

(2006) 01 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 74343 of 2005

Anit Kumar

APPELLANT

Vs

Director, Rajya Krishi Utpadan Mandi Parishad, The Deputy
Director (Administration)/Appointing Authority, Rajya Krishi
Utpadan Mandi Parishad and Sachiv, Krishi Utpadan Mandi
Samiti

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 4,
4(1)

Citation : (2006) 5 AWC 5000 : (2006) 3 UPLBEC 2112

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Arun Kumar, for the Appellant; B.D. Mandhyan, Satish Mandhyan
and Sanjay Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Shri Arun Kumar, learned Counsel for the petitioner and Shri B.D. Mandhyan, Senior Advocate assisted by Shri Satish Mandhyan, learned Counsel for the Respondents.

2. Assailing the Order dated 11.11.2005 passed by the Deputy Director (Administration), U.P., Krishi Utpadan Mandi Parishad, Meerut (Annexure-3 to the writ petition), whereby the petitioner has been placed under suspension, this writ petition has been filed alleging that the same is not permissible in view of the first proviso to Rule 4(1) of U.P. Government Servants (Discipline and Appeal) Rules 1999 (hereinafter referred to as the "1999 Rules") and various other grounds.

3. In brief the factual matrix stated in the writ petition is that the petitioner is working as Mandi Nirikshak and posted at Mandi Samiti, Mawana, District

Meerut. The Deputy Director (Administration) in his capacity as Appointing Authority passed an order dated 4.08.05 initiating a disciplinary proceeding against the petitioner under Regulation 43 of U.P. Krishi Utpadan Mandi Samiti Centralised Service (Officers and Employees) Rules, 1984 r/w the Rules relating to disciplinary proceedings, appeals and representations against punishment on the allegation that during May 2005 and June 2005 when the petitioner was working as Mandi Nirikshak at Mawana, but he could not achieve the 100% target determined for collection of Mandi fee, could not ensure 100% recording of entries of arrival of the commodities in his sector and collection of Mandi fee being less than the last year, thus caused financial loss to Mandi Samiti. An Enquiry Officer was also appointed under the said order directing to complete enquiry and submit report to the Appointing Authority.

4. It is further stated that the respondent No. 2 i.e. Deputy Director (Administration) vide order dated 16.9.2005 also directed the petitioner to take over the additional charge of Secretary, Mandi Samiti, Mawana and discharge functions on the aforesaid post. All of a sudden on 11.11.05 without any application of mind, on the allegations as contained in the earlier order dated 4.8.05, the respondent No. 2 has placed the petitioner under suspension although there is no addition or change in the circumstances as they were existing on 4.8.05 when disciplinary proceedings were initiated or 16.9.05, when he was handed over the additional charge of Secretary, Mandi Samiti, Mawana.

5. The learned Counsel for the petitioner has raised several grounds in writ petition challenging the order of suspension, but during the course of the arguments before this Court, stressed and advanced only the following:

1. Taking that the allegations contained in the impugned order of suspension on its face still they do not constitute any "misconduct" inasmuch as it is not the case of the respondents that the petitioner caused any loss to the Mandi Samiti on account of any deliberate and intentional negligence or fault.

2. After initiating the enquiry on 4.8.05 on the same allegations, and subsequently when the holding of enquiry was not found to be an impediment in conferring additional responsibility upon the petitioner i.e. charge of Secretary Mandi Samiti, Mawana, yet after a few months thereafter, placing him under suspension without any change or alterations in the circumstances shows total non-application of mind on the part of the respondent No. 2 and the impugned order of suspension, is therefore, arbitrary and lacks objective consideration.

6. Learned counsel for the respondent in the course of his oral arguments as well as in his written submissions has submitted that the petitioner being Mandi Inspector is also the Supervisor of sale and purchase of the specified agricultural produce in the sub-market yard. He deliberately and in collusion with the traders has caused financial loss in the shape of market fee and development cess of Mandi Samiti and has committed embezzlement of public funds. The lack of achievement of target on the part of the petitioner is deliberate and on account

of pocketing of the public money belonging to Mandi Samiti, which is a serious offence and it is almost a proved case of embezzlement, which may result in a major penalty.

