
(2010) 01 AHC CK 0175

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28417 of 2009

Chaya Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0175

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Siddharth Khare for the petitioner and learned Standing Counsel for the respondents.

2. The petitioner was working as Headmistress of a Primary School, Mehandipur, Block & District Kannauj. By means of the order dated 21st March, 2009 the District Basic Education Officer, Kannauj imposed punishment of reduction in rank by reducing her rank from the post of Headmistress to Assistant Teacher on the certain allegations constitute misconduct.

3. The learned Senior Counsel for the petitioner contended that a major penalty has been imposed without holding any enquiry. Initially the impugned order was kept in abeyance and thereafter by means of the impugned order dated 13th may, 2009 the same has been given finality by the District Basic Education Officer holding that the charges are proved as the petitioner is not able to place any defence. It is contended that the procedure adopted by the respondents is wholly illegal and arbitrary, inasmuch as, the penal order of reduction in rank could not have been passed without holding regular departmental enquiry against the petitioner and giving adequate opportunity of hearing. It is further submitted that it is incumbent upon the respondents to hold departmental enquiry where they were supposed to prove charges and thereafter only the petitioner was required to place defence. No such procedure was adopted, therefore, the impugned order is wholly illegal.

4. In the counter affidavit filed by the respondents they have placed reliance upon certain show cause notice issued to the petitioner and it is submitted that the said show cause notice, whereby the petitioner was required to explain his conduct, constitute sufficient opportunity.

5. However, it is not disputed that neither any formal charge sheet was issued to the petitioner nor any oral departmental enquiry in accordance with the known procedure was followed. The matter is of a junior primary school maintained by Board of Basic Education. No order of major penalty could have been imposed without following the principles of natural justice and the known procedure for departmental enquiry in the matter.

6. For the Headmistress and teachers and other staff of the Basic Schools established by the Board, the procedure for departmental enquiry contained in U.P. Basic Education Staff Rules, 1973, hereinafter referred to as "1973 Rules", and Rule 5 sub rule (3) thereof reads as under:

"The procedure laid down in the Civil Services (Classification, Control and Appeal) Rules, as applicable to servants of the Uttar Pradesh Government shall, as far as possible, be followed in disciplinary proceedings, appeals and representations under these rules."

7. In view of the above, the procedure for departmental enquiry prescribed in U.P. Government Servant (Discipline & Appeal) Rules, 1999 comes into picture and becomes applicable for departmental proceedings against the teachers of school concerned. The departmental enquiry, in the case in hand admittedly has not been held according to the above procedure.

8. Holding of oral enquiry is mandatory before imposing a major penalty as held by the Apex Court in State of U.P. & another Vs. T.P.Lal Srivastava, 1997 (1) LLJ 831 as well as by a Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director & another, 2000 (1) U.P.L.B.E.C. 541.

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 Vs. 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 judgement 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 & another, 2000 (1) U.P.L.B.E.C. 541, 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. Cooperative Spinning Mills & others, 2001 (2) UPLBEC 1475 and Laturi Singh Vs. U.P. Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005."

10. In the result the writ petition is allowed. The impugned order dated 13.5.2009 (Annexure 20 to the writ petition) is hereby quashed. The petitioner shall be entitled for all consequential benefits.

11. However, this order shall not preclude the respondents from passing a fresh order in accordance with law.