
(2015) 08 AHC CK 0244

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 60503 of 2007

Ishrat Nasim Siddiqui

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 9 ADJ 728 : (2015) 6 AWC 5499 : (2015) 4 UPLBEC 3056

Hon'ble Judges : V.K. Birla, J.

Bench : Single Bench

Advocate : Arvind Kumar Shukla and Arvind Kumar Gupta, for the Appellant

Final Decision : Dismissed

Judgement

V.K. Birla, J.—Heard learned counsel for the petitioner and the learned Standing Counsel for the respondents. The petitioner has come up challenging the order dated 18.9.2007 whereby his claim for re-consideration of his removal from service was rejected and order regarding recovery of a sum of Rs. 1,25,432/- was passed and it was also provided that the recovery order dated 19.8.2000 to recover a sum of Rs. 4,44,827.45/- is set aside and it was provided that for recovery of the same, separate order will be passed. The petitioner is claiming benefits of payment of gratuity and entire pensionary benefits.

2. Earlier, the petitioner has filed Writ Petition No. 41192 of 2000 challenging the order dated 29.10.1999 whereby punishment of removal of petitioner from service and order of recovery of Rs. 1,25,432.36/- were passed, which was decided on 6.1.2006. The relevant paragraphs, wherein facts in brief of the case have been narrated, are quoted as under :

"Sri Arvind Kumar Shukla learned counsel for the petitioner and learned standing counsel on behalf of the respondents are present. Counter and rejoinder-affidavits have been exchanged between the parties. Heard learned counsel for the parties at length and perused the record.

The facts of the case in brief are that the petitioner was appointed as a Junior Engineer in Public Works Department on 18.8.1970 at Lucknow and thereafter he worked at many places and was transferred to Meerut in the year 1978 where he worked till 1982 and thereafter in the year 1990 to Bareilly from where he was to retire on 31.10.1999. The respondent No. 2 Engineer in Chief, P.W.D. vide office memo dated 5.1.1996 instituted a disciplinary inquiry against the petitioner in terms of Rule 5 of the Subordinate Service Punishment and Appeal Rules read with Rule 55 of the CCA Rules for irregularities alleged to have been committed by him as Assistant Engineer during the period 1979 to 1983 while he was posted at temporary Khand No. 1 P.W.D., Meerut. Respondent No. 3 Superintendent Engineer, Meerut Circle Meerut was appointed as inquiry Officer with a direction to proceed with the inquiry on day to day basis and complete the same within fifteen days and place the report alongwith all the relevant documents before him Charge-sheet dated 28.11.1996 was served upon the petitioner in which two charges had been framed. Charge No. 1 related to agreement No. E.E./81-82 dated 9.4.1981 with M/s. Jindal Construction Company regarding upgrading of the primary health centre for which did not recover the amount of the released steel from the four running bills paid to the contractor nor a reference was made regarding the same while handing over the charge to his reliever Sri Ramji Lal Sharma, Assistant Engineer due to which the State had to suffer a loss of Rs. 55,707/-. The charge NO. 2 relates to the period 3.10.1981 when the labour was recruited for patch repairing and painting works in the muster roll released by the then Assistant Engineer Sri R.K. Goel. Repair work was shown to have been done for 4 Kilo Meters of the 5 muster rolls without sanction which were handed over to the petitioner and who was required to dispose off the objections on the said muster roll but the said muster rolls were never placed for released of payment nor the labour shown have been engaged for the said purpose came forward to claim their wages, thus these muster rolls were considered to be forged, though the material was shown to have been consumed which has been valued at Rs. 69,725.36 paise causing a loss to the State to the tune of the said amount. During the pendency of the inquiry, the petitioner demanded for the inspection and required the said copies of the documents from the inquiry officer but neither the original records were produced nor he was permitted to make inspection inspite of several requests made in writing to enable him to file a suitable reply. However, the petitioner met the inquiry officer on 2.9.1997 personally who permitted him to make an inspection of the record but out of 19 documents 14 documents were not available on record for inspection and he made an endorsement with regard to all the 14 documents which were not made available by the petitioner.

The inquiry officer submitted his report on 24.9.1997 before the respondent No. 2 and recommended for a recovery of Rs. 1,25,432.36 paise. The respondent No. 2 issued notice dated 14.10.1998. The petitioner made several requests in writing to the respondent No. 2 bringing all the facts to its notice including the non-availability of the record for inspection but the respondent No. 2 admittedly

did not provide any opportunity to the petitioner and passed an order dated 29.10.1999, imposing two punishments, firstly the recovery of Rs. 1,25,432.36 paise from the petitioner towards loss incurred by the petitioner State Government and secondly the removal of petitioner from the service with immediate effect."