7. It is further submitted that merely because the word embezzlement has not been mentioned in the order of suspension, it would not mean that the charge is not that of embezzlement. It is also submitted that in case targets are not fixed, Mandi Samiti would suffer loss since the employees are likely to indulge in rampant corruption and in these circumstances, this is not a matter fit for interference of this Court under Article 226 of the Constitution of India. It is also submitted that the respondents Disciplinary Authority is undertake to conclude the disciplinary proceedings within a period of two months.

8. Heard the rival submissions advanced by the learned Counsel for the parties orally as well as through their written submissions and perused record.

9. It is not disputed between the parties that the procedure of departmental enquiry is governed by 1999 Rules. Rule 4 of 1999 Rules empowers the disciplinary authority to place an employee under suspension and states as under:

4. Suspension. -(1) A Government servant against whose conduct an inquiry is contemplated, or is proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the appointing authority:

Provided that suspension should not be resorted to unless the allegations against the Government servant are so serious that in the event of their being established may ordinarily warrant major penalty.

Provided further that concerned head of the Department empowered by the Governor by an order in this behalf may place a Government servant or class of Government servants belonging to Group "A" and "B" posts under suspension under this rule:

Provided also that in the case of any Government servant or class of Government servants belonging to Group "C" and "D" posts, the appointing authority may delegate its power under this rule to the next lower authority".

10. I propose to deal with the second contention of the petitioner first and if necessary only then would go to the first questions.

11. The Order of suspension is not to be passed in a mechanical manner whenever a disciplinary inquiry is contemplated or pending, A perusal of Rule 4(1) of 1999 Rules clearly shows that the Appointing Authority has discretion to place a Government servant under suspension but it is not to be resorted to automatically or in any mechanical manner, but it has to apply its mind not only to the allegations, which are to be investigated against the Government servants but also its seriousness and whether suspension is warranted or not.

12. In the present case, it is not disputed that the Appointing Authority decided

to initiate disciplinary proceedings on 4.8.05 when it passed order containing the following allegations, which required to be investigated in the contemplated inquiry for which Secretary, Mandi Samiti, Baraut was nominated as Enquiry Officer.

Jh vfur dqekj] eaMh fujh{kd] d`f"k mRiknu eaMh lfefr] eokuk] tuin esjB ds fo:) muds }kjk ekg ebZ 05 ,oa twu 05 esa lfpr] eaMh lfefr }kjk lkSais x;s eaMh "kqYd ds y{; dh "krizfr"kr izkfIr u fd;s tkus vius lsDVj dh vkod dk "krizfr"kr vadu eaMh vfHkys[kksa esa u djks; tkus rFkk xr o"kZ ds lkis{k Hkh eaMh "kqYd esa deh djus ,oa eaMh lfefr dks vkfFkZd {kfr igqpk,a tkus tSlh vfuferrk,a izdk"k esa vk;h gS ftuds fof/kor fl) gks tkus ij mUgSa xEHkhj naM fn, tk ldrs gS rFkk muds {kfriwfrZ Hkh djks;h tk ldrh gS A

13. It is apparent that the Appointing Authority did not find the allegations mentioned in the Order dated 4.8.05 to be serious enough, which may require placement of the petitioner under immediate suspension. The same authority, thereafter on 16.9.05 inspite of having passed the order initiating disciplinary inquiry against the petitioner found it appropriate to confer the additional charge of the post of Secretary, Mandi Samiti, Mawana upon the petitioner requiring him to discharge the additional burden of the aforesaid post.

