

(2008) 08 AHC CK 0052
In the Allahabad High Court

Ganesh Prasad Singh Patel

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 52

Citation : (2009) 1 AWC 980

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard learned Counsel for the parties.

Present writ petition under Article 226 of the Constitution of India has been preferred against the impugned order of dismissal from service. The question cropped up in the present case is; whether only because of compliance of the judgment and order passed by the High Court without seeking prior permission of the superiors, the services of an employee can be dismissed treating the action as misconduct?

2. The brief facts giving rise to the present writ petition is that the petitioner was posted as Registrar Kanungo in Tahsil Sandeela, District Hardoi. One Bhawani Prasad approached this Court by preferring a Writ Petition No. 9892 of 1989, which was allowed by judgment and order dated 22.1.1992, a copy of which has been filed as Annexure-4 to the writ petition. The operative portion of the Judgment and order dated 22.1.1992 is reproduced as under:

In view of above, I am of the opinion that the consolidation authorities incorrectly denied petitioner's claim. The writ petition, therefore, deserves to be allowed and is hereby allowed and the order passed by all the three consolidation authorities are hereby quashed. The consolidation authorities shall treat the petitioner as "bhumidhar" of the land in question and proceed in accordance with

law.

However, there shall be no order as to costs.

3. The petitioner Bhawani Prasad of the aforesaid writ petition submitted a certified copy of the judgment of this Court (supra) to the District Magistrate, who in turn forwarded the same for compliance to Sub-Divisional Magistrate concerned. The Sub Divisional Magistrate, Sandeela forwarded the same for compliance to the petitioner, who was working as Registrar Kanungo. In compliance of the judgment of this Court, the petitioner recorded the name of Sri Bhawani Prasad for which he was authorised under law. On account of the aforesaid act on the part of the petitioner, by an order dated 18.7.1996 the petitioner was suspended in contemplation of the departmental enquiry. The inquiry officer submitted a report that while recording the name of Sri Bhawani Prasad in compliance of the judgment of this Court, the petitioner as Registrar Kanungo did not follow the procedure provided under the statute and straightaway mutated the name of farmer. A finding was recorded by the inquiry officer that since procedure for mutation was not followed by the petitioner and he had recorded the name of Bhawani Prasad without approval of superiors hence he has committed serious misconduct and his services are liable to be dismissed. In pursuance of the report of the inquiry officer, the services of the petitioner were dismissed by impugned order dated 14.11.1996 passed by the District Magistrate, Hardoi, as contained in Annexure-1 to the writ petition. The operative portion of the impugned order dated 14.11.1996 is reproduced as under:

Maine aropi dwara prastut espastikaran, janch adhikari ki akhya tatha karan batao notice ke prati prastut espastikaran dinankit 7.11.1996 ka bhalibhanti parikshan va vicharan kar liya hai. Chunki prasnagat prakaran gaon sabha bhumi sa ek bahut bade kshetrapal par aropi dwara apne kisi bhi uchchadhikari ka adesh prapt kiye bina hi amaldaramad kar liya gaya hai jisme aropi ki durabhisandhi prateet hoti hai atev uske viruddha prasnagat arop purnataya siddha pate huve mai ishi niskarsha par pahuncha hoon ki is prakar manmane dhang ke swechhacharita baratne wale anushashanheen karmchari ko sewa mein banaye rakhane ka koi auchitya prateet nahi hota hai tatha use sewa se barkhast (nilambit) kar diya jana hi rajya sarkar ke hit mein uchit va nyay sangat hoga.

Uprokta karno se Sri Ganesh Prasad, Sahayak Registrar Kanungo Tahsil Sandila, Janpad Hardoi ko etaddwara tatkalik prabhav se sewa se barkhast kiya jata hai. Es adesh ki tamil aropi par tatkal sunisshit ki Jaye.

4. While assailing the impugned order, it has been submitted by the petitioner's counsel that since the order of dismissal has been passed only because of the fact that the petitioner complied the judgment and order of this Court, it suffers from substantial illegality. It has also been submitted that by proceeding against the petitioner on the aforesaid ground, the District Magistrate, Hardoi virtually has tried to interfere with the administration of justice. It has further been

submitted by the petitioner's counsel that since the consolidation proceedings were de-notified u/s 52 of the U.P. Consolidation of Holdings Act (in short the "Act"), in view of the provisions contained in Rule 109A the petitioner was entitled to discharge the duty in place of consolidation authority. The submission is that after issuance of the notification u/s 52 of the Act, the petitioner was fully empowered to make entry in compliance of the judgment of this Court. u/s 49A of the Act, no suit or prosecution or other legal proceedings may take place against the action taken in good faith. For convenience, Section 49A of the Act, as well as Sub-rule (1) of Rule 109A of the Rules is reproduced as under:

Section 49A. Protection of action taken under this Act and Rules made thereunder.-No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or Rules made thereunder.

Rule 109A (1). Order passed in cases covered by Sub-section (2) of Section 52 shall be given effect to by the consolidation authorities, authorized in this behalf under Sub-section (2) of Section 42. In case there be no such authority, the Assistant Collector-in-charge of the subdivision, the Tahsildar, the Naib-Tahsildar, the Supervisor Kanungo, and the Lekhpal of the area to which the case relates shall, respectively, perform the functions and discharge the duties as the Settlement Officer, Consolidation, Consolidation Officer, the Assistant Consolidation Officer, the Consolidator, and the Consolidation Lekhpal respectively for the purpose of giving effect to the order, aforesaid.

5. While rebutting the argument advanced by the learned Counsel for the petitioner, learned standing counsel submitted that power was conferred only to the consolidation courts and the petitioner was not entitled to make entry in compliance of the judgment of this Court.

