

(2014) 07 AHC CK 0086

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 30714 of 2012

Aziz Ullah

APPELLANT

Vs

Dakshinanchal Vidyut Vitaran Nigam Limited

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 8 ADJ 313 : (2015) 1 AWC 151 : (2014) 33 ESC 2264 : (2014) 3 UPLBEC 2566

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Gulrez Khan, J.H. Khan, P.K.S. Niranjani, Ram Sajiwan, Shekhar Srivastava and W.H. Khan, Advocate for the Appellant; Sandeep Kumar Srivastava, Baleshwar Chaturvedi and S.C, Advocate for the Respondent

Judgement

Suneet Kumar, J.—Heard learned counsel for the petitioner and Sri Baleshwar Chaturvedi, learned counsel appearing for respondents. The petitioner was initially appointed in 1971 as Kuli on Class-IV post with Dakshinanchal Vidyut Vitaran Nigam Limited, Agra, and thereafter on qualifying examination, the petitioner was promoted on Class-III post as Technical Grade-II (TG-2). The minimum qualification for promotion is that the incumbent apart from qualifying the examination must be a High School. On 6.8.2008, the third respondent, Executive Engineer issued a show-cause notice directing the petitioner to produce his High School certificate accordingly petitioner approached the third respondent alongwith original mark sheet as well as certificates, however, the respondent No. 3 did not examine the original mark sheet and again a notice was issued on 20.10.2008 calling upon the petitioner to submit his mark sheet. Similar notice was issued on 5.9.2009. Pursuant thereto, the petitioner submitted a detailed reply on 3.10.2009 and due to the pendency of the enquiry, the petitioner was not given the benefit of "Sixth Pay Commission" hence the petitioner approached the Court by filing Writ Petition No. 75588 of 2010, inter alia, praying that the pending enquiry be concluded and finalized and the Court

by order dated 4.1.2011 dismissed the writ petition making the following observations:

"Heard learned counsel for the parties.

It appears that some enquiry is going on against the petitioner with regard to authenticity of papers submitted by the petitioner and in pursuance thereto the petitioner has been asked to submit certain document vide orders dated 7.4.2010 and 23.9.2010.

It is stated by the petitioner that he has supplied all the documents but no decision is being taken.

If that is the case, the respondents may complete the said enquiry within six weeks from the date of submission of a certified copy of this order, provided the petitioner cooperates.

Subject to the aforesaid, this petition is dismissed."

2. Thereafter the impugned order dated 14.5.2012 was passed terminating the services of the petitioner on the allegation that the documents submitted by the petitioner, pertaining to high school appears to be forged as the Enquiry Officer enquiring into the matter came to a conclusion that the original certificate does not match with the documents submitted by the petitioner and hence exercising powers under the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, the petitioner's services was terminated.

3. Submission of learned counsel for the petitioner is that only a show-cause notice was issued to which the petitioner submitted his reply and on the basis of the reply, the petitioner has been terminated on an enquiry conducted behind the back of the petitioner, thus, the authorities by adopting the procedure for imposition of minor penalty have imposed major penalty, which is not permissible under the 1999 Rules.

4. In support of his submission, learned counsel for the petitioner has relied upon the following cases; Smt. Parmi Maurya Vs. State of U.P. and Others, , Munni Devi Vs. State of U.P., , Dev Prakash Tewari Vs. U.P. Cooperative Institutional Service Board, .

5. Per contra, Sri Chaturvedi admits that no charge-sheet was issued and neither any enquiry report was submitted by the Enquiry Officer, but submits that a show-cause notice was issued to the petitioner and on the reply received the Enquiry Officer conducted an enquiry and on the findings of the enquiry the impugned order was passed.

6. Rival submissions fall for consideration.

7. The petitioner has been working since 1971 and had passed his high school exam in 1990, thereafter he appeared for the written examination for promotion to the next higher post (TG-II). On the basis of some complaint that the

petitioner's high school certificates are forged, an enquiry was initiated at the best it could be said that it was a fact finding enquiry and on the basis of a fact finding enquiry petitioner was terminated without following the procedure as prescribed under rule 7 of the Rules.

