

(2012) 12 AHC CK 0244

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (S/B) No. 189 of 2012

Dr. Vinay Kumar Pandey

APPELLANT

Vs

Chancellor, Deen Dayal Upadhyay Gorakhpur University

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2013) 1 ADJ 474

Hon'ble Judges : Rajiv Sharma, J; Mahendra Dayal, J

Bench : Division Bench

Advocate : Chandra Bhushan Pandey and Rohit Tripathi, for the Appellant; Alok Mathur and Rajesh Chandra Mishra, for the Respondent

Judgement

1. The petitioner has challenged the order dated 6.1.2012 passed by the Chancellor, Deen Dayal Upadhyay Gorakhpur University, Gorakhpur, respondent No. 1, the resolution of the Executive Council dated 28.6.2009, the charge-sheet dated 22.4.2009, served upon him and the enquiry report dated 27.6.2009. The petitioner has further prayed that the respondents be directed to reinstate the petitioner in service giving him all the consequential benefits treating him to be in continuous service. The petitioner while he was working as Professor in the Commerce Department of Deen Dayal Upadhyay Gorakhpur University, Gorakhpur (the University), the Vice-Chancellor appointed him as Coordinator for the evaluation work in the B.Ed. examination for the session 2006-07 vide order dated 30.7.2007. After the examination was over, one Durga Prasad Yadav of Gorakhpur made a complaint to the Chief Minister on 18.6.2007 pointing out large scale irregularities in the conduct of B.Ed. entrance examination for the session 2005-06 and 2006-07.

2. The State Government vide order dated 20.9.2007 passed an order to hold an enquiry. Pursuant to the said order, the Commissioner, Gorakhpur Division conducted the enquiry and submitted his report on 12.12.2007 indicating certain irregularities. Thereafter on the basis of the aforesaid letter of the Commissioner,

the State Government issued directions for conducting full fledged enquiry vide order dated 22.4.2008. The detailed enquiry was conducted by the sub-committee, constituted by the Executive Council of the University. The Commissioner Gorakhpur Division, the respondent No. 6 was also one of the members of the sub-committee. A charge-sheet was issued to the petitioner levelling charges of irregularity committed by him in the capacity of coordinator. The sub-committee submitted the enquiry report on 27.6.2009. It will not be out of place to mention here that the subcommittee found the charges to be proved and held the petitioner responsible for the irregularities. The committee also recommended for the dismissal of the petitioner. Thereafter on 30.6.2009 the petitioner was informed by the Registrar of the University that the Executive Council of the University has dismissed him from service on 28.6.2009. While the enquiry was in progress, the petitioner preferred Civil Misc. Writ Petition No. 24627 of 2009 before this Court which was disposed of on 21.1.2011 with the observation that the petitioner had a statutory remedy of filing the representation before the Chancellor u/s 68 of the U.P. State Universities Act, 1973 (the Act). It was further directed by the division bench that if such representation is filed, the Chancellor may consider the same on merit and decide the representation as expeditiously as possible. It appears that after the disposal of the aforesaid writ petition, the petitioner submitted a representation before the Chancellor, respondent No. 1, which was decided on 6.2.2012 holding that the dismissal of the petitioner was not made in violation of the provision of the Act, Statute or Ordinance.

3. Heard Mr. Chandra Bhushan Pandey, learned counsel for the petitioner, Mr. Alok Mathur, learned counsel for the Chancellor/opposite party No. 1 and Mr. Umesh Chandra, Senior Advocate assisted by Mr. Rajesh Chandra Mishra, learned counsel for the opposite party Nos. 3 to 5 and the learned standing counsel.

4. The petitioner has challenged the entire process of enquiry conducted against him mainly on the ground that the committee submitted the enquiry report without affording any opportunity to the petitioner and without examining any witness. The petitioner has also challenged his appointment as coordinator on the ground that under the Act, Statute or Ordinance, there is no provision for the post or authority of the coordinator. The charge-sheet served upon him was, therefore, illegal firstly on account of the fact that it was not issued by the competent authority and secondly, because it was totally vague, without indicating any specific act or irregularity of the petitioner.

5. The submission on behalf of the petitioner is that the committee had clearly indicated in its report that neither it was the duty of the petitioner to evaluate the answer books nor he actually participated in the examination process but since he did not himself inquire into the alleged irregularities, he was responsible for the irregularities committed by the concerned officials. Even the result was not prepared by the petitioner and the result was also not declared by him. But since the irregularities were serious in nature and the petitioner was coordinator,

hence he was responsible for all the irregularities committed during the course of examination.

6. The petitioner has also challenged the enquiry report on the ground that his reply to the charge-sheet was not considered while holding him responsible and no opportunity of hearing was given to him before passing any order of dismissal by the Executive Council. Even, when he made a representation before the Chancellor, his representation was not properly considered and was decided in a cursory manner.