6. I have considered the argument advanced by the learned Counsel for the parties.

It has not been disputed that consolidation operation was de-notified in pursuance to the provisions contained in Section 52 of the Act and the procedure prescribed by the Rule 109A of the Rules is not disputed. The provision of Rule 109A of the rules empowers Supervisor Kanungo to make entry in the revenue record. Moreover, in the present case, when the judgment of this Court was - submitted to District Magistrate, he himself referred the same to the Sub-Divisional Magistrate, who, in turn, forwarded to the Tahsildar and then Tahsildar to the petitioner. Thus, in the hierarchy of system, it was the higher authority, who referred the judgment of this Court (supra) for compliance to the petitioner. No pleading has been pointed out by the learned standing counsel, which may indicate that the authority had not referred the judgment of this Court to the petitioner for compliance. There is also nothing on record, which may indicate that the petitioner has acted malafidely for some extraneous reasons. Accordingly, in view of statutory provisions (supra), the decision taken by the

petitioner to declare Bhawani Prasad as bhumidhar in compliance of the judgment of this Court does not seem to suffer from any illegality or impropriety more so when the judgment stands final being not set-aside by some higher forum/Supreme Court.

7. Learned standing counsel tried to defend the impugned order on the ground that procedure provided under the rules was not followed. The submission made by the learned standing counsel seems to be misconceived. The petitioner had complied with the judgment of this Court. Under Article 227 of the Constitution of India, the High Court has got power of superintendence over all subordinate courts falling within its jurisdiction and the Tribunals. The High Court may call for record and decide a controversy in accordance to law. Otherwise also, wherever a grave injustice has been done to a party by subordinate courts, authorities or Tribunals, the High Court may interfere with such action for the ends of justice vide Ouseph Mathai and Others Vs. M. Abdul Khadir, and a number of other judgments of Hon"ble Supreme Court and of this Court.

8. In case while exercising writ jurisdiction under Article 226/227 of the Constitution of India the High Court set-asides a judgment and order of the subordinate court, authority or Tribunal then the finding given and direction issued shall not be liable to be reviewed by any authority, whosoever may be, for any reason whatsoever, in case the judgment is not set aside by higher forum. It shall be the duty of the authority to implement the judgment of this Court in its letter and spirit. The direction issued by the High Court shall be binding not only on the State authorities but also on other authorities, bodies, persons or corporations. For the implementation of the Judgment of this Court, it shall not be lawful to a person incharge of the occasion to seek permission from the higher authority. Whenever a judgment or order of this Court is produced before any person or authority, whosoever may be, it should be implemented in its letter and spirit without awaiting an approval from the higher authority.

9. In the present case, the writ petition was allowed against the Judgment of the consolidation court. Meaning thereby, this Court recorded a conclusive finding on merit, therefore, it was necessary for the revenue authorities to implement the same in its letter and spirit. It was not necessary for the petitioner to issue notice or invite objection from the public before proceeding ahead to record the name of Sri Bhawani Prasad as bhumidhar. He was bound under the hierarchy of system to implement the judgment of this Court when it was produced before him with the forwarding letter of the higher authorities for compliance. Compliance of the judgment of this Court by the petitioner does not seem to constitute a case of misconduct, which may warrant for dismissal from service.

10. Factually by dismissing the petitioner, treating the act of compliance of the judgment of this Court as misconduct the respondents have interfered with the administration of justice. In the hierarchy of system being the highest court of the State having supervisory control over the subordinate courts, bodies and Tribunals, it was the bounden duty of the revenue authorities to implement the

judgment. Any slackness including non-implementation of the judgment of this Court means to interfere with the administration of justice. Since, petitioner's counsel has not moved appropriate application to initiate contempt proceedings, I leave it open to be considered in some other case.

11. Disobedience or circumvention of statutory provisions or the judgments and orders of this Court is antithesis of rule of law. The element of force in maintaining the rule is closely associated with the notion of formal hierarchy of command or authority Professor Fiedmann had given a neutral concept of law (Law of Social change Ref. P. 281). To quote:

the rule of law simply means the "the existence of public order." It means organized Government, operating through the various instruments and channels of legal command. In this sense, all modern societies live under the rule of law, fascist as well as socialist and liberal states.

12. In a country where in a hierarchy of system, lower authority disobeys the order of higher authority or questions the decision taken by the higher authority for extraneous reasons or where court's orders are not implemented in its letter and spirit or where the authorities or public bodies, individually or collectively, try to circumvent the order of the Court on one pretext or the other, it leads to uncertainty and chaos in the society resulting in the revival of primitive society, where the "might is right" prevails and big fish swallows the small fish.

13. Thus, the action of the district authorities charging the petitioner for misconduct resulting into dismissal of his service is a highly arbitrary act and amounts to interference with the administration of justice. The petitioner deserves for all commendations for lawful act to implement the judgment of this Court. At no stretch of imagination his conduct seems to constitute misconduct under service rules.

14. From the facts and circumstances discussed herein-above, there appears to be doubt that the petitioner has suffered a lot for no fault on his part. He has acted bona fide by implementing the judgment of this Court. It is a fit case where the ratio of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), should be applied and the writ petition should be allowed with exemplary cost.

15. In view of above, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 14.11.1996 and 19.11.1996 contained in Annexures-1 and 2 to the writ petition with consequential benefits alongwith arrears of salary and other service benefits. Cost is quantified to Rs. 20,000, which shall be deposited in this Court within a period of two months from the date of receipt of a certified copy of this order. Out of Rs. 20,000, Rs. 10,000 shall be remitted to the Mediation Centre, Lucknow Bench, Lucknow and the petitioner shall be entitled to withdraw Rs. 10,000. Let a copy of the judgment be sent to the District Magistrate, Hardoi for compliance forthwith.

16. The writ petition is allowed accordingly. No order as to costs.