8. The impugned order of termination was passed on 14.5.2012 and the petitioner has since superannuated on 31.7.2012.

9. Enquiry commences with the issue of charge-sheet as held in the case of Union of India Vs. K.V. Jankiraman, etc. etc., ; The Union of India (UOI) and Others Vs. Anil Kumar Sarkar, and The Government of Andhra Pradesh and Others Vs. Ch. Gandhi, ; Framing of the charge-sheet is the first step taken for holding enquiry into the allegations on the decision taken to initiate disciplinary proceedings. Service of charge-sheet on the Government servant follows decision to initiate disciplinary proceedings and it does not precede and coincide with that decision (vide Delhi Development Authority Vs. H.C. Khurana, . Once the enquiry was not initiated or contemplated or pending before the retirement, the same cannot be continued after retirement, unless there is a rule to that effect. The learned counsel for the respondents has failed to show any rule or circular as to whether disciplinary proceedings could be initiated after retirement and under what circumstances.

10. A Division Bench of this Court in Smt. Parmji Maurya Vs. State of U.P. and Others, , held that the provisions of Rule 7 is mandatory and it is obligatory for the employer to frame charge/conduct disciplinary enquiry by applying the principles of natural justice and prove that certificates were fabricated, without adopting such procedure order passed terminating the delinquent employee is illegal. Paragraph 7 is as follows:

"7. On these facts, the learned Single Judge, in our view, was clearly in error in arrogating to the Court the task of determining whether the certificate and mark sheets submitted by the appellant were genuine or otherwise. This, with respect, was no part of the jurisdiction of the writ Court under Article 226 of the Constitution. When a substantive charge of misconduct is levied against an employee of the State, the misconduct has to be proved in the course of a disciplinary inquiry. This is not one of those cases where a departmental inquiry was dispensed with or that the ground for dispensing with such an inquiry was made out. The U.P. Government Servants (Discipline and Appeal) Rules, 1999 lays down a detailed procedure in Rule 7 for imposing a major penalty. Admittedly, no procedure of that kind was followed since no disciplinary inquiry was convened or held."

11. In Munni Devi Vs. State of U.P., , it was held that once an enquiry is initiated under Rule 7 it is mandated that the enquiry officer would conduct oral enquiry. It was held that oral enquiry would be mandatory before imposing major punishment. Paragraph 9 is as follows:

"9. The question as to whether non holding of oral inquiry can vitiate the entire

proceeding or not has also been considered in detail by a Division Bench of this Court (in which I was also a member) in the case of Salahuddin Ansari v. State of U.P. and others, 2008 (3) ESC 1667 and the Court clearly held that non holding of oral inquiry is a serious flaw which vitiates the entire disciplinary proceeding including the order of punishment. This Court has said in paras. 10 and 11 of the judgment as under:

"10. ----- Non holding of oral inquiry in such a case is a serious matter and goes to the root of the case.

11. A Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another, , considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subhash Chandra Sharma Vs. U.P. Co-operative Spinning Mills and Others, and Laturi Singh v. U.P. Public Service Tribunal and others, Writ Petition No. 12939 of 2001, decided on 6.05.2005."

12. The Supreme Court in Dev Prakash Tewari v. U.P. Cooperative Institutional Service Board, [LAWS (SC)-2014-6-14] was considering the case that as to whether disciplinary proceedings after retirement of an employee could be continued in absence of any rule to that effect. In paragraph 6 and 7 held as follows:

"6. While dealing with the above case, the earlier decision in Bhagirathi Jena's case (supra) was not brought to the notice of this Court and no contention was raised pertaining to the provisions under which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision cannot help the respondents herein.

Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.

7. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and upto the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him."

