

(2013) 10 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition No. 1392 of 2013 (S/S)

Dharam Ram

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) LabIC 352

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Nandan Arya, for the Appellant; Subhash Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.—Present petition is filed assailing the impugned order dated 27.08.2013, passed by Collector, Almora whereby petitioner was placed under suspension with immediate effect. Perusal of the impugned order reveals that petitioner was posted as Patwari in Katarmal area, District Almora. He prepared form-11 for the purpose of undisputed mutation. Later on, it was found that mutation was not undisputed and petitioner has prepared form-11 wrongly. Tehsildar, Almora reported the matter to the Collector, Almora and Collector, Almora vide impugned order, placed the petitioner under suspension with immediate effect.

2. Mr. Nandan Arya, learned counsel for the petitioner submitted that first of all, preparation of form-11 for the purpose of undisputed mutation is not final. The person disputing the mutation can apply for mutation u/s 34 of the U.P. Land Revenue Act whereupon concerned Tehsildar after obtaining due process of law can pass appropriate order and entry made by the Patwari in form-11 shall cease to have any effect after mutation order is passed by the competent Tehsildar. Therefore, no prejudice can be caused any of the parties by preparing the form-11. Learned counsel for the petitioner further submitted that this is not a grave misconduct which can result into major penalty of dismissal, therefore,

suspension was not desirable. Learned counsel for the petitioner further contended that suspension order should not be passed in a routine manner.

3. On the other hand, Mr. Subhash Upadhaya, learned Standing Counsel for the State supported the suspension order and argued that since petitioner was found having prepared incorrect form-11 to give benefit to the person who otherwise was not entitled, therefore, suspension of the petitioner seems to be justified.

4. Hon''ble Apex Court in the case of State of Haryana Vs. Hari Ram Yadav and others, , has held as under:--

10. We find it difficult to agree with the said view of the tribunal. The mere fact that the impugned order of suspension does not contain a recital that the Governor was satisfied that it is either necessary or desirable to place respondent No. 1 under suspension does not, in our opinion, render the said order invalid. The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the said condition is not fulfilled. Reference, in this context, may be made to the decision of this Court in The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others, wherein it has been observed:

The validity of the order therefore does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence. It would therefore follow that if by inadvertence or otherwise the recital of the formation of the opinion is not mentioned in the preamble to the order the defect can be remedied by showing by other evidence in proceedings where challenge is made to the validity of the order, that in fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law. The only exception to this course would be where the statute requires that there should be a recital in the order itself before it can be validly made.

5. Hon''ble Apex Court in the case of State of Orissa Vs. Bimal Kumar Mohanty, has held as under:--

It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind

by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

6. The Division Bench of this Court in the case of S.K. Goel Vs. State of Uttaranchal and Another, has held as under:--

4. It is not necessary to place a Government employee under suspension in every case where disciplinary proceedings are contemplated. The continuance of the employee in the same post or at the same station may be considered likely to influence or prejudice the enquiry and the disciplinary proceedings. Sometimes, in view of the nature of the post held by the officer and the nature of the irregularities alleged, the very continuance of the officer in service during the disciplinary proceedings may be considered undesirable. In the first case, the proper conduct of enquiry and disciplinary proceedings can be ensured by a mere transfer of the officer. Only in the second case the officer need be placed under suspension. Hence, it is incumbent upon the disciplinary authority to consider whether a transfer of the officer will be sufficient or whether suspension itself is required. Only when the disciplinary authority is satisfied that suspension itself is required, an officer can be placed under suspension. If and when the suspension is questioned in a Court of Law, the disciplinary authority is bound to show that he had arrived at a satisfaction that a mere transfer was not sufficient and that suspension itself was required. If the disciplinary authority fails to show that he had properly considered the matter and was satisfied that suspension itself was required, the order of suspension is liable to be declared illegal and arbitrary and

quashed on that basis, it should be remembered that though suspension is not a punishment, it visits the employee with serious civil consequences and loss of reputation and prestige. Hence, an order of suspension should not be passed lightly, casually or without proper application of mind.