7. Shri Alok Mathur, learned counsel representing the respondent No. 1 and Shri Umesh Chandra, learned senior counsel assisted by Shri Rajesh Chandra Mishra representing the respondent Nos. 3 to 5 and the learned standing counsel submitted that a division bench of this Court while disposing of the writ petition No. 24627 of 2009, filed by the petitioner considered all the aforesaid submissions of the petitioner and clearly held that it cannot be said that the order was not passed by the competent authority or that the principle of natural justice were violated. The Bench further came to the conclusion that the averments and material placed on record by the petitioner do not indicate that the order was passed in mala fide exercise of powers.

8. In view of the observations made by the Division Bench, the petitioner cannot now agitate those grounds again in this writ petition. Moreover, the original records with regard to the disciplinary enquiry conducted against the petitioner have been produced before the Court and the record reveals that the enquiry was conducted in a fair manner giving all possible opportunities to the petitioner to defend himself.

9. It was also pointed out by the learned counsel for the respondents that the B.Ed. entrance examination conducted by the University was subject to judicial scrutiny of the Court. In writ petition No. 14587 of 2007 Pradeep Kumar Tripathi v. State of U.P. and others, a single judge of the Court passed a detailed order on 23.5.2007 directing the officers of the University including the Vice-Chancellor and Registrar to place the record of the writ petition alongwith the order before the Secretary, Higher Education, U.P. who will conduct a detailed enquiry in the entire episode. It was further directed that the Secretary shall recommend appropriate action against all found responsible.

10. It has been further submitted on behalf of the respondents that all the answer books of the B.Ed. entrance examination were under the control of the Examination Controller and Rs. 25-30 lakhs were taken from the students to award them good marks. The officers of the University including the Controller increased the marks of about 4000 students by accepting money. Under letters of recognition granted by the National Council for Teachers Education in favour of the Institution it is specifically mentioned that an intake of 100 students would be permissible. However, the admission was granted to much more students by increasing their marks. In compliance of the order of the Court, the University

had to compensate the students who were illegally admitted in the B.Ed. course and were subsequently denied admission, and in this way the University had to deposit a sum of Rs. 47.00 lakhs as compensation to these students. The copies of such students were also destroyed in order to conceal the fraud and irregularity. The petitioner being the coordinator of the examination was wholly responsible for all these affairs and thus the Disciplinary Committee rightly held him responsible and the Executive Council rightly dismissed him from service.

11. The Chancellor also considered the representation of the petitioner in detail and found the order passed by the Executive Council fully in accordance with law and rightly rejected the representation of the petitioner.

12. Having heard the learned counsel for the parties and going through the pleadings, it appears that the grievance of the petitioner is that after the submission of the enquiry report by the sub committee and before the order of dismissal passed by the Executive Council, the petitioner was not given any opportunity of hearing. It is submitted that the sub committee submitted its report on 27.6.2009 and the Executive Council held an emergent meeting on 28.6.2009 and passed an order for dismissal of the petitioner. This action on the part of the Executive Council is not only against the principles of natural justice but is also against the settled principle of law. Another grievance of the petitioner is that the Chancellor while deciding his representation solely based his findings on the judgment of this Court passed in Civil Misc. Writ Petition No. 24267 of 2009 while it was clearly mentioned in the judgment that the Court did not examine the merits of the charges. The Chancellor also failed to consider that no opportunity of hearing was provided to the petitioner after submission of the report of the sub committee and the order passed by the Executive Council of the University. The proceedings of the Executive Council of the University dated 28.6.2009 have neither been annexed by the petitioner alongwith the writ petition or rejoinder-affidavit nor it has been annexed with the counter-affidavit filed by the respondents but the record of the enquiry proceedings were placed before this Court by the respondents and a copy thereof is available on record.

13. This document clearly suggests that the sub committee submitted its enquiry report on 27.6.2009 and recommended the dismissal of the petitioner the same day. The Executive Council of the University held a meeting on the very next day i.e. on 28.6.2009 and while accepting the recommendation of the sub committee, passed an order for dismissal of the petitioner from the service. Thus, it is clear that no opportunity was given to the petitioner to make any explanation to the report submitted by the sub committee. This is clear violation of the settled principles of law and the principles of natural justice.

14. In the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , the Apex Court has clearly held that any employee against whom the disciplinary enquiry has been conducted, has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against

him. This right is a part of the employee's right to defend himself against the charges levelled against him. That denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

15. The Apex Court has further held that the delinquent employee shall be entitled to a copy of report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

16. In the present case, the manner in which the Executive Council of the University has acted in awarding punishment to the petitioner is totally illegal and against the principles of natural justice as neither the copy of the Inquiry Report was provided to the petitioner nor any opportunity of hearing was given to him before awarding him the major punishment of dismissal.