3. The said Writ Petition No. 41192 of 2000 was allowed on the ground that no appropriate opportunity of hearing was given to the petitioner as the documents relied upon by the respondent authorities were not supplied to the petitioner. An additional recovery of a sum of Rs. 4,44,827.45/- was also set aside for the reason that neither any notice was issued to the petitioner nor any opportunity of hearing was provided to the petitioner. A further direction was given to release the entire pensionary benefits to the petitioner within a period of three months alongwith interest @ 6% was also directed.

4. Against the aforesaid judgment the State filed Special Appeal (Defective) No. 963 of 2006 (State of U.P. and others v. Ishrat Nasim Siddiqui). The argument advanced by the State before the special appellate Court was that if there was any fault in the order of the disciplinary authority then the learned Judge should have directed for proceeding from that stage. In view of the aforesaid, the special appeal was allowed vide order dated 4.12.2006. The relevant extract of the judgment dated 4.12.2006 is quoted as under :

"In view of the aforesaid, the judgment and order dated 6th January, 2006 is modified to the extent that the disciplinary authority shall give now a proper opportunity to the respondent to file a reply to the show-cause notice dated 14th October, 1998 and after considering the reply, if any, filed by the respondent-employee the disciplinary authority shall pass an appropriate order within a period of four weeks from the date the reply is filed by the respondent employee. The Department shall permit the inspection within two weeks from the submission of the certified copy of this order and the respondent employee shall file the reply within two weeks from such inspection."

(emphasis supplied)

5. Subsequently, the order impugned herein dated 18.9.2007 passed by the respondent No. 2-Engineer in Chief. The submission of the learned counsel for the petitioner is that the documents demanded by the petitioner were not supplied to the petitioner inspite of the order of this Court, as such, the sole argument of the learned counsel for the petitioner is that in absence of document, the entire inquiry proceedings stand vitiated and the order impugned herein is in clear violation of principles of natural justice. The submission is that the inquiry proceedings were conducted and the entire proceedings are contrary to the service rules. He further submitted that even if the petitioner has not submitted his reply, the charges against the petitioner were never proved by the department. It is further submitted that the order of removal dated 29.10.1999 was served upon the petitioner on 30.10.1999 just before a day of his retirement

and, therefore, the entire exercise is mala fide.

6. A counter-affidavit has been filed categorically stating therein that the petitioner was given opportunity time and again and he has inspected the records on various dates but he neither submitted his reply and nor cooperated in the inquiry proceedings.

7. The further submission is that the Special Appellate Court vide its order dated 4.12.2006 had directed the petitioner to submit his reply after inspection of the record but he never submitted his reply. Paragraphs 15 and 16 of the counter-affidavit are extracted as under :

"15. That the contents of paras 21, 22 and 23 of the writ petition are not admitted as stated. It is submitted that in pursuance of the order dated 4.12.2006, notice dated 30.12.2006 was sent by the Superintending Engineer, Meerut Circle, PWD, Meerut to the petitioner to inspect the records and to specify as to which record he wanted to inspect. A true copy of the letter dated 30.12.2006 is being filed herewith as Annexure CA-3 to this affidavit. In pursuance of the letter dated 30.12.2006, the petitioner submitted a letter dated 2.1.2007 to the Superintending Engineer mentioning the records, he wanted to inspect. A true copy of the letter dated 2.1.2007 is being filed herewith as Annexure CA-4 to this affidavit. The Executive Engineer, PWD, Bareilly wrote a letter dated 3.1.2007 to the Superintending Engineer, Meerut annexing the copy of the letter dated 2.1.2007 submitted by the petitioner for necessary action regarding inspection of records. A true copy of the letter dated 3.1.2007 is being filed herewith as Annexure-5 to this affidavit. The petitioner inspected the records on 15.1.2007 and further requested certain other records for inspection. A true copy of the letter dated 15.1.2007 is being filed herewith as Annexure CA-6 to this affidavit. In pursuance of request dated 15.1.2007 submitted by the petitioner, he was allowed inspection of record on 29.3.2007. After inspecting the records he demanded certain other records for inspection. A true copy of the letter dated 29.3.2007 submitted by the petitioner is being filed herewith as Annexure CA-7 to this affidavit. A letter dated 4.4.2007 was sent from the office of Engineer-in-Chief to the Superintending Engineer, Meerut Circle, PWD, Meerut for submitting the report after allowing the inspection to the petitioner of the records. Copy of the aforesaid letter was sent to the petitioner with the instructions that after the inspection of records, he should submit his reply to the show-cause notice. A true copy of the letter dated 4.4.2007 is being filed herewith as Annexure CA-8 to this affidavit. In pursuance of letter dated 4.4.2007, the petitioner inspected the records on 4.5.2007. After inspecting the records, in the letter the petitioner has written that he was not allowed inspection of records, for which he had submitted written request. It is relevant to mention here that the entire relevant records as demanded by the petitioner, was inspected. The aforesaid line is wholly vague without satisfying as to which record was not shown to him. The aforesaid line has been written by the petitioner for mala fide reasons, in spite of fact that he inspected the entire