14. In these circumstances for the same allegations, which were already sought to be investigated by the respondent No. 2, the same authority in what circumstances found it necessary to place the petitioner under suspension after more than 3 months, when the enquiry was sought to be instituted against the petitioner, is neither clear from the order of suspension nor has been explained otherwise by the respondents in their counter affidavit. The allegations contained in the suspension order are also same as contained in the earlier order dated 4.8.05, whereby the disciplinary proceedings were initiated, as would be apparent from the following:

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15. The only difference in the order of suspension is that the subsequent

development has also been mentioned that there is no improvement in the progress of the Mandi Samiti and collection of Mandi fee has further reduced in the month of October 2005. Thus the basic allegations are same only subsequent period has been added in the order of suspension. In my opinion suspension is resorted when it is apprehended by the disciplinary authority that the delinquent employee may temper with the evidence or may affect the disciplinary inquiry by influencing witnesses etc. When the disciplinary authority did not found on 4.8.05 that the petitioner needs to be suspended on the nature of the charges, which it sought to be inquired by means of the order dated 4.8.05, with the same allegations there does not appear to be any reason whatsoever for placing the petitioner under suspension after more than three months and the impugned order passed by the respondent No. 2 appears to be an arbitrary and mechanical exercise of power without application of mind to the facts and circumstances of the case.

16. In the Counter Affidavit, the respondents have tried to explain the allegations mentioned in the order of suspension as amounting to embezzlement of public money by the petitioner, but. that appears to be an after-thought since the recital of allegations in the order of suspension does not suggest that the respondents have levelled allegations of embezzlement upon the petitioner. A copy of the charge sheet issued on 19.11.05 to the petitioner has also been placed on record as Annexure- C.A. 4, but the same also does not show that the allegation of embezzlement of public funds has been levelled against the petitioner.

17. From the charge-sheet and the evidence relied in support thereof, the only inference, a person of ordinary prudence may arrive at, would be that charges of the less recovery of Mandi Fee based on the relevant accounts of Mandi Samiti, Mawana have been levelled by the Disciplinary Authority after drawing an inference, that the less recovery of Mandi Samiti is on account of the petitioner having worked in collusion with the traders, although there is no oral or documentary evidence even mentioned in the charge-sheet to suggest that there is any attempt to prove the allegation of collusion with traders, which is a separate charge, and has to be proved by evidence, as a matter of fact. Therefore, the case sought to be made out by the respondents in the counter affidavit is beyond the order of suspension as well as charge-sheet, and hence, cannot be accepted.

18. An order of suspension neither is to be passed in a routine manner nor in a sudden moment of passion, but only when the Disciplinary Authority after considering the gravity of the alleged misconduct, the nature of evidence available in support of such allegations of misconduct, the necessity of preventing the official concerned any opportunity to perpetrate the alleged misconduct and to avoid or prevent any tempering etc. with the evidence and such other relevant factors the order of suspension has to be passed. It must be a step in aid to the ultimate result of the investigation or enquiry and not just be

a motive or intention to keep an official under suspension merely because a disciplinary enquiry has been initiated against him. In this regard the Apex Court has considered the matter in detail in the case of State of Orissa Vs. Bimal Kumar Mohanty, and after a review of the entire earlier case law on the matter of suspension. It has been held as under: -

The order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

19. In my view, the writ petition deserves to be allowed on this ground alone and it is not necessary to consider the first issue, as to whether, the allegations contained in the order of suspension on the basis whereof the petitioner has been suspended, constitute misconduct or not since the same would frustrate the entire disciplinary enquiry, which has been initiated by the respondent No. 2 vide order dated 4.8.05 and the order of 4.8.05 is not under challenge in the present writ petition. In this view of the matter, this Court find it appropriate to leave this issue open to the parties to be raised at the appropriate time whenever the cause arises, although the learned Counsel for the petitioner on the basis of the judgment dated 1.2.2000 in writ petition No. 2757 of 2000, Ram Nayak Verma v. Deputy Director and Anr., vehemently argued that even the allegations do not constitute any misconduct at all, and therefore, the entire proceedings are

vitiated in law.

20. In the result, the writ Petition succeeds. The order of suspension dated 11.11.05 (Annexure-3 to the writ petition) passed by the Respondent No. 2 is quashed. However this will not affect the disciplinary proceedings pending against the petitioner and as stated by the learned Counsel for the respondents, this Court hope and trust that the same would be finalized expeditiously preferably within a period of three months" from the date of production of a certified copy of this order before the Appropriate Authority.

21. No order as to costs.