

(1992) 09 AHC CK 0126

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23342 of 1991

Anand Swaroop Sharma

APPELLANT

Vs

Managing Director, U.P. Cooperative Federation Limited and
Another

RESPONDENT

Date of Decision : 15-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 84

Citation : (1993) 1 AWC 459

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : D.K. Dewan and Sudhir Narain Agarwal, for the Appellant; R.C. Srivastava and Pradeep Chandra, for the Respondent

Final Decision : Allowed

Judgement

D.P.S. Chauhan, J.—By means of this petition, Petitioner has approached this Court under Article 226 of the Constitution seeking relief for quashing the order dated 13-6-1991 passed on a disciplinary proceeding and also the order of the appellate authority passed in appeal filed by him. He has also prayed for issuance of a writ of mandamus directing to the Respondents for not realising the amount of damages from his Salary.

2. Petitioner is an employee in U.P. Cooperative Federation Ltd. (for brevity hereinafter referred to as "Federation") and a disciplinary proceedings against him were initiated. Consequent upon the disciplinary proceedings Petitioner was punished vide order dated 13-6-1991 passed by the Managing Director of the Federation. He was awarded following three penalties:

(a) while holding him responsible for shortage and loss of fertilizer stock a recovery was directed against him to the tune of Rs. 94213,12.

(b) he was given adverse entry of censor.

(c) two annual increments were stopped.

3. Heard learned Counsel for the Petitioner Sri. D.K. Diwan and Sri. R.C. Srivastava, Senior advocate, counsel for the Respondents.

4. This petition is being disposed of finally with the consent of the parties under Rule 2 of Chapter XXII of the Rules of the Court.

5. Learned Counsel for the Petitioner submitted that the impugned order imposing the penalty is illegal and is in contravention of Regulation 84 of U.P. Cooperative Societies Employees Service Regulations, 1975, where-under only one penalty can be Imposed. Regulation 84 is as extracted below:

Penalties: (i) without prejudice to the provision contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted of criminal offence or an offence u/s 103 of the Act or does anything prohibited by these regulations shall be liable to be punished by any one of the following penalties:

(a) Censure,

(b) withholding of increment,

(c) fine on an employee of category IV (Peon chaukidar etc.).

(d) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the cooperative society by the employee's conduct.

(e) reduction in rank or grade held substantively by the employee.

(f) removal from service or

(g) dismissal from service.

(ii) Copy of order of punishment shall invariably be given to the employee concerned and entry to this effect shall be made in the service record of the employee.

(iii) No penalty except censure shall be imposed unless a show cause notice has been given to the employee and he has either failed to reply within the specified time or his reply has been found to be unsatisfactory by the punishing authority.

(iv) (a) The charge sheeted employee shall be awarded punishment by the appropriate authority according to the seriousness of the offence:

Provided that no penalty under Sub-clauses (e)(f) or (g) of Clause (i) shall be imposed without recourse to disciplinary proceedings.

(b) No employee shall be removed or dismissed by an authority other than by which he was appointed unless the appointing authority has made prior delegation of such authority to such other person or authority in writing.

(v) The appointing authority or person authorised by him while passing orders for stoppage of increments shall state the period for which it is stopped and whether it shall have effect of postponing future increments or promotion.

6. From the perusal of the aforesaid Regulation, the submission of the learned Counsel for the Petitioner has substance Under the said provision the penalties as may be imposed are mentioned. But out of the penalties as mentioned the law has authorised for imposing only one penalty. In the present case three penalties are imposed on the Petitioner. Learned Counsel for the Respondents submitted that the legal positions as it stands, cannot be disputed, but in view of the loss caused to the Federation, this Court may not exercise its discretionary jurisdiction under Article 226 of the Constitution. It was also submitted that the Court has powers to modify the order regarding imposition of penalties and as such may pass a suitable order for cancellation of penalties other than the penalty regarding recovery of money from the Petitioner.

7. The order imposing the penalty has been confirmed in appeal and even the appellate authority has not taken care to look into the question as to whether the penalties as imposed on the Petitioner are legally valid. No order of appellate authority has been filed but a communication has been filed, which indicates that the appellate authority after considering the appeal of the Petitioner, dismissed the same as having no merit.

8. It is not the province of this Court to pass orders for imposition of penalty on a delinquent employee. It is the job of the punishing authority and he is supposed to act within the ambit of law. The law has provided for imposition of only one penalty, whereas by means of impugned order three penalties were imposed. This approach by itself indicates that neither punishing authority nor the appellate authority acted in accordance with the requirement of law under Regulation 84 of the Regulations and such order cannot be allowed to stand- The appellate authority has not gone through the matter to find out whether the penalty imposed on the Petitioner was in accordance with the Regulation 84 of the Regulations. In this connection learned Counsel for the Petitioner submitted that the Petitioner though filed an appeal, but he could not take such ground in his appeal. Whether any ground has been taken or not by the Petitioner, the appellate authority cannot be allowed to shirk the responsibility to see that the order appealed against is according to law as it is the duty of the appellate authority to see that the order imposing the penalty is passed in accordance with law.

9. In these circumstances, I find that order of the punishing authority as well as the appellate authority are beyond the scope of provision of Regulation 84 of the Regulations and such orders cannot be allowed to stand.

10. The writ Petition is, accordingly, allowed The impugned order dated 13-6-1991 passed by the Managing Director, Annexure III to the Petition, and the order in appeal as communicated by the Managing Director (Administration),

which is Annexure I to the supplementary affidavit and is undated are quashed together with the order passed in the appeal preferred by the Petitioner. It would be open for the punishing authority to pass appropriate orders in the matter in accordance with law. No order as to costs.