relevant records. A true copy of the letter dated 4.5.2007 is being filed herewith as Annexure CA-9 to this affidavit. After allowing inspection of entire records, the Superintending Engineer, Meerut Circle, PWD, Meerut wrote a letter to the petitioner that he was allowed inspection of all relevant records on 4.5.2007 and no further record was there for inspection. The copy of the aforesaid letter was also sent to the office of Engineer-in-Chief. A true copy of the letter dated 2.6.2007 is being filed herewith as Annexure CA-10 to this affidavit. Thus from the aforesaid fact, it is clear that the petitioner was allowed inspection of all the relevant records relating to the case. vide letter dated 4.4.2007, the petitioner was directed to file his reply after inspection of record, but in spite of that the petitioner did not submit any reply. It is wholly incorrect to say that the petitioner was not given opportunity.

16. That the contents of paras 24 and 25 of the writ petition are not admitted. It is submitted that the competent authority passed the order dated 18.9.2007 in accordance with law. The petitioner was dismissed from service vide order dated 29.10.1999 when he was still in service. As the petitioner was found guilty of serious irregularities and embezzlement of money, he was dismissed from service. He was not entitled for any pension, gratuity or other funds. The petitioner embezzled public money and therefore, the competent authority passed the order to recover the amount from the petitioner. The order was passed after giving due notice to the petitioner, but in spite of notice, he did not submit any reply and did not participate in the proceedings. It is incorrect to say that the order has been passed on account of contempt proceedings. It is stated that by inadvertent bona fide and typing mistake, the amount recoverable from the petitioner was mentioned as 447827.45 in place of correct amount of Rs. 322395.45, which has been corrected by the contempt authority vide order dated 25.2.2008. Further the date of Special Appellate order dated 4.12.2006 was wrongly mentioned by mistake as 6.1.2006, which has also been corrected. A true copy of the order dated 25.2.2008 is being filed herewith as Annexure CA-11 to this affidavit."

8. A rejoinder-affidavit was filed denying the assertions made in the counter-affidavit.

9. A perusal of the charge-sheet dated 5.1.1996 clearly indicates that in support of the charges levelled against the petitioner, attested photocopies of as many as 86 documents was supplied to the petitioner, which was admittedly received by him. It is clear from the Annexures-1 and 2 to the counter-affidavit that a letter dated 17.7.1998 was written by the Executive Engineer to the Superintendent Engineer and the petitioner had visited the office on 2.9.1997 and the entire record was shown to him but thereafter he has never inspected any other documents. A letter dated 30.12.2006 was issued to the petitioner after decision of Hon"ble Division Bench in Special Appeal (Defective) No. 963 of 2006 to inspect the documents and that the petitioner may also inform about his requirement. The petitioner was also asked to inform within two days about the

record which is required to be inspected by him. In pursuance thereof, the petitioner has written a letter dated 2.1.2007, which is Annexure-4 to the counter-affidavit stating therein the documents required by him for inspection. Subsequently, the petitioner wrote a letter dated 15.1.2007 that he had inspected the documents sent to him but certain other documents which have not shown to him are also required to be inspected. A list of document is also given by him by letter dated 15.1.2007, which is Annexure-6 to the counter-affidavit. Annexure-7 is the letter dated 29.3.2007 written by the petitioner that he had inspected the documents sent by special messenger on 29.3.2007 but still he again demanded certain more documents for inspection. Thereafter, a letter dated 4.4.2007 was written by the Engineer-in-chief to the Superintendent Engineer that relevant document be made available for inspection to the petitioner and for this purpose, the petitioner may be informed accordingly. This letter dated 4.4.2007 is Annexure-8 to the counter-affidavit. The said letter was received by the petitioner on 29.4.2007. The petitioner again inspected as many as 12 documents on 4.5.2007 but the petitioner again claimed that the documents demanded by him have not been shown to him. Thereafter a letter dated 2.6.2007 was written by Superintendent Engineer to the petitioner that all documents as required by him have already been shown to him on 4.5.2007 and no other record is left in this regard.

