
(2001) 03 AHC CK 0027
In the Allahabad High Court
Case No : C.M.W.P. No. 11939 of 1998

Jai Shanker Mishra

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 AWC 1223 : (2001) 2 UPLBEC 1252

Hon'ble Judges : A.Y. Yog, J

Bench : Single Bench

Advocate : Kamallesh Kumar, Siddarth Srivastava and Shailesh Verma, for the Appellant; R.K. Tiwari, S.C., for the Respondent

Final Decision : Allowed

Judgement

A. K. Yog, J.—Heard Sri Siddarth Srivastava, learned counsel for the petitioner, Sri R. K. Tewari, learned counsel for the respondent and perused the record.

2. Jai Shanker Misra (petitioner) filed this petition under Article 226, Constitution of India in March, 1998, after serving a copy of this petition, as required under Rules of Court, in the office of chief standing counsel.

3. No counter-affidavit has been filed in spite of opportunity to the respondent.

4. Perusal of the order passed by the concern Government authority dated 18th March, 1998, shows that petitioner was restrained from discharging his duties on the allegation that some first information report (no details given) was lodged against him on the ground of obtaining initial appointment with the help of alleged forged document (no details given). In pursuance, thereof, impugned order dated 24th March, 1998 (Annexure-1 to the writ petition) has been consequently issued by Prabhari Chikitsa Adhikari/Medical Officer, Rajkiya Homeopathic Chikitsalay Kathari Maharajganj on the ground that appointment of the petitioner was suspicious and he was not an employee of the department.

5. Earlier petitioner was asked not to discharge his duties till conclusion of an alleged inquiry on the allegation of his appointment being doubtful. This compelled him to file W.P. No. 11917 of 1993. Jai Shankar Mishra v. State of U. P. and others. In the said petition, an interim order was passed, which reads :

"It is directed that the respondent shall decide and dispose of the representation of the petitioner dated 1.2.1993 pending before the respondent No. 2 within two months from the date a copy of this order is presented before him. The petitioner is entitled to salary and emoluments admissible to him under Rules be paid regularly meanwhile."

6. Petitioner contends that in pursuance of the said interim order, his salary was paid initially till August. 1997 but it was stopped arbitrarily and illegally. There is no explanation as to why the respondents did not approach in the earlier writ petition for modifying interim order. Respondent thus acted in contempt and their conduct was nothing short of an attempt to overreach interim order in that case. This is not having been done, action of the respondents in stopping the salary and the impugned orders cannot be justified, which obviously suffer from malice on record.

7. Petitioner raised grievance for non-payment of salary by filing several representations (Annexure Nos. 7, 8 and 9 to the writ petition). There being no respite, he was constrained to file present petition in March, 1998.

8. As noted above, no counter-affidavit has been filed by the respondents and learned standing counsel is not in a position to assist the Court and inform the Court as to what has been the fate of the inquiry/proceedings initiated on the basis of first information report-referred to in the impugned order dated 18th March, 1998 (Annexure-2 to the writ petition).

9. Petitioner has stated in para 3 of the writ petition that the impugned orders dated 24.3.1998 and 18.3.1998 were passed illegally and arbitrarily without giving proper opportunity of hearing. From the documents annexed with the petition, particularly the impugned orders (Annexures-1 and 2 to the writ petition), it is apparent that petitioner was given no opportunity before aforesaid orders were passed. More than two years have elapsed.

10. I sent for the file of above mentioned W.P. No. 11917 of 1993. Jai Shankar Mishra v. State of U. P. and others. The record, placed before the Court today, of the said petition shows that no counter-affidavit has been filed on behalf of the respondents. This petition is also decided along with this petition.

11. Learned counsel for the parties (in both the petitions) are present and agree to it. With their consent, both the petitions are finally decided. No doubt, it is a serious matter and Court cannot ignore that an employee, who has obtained appointment on the basis of fraud by manufacturing or forging/fabricated documents, should be dealt severely, he deserves no leniency and in no case entitled to relief by invoking this Court's extraordinary discretionary jurisdiction

under Article 226, Constitution of India.

12. But at the same time, a person should not be allowed to be irreparably injured compelling him to starve by forestalling hearing of the case merely because respondents do not choose to file their reply.

13. Perusal of the impugned order dated 18th March. 1998 (Annexure-2 to the writ petition) does not refer to any "particular document" or "act" in connection with the appointment of the petitioner, which have been alleged to be fabricated or forged. Even if the first information report was lodged, the petitioner could not be thrown out of job unless he was made to face disciplinary inquiry as may be contemplated under law and finally after opportunity being afforded his services terminated. Asking a Government employee not to discharge his duty and throw him on the street, is not warranted under law.

14. In view of the above, the impugned order dated 24.3.1998 and 18.3.1998 (Annexures-1 and 2 to the writ petition) cannot be sustained and liable to be quashed.

15. Consequently, the aforesaid impugned orders are hereby quashed and directions are issued to the respondents to allow the petitioners to join duties on his post, pay future salary month by month in accordance with law along with other staff and arrears of salary as may be found due to him, within two months.

16. It is made clear that this judgment does not preclude the respondents from taking suitable action, in accordance with law and hold disciplinary inquiry as may be permissible and warranted in the facts of the case.

17. Writ petition stands allowed subject to direction and observation made above.

18. No order as to costs.