13. The Full Bench judgment in case of State of Uttar Pradesh Vs. Jai Singh Dixit, , the words Inquiry" and "contemplated" was considered.

"34. A formal departmental inquiry is invariably preceded by an informal preliminary inquiry which itself can be in two phases. There can be a summary investigation to find out if the allegations made against the Government servant

have any substance. Such investigation or inquiry is followed by a detailed preliminary or fact finding inquiry whereafter final decision is taken whether to initiate disciplinary proceeding. The first preliminary inquiry may be in the shape of secret inquiry and the other, of an open inquiry. In the alternative, when complaints containing serious allegations against a Government servant are received, the authority may peruse the records to satisfy itself if a more detailed preliminary inquiry be made.

37. Departmental inquiry is contemplated when on objective consideration of the material the appointing authority considers the case as one which would lead to a departmental, inquiry, irrespective of whether any preliminary inquiry, summary or detailed, has or has not been made or if made, is not complete. There can, therefore, be suspension pending inquiry even before a final decision is taken to initiate the disciplinary proceeding i.e., even before the framing of the charge and the communication thereof to the Government servant."

14. The Supreme Court in Mathura Prasad Vs. Union of India (UOI) and Others, , held that when an employee is sought to be deprived of his livelihood for alleged misconduct, the procedure laid down under the rules are required to be strictly complied with:

"When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedure laid down under the sub-rules are required to be strictly followed: It is now well-settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in the manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact, for sufficient reasons may attract the principles of judicial review."

15. The Division Bench of this Court in Dr. Subhash Chandra Gupta v. State of U.P. and others, 2012 (1) ESC 279 (All) (DB), while dealing with the provision of rule 7 and 9 of the Rules, held that the procedure for imposition of major penalty is mandatory and where the statute provides to do a thing in a particular manner that thing has to be done in that manner. Paras. 15 and 16 is as follows:

"15. It is well-settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any out come inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does not require any proof. The view taken by us find support from the judgment of the Apex Court in State of U.P and Others vs. T.P. Lal Srivastava, (1996) 9 JT 301 SC, as well as by a Division bench of this Court in Subhash Chandra Sharma Vs.

Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another, .

16. A Division Bench decision of this Court in the case of Salahuddin Ansari v. State of U.P. and others, 2008 (3) ESC 1667 (All.)(DB), held that non holding of oral inquiry is a serious flaw which can vitiate the order of disciplinary proceedings including the order of punishment has observed as under:

"10.....Non holding of oral inquiry in such a case, is a serious matter and goes to the root of the case.

11. A Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another, , considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subhash Chandra Sharma Vs. U.P. Co-operative Spinning Mills and Others, and Laturi Singh v. U.P. Public Service Trinunal and others, Writ Petition No. 12939 of 2001, decided on 6.5.2005."

16. The facts are not in dispute between the parties. It is admitted that no charge-sheet was issued to the petitioner as required under rule 7 for initiating disciplinary proceedings for imposing major penalty. The enquiry had not commenced before the petitioner superannuated. The learned counsel for the respondents failed to point out any rule as to whether disciplinary proceedings could be initiated against the petitioner after retirement. Even otherwise, after retirement the petitioner cannot be imposed the penalty of termination as the employer/employee relationship no longer exists. There is no allegation of causing loss to the corporation that is to be recovered, hence no enquiry can be initiated against the petitioner after retirement. The impugned order of termination was passed on 14.5.2012 merely on a show-cause notice and two months thereafter i.e. on 31.7.2012 the petitioner retired on attaining the age of superannuation thus on the date of superannuation there was no enquiry pending or contemplated, and admittedly the procedure as contemplated under rule 7 of the Rules of 1999 was not followed and straightway the petitioner's services was terminated.

17. For the facts and circumstances stated herein above, the impugned order dated 14.5.2012 is quashed. The petitioner shall be entitled to post retirement benefits. The writ petition is allowed with all consequential benefits. Legal expenses assessed as Rs. 15,000/-.