7. Another Division Bench of this Court in the case of Mahendra Kumar Tayal Vs. State of Uttaranchal, has held as under:--

14. It cannot be disputed that State Govt. being the appointing authority was competent to suspend the petitioner pending the disciplinary action. The State Govt./Disciplinary authority had the option to place him under suspension pending inquiry or to transfer him to another place. An employee can be suspended only when the disciplinary authority is of the opinion that it is necessary in the public interest to place him under suspension in order to maintain the discipline in service and keep up the morale of the honest and dutiful employees or to inspire confidence and trust in the minds of the public or to protect the image of the Department. Disciplinary authority while suspending an employee has to consider the nature of the allegations and the nature of the post held by him. An order of suspension visits the employees with serious civil consequences, monetary loss and loss of reputation. It is not necessary to place the employee under suspension in every case where the disciplinary proceedings are initiated. It has to be considered by the State Govt. whether the continuance of the employee in service at any other place in the State is likely to influence or prejudice the inquiry and disciplinary proceedings. Sometimes Govt. may feel that the nature of the irregularities alleged against the delinquent official are of serious nature or that he is holding such a sensitive post and hence his continuance in the service during the disciplinary proceedings is undesirable. If transfer will be sufficient to ensure proper and fair disciplinary inquiry, the State Govt. may only transfer the employee and may not place him under suspension. The State Govt. should consider whether transfer or suspension is necessary in the given circumstances. The State Govt. has the discretion in the matter and the State Govt. has to exercise its discretion only after considering the relevant aspects of the matter fairly and judiciously and not arbitrarily. When the suspension order is challenged before the court, the disciplinary authority is bound to show that he had arrived at a satisfaction that suspension was necessary to proceed with the departmental inquiry and the continuance of the employee in service during the inquiry is undesirable and would influence or prejudice the inquiry. A proper exercise of the discretion by the State Govt. cannot be interfered with by the court. If the State Govt. fails to show that it had properly considered the matter and was satisfied that suspension itself was required, the order suspension is liable to be held to be illegal and arbitrary and is liable to be quashed. It may not be necessary for the State Govt. to give detailed reasons in the order to suspend an employee, but the order of the State Govt. or the relevant file should reflect that the competent authority after applying its mind to all the relevant aspects of the matter had exercised its discretion properly, fairly and judiciously and not arbitrarily.

8. In view of the dictum of the Apex Court as well as the Division Benches of this Court, the law of suspension is summarized as under:--

9. When an appointing authority proceeds to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and order of suspension should not be passed in a routine or automatic manner. It is not necessary to place a Government employee under suspension in every case where disciplinary proceedings are contemplated. Appointing authority must be satisfied that continuance of the employee in the same post or at the same station may cause a reasonable apprehension that it will influence or prejudice the enquiry and the disciplinary proceedings. It should always be kept in mind by the appointing authority that though suspension is not a punishment, however, it visits the employee with serious civil consequences and loss of reputation and prestige. Therefore, an order of suspension should not be passed lightly, casually or without proper application of mind.

10. Order of suspension need not contain the recital of the reasons which has resulted into the passing of the suspension order. If the suspension order is questioned before a Court of Law, the appointing authority must show before the Court of Law that before passing the suspension order the case of the delinquent employee was considered properly and suspension order was found to be desirable in the peculiar facts and circumstances of the case considering the gravity of the misconduct or continuance of the officer in the office may likely to influence the proceedings. If the appointing authority or the disciplinary authority fails to show that the grounds of suspension were considered before passing the suspension order, the suspension order so passed is liable to be quashed.

11. On being asked, Mr. Subhash Upadhyaya, learned standing counsel could not show that before passing the suspension order, the case of the petitioner was considered properly and suspension order was found desirable considering the gravity of the misconduct or continuance of the petitioner in the office may likely to influence the proceedings.

12. It is admitted fact that now petitioner is no more Patwari of Katarmal area, therefore, it cannot be said that he will be in a position to tamper with documentary evidence which can be read against him. Therefore, suspension of the petitioner seems to be totally undesirable and unjustified. Therefore, same does not sustain in the eyes of law.

13. Consequently, present writ petition is allowed. Impugned order so far it relates to suspension of the petitioner stands quashed. However, respondents are directed to expedite the disciplinary proceedings against the petitioner and to complete the same in accordance with law without any undue delay. CLMA No. 10562 of 2013 also stands disposed of accordingly.