
(2003) 03 AHC CK 0134
In the Allahabad High Court
Case No : C.M.W.P. No. 8088 of 2003

Hira Lal Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 AWC 1459 : (2003) 1 AWC 1459

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Nripendra Mishra and P.K. Tripathi, for the Appellant; Vikas Sahai and Seema Agrawal and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Singh, J.—By means of the present writ petition, petitioner has challenged the order of suspension dated 3.2.2003 (Annexure-1 to the writ petition) passed by the respondent No. 1.

2. At the time of initial hearing, short counter-affidavit has been filed on behalf of respondent No. 7 upon which the learned counsel for the petitioner stated that he do not propose to file any reply to the affidavit filed by the respondent No. 7 and in the light of the facts and materials as exist matter may be heard and decided. In view of the aforesaid, in the light of the arguments as advanced, matter has been examined.

3. The order of suspension dated 3.2.2003 (Annexure-1 to the writ petition) proceeds on four charges :

(i) Petitioner has drawn salary from Nagar Panchayat, Jhusi, Allahabad without filing Last Pay Certificate (L.P.C.).

(ii) Payment has been made to one Rajendra Prasad and not to M/s. Amar Electricals to the tune of Rs. 23,134 in respect to certain electrical items which

are not even recorded in the Stock Register.

(iii) The muster roll of December, 2000 in respect to four labourers who were paid the amount accordingly, do not bear the signature/thumb impression of one of the labourer and there is no signature of the Chairman, Nagar Panchayat.

(iv) An amount of Rs. 18,71,987 towards running payment to the contractors has been made whereas on the spot verification by the quality checking wing all the work has been found to be below standard and even several works being not complete on the spot.

4. Submission of the learned counsel for the petitioner is that on the charges on which the petitioner has been suspended are incorrect and they are not substantiated from the record and the materials as has been referred. The explanation in respect to each charges appears to have been given in the writ petition and in the supplementary-affidavit and that has been advanced during the course of arguments as well. It is submitted that the Executive Officer, Nagar Panchayat, Antu, Pratapgarh by letter dated 25.8.2001 has certified that L.P.C. was issued to the petitioner and, therefore, it is pointed out that the first charge is based on nonexistent fact. It is then submitted that there is authorisation letter by M/s. Amar Electricals that the amount be paid to Rajendra Prasad and thus it was accordingly paid to him. It is then argued that the muster roll of December, 2000 referred to in the impugned order bears the signatures of all the four labourers and, therefore, there is no irregularity in the payment. Lastly, it is argued that for checking the quality of the work in respect to the payment of the amount to the tune of Rs. 18,71,987 a separate official was appointed and, therefore, for any irregularity or lapses, petitioner cannot be hauled up.

5. In respect to the arguments as has been advanced by the learned counsel for the petitioner dealing with the charges Sri Vikas Sahai, learned counsel who appeared for the respondent No. 7 submitted that certificate which is said to have been issued by the Executive Officer in respect to the Issuance of the L.P.C. is not a genuine document and in fact the L.P.C. was never issued to the petitioner from Nagar Panchayat, Antu, Pratapgarh. In support of the aforesaid a certificate from the Adhyaksh, Nagar Panchayat, Antu, Pratapgarh (Annexure-4 to the short counter-affidavit) has been filed which states that no L.P.C. was ever issued to the petitioner and in this connection, Commissioner of the Allahabad Division and the District Magistrate, has also been informed accordingly. It is then submitted that in respect to authorisation for payment to Rajendra Prasad on behalf of Amar Electricals, document as has been filed by the petitioner himself appears to be a manufactured document as in the two documents as annexed in the writ petition there is clear difference in the signature. It is then pointed out that the muster roll of December, 2000 which has been filed by the petitioner is a forged document as on the other photostat copy which is with the respondents, which was placed before the Court during the course of arguments, there is no signature of Lal Chand, labourer and, therefore, petitioner having filed a forged document before this Court he deserves straightaway rejection.

Lastly, it was canvassed that the payment of huge amount to the contractors in respect to the work as undertaken by the petitioner was found to be much below standard and even not complete and, therefore, irrespective of the argument of there being appointment of some higher official to examine the matter, petitioner cannot claim immunity from the lapses.

6. Learned Standing Counsel who represents the State authorities has also submitted that the order of suspension is based on the charges of serious financial irregularities and acceptance of the petitioner's claim is dependent on adjudication of various factual aspect. therefore, no interference at this stage is required by this Court.

