
(1985) 03 AHC CK 0046
In the Allahabad High Court
Case No : Writ Petition No. 6036 of 1984

Dharam Pal Singh

APPELLANT

Vs

U.P.Ware-Housing Corpn.& Another

RESPONDENT

Date of Decision : 19-03-1985

Acts Referred:

Uttar Pradesh Warehousing Corporations Act, 1962 — Section 4

Citation : (1985) 03 AHC CK 0046

Hon'ble Judges : S.Saghir Ahmad, J and Brijesh Kumar, J

Final Decision : Disposed Of

Judgement

S. Saghir Ahmad, J.—The petitioner, who is an employee of the State Warehousing Corporation (for short "Corporation"), has, by means of this petition, challenged the order dated 30.11.84 (Annexure 1) by which he has been placed under suspension. The order has been passed by the Deputy Managing Director. It is contended that the Deputy Managing Director has no power under the U.P. State Warehousing Corporation Staff Regulations made under Section 4 of the Warehousing Corporation Act, 1962 (58 of 1962) to place an employee under suspension. Our attention has been invited to the provisions of Regulation 17 which may be quoted below :

17. Procedure About Suspension:

(1) An employee may be placed under suspension pending an enquiry against him for breach of discipline or neglect of duty or pending proceedings instituted against him in respect of any Criminal offence involving moral turpitude.

(2) The power to place an employee under suspension shall be exercised;

(a) in the case of all employees except the Managing Director, by the Managing Director; and

(b) in the case of the Managing Director by the Board of Directors in consultation with the Central Warehousing Corporation and with the previous approval of the

State Government.

Provided that an employee on deputation from the Central Government, a State Government or a Government Institution shall be suspended only in accordance with the procedure and rules applicable to him in his parent service.?

2. With reference to the Regulation quoted above, it is contended that the Managing Director alone has been authorised to place an employee under suspension and not any other authority including the Deputy Managing Director.

3. It will be noticed that the Regulations were made on 28th March, 1966. The post of Deputy Managing Director was created by a resolution of the Executive Committee of the Corporation adopted on 23/1/70. This resolution apart from creating the post also specifies that the Deputy Managing Director shall have the power to appoint the staff of various categories below the grade of Rs. 200 400 (Since revised) and to take disciplinary action?.

4. The petitioner admittedly was appointed by the Deputy Managing Director. This appointment was obviously made by the Deputy Managing Director in exercise of the powers conferred upon him by the resolution dated 23/7/0 referred to above. It is in exercise of the powers conferred upon him by that resolution that the Deputy Managing Director has placed the petitioner under suspension. The contention of the learned counsel for the petitioner that the power of suspension could be exercised only by the Managing Director does not, therefore, hold water inasmuch as the petitioner's appointing authority is the Deputy Managing Director who, as observed earlier, has power to take disciplinary action which, by necessary implication, includes the power to suspend. We also feel that since the petitioner was appointed by the Deputy Managing Director, he cannot legally question the power of the Deputy Managing Director to place him under suspension as the power to appoint and the power to take disciplinary action, which, as observed earlier, includes power to Suspend, both flow from the same source, i.e., the Resolution dated 23/7/0.

5. Learned counsel for the petitioner has next contended that the petitioner, in any case, is entitled to full salary even during the period of suspension as the suspension order has not been passed under the Regulation but has been passed by the Deputy Managing Director in exercise of his powers under the Resolution dated 23/7/0.

Regulation 18 provides as under :

18. Grant of subsistence allowance to employees when under suspension: An employee when suspended under these Regulations shall not be entitled, during the period of suspension, to draw his full pay but he will be paid during that period, a monthly subsistence allowance at such rate not less than one fourth and not exceeding one half of his substantive pay and so much of the dearness allowance, if any as the authority ordering suspension may determine." [Emphasis supplied].

6. A perusal of the provision quoted above would show that the subsistence allowance, and not the full salary, is to be paid to an employee who is suspended under the Regulation. Regulation 18 does not extend or apply to suspensions ordered by the Deputy Managing Director in exercise of his power under the Resolution dated 2370 as Regulation 18 in its applicability is confined to ? suspension under the Regulation?.

7. Since the petitioner has been placed under suspension by the Deputy Managing Director, it is obvious that he has not been suspended under Regulation 17. The provisions of Regulation 18 under which reduced salary by way of subsistence allowance is payable to an employee will not therefore, be applicable to the petitioner.

8. The question then is what emoluments are to be paid to the petitioner during the period of suspension,

9. It is Well settled on the basis of the principles underlying the provisions contained in Section 16 of the General Clauses Act that an authority competent to appoint or dismiss an employee has also the power to suspend that employee even though an express power in that regard is not given to him by any specific service rule but the employee, in that case,, will be entitled to full salary during the period of suspension.

10. Similarly, if a power to suspend is given by a service rule but the rule or the contract of service does not provide for payment of reduced salary or the subsistence allowance, the employee, though under suspension, will be entitled to full salary. (See : *Salvantaray Rati Lal Patel v. State of Maharashtra*, 1968 SLR 593 (SC) and *Union of India v. Baij Math* 1972 SLR 352 (Delhi).

11. We have held above that Regulation 18 under which subsistence allowance is payable to a suspended employee is not applicable to the petitioner whose suspension was ordered by the Deputy General Manager, not under Regulation 17, but in exercise of his power under Resolution dated 2370. On the basis of principles laid down by the Supreme Court in Patel's case (Supra) and by the Delhi High Court in *Union of India v. Baij Math*, the petitioner, in our opinion, will be entitled to his full salary even during the period of his suspension.

12. It may be anomalous that if an employee is suspended by the Managing Director, he is paid only subsistence allowance but if he is suspended by the Deputy Managing Director, he is to be paid full salary but the anomaly. Can be removed by the Corporation by necessary amendments so as to bring suspensions by the Deputy. Managing Director within the umbrella covering of Regulations 17 and 18. So long as this is not done, the employee, as expressed by us earlier, will, if he is suspended by the Deputy Managing Director, be entitled to full salary.

13. In view of the above, we direct, although we do not quash the impugned order or suspension contained in Annexure1, that the petitioner, even during the

period of his suspension, shall be paid full salary.

14. The writ petition is thus disposed of finally but without any order as to costs,
[ordered accordingly.]