
(2014) 07 AHC CK 0080
In the Allahabad High Court
Case No : Case No. 1153 of 2000

Janardan Prasad Mishra

APPELLANT

Vs

U.P. Cooperative Federation Ltd.

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 07 AHC CK 0080

Hon'ble Judges : Mahendra Dayal, J

Bench : Single Bench

Advocate : Satya Prakash, Advocate for the Appellant; Pushpa Saxena and Shireesh Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mahendra Dayal, J.—The petitioner, by means of the instant writ petition, has prayed for quashing of the show cause notice dated 11.2.2000 issued by the Managing Director, P.C.F., Lucknow. The petitioner has further prayed for a direction to the opposite parties to ignore the said show cause notice and not to harass the petitioner in any manner.

2. The case of the petitioner is that the petitioner was appointed as Junior Assistant on 10.9.1997. Subsequently he was selected and appointed as Store Keeper by the order dated 26.2.1981 and he joined on the said post at Deoria on 2.3.1981. In the year 1988 the petitioner was promoted as Senior Store Keeper. While posted as Senior Store Keeper at Gorakhpur, the petitioner was selected for Ware Housing Training and accordingly relieved for training. On 23.2.1995, the petitioner was transferred from Gorakhpur to Sultanpur and while working at Sultanpur he made a request for his transfer to some other place and on his request he was transferred to Ambedkar Nagar in the year 1996. While working at Ambedkar Nagar, the petitioner was served with a charge sheet and was also placed under suspension by the order dated 17.10.1996. Since the enquiry was not initiated for a quite long period the petitioner approached this Court by way of filing Writ Petition No. 7072(S/S) of 1996, which was disposed of by the

judgment and order dated 26.9.1997, whereby it was directed that the disciplinary authority shall conclude the enquiry proceedings within a specified period and in case the enquiry is not completed within the period fixed by the Court, the suspension order shall stand revoked. The opposite parties in utter disregard of the aforesaid order did not conclude the enquiry and the petitioner was compelled to file contempt petition before this Court, in which the notice was issued to the Managing Director. During the pendency of the contempt petition the suspension of the petitioner was revoked and the contempt petition was disposed of accordingly on 28.10.1998. The enquiry officer after completion of the enquiry submitted the enquiry report on 29.7.1998, upon which a show cause notice was issued to the petitioner. The then In-charge Managing Director after considering the enquiry report and the reply of the show cause notice, submitted by the petitioner, passed an order dated 19.2.1999, whereby, the petitioner was awarded punishment of warning and further a direction for recovery of Rs. 10.80/- was passed against him.

3. The contention of the petitioner is that two charges were framed against him and in the enquiry the charge no. 1 was not found proved and the charge no. 2 was found partly proved. Since apart from the petitioner other persons were also found guilty, therefore, the petitioner was awarded lesser punishment. In pursuance of the order dated 19.2.1999, the petitioner deposited penalty amounting to Rs. 1080/- and an entry of warning was made in his service record. To his utter surprise the petitioner was served with another show cause notice dated 11.2.2000 issued by the Managing Director as to why the order of punishment be not cancelled and also indicating therein that earlier In-charge Managing Director was not competent to pass final order on the disciplinary proceedings and award punishment to the petitioner. It is the second show cause notice which has been challenged by the petitioner in the instant writ petition.

4. The submission on behalf of the petitioner is that once the disciplinary proceeding came to an end and the petitioner was awarded adequate punishment, the subsequent Managing Director has no authority to issue a second show cause notice and cancel the order passed by his predecessor and reopen the disciplinary proceedings. The petitioner has already faced a departmental enquiry and was also awarded punishment by the then Managing Director under the orders of this Court and as such the new incumbent on the post Managing Director has no authority to cancel the order passed by his predecessor.

5. The learned counsel appearing on behalf of the opposite parties has filed a detailed counter affidavit and it has been argued that the earlier Managing who has passed the final order in the matter of the petitioner, was In-charge Managing Director and he was given charge only as an stop gap arrangement until a full fledged Managing Director joins the post. He was not authorized to take final decision in the administrative matters like disciplinary proceedings against the employees. The enquiry report clearly discloses that the petitioner

was found guilty of loss of huge amount and the In-charge Managing Director only with a view to extend the benefit to the petitioner, took decision in a hasty manner and awarded only a fine of Rs. 1080/- as penalty while on account of the negligent act of the petitioner, the opposite parties had suffered huge loss. It has also been submitted on behalf of the opposite parties that giving simple warning to the petitioner is not a punishment but it is in the nature of advice for the petitioner to remain careful in future. It was because of this reasons that new incumbent on the post of Managing Director issued a show cause notice to the petitioner and proceeded to cancel the order passed by the In-charge Managing Director. It has also been argued on behalf of the opposite parties that this writ petition is not maintainable as only the show cause notice has been issued to the petitioner and no order has been passed. He has relied upon Supreme Court's decision reported in *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, in which Hon'ble the Supreme Court has held that the High Court should not interfere in the matter of show cause notice unless it is found that the notice was totally no-nest in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts. The Hon'ble Supreme Court has further held that the writ petition in such matter should not be entertained rather the petitioner should be directed to respond to the show cause notice and take all stands whatever he wants to take.

6. On the basis of the aforesaid law, the learned counsel for the opposite parties has argued that it is open for the petitioner to give proper reply to the impugned show cause notice and the authority shall take decision taking into account the reply submitted by the petitioner. He further argues that in case any adverse order is passed against the petitioner it will again be open for him to approach this Court.

7. The learned counsel for the petitioner during the course of argument pointed out towards an order passed by the then In-charge Managing Director dated 11.3.1999 whereby he passed several administrative orders and it has been argued that the opposite parties did not question the authority of the In charge Managing Director with regard to passing of these administrative order. They proceeded only to cancel the orders passed in the matter of the petitioner only with a view to harass him. In reply to this learned counsel for the opposite parties has argued that the administrative order referred by the petitioner is only an internal arrangement with regard to distribution of work and such orders are purely temporary in nature while the final order passed on the disciplinary proceedings was not within the authority of the In charge Managing Director who was only authorized to look-after the routine work of Managing Director till the new incumbent comes and joins the posts.

8. After hearing the learned counsel for the parties and perusal of the pleadings there is nothing on record to show as to what was the powers of the In-charge Managing Director. There is nothing on record to show as to whether the In charge Managing Director has authority to take final decision in the matters of

disciplinary proceedings. Moreover the petitioner has already been provided an opportunity to give detailed reply and satisfy the authority that the In charge Managing Director was fully competent to pass final order in his matter and the authority who has issued the impugned show cause notice will have occasion to examine every aspect of the matter including the reply of show cause notice. In case after considering the reply filed by the petitioner and the relevant rules, the authority passes an order cancelling the earlier order, it will always be open for the petitioner to assail that order before this Court.

9. In view of what has been discussed above, I do not find any sufficient ground for interference as the Hon''ble Supreme Court has held that in the matters of show cause the High Court should not ordinarily interfere unless it is shown that the show cause notice is without jurisdiction. In the instant case it is not disputed that the Managing Director has authority to issue show cause and as such the petition is devoid of merit and is liable to be dismissed.

10. The petition is dismissed. However, it will be open for the petitioner to give reply of the impugned show cause notice within three weeks from the date of this order and in case the petitioner submits such reply within the aforesaid period, the opposite party no. 2 shall take appropriate decision in the matter keeping in view the relevant rules within a period of one month from the date, a reply of show cause notice is submitted.