
(1995) 07 AHC CK 0098
In the Allahabad High Court
Case No : C.M.W.P No. 2253 of 1987

Hari Prasad

APPELLANT

Vs

High Court of Judicature

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1995) 71 FLR 1088 : (1996) 1 LLJ 1184 : (1995) 2 UPLBEC 1250

Hon'ble Judges : P.K. Mukherjee, J

Bench : Single Bench

Advocate : B.P. Srivastava, for the Appellant;

Final Decision : Partly Allowed

Judgement

P.K. Mukherjee, J.—This writ petition is directed against the order dated August 5, 1986, passed in appeal preferred by the petitioner, by two Hon'ble Judges of this Court, on administrative side, and order of dismissal from service dated September 25, 1984.

2. The Petitioner was a permanent class IV employee in Banda Judgeship. He was in employment since 1959. Petitioner was transferred from "Banda to Karvi in 1981, Since petitioner was an active member of the Staff Union, according to the petitioner, the officers of Banda Judgeship were prejudiced against him. He was charge sheeted, and proceeded with departmental enquiry. During the course of departmental enquiry, petitioner moved an application dated October 14, 1982, praying for an Advocate to assist him. No order was passed on the aforesaid application and on the basis of report of the Enquiry Officer, petitioner was dismissed from service by order dated September 25, 1984. Appeal preferred against the aforesaid order was also dismissed by the Court.

3. This case was heard on May 17, 1995 and, on being satisfied that Sri. Ram Sajivan Singh Senior Administrative Officer in the office of District Judge, Banda had affirmed false affidavit, this court passed the following orders:-

"Sri Ram Sajivan Singh, Senior Administrative Officer, Office of District Judge Banda, who has affirmed an affidavit in this case on February 20, 1990, has stated in paragraph 14 as under:

".....that there was no application dated October 14, 1982 on the record whereunder the petitioner alleged to have made request for permitting him to take assistance of some legal practitioner nor this fact has been mentioned by the enquiry officer in his enquiry proceedings."

The petitioner has produced the carbon copy of aforesaid application dated October 14, 1982 wherein seal of office of District Judge is affixed and signature in token of receipt is there. The application is being kept on record.

Thus, prima facie, in view of aforesaid application which has been retained in record, it is clear that aforesaid Sri Ram Sajivan Singh has made false statement before this Court. The enquiry officer has also not filed any independent affidavit in this case.

In the aforesaid circumstances, Sri Ram Sajivan Singh, Senior Administrative Officer in the office of District Judge, Banda, as well as the enquiry officer are directed to remain present at 10.A.M. on July 14, 1995 before this Court with all necessary records, and apprise this court as to whether any such application had been filed.

....."

4. Today, in compliance of the aforesaid direction, Sri Ram Sajivan Singh, Senior Administrative Officer Banda, Judgeships; Shri Ashok Kumar, Special Judge, Allahabad and the Standing counsel are present. According to Sri Ashok Kumar, Special Judge, Allahabad, he was posted as Addl. District Judge, Karvi from July 16, 1983 to June 30, 1985. He had submitted his report regarding petitioner on August 31, 1984 and no application dated October 14, 1982 was ever moved before him. So far as Sri Ram Sajivan Singh is concerned, I am afraid, he could not offer any satisfactory explanation to justify his conduct. Thus, this fact is admitted that Sri Ram-Sajivan Singh has misled this court by filing a wrong counter affidavit, containing incorrect facts. He has committed a very serious offence. Since he is attached to the office of District Judge, Banda, the District Judge, Banda, is directed to make an adverse entry in his character roll to this effect, and warn him that he will be careful in future.

5. Learned counsel for the petitioner drew my attention to the order passed by Hon"ble Mr. A. Banerjee, J and Hon"ble Mr. R.A. Misra J, dated August 5, 1986 as their Lordships there, were rejecting the appeal preferred by the petitioner. This order is passed on administrative side. The prevailing practice in Allahabad High Court is that when an appeal of this nature is filed by an employee of the subordinate judiciary the same is placed before a committee of two Hon"ble Judges to be nominated by Hon"ble Chief Justice. In the present case, the appeal was placed before the aforesaid committee, and the committee rejected the

appeal on August 5, 1986.

6. The complaint of the petitioner is that adequate opportunity was not afforded to him before passing the order of dismissal. Neither he was allowed to engage a Legal Assistant nor was he allowed to cross examine some important witnesses.

7. In *Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal*, it has been held that if on the particular facts and complexity of a case, assistance of a lawyer is regarded as a part of reasonable opportunity, then denial of such an opportunity is violation alike of the constitutional protection under Article 311(2) and the principles of natural justice.

8. In *C.L. Subramaniam Vs. Collector of Customs, Cochin*, the Hon"ble Supreme Court has held that the Government servants, by and large have no legal training. When a man is charged with the breach of a rule entailing serious consequences he is not likely to be in a position to present his case as best as it should be. That is why the rules provide for representation of a Government servant charged with dereliction of duty or with contravention of the rule by another Government servant or in appropriate cases, by a legal practitioner.

9. In *R.K. v. Secretary of State for the Home* 1973 (3) All ER 796. Lord Denning held that if by reason of refusal to engage a legal assistant natural, justice has been violated, then the entire proceeding is liable to be vitiated.

10. In view of clear position of law, as discussed above, I am of the view that the matter requires re-examination. The Enquiry Officer is expected to dispose of the application for legal Assistance, following the aforementioned doctrines, before proceeding further in the case. He will first decide the application for Legal Assistance by a reasoned order, so that if any adverse order is passed, petitioner may challenge the same. The petitioner will be treated to be under suspension during all these years and paid subsistence allowance, as per rules. Since the case is too old, I direct the Enquiry Officer to complete enquiry within a period of three months from the date of production of a certified copy of this judgment and order. After completion of the enquiry, necessary order will be passed by the competent authority and till then the petitioner will remain under suspension.

11. In the result, the writ petition is allowed, in part, to the extent indicated above. The orders dated August 5, 1986 passed in appeal and September 25, 1984 (Annexure IX) are hereby quashed. The parties shall bear their own costs.