7. On examination of the matter in the light of the submission of both sides as noted above, on own showing of the petitioner which he has referred from various documents filed alongwith the supplementary affidavit, it appears that petitioner has drawn salary from Nagar Panchayat, Jhusi, Allahabad of the month of December, 2000 and January and February, 2001 although petitioner states that he has joined at this place on 14.3.2001. In view of the aforesaid, irrespective of there being a serious dispute about issuance of L.P.C. in favour of the petitioner from Nagar Panchayat. Antu, Pratapgarh, it is clear that he has drawn the salary from Nagar Panchayat, Jhusi, Allahabad of December, 2000, January and February, 2001, allegedly as arrears from this place which he says to be legally permissible. In respect to other charges and explanation so offered by the petitioner, suffice it to say that there is serious dispute about genuineness of various documents i.e., authorisation for payment to one Rajendra Prasad on behalf of Amar Electricals about which a difference in the signature in the document as filed by the petitioner has been pointed out and also in respect to interpolation in the muster roll of December, 2000 in which it is pointed out that there is no signature of one of the labourer i.e., Lal Chand. In view of the details as has been mentioned above, there cannot be any dispute about the situation that the charge against the petitioner appears to be serious in nature being in the nature of financial irregularity, the acceptance of the petitioner's claim/ contention has to depend on examination of various disputed questions of fact and adjudication of the issue even in prima facie manner In favour of the petitioner. It is to be kept in mind that the order of suspension used to be passed on a prima facie satisfaction in respect to the charges and it is on the full-fledged enquiry Its truth is to be ascertained either way. In view of the aforesaid, it cannot be said that there is no justification on the part of the respondents for passing the impugned order. At this stage, a reference can be given to few decisions of our own Court in which it has been opined that even it is not necessary to give the charges In detail in the order of suspension and even indication of the nature of charges in the order of suspension is sufficient and if the charges are serious enough to warrant major penalty, the order of suspension need not be interfered. Reference can be given to decisions of our own Court on the point as has been given in the case of R.R. Pandey Vs. Managing Director, U.P. Jal Nigam and Another, ; Murli Manohar Shukla Vs.

Member Secretary, District Administrative Committee and District Assistant Registrar, Co-operative Societies, U.P. and others, ; Narain Engineering Vs. State of U.P. and Others, ; chandra Prakash Gupta Vs. State of U.P. and others, and Asha Ram v. State of V. P. and Ors. 2002 (1) AWC 809 : 2002 (1) ESC (All) 298. Observation as has been made in the judgment of this Court in the case of R. P. Pandey (supra) will be useful to be quoted here :

"The charges mentioned in the impugned order are serious enough in the event of their being established to warrant major penalty. It may be mentioned that suspension itself is not a punishment. There are situations that call for immediate action against a Government servant or a servant of some other body. In view of the seriousness of the misconduct or the circumstances immediate action may be required. It is not, therefore, necessary to give opportunity of hearing or detailed reasons in the suspension order as a suspension order is not a quasi-judicial order at all. A suspension order is an administrative order and hence the rules of natural justice need not be complied with before passing a suspension order. The rules of natural justice have to be complied with only when a penalty is being imposed, e.g., dismissal of service or reduction of salary, but as stated above a suspension order is not a penalty."

8. For the reasons indicated above, the Court is of the considered view that the order of suspension proceeds on the serious charges of financial irregularity and the acceptance of the petitioner's contention in respect to incorrectness in the charges is dependent on examination and adjudication of various factual aspects in respect to which there appears to be serious dispute before this Court and thus it will not be a proper exercise by this Court at this stage to examine the correctness of each and every charge individually in the light of some of the evidence as has been placed before this Court and to record a finding either way, for which the learned counsel for the petitioner vehemently pressed before this Court. It appears to be the first concern of the enquiry officer who will be in a better position to take full-fledged evidence from both sides and to submit his report upon which it will be for the disciplinary authority to examine the matter and do the needful in accordance with law.

9. For the reasons recorded above, on the facts of the present case, it appears to be not a fit case for exercise of the Jurisdiction of this Court under Article 226 of the Constitution of India to interfere in the order of suspension, as argued by the learned counsel for the petitioner.

10. Accordingly writ petition fails and it is dismissed.