideration to the rival submissions made by the learned counsel for the parties.

15. We are of the considered opinion that taking into account the nature of the appointment subject to the conditions which appointment had been accepted by the petitioner with his eyes wide open and the implications arising under the Explanation II to Rule 5 of Rules 1976 and further in the absence of submission of any defence in reply to the show cause notice and the nature of the misconducts, the learned single Judge cannot be taken to have erred in dismissing the writ petition declining to interfere while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India specially when the reasons mentioned in the impugned order passed by the disciplinary authority could not be taken to be foundation for the order but indicate only a motive.

16. In any view of the matter, the failure of the petitioner in putting in a defence in spite of the opportunity having been afforded was sufficient to justify the order passed by the disciplinary authority.

17. Taking into consideration the facts and circumstances as brought on record including those noticed hereinabove and in the impugned order, we are not satisfied that sufficient ground can be said to have been made out for any interference in the discretion exercised by the learned single Judge.

18. This intra-court special appeal, accordingly, fails and is dismissed.