

(2003) 07 AHC CK 0235
In the Allahabad High Court
Case No : C.M.W.P. No. 26883 of 2003

Dayanand Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 AWC 4546

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Rakesh Pande, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The Petitioner was appointed as Warder/Bandi Rakshak on 15.1.1986. The District Magistrate, Pratapgarh along with Senior Superintendent of Police, Pratapgarh visited the District Jail, Pratapgarh and made a spot inspection on 19.6.2002. Barracks were searched. In the search a Mobile phone was recovered from one Kundan Singh, a convict in Barrack No. 3. The Petitioner was suspended in contemplation of an enquiry for being negligent on duty resulting in entry of unauthorized/objectionable material in the jail. The order of suspension impugned in the writ petition dated 21.6.2003 is as under:

3. The Petitioner has come up before this Court with the prayer for quashing the order of suspension dated 21.6.2003 on the ground that the impugned order is arbitrary as subjective satisfaction for suspending the Petitioner had been arrived at without any material basis and that it has been passed in a mechanical manner under the pressure of the District Magistrate who was visitor of the jail.

4. It is contended by the counsel for the Petitioner that the allegations in the suspension order that mobile phone has been recovered are on the face of it incorrect and against the record as no memo of recovery of cellular phone was

prepared and there is nothing in the jail book/exit register to show that the District Magistrate has seized any material such as cellular phone and has taken away the same.

5. It is also contended that the charge is not so as to result in any major punishment or dismissal/ removal of the applicant from service and as such the suspension order is bad. It is further contended that the Petitioner is being made a scape goat in order to shield superior officers.

6. These are question of facts to be decided in the enquiry upon consideration of relevant documentary and oral evidence.

7. It is settled law that the suspension is not punishment. It appears from the record that the enquiry is contemplated against the Petitioner. All that is being said in this petition can also be said before the Enquiry Officer who can examine the matter on basis of oral and documentary evidence adduced before him in the enquiry proceeding. This Court will not adjudicate upon question of facts under Article 226 of the Constitution by inviting the parties to give oral and documentary evidence and to do so would mean stepping to the shoes of the Enquiry Officer. This would not be proper. This writ petition is premature as charge-sheet has not been issued against the Petitioner and there is no material on record for alleged mistake. The allegations against the Petitioner appear to be serious on the face of it. Recovery of mobile phone from a convict in jail cannot be taken lightly. The running of the network of illegal activities through mobile phones by the convicts while in jail under the safety of the police has shaken the public confidence in recent past, because of some unscrupulous Police Officers getting more and more involved with criminals virtually becoming partners in crimes is a serious matter for the law abiding citizens and the courts.

8. This Court will not decide questions of fact particularly, when the enquiry is contemplated. It is not a fit case for interference under Article 226 of the Constitution of India.

9. No material has been placed by the Petitioner before this Court on the basis of which the contentions raised by the Petitioner are supported.

10. Needless to say that if the Petitioner is proved to be innocent in the enquiry proceedings, action may be taken against the guilty person and he would be entitled to his full wages with all benefits.

11. For the reasons stated above, the petition is dismissed.

12. No order as to costs.