
(2010) 05 AHC CK 0285
In the Allahabad High Court

Chairman, Nagar Panchayat, Suriyawan and Others	APPELLANT
Vs	
Aziz and Another	RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Citation : (2010) 6 AWC 5501 : (2010) 126 FLR 784

Hon'ble Judges : R.K. Agrawal, J;Abhinava Upadhya, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Abhinava Upadhya, J.—The present Special Appeal as well as Special Appeal No. 740 of 2010 (Aziz and Anr. v. Chairman, Nagar Panchayat, Suriyawan, district Sant Ravi Das Nagar/Bhadohi and Anr.) involve similar questions and have been filed challenging the same order of the Hon"ble Single Judge dated 18.3.2010, both the appeals are taken up and are decided together.

2. We have heard learned Counsel for the parties and have perused the judgments impugned as also the affidavits filed by the parties.

3. The dispute in brief is that the respondent-petitioner, Aziz, hereinafter referred to as the petitioner, was a Class IV employee of the Nagar Panchayat Suriyawan, District Sant Ravi Das Nagar/Bhadohi and was working as Sweeper. Upon certain charges he was placed under suspension pending enquiry vide order dated 7.11.1997. Thereafter one Shiv Prasad was appointed as Enquiry Officer and a charge sheet dated 8.12.1997 was served upon the petitioner calling for his reply. On 12.12.1997 he submitted his reply denying the charges.

4. The charges in substance were that the petitioner did not take interest in his work and unduly influenced other employees against performing their duties. A report was called from the Safai Naik, who submitted his report dated 26.5.1997 confirming the aforesaid allegation. Secondly, the petitioner w.e.f. 25.9.1997 to 21.10.1997 without seeking any permission and without any application for leave absented himself and submitted his medical leave application along with medical

certificate only after suspension order was passed.

5. The charges were denied by the petitioner and departmental proceedings ensued. An enquiry report dated 27.1.1998 was submitted stating that the charges levelled against the petitioner have been proved. Upon the said enquiry report an order of dismissal dated 27.2.1998 was passed.

6. The said order of dismissal was challenged before the learned Single Judge on the ground that no opportunity was offered to the petitioner and at no stage he was associated in the enquiry. Further no opportunity of adducing oral evidence was allowed and, therefore, the entire enquiry is vitiated in law.

7. Hon'ble Single Judge accepting the contention raised by the petitioner, set aside the entire enquiry and the order of dismissal dated 27.2.1998 on the ground of violation of principles of natural justice and directed reinstatement. For the period, from the date of dismissal, i.e., 27.2.1998 up to the date of passing of order in the writ petition dated 18.3.2010, i.e., approximately 13 years, Rs. One lac lump sum amount was determined by the Hon'ble Single Judge in lieu of back wages and directed the authorities to maintain the continuity of service of the petitioner.

8. On the other hand, learned Counsel for the appellant submitted that the enquiry was conducted in accordance with law, inasmuch as Enquiry Officer was appointed. Charges were framed and charge sheet filed and was duly served upon the petitioner. Petitioner was given opportunity to submit his reply to the charges. He submitted his reply and thereafter enquiry was conducted in a fair and transparent manner and upon the conclusion of enquiry the disciplinary authority, who was competent to pass the order after assessment of the evidence relied upon by the Enquiry Officer, passed the order of dismissal. It is alleged that the aforesaid procedure adopted by the authorities does not contravene any provision of law or of principles of fair play and natural justice and, therefore, no interference by this Court is called for.

9. In the alternative learned Counsel has also submitted that the charges levelled were serious in nature and it reflects a clear case of dereliction of duty coupled with enticing the other employees from working and thereby disturbing the entire working environment of the department. He submits that these charges, if proved, which indeed has been, would entail dismissal from service. He further contends that if the learned Single Judge was of the opinion that there was any procedural defect in the enquiry, at the most, a direction could have been issued to recommence the enquiry from that stage of that defect instead of quashing entire enquiry. For this submission, learned Counsel for the appellant has relied upon a Constitution Bench judgment of the Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , followed in State Bank of Patiala and others Vs. S.K. Sharma,

10. In the case of Managing Director, ECIL, Hyderabad v. B. Karunakar, (Supra), the Supreme Court has held thus:

Whereafter following the above procedure, the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the enquiry, by placing the employee under suspension and continuing the enquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceeding and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the enquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

11. In the present case, as discussed above, charges were framed against the petitioner and departmental enquiry was proceeded with. The learned Single Judge has recorded a finding that the said enquiry was proceeded one sided and the petitioner has not been given a fair chance to defend his case. But this would not mean that the charges levelled against the petitioner have been obliterated. If the charges are true and are proved, the consequences permissible under the law would necessarily have to be allowed to follow. Therefore, in our view it would meet the ends of justice if it is provided that the enquiry may re-start from the stage of submission of reply of the petitioner against the charge sheet dated 8.12.1997. Since the matter pertains to the year 1997, if so required, new Enquiry Officer may be appointed to enquire into the matter, who shall thereafter proceed in accordance with law. It is further directed that till the conclusion of the aforesaid enquiry, the petitioner will remain in suspension and will be entitled to the allowances permissible under the law.

12. Subject to the aforesaid directions, the appeal succeeds and is allowed. The impugned order of the learned Single Judge dated 18.3.2010 is thus, set aside.

13. So far as Special Appeal No. 740 of 2010 Aziz v. Chairman, Nagar Panchayat, Suriyawan, district Sant Ravi Das Nagar/Bhadohi and Ors. is concerned, the appellant has challenged the order of the Hon''ble Single Judge dated 18.3.2010 on the ground that once having been held that the disciplinary proceedings are vitiated and the order of dismissal having been set aside, the Hon''ble Single Judge ought to have allowed the appellant full salary for the period he was not allowed to work, whereas the Hon''ble Single Judge has only allowed lump sum one lac rupees for the said period.

14. Since the special appeal filed by the employer, i.e., Chairman, Nagar

Panchayat, against the same order of the Hon''ble Single Judge dated 18.3.2010 has been allowed by order of date and the judgment of the Hon''ble Single Judge has been set aside, the Special Appeal No. 740 of 2010 filed by the appellant Aziz has been rendered infructuous as no cause of action survives.

15. The Special Appeal No. 740 of 2010 Aziz v. Chairman, Nagar Panchayat, Suriyawan, district Sant Ravi Das Nagar is accordingly dismissed as infructuous.