

(2011) 02 AHC CK 0354
In the Allahabad High Court
Case No : Writ A No. 11580 of 2011

Bachcha Lal Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Citation : (2011) 02 AHC CK 0354

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The Petitioner is a Assistant Superintendent in a Government Observation Home, (Juvenile). He earlier filed Writ Petition No. 55000 of 2010 for assailing the suspension order dated 6th August, 2010. This petition was disposed of by the judgment and order dated 8th September, 2010 with a direction to the Respondents to conclude the disciplinary proceedings against the Petitioner expeditiously, preferably within a period of two months from the date a certified copy of the order was filed by the Petitioner before the Disciplinary Authority.

2. Special Appeal (Defective) No. 966 of 2010 was filed by the Petitioner against this order. The Special Appeal was dismissed by the judgment and order dated 28th October, 2010 with the observation that in case the Appellant so desires he may apply for the revocation of his order pending enquiry and if such an application is moved, the Respondents shall proceed to consider the same and pass an appropriate order without being influenced by the observations made by the Court.

3. It is pointed out by Sri Rajeev Mishra, learned Counsel appearing for the Petitioner that neither the disciplinary proceedings have been concluded and nor any order has been passed on the application filed by the Petitioner for revocation of the suspension order. He, therefore, submits that the Petitioner can

challenge the suspension order again by filing this petition and in support of his contention he has placed reliance upon a Division judgment of this Court in *Munna Lal Tewari v. State of U.P. and Ors.* 1986 UPLBEC 235. It is also his submission that the Respondents have not filed any application seeking extension of time in the writ petition or in the Special Appeal.

4. Learned Standing Counsel appearing for the Respondents has submitted that this petition for the same cause of action cannot be entertained. It is his submission that when the Court disposed of the writ petition by a detailed order and the Special Appeal filed by the Petitioner was dismissed, the Petitioner cannot challenge the suspension order in this petition. In this context he has placed reliance upon a judgment of this Court in *Farhat Hussain Azad and Ors., v. The State of U.P. and Ors.* 2005 All. C.J. 359.

5. I have considered the submission advanced by learned Counsel for the parties.

6. It is not in dispute that the Petitioner had filed Writ Petition No. 55000 of 2010 for assailing the suspension order dated 6th August, 2010 which has again been assailed in this petition. This petition, as noticed hereinabove, was disposed of by the judgment and order dated 8th September, 2010 which was upheld in Special Appeal (Defective) No. 966 of 2010. If the Respondents have not complied with the directions issued by the Court, then it is for the Petitioner to seek remedy in appropriate proceedings but this petition for the same cause of action cannot be entertained in view of the aforesaid Full Bench Decision of this Court in *Farhat Hussain Azad (supra)*. The decision of this Court in *Munna Lal Tewari (supra)* does not help the Petitioner as in that case the petition was dismissed in limine by a non speaking order. It is in this context that the Division Bench observed that a suspension is a continuing cause of action and it is open to an employee to challenge the order of suspension at any time on the ground of inordinate and unreasonable delay in initiating the disciplinary proceedings.

7. This petition cannot, therefore, be entertained. It is, accordingly, dismissed.