(1984) 01 AHC CK 0037

In the Allahabad High Court

Case No : Writ Petition No. 3533 of 1983

Khem Singh Yadav — APPELLANT

Vs

U.P.State & Others — RESPONDENT

Date of Decision : 05-01-1984

Acts Referred:

Subordinate Revenue Executive Services Naib Tehsildar Services Rules, 1944 — Rule 36

Citation : (1984) 01 AHC CK 0037

Hon'ble Judges : U.C.Srivastava, J

Final Decision : Allowed

Judgement

U.C. Srivastava, J.

1. A very short question is involved in this case, as to whether under Rule 36 of Subordinate Revenue Executive Services, Naib Tehsildar Serviced Rules, 1944, a District Officer can suspend a Naib Tehsildar against whom enquiry has not yet started and was only alleged to be under contemplation. It seems that the Deputy Collector, Sales Tax, made certain complaints, four in number, against the petitioner, and the District Magistrate i.e., the District Officer, it seems, was of the view that an enquiry may take place against the petitioner, that is why he ordered suspension of the petitioner because of the contemplated enquiry on those charges. A counteraffidavit was filed by the State, in which it has been stated that the petitioner has been served with a chargesheet by the Board of Revenue. So far as the suspension is concerned, it has been stated that the petitioner has been placed under suspension on the report of the Deputy Collector, Sales Tax, pending enquiry against him and the Collector was competent to pass the suspension order. It was further stated that the Collector, after being satisfied with the report of the Deputy Collector, Sales Tax, passed suspension order against the petitioner pending enquiry. When the suspension order was passed no enquiry was pending or had started against the petitioner.

2. The petitioner approached the U.P. Public Services Tribunal earlier, which rejected the application of the petitioner, for interim relief as well as the claim

petition filed by him, as not maintainable, whereafter he filed the present writ petition.

3. Rule 36 of Subordinate Revenue Executive Services Naib Tehsildar Services Rules, 1944, so far as it is relevant, reads as under:

R. 36 Punishment and Appeals: Subject to the modifications noted below, the provisions of the rule regulating punishment and appeals promulgated in the ''Punishment and Appeal Rules for the Subordinate Services'' shall apply to persons appointed to the service:

(1) The District Officer may censure a Naib Tehsildar.

(2) The District Officer may suspend a Naib Tehsildar pending enquiry into any instance of official misconduct orpending the receipt of orders upon any report made as to such misconduct..................?

There is dispute that the Board of Revenue can suspend a Naib Tehsildar, but under circumstances mentioned in Rule 56 extracted above, the District Officer can also suspend a Naib Tehsildar. Admittedly, no enquiry was pending against the petitioner and it is not the case of the State that some report of official misconduct was pending against him, and pending the receipt of the enquiry report the District Officer suspended the petitioner. On the face it is clear that the petitioner was suspended under contemplated enquiry. Thus, none of the conditions under which a Naib Tehsildar could be suspended by a District Officer were existing in the case, as such, the District Magistrate had no jurisdiction to suspend the petitioner. It seems that the District Magistrate applied the general provisions of law in face of specific provision, by suspending him on the ground that an enquiry against him was under contemplation. A District Officer has no jurisdiction under Rule 36 to suspend a Naib Tehsildar for contemplated enquiry. As such, the order of suspension is without jurisdiction and is not sustainable.

4. The writ petition is allowed and the order dated 3.6.83 (Annexure2) passed by the District Officer is quashed. It is, however, made clear that it will be open to the competent authority to suspend the petitioner in case they deem it fit. No order as to costs.

(Petition allowed)