17. So far as the judgment of the Division Bench in writ petition No. 24627 of 2009 is concerned, this writ petition was filed by the petitioner for expeditious disposal of his enquiry but during the pendency of the writ petition, the enquiry was completed and punishment was also awarded to the petitioner. The Division Bench while disposing of the writ petition has observed that against the order of Executive Council of the University, the petitioner has a remedy to move representation before the Chancellor u/s 68 of the Act. The Bench further clarified that the merits of the charges were not examined and the discussion of fact in the judgment was only to find out that any case of interference without exhausting alternative remedy has been made out or not. The relevant portion of the judgment is reproduced below;

In the present case, we do not find that the petitioner has been able to make out any exception to circumvent the alternative remedy, which is efficacious and speedy.

In the above circumstances, it cannot be said that the order was not passed by the competent authority, or that the principle of natural justice were violated. Further at this stage we are not satisfied from the averments and material produced on record that the order has been passed in mala fide exercise of powers.

For the aforesaid reasons, we relegate the petitioner to the statutory remedies of filing representation before the Chancellor u/s 68 of the U.P. State Universities Act, 1973. If such a representation is filed, the Chancellor may consider the same on merits and decide the representation as expeditiously as possible. We make it clear that we have not examined the merits of the charges. The discussion of facts in the judgment is only to find out whether any case of interference, without exhausting alternative remedies has been made out.

The writ petition is disposed of accordingly.

18. Thus, it is clear that their Lordships while disposing of the earlier writ petition

of the petitioner did not examine the merits of the case but only confined themselves to find out as to whether the petitioner could be given any relief without exhausting the alternative remedy of filing of the representation before the Chancellor.

19. The Chancellor while deciding the representation of the petitioner did not consider the fact after submission of the Inquiry Report by the sub-committee and recommending the dismissal of the petitioner no opportunity was given to him. The Executive Council of the University proceeded to hold meeting and passed an order dismissing the petitioner from the service without even providing a copy of the Inquiry Report to the petitioner and providing him any opportunity to give explanation to the Inquiry Report.

20. In view of the above, the order passed by the Chancellor cannot be allowed to stand and is liable to be quashed. Since the Executive Council of the University has also not followed the settled principles of law while passing the major punishment to the petitioner, the resolution of the Executive Council dated 28.6.2009 as contained in Annexure 2 to the writ petition is also liable to be quashed.

21. The petitioner has further challenged the Inquiry Report dated 27.6.1009 submitted by the sub-committee holding that the petitioner is responsible for the irregularities committed during the B.Ed. examination for the year 2006-07. It has been submitted on behalf of petitioner that the petitioner was served with the copy of the charge-sheet to which he gave his reply but during the course of enquiry by the sub-committee he was not provided sufficient opportunity to defend himself. Even the copy of the documentary evidence used against him was not provided to him. No witness of the alleged irregularity was examined during the course of enquiry, thus the petitioner interest was highly prejudiced. Article 311 of the Constitution of India has protected the interest such employees against whom the disciplining enquiry is being held. It provides that such employee shall be given a reasonable opportunity of being heard in respect of the charges against him.

22. A perusal of the enquiry report does not indicate that any witness was examined during the course of enquiry or petitioner was given any opportunity to cross-examine any such witness. However, the submission of the learned counsel for the respondents is that the witnesses were examined during enquiry and the petitioner also cross-examined some of the witnesses. The copies of the statement of such witnesses have not been placed on record by the respondents. There is also no reference in the enquiry report as to how many witnesses were examined during the course of enquiry and the petitioner was given opportunity to cross-examine them. The Inquiry Report reveals that the sub-committee considered only the reply submitted by the petitioner to the charge-sheet and considered other documents made available to the committee and found the petitioner guilty of irregularities. Sub-committee thus found it sufficient to consider only the reply of the petitioner submitted against the charge-sheet

served upon him while the law as well as principles of natural justice require that such employee against whom serious charges have been levelled should be given proper and reasonable opportunity to defend himself in any enquiry against him.

23. In view of this, we are of the view that the Inquiry Report submitted by the sub-committee is also vitiated and is also liable to be quashed.

24. In the result, the writ petition partly succeeds. The order passed by the Chancellor dated 6.1.2012 as contained in Annexure 1 to the writ petition, the resolution of the Executive Council dated 28.6.2009 as contained in Annexure 2 to the writ petition and the Inquiry Report dated 27.6.2009 as contained in Annexure 23 to the writ petition are quashed. However, it will be open to the authorities to conduct fresh enquiry against the petitioner in accordance with law. In the circumstances of the case, there will be no order as to cost.