

(2001) 03 AHC CK 0015

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6520 of 1999

K.P. Giri

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 1 UPLBEC 908

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : H.R. Misra and R.C. Shukla, for the Appellant; R.K. Ojha, for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—The petitioner, K.P. Giri, has filed the present writ petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 20.3.98 passed by the Secretary/General Manager, U.P. Sahkari Katai Mills Ltd., Fatehpur, respondent No. 4, filed as Annexure No. 8 to the writ petition and the order dated 29.6.98 passed by the Chairman, Committee of Management, U.P. Sahakari Katai Mills Ltd., Fatehpur, respondent No. 2, filed as Annexure No. 13 to the writ petition. He further seeks a writ of *druidamw*, commanding the respondents No. 3 and 4 not to interfere in the working of the petitioner on the post of Cost Accountant and pay his salary as and when the same is due with all arrears.

2. Briefly stated the facts of the case are that the petitioner was an employee of U.P. Co-operative Spinning Mills Federation Ltd., Kanpur, which is an Apex Society within the meaning of Section 2(A-4) of the U.P. Co-operative Society Act, 1980. The U.P. Co-operative Spinning Mills Federation Ltd., Kanpur (hereinafter referred to as Federation) has been recognised as "Federal Authority" u/s 123 of the aforesaid Act. The Federation is to advise assist, Co-ordinate, supervise, minor and facilitate the working of the affiliated Co-operative Spinning Mills in the State

of U.P. At present eleven Co-operative Spinning Mills are affiliated to the Federation. The petitioner is posted as Cost Accountant in U.P. Sahakari Katai Mills Ltd., Fatehpur, which is also one of the Unit to the Federation. According to the petitioner, he was appointed as Cost Accountant in Mau-Aima Sahkari Katai Mills Ltd., Mau-Aima, District Allahabad, on 26.8.86. He was confirmed on the said post. During the year 1997 while he was working in U.P. Sahkari, Katai Mills Ltd., at Fatehpur, (hereinafter referred to as the Fatehpur Unit), the petitioner was placed under suspension by the Secretary /General Manager, U.P. Sahakari Katai Mills Ltd., Fatehpur, vide order dated 11.8.97 and was attached with the Federation Office at Kanpur. According to the petitioner, he reported for duty at the Federation Office at Kanpur. When for a considerable period of time he was not issued any chargesheet, he submitted an application on 17.1.98 to the respondent No. 4 requesting him to disclose the reasons and to supply the copy of the charge-sheet, if any, so that he may submit his explanation in defence of his case. It has been further stated in the writ petition that the petitioner was not paid his subsistence allowance also. He again requested vide application dated 19.2.98 for supplying the charge-sheet which was followed by another reminder/letter on 7.2.98. According to the petitioner, he was not given any charge-sheet but on 27.3.98 he received an order whereby his services had been dispensed with. The said order was served at his residence in the campus of Fatehpur. The petitioner preferred an appeal before the next higher authority i.e. respondent No. 2. Respondent No. 2 rejected the appeal vide order dated 29.6.98. Both the orders are under challenge in the present writ petition.

3. I have heard Sri H.R. Mishra assisted by Sri R.C. Shukla, learned Counsel for the petitioner, and Sri R.K. Ojha, learned Counsel for the respondents.

4. Learned Counsel for the petitioner submitted that since the petitioner has not been paid subsistence allowance, therefore, the entire proceedings is bad. In support of the aforesaid plea, he relied upon a decision of the Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , wherein the Hon"ble Supreme Court had held that if the subsistence allowance has not paid then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of subsistence allowance can be likened to show poisoning as the employee, it not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death. He further submitted that the entire proceedings was actuated with malice as neither the petitioner was paid the subsistence allowance nor the charge-sheet was served upon him inspite of repeated request made in this behalf by the petitioner. He further submitted that even if it is assumed for a moment only that charge-sheet was sent to the petitioner and he did not give any reply though the case of the petitioner was that charge-sheet was not served upon him, yet before the enquiry officer the department has to prove its case and the petitioner ought to have given an opportunity to cross-examine the witnesses. He submitted that all the norms of the enquiry have to be followed and if the norms have not been followed then

the entire proceedings stands vitiated. In support of the aforesaid plea, he relied upon decisions of this Court in the case of Subhash Chandra Sharma v. Managing Director and Anr., reported in (2000) 1 UPLBEC 541 and Om Pal Singh v. District Development Officer. Ghaziabad, reported in (2000) 2 UPLBEC 1591. He also relied upon a decision of this Court in the case of Bajrang Prasad Srivastava Vs. U.P. Pariyojana Prabandhak and others, He further submitted that after the enquiry was completed the petitioner was not given the copy of the enquiry report nor any show-cause notice was issued to him before imposing the punishment of dismissal which had vitiated the entire proceedings. In support of the aforesaid plea, he placed reliance on the Constitution Bench decision