

(2013) 02 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58695 of 2006

Harendra Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2013) 5 ALJ 424 : (2013) 6 AWC 5915 : (2013) 2 UPLBEC 1704

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : R.N. Tripathi and P.N. Tripathi, for the Appellant; K.N. Mishra, Abhishek Mishra and R.N. Mishra, S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard learned counsel for the petitioner, learned counsel for respondent No. 2 and learned Standing Counsel for the State-respondent. Petitioner, before this Court seeks quashing of the order of the appellate authority, namely, Member Secretary, Regional Administrative Committee, Gorakhpur dated 14th August, 2006 as well as the order of the District Administrative Committee, Deoria dated 17th November, 2003.

2. By means of the order dated 17th November, 2003, the services of the petitioner as Cadre Secretary had been dismissed after recording a finding that the petitioner had neither responded to the charge-sheet nor he had appeared before the District Administrative Committee to submit his explanation to the finding recorded in the enquiry report, despite service of notice by a registered post and despite publication in the newspaper. The Appellate Authority has affirmed the finding of the District Administrative Committee under order dated 14th August, 2006.

3. The present writ petition deserves to be allowed on one short ground namely, that the order of the appellate authority contains absolutely no reasons. In first page of the order, the appellate authority has only reproduced the case of the

employee as well as that pleaded by the District Administrative Committee and in last but two paragraphs, it has recorded its reasons for the conclusion that the appeal has no merit. It is worthwhile to reproduce last three paragraphs of the said order, which read as follows:

(Vernacular matter omitted.... Ed.)

4. In absence of reasons having been recorded in support of conclusion drawn by the appellate authority, the order impugned cannot be legally sustained.

5. Hon"ble Supreme Court of India in its latest judgment in the case of State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi, as well as in the case of Raj Kishore Jha Vs. State of Bihar and Others, has held that reasons are heart beat of every conclusion and without the same it is lifeless.

6. Valuable rights of the petitioner have been jeopardized because of the order of the appellate authority. The minimum expected from the authority was to have considered the case of the petitioner and that of the District Administrative Committee and to have recorded reasons for disagreeing or agreeing with what had been stated by the petitioner in his appeal.

7. It may be stated that the petitioner in his appeal had stated that he had submitted his reply to the charge-sheet with the enquiry officer in person within the time permitted and such reply has not been considered nor any enquiry has been held in fact thereafter.

8. The appellate authority should have summoned the records from the District Administrative Committee qua the enquiry proceedings, should have recorded its finding on the basis of records so produced as to whether reply of the petitioner exists on record or not and further as to how the petitioner was intimated about the dates by the enquiry officer in the matter of enquiry qua.

9. Normally, in such a fact situation, this Court would have set aside the order of the appellate authority and would have restored the appeal for being reheard and to be decided by means of a reasoned speaking order but such a direction is not being issued by this Court, inasmuch as the enquiry report itself is unsustainable in the eyes of law.

10. Even if the entire case of the employer is accepted, namely, that the employee had not been responded to the show-cause notice then the enquiry should have proceeded ex parte. However, an ex-parte and how enquiry is to be completed, has been explained by the Apex Court in the case of Ministry of Finance and Another Vs. S.B. Ramesh, , Pr. 12. The Apex Court has held that in the case of ex parte enquiry, the Enquiry Officer must communicate the date on which the evidence is to be taken in support of the charges. The Enquiry Officer must question the employee and if the employee is absent, next date should have been for its participation and he should have been permitted cross-examination. Lastly, it has been explained that no document can be received, in evidence unless proved nor can any such document be relied upon for bringing

home the charge.

11. In the facts and circumstances of the case, this Court finds that the Enquiry Officer in his report has only recorded that the petitioner has not responded to the show-cause notice and therefore, the allegations against him are taken to be proved. Not even a single witness has been examined to prove the document, which had been relied upon nor any reasons have been recorded with reference to the evidence on record so as to come to the conclusion that the charges against the petitioner stands proved. In my opinion such enquiry report is a waste paper and could not have formed the basis for any action being taken against the employee concerned.

12. This Court therefore, holds that departmental proceedings taken against the petitioner have gone wrong from the stage of enquiry.

13. The enquiry report dated 23rd/28th February, 2003, the decision of the District Administrative Committee as per the resolution dated 9th October, 2003, based on the enquiry report and the order dated 17th November, 2003 passed in pursuance to the said resolution, as well as the order of the appellate authority dated 14th August, 2006 are hereby quashed.

14. The enquiry shall be re-initiated afresh and shall be brought to its logical end, preferably within two months from the date a certified copy of this order is filed before the District Administrative committee.

15. Learned counsel for the respondent points out that petitioner has already attained the age of superannuation and therefore, the question of reinstatement does not arise.

16. The District Administrative Committee shall also examine as to whether the petitioner is also entitled for any back-wages or not for the period he was out of employment while passing the final orders as indicated above.

17. All consequential action shall be taken immediately thereafter.

18. It is provided that the petitioner shall cooperate in the enquiry and in case he does not do so, it will always be open to the disciplinary authority to proceed ex parte against the petitioner in accordance with law. The present petition is allowed subject to the observations made above.