
(1997) 02 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8799 of 1982

Chain Sukh

APPELLANT

Vs

State of U.P., through Collector, Moradabad & Ors.

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 02 AHC CK 0071

Hon'ble Judges : R.H. Zaidi, J

Final Decision : Partly Allowed

Judgement

R.H. Zaidi, J.—By means of the present petition under Article 226 of the Constitution of India, petitioner prays for a writ, order or direction in the nature of certiorari quashing the order dated 11111975, passed by the District Magistrate dismissing the petitioner from service, order dated 26111976, passed by the Commissioner dismissing the appeal of the petitioner and the order dated 11121982, Cissed by the U. P. Public Services Tribunal, ucknow dismissing the claim petition of the petitioner.

2. The facts of the case in brief are that the petitioner was a Collection Amin in the Revenue Department. It was on 2561975 that a chargesheet was served upon the petitioner calling his explanation. Petitioner submitted his explanation on 2871975. Thereafter another show cause notice and an additional chargesheet was served upon the petitioner on 1871975. Petitioner filed reply of the said chargesheet also on 21101975. Thereafter the enquiry was conducted and an enquiry report was submitted and supplied to the petitioner. Petitioner was dismissed from his service by the District Magistrate vide order dated 11111975. Aggrieved by the order passed by the District Magistrate, petitioner preferred an appeal before the Commissioner. The appeal filed by the petitioner also met the same fate and was dismissed on 26121976. Petitioner thereafter appears to have approached to the Secretary, Board of Revenue, but without waiting for the result of the representation he filed a claim petition before the U.

P. Public Service Tribunal. The claim petition filed by the petitioner was also dismissed on 1121982. Challenging the validity of the orders passed by the District Magistrate, Commissioner and the Public Service Tribunal, present petition has been filed for the reliefs as stated above.

3. Writ petition was admitted on 3081982, but till today no counter affidavit has been filed on behalf of the respondents. Learned standing counsel stated that in spite of several letters and reminders sent from the office, nobody turned up for preparation of counter affidavit. Therefore, I have got no option but to rely upon the facts stated in the writ petition and to decide the case in accordance with law.

4. Learned counsel appearing for the petitioner submitted that the order of dismissal was passed against the petitioner without affording him an opportunity to defend himself. It was also urged that copy of enquiry report was not supplied to the petitioner and that the provisions contained in Article 311 of the Constitution of India were violated. Learned counsel for the petitioner further submitted that, in any view of the matter, the extreme punishment of the dismissal from service awarded to the petitioner was not commensurate to the gravity of the charges levelled and proved against him, therefore, the order of dismissal was liable to be set aside.

5. Learned standing counsel in reply to the arguments made by the learned counsel for the petitioner submitted that full opportunity of hearing was afforded to the petitioner, as is evident from the facts stated in the impugned orders. Copy of enquiry report was also supplied to him and in view of the fact that the petitioner has been found guilty of misappropriation of Government money, he did not deserve any lenient view in the matter and the writ petition is liable to be dismissed.

6. I have considered the rival submission made by the learned counsel for the parties and perused the record.

7. So far as the question of affording of opportunity of hearing, is concerned, before the authorities below or before the U. P. Public Service Tribunal, no such grievance was made by the petitioner. Even in the writ petition it has not been clearly and specifically stated that the petitioner was not afforded an opportunity of hearing or to participate in the disciplinary proceedings. Whether the petitioner was afforded an opportunity of hearing or not, is a question of fact and the same cannot be permitted to raise for the first time at this stage. Therefore, the submission made by the learned counsel for the petitioner that the petitioner was not afforded an opportunity of hearing to defend himself is not acceptable to me.

8. The controversy regarding supply of the enquiry report was, however, agitated before the authorities below. On the report itself there was an endorsement of receipt made by the petitioner, which has been believed by the authorities below. Believing or disbelieving of evidence is a question of fact. The Public Service Tribunal noted this argument and rejected the same holding that the copy of the

enquiry report was supplied to the petitioner, in accordance with law. The finding recorded by the Public Service Tribunal on the said question is based on relevant evidence and does not call for interference under Article 226 of the Constitution of India.