10. The undisputed fact in this case is that the petitioner has never submitted his reply to the charges on merits and always kept asking for the records right since proceedings were initiated against him in the year 1996. The operative portion of the judgment of Hon'ble Division Bench in Special Appeal No. 963 of 2006 as already quoted above clearly indicates that disciplinary authority shall give proper opportunity to the respondent to file a reply to the show-cause notice dated 14.10.1998 and after considering the reply, if any, filed by the respondent-employee, the disciplinary authority shall pass an appropriate order within a period of four weeks from the date the reply is filed by the respondent-employee. It was further provided that the respondent-employee shall file the reply within two weeks from such inspection. The department shall permit the inspection within two weeks from the submission of certified copy of the order and the respondent employee shall file the reply within two weeks thereafter. Clearly in the present case, although, the petitioner was supplied as many as 86 documents alongwith the charge-sheet he was at least on four other occasions, as already noted while considering the documents annexed to the counter-affidavit, was granted opportunity to inspect the documents but he was never satisfied and he kept on asking for more and more documents. It is also pertinent to note that except the fact that the petitioner kept on asking for inspection of the documents, there is nothing on record to indicate that due to non-supply or non-inspection of documents, or at the most which were lastly not provided to the petitioner for inspection, what prejudice was caused to the petitioner so that he could not even file his reply to the charge-sheet dated 5.1.1996. This Court also cannot be oblivious of the fact that Hon'ble the Special

Appellate Court had directed that the inquiry proceedings be completed in a time-bound manner wherein the petitioner was also directed to cooperate.

11. Learned counsel for the petitioner has relied on decision rendered by Hon''ble Division Bench of this Court in Sita Ram Vs. State of U.P., , to contend that the charges must have been proved by the department by examining the witness for proving the documents relied on against the petitioner.

12. The said case has no application in the present facts and circumstances of the case, inasmuch as, in paragraph 6 of the aforesaid judgment, it has been mentioned that the charges were replied by the petitioners, which is not so in the present case. Further, in the present case the matter was remanded back to the authorities to provide an opportunity to the petitioner to inspect the documents within two weeks and the petitioner was also directed to submit his reply to another two weeks, which in fact, was never submitted by petitioner. Hence, the petitioner cannot be permitted to take benefit of his own mala fide intentions to somehow get away with the charges levelled against him on super technical ground.

13. In such view of the matter, I do not find that a proper opportunity of hearing was not provided to the petitioner or the order impugned herein is in violation of principles of natural justice.

14. It is a well-settled law that the High Court in exercise of its powers under Articles 226 /227 of the Constitution of India shall not venture into re-appreciation of the evidence. Reference may be made in this regard to a recent judgment rendered by the Hon''ble Apex Court in the case of Union of India v. P. Gunasekaran, 2015(1) ESC 101 (SC). Relevant paragraphs 12, 13, 14, 16 and 17 are quoted as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226 /227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or

extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Article 226 /227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in State of Andhra Pradesh Vs. Sree Rama Rao, , many of the above principles have been discussed and it has been concluded thus:

"7.... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very

face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

16. These principles have been succinctly summed-up by the living legend and centenarian Justice V.R. Krishna Iyer in *State of Haryana and Another Vs. Rattan Singh*, . To quote the unparallel and inimitable expressions:

"4.....in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good...."

17. In all the subsequent decisions of this Court upto the latest in *Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu*, 2015(1) ESC 35 (SC), these principles have been consistently followed adding practically nothing more or altering anything."

15. A perusal of record indicates that even initially as many as 86 attested copies of documents were supplied to the petitioner alongwith charge-sheet dated 5.1.1996 and after special appellate Court's direction on four occasions he was shown documents as demanded by him till nothing was left to be inspected. Therefore, in such view of the matter, sufficient legal documentary evidence was on record on which finding of charges having been proved against the petitioner was recorded. It would be a travesty of justice that if such persons are allowed to take benefit of their own misconduct/misdeed/mala fide intentions to get away with the charges levelled against him. Further, it would be like putting premium on misconduct.

16. It is also well-settled law that it is not open to the High Court in exercise of its jurisdiction under Articles 226 /227 of the Constitution of India to go into proportionality of punishment so long as the punishment does not shock the conscience of the Court. Reference may be made to paragraphs 20 and 21 of the

abovenoted case Union of India v. P. Gunasekaran (supra), which are quoted as under:

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226 /227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the Court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values.

21. The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment. These aspects have been discussed at quite length by this Court in several decisions including B.C. Chaturvedi Vs. Union of India and others, , Union of India and another Vs. G. Ganayutham (Dead) by LRs., , Om Kumar and Others Vs. Union of India, , Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another, , Coal India Limited and another v. Mukul Kumar Choudhuri and others, 2010(2) ESC 248 (SC) and the recent one in Chennai Metropolitan Water Supply (supra)."

17. A perusal of the impugned order dated 18.9.2007 clearly indicates that the petitioner was granted full opportunity of hearing and in absence of his reply satisfaction was recorded that the order of removal passed earlier does not require any interference. Under such circumstances, the finding recorded on the punishment awarded on the order for recovery of amount as provided in the order impugned herein does not warrant any interference under Article 226 of the Constitution of India.

18. Since, prayer (i) is rejected, prayer (ii) also cannot be granted. The petition lacks merit and is, accordingly, dismissed.