
(2010) 11 AHC CK 0144

In the Allahabad High Court

Case No : Special Appeal Defective No. 994 of 2010

Ghanshyam

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Laws Act, 1876 — Section 36

Uttar Pradesh Police Regulations and Uttar Pradesh Road Police Act, 1873 — Section 10

Citation : (2011) 1 ADJ 692

Hon'ble Judges : F.I. Rebello, C.J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Appellant was a village policeman appointed under the provisions of Oudh Laws Act, 1876 read with the provisions of the U.P. Police Regulations and U P. Road Police Act, 1873 The Appellant was dismissed from service by the order of the District Magistrate, Lalitpur dated 3rd June, 2006 which came to be assailed by the Appellant in Writ Petition No. 37265 of 2006 complaining of violation of the aforesaid provisions particularly Section 36 of the 1876 Act The writ petition was allowed on 19th July, 2006 on the ground of violation of principles of natural justice whereafter the District Magistrate passed a fresh order on 5th October, 2006 giving reasons for the dismissal. It is this order which was subjected to a challenge before the learned single Judge in the writ petition giving rise to the present appeal.

2. The contention raised by the Appellant was that the provisions of Article 311 have been violated and there being no proper enquiry the order deserves to be set aside. Appellant's counsel also placed reliance on the judgment of the Apex Court in the case of Chandra Prakash Shahi v. State of U.P. 2000 (3) ESC 1625. The learned single Judge found that a show cause notice had been issued on 24th August, 2006 in compliance of the judgment of this Court dated 19th July,

2006 to which the Appellant submitted a reply whereafter the impugned order was passed which was in conformity with law. The learned single Judge further found that the decision relied upon by the learned Counsel for the Appellant did not come to his aid so as to attract the provisions of Article 311 in the matter governing the service of the Appellant. The learned single Judge after discussing the facts as indicated in the order of the District Magistrate held that on facts the District Magistrate has arrived at a conclusion on the basis of material placed before him, and therefore in view of the reasons recorded by the District Magistrate, the decision cannot be faulted with and accordingly the writ petition was dismissed.

3. Learned Counsel for the Appellant submitted that the learned single Judge has failed to appreciate the decision of the Apex Court in the case of Chandra Prakash Shahi (*supra*), and the Appellant who enjoys a unique position of employment, is entitled to all the benefits that a regular Government servant is entitled to as provided for under Article 311(2) of the Constitution of India. He further submitted that the Appellant was not given an opportunity to contradict the report of the Superintendent of Police dated 24th May, 2006 hence, the impugned order is vitiated.

4. Learned Standing Counsel on the other hand submits that the Appellant does not enjoy any such status of a post that can be termed as a civil post or for that matter any service condition that may allow him any such protection as contended on behalf of the Appellant. He further submitted that the entire objections taken by the Appellant have been taken into account by the District Magistrate and therefore the judgment of the learned Single Judge as well as the order of the District Magistrate do not deserve any interference.

5. Having heard learned Counsel for the parties we find that the provisions of the Oudh Laws Act, 1876 do not require a full scale enquiry and the only requirement by the District Magistrate is to give a reasoned order. It is for this reason that the principles of natural justice were read into Section 36 of the 1876 Act, and *vide* judgment dated 19th July, 2006 the matter was remanded back to the District Magistrate. Neither the provisions of Section 36 nor any other provisions of the 1873 Act, or the Police Regulations do require the holding of a regular enquiry in relation to a village policeman. Learned Counsel for the Appellant has been unable to point out any such provision which may require the invoking of this principle.

6. At this stage it may be pointed out that this Court in the case of *Hridayanand v. State of U.P.* and Ors. 2010 (1) ADJ 172, after examining the provisions in relation to the dismissal of a village or a road policeman as contained in Section 10 of the 1873 Act came to the conclusion that the rules of natural justice have to be complied with. It was also held that in a given case it would be sufficient compliance if a show cause notice has been given and an opportunity to explain the conduct has been afforded to a delinquent. If such a procedure has been followed, then it cannot be said that there was any violation of principles of

natural justice. This aspect in the present case was taken care of vide judgment dated 19th July, 2006 which procedure was followed by the District Magistrate and the Appellant availed of the said opportunity by giving his explanation. The Appellant did not raise any grievance about any such procedure at that stage.

7. Apart from this, on facts the contention that the Appellant was not given a reasonable opportunity to defend himself particularly with regard to the report of the Superintendent of Police dated 24th May, 2006 does not appear to be correct. The report dated 24th May, 2006 has been brought on record and the reply of the Appellant to the show cause notice issued thereafter is also on record. The said reply in its opening paragraph (1) clearly objects to the contents of the report of the Superintendent of Police with a further objection that the report was submitted by the Superintendent of Police without making any spot enquiry himself. The report of the Superintendent of Police is founded on the report of the Circle Officer dated 11th April, 2006 which has also been commented upon by the Appellant in his reply which is dated 2nd September, 2006. After considering the same the District Magistrate arrived at a conclusion that the explanation afforded was untenable for which reasons have been recorded by the District Magistrate. The said reasons have been discussed in detail by the learned single Judge and need not be reproduced by us once again.

8. Learned Counsel has further relied on a judgment in the case of Basic Shiksha Adhikari, Etah and Ors. v. Ram Dularey Sharma and Ors. 2010 (8) ADJ 352 (DB), to submit that it was necessary to have provided an opportunity to the Appellant in relation to the aforesaid reports in order to object to the same. This decision is of no avail as we have already noticed above that the reply submitted by the Appellant contains all possible defences and objections to the report submitted by Police authorities.

9. The discretion so exercised by the learned single Judge therefore is perfectly in accordance with law and the learned Counsel for the Appellant has been unable to make any dent so as to persuade us to take a different view. In the absence of any infirmity, much less a legal infirmity, either in the order of the District Magistrate, or of the learned single Judge, we find no merit in this appeal and is hereby dismissed.