9. So far as the question of quantum of punishment is concerned, it is well settled in law that the punishment awarded to an employee should be commensurate to the charges found to have been proved against him. In the present case as many as eight charges were levelled against the petitioner. Out of which only seven have been found to be proved. The charges levelled against the petitioner are regarding dereliction of duties only. There was no charge of dishonest misappropriation of the property levelled against the petitioner.

10. Section 403, Indian Penal Code defines dishonest misappropriation of property as under (only relevant quoted):

"403. Dishonest misappropriation of property. Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a).....

(b).....

(c).....

Explanation I. A dishonest misappropriation for a time only is a misappropriation within the meaning of this section."

11. There is no mention in the chargesheet of dishonest misappropriation or conversion to his own use of the money recovered by the petitioner even for a short period. It on account of some difficulty or even negligence, on the part of the petitioner there was some delay in depositing the money with the State Bank of India, or with the authority concerned, the same cannot constitute dishonest misappropriation or conversion to his own use, of the money recovered by him. Therefore, the argument made by the learned standing counsel that the petitioner was guilty of temporary embezzlement and did not deserve any leniency in the matter is not acceptable to me.

12. As stated above, it is well settled in law that punishment awarded to a Government servant/employee should be commensurate to the gravity of charges proved against him. A reference in this regard may be made to the following cases:

(i) Sardar Singh Ex Naik v. Union of India, AIR 1992 SC 417.

(ii) Rama Kant Misra v. State of U.P. & others, AIR 1982 SC 1552.

(iii) State of U.P v. Om Prakash Gupta, AIR 1970 SC 679.

(iv) State of Orissa v. Bidyabhusan Mohapatra, AIR 1963 SC 779.

13. By the Supreme Court, this Court and other High Court it has consistently been ruled that the punishment awarded to an employee should not be disproportionate and should be commensurate to the gravity of the charges.

14. Learned standing counsel submitted that even if the petitioner is permitted to be reinstated, he is not entitled to back wages, applying the principle "no work no pay" since after his dismissal the petitioner did not render any service to the department.

15. In the present case it was in the year 1975 that the petitioner was dismissed from service. In my opinion the charges levelled against the petitioner were not grave enough so as to entail the penalty of dismissal. No counter affidavit, as stated above, has been filed on behalf of the respondents and there is nothing on the record to show that the petitioner was in gainful employment after he was dismissed from service. Further the petitioner cannot be held responsible for not attending to his duties, actually he was not permitted to work on the basis of illegal order of dismissal. The rule "no work no pay" has got no application in the present case.

16. Learned counsel for the petitioner after receiving instructions from the petitioner, who was present in the Court, made a statement at the bar that the petitioner has got no other source of income except about two bighas of agricultural land in the village. On the other hand he has got liabilities on his shoulders in the form of sons and daughters who are of marriageable age. For more than twenty years he is out of the job. However, the learned counsel for the petitioner showed his willingness even to happily accept 50% of the amount of salary, if awarded by the Court.

17. The penalty of dismissal being harsh and disproportionate to the gravity of the charges levelled against the petitioner, he cannot be held responsible for not discharging his duties; but it is a fact that the petitioner did not render any service to the department. In my opinion, therefore, it will meet the ends of justice if direct the respondents "to pay half of the salary to the petitioner with effect from the date of his dismissal i.e. 11111975.

18. In view of the aforesaid discussion, the writ petition succeeds in part. The orders dated 11111975, 26111976 and 1121982 are quashed. Respondents are directed to reinstate the petitioner forthwith on the post of Collection Amin and pay his salary to the extent of fifty per cent with effect from 11111975. From the date of reinstatement, he shall be entitled to his full salary in accordance with law. For the dereliction of the duties, the respondents are at liberty to award the petitioner adverse entry in his service book and to admonish him not to repeat the performance in future and to discharge his duties in accordance with law. No order as to costs.