
(2016) 04 AHC CK 0242
In the Allahabad High Court
Case No : Writ A No. 41581 of 1996

Jai Kishan Srivastava

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Citation : (2016) 9 ADJ 274

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : B.P. Srivastava, Namit Srivastava and Prabhakar Sinha, Advocates, for the Petitioner; S.C. Ajeet Kumar, N.C. Tripathi and Pankaj Srivastava, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—; Heard learned counsel for the petitioner and Sri N.C. Tripathi, learned counsel appearing for the respondent Hindi Sansthan.

2. Following orders were passed in the matter on 16.4.2013:-

"Learned counsel for the petitioner submits that the termination order dated 05th December, 1996, though, was passed after conducting an inquiry as well as issuing a show cause notice, to which the petitioner had submitted a reply, but in the termination order neither the explanation submitted by the petitioner to the show cause notice has been considered nor any finding of guilt has been recorded and, as such, the termination order is bad in law.

Sri N.C. Tripathi, who has appeared on behalf of U.P. Hindi Sansthan, submitted that the service conditions of employees of U.P. Hindi Sansthan are governed by U.P. Hindi Sansthan Karmachari Seva Niyamawali, 1983 under which the services could be validly terminated.

In the circumstances, let a supplementary counter affidavit be filed bringing on record the aforesaid regulations as also the power to terminate the service in the

manner in which it has been done.

List after three weeks. In the meantime, supplementary counter affidavit, indicating the aforesaid facts, may be brought on record".

3. A supplementary counter affidavit has been filed in which the service Regulations of 1983 have been annexed. In para-4 of the counter affidavit, it has been stated that the disciplinary proceedings were initiated against the petitioner in accordance with the Regulations and the order under challenge has been passed as a means of punishment consequent upon the conclusion of the disciplinary proceedings. However, the order under challenge does not refer to the disciplinary proceedings; the reply submitted in the matter; the conclusion of the inquiry officer and the satisfaction of the disciplinary authority about charges being proved. The only averment, in the order under challenge, is that the services of the petitioner are no longer required. A recovery has also been order for realisation of a sum of Rs. 2,48,618.30 paise. The reason for passing of such order has not been disclosed. It has merely been stated that a month's notice and salary in lieu thereof, would be payable.

4. A supplementary affidavit has been filed, copy whereof has been provide by the counsel for the petitioner, according to which, petitioner's services had already been regularised on 20.4.1991. Although parties are at issue as to whether petitioner's services had been regularised but it is not in dispute that petitioner was appointed in June, 1987 and continued to work till passing of the order under challenge. It is not disputed that the order of termination is not a simple termination, but is punitive in nature. The order dated 5.12.1996 since does not contain any reason nor refers to the holding of disciplinary proceedings and finding of guilt therein, the same cannot be sustained.

5. Writ Petition succeeds and is allowed. The order dated 5.12.1996 is consequently, set aside. The petitioner would be entitled to reinstatement and also to the service benefits admissible to him, in accordance with law. Respondents shall be at liberty to proceed in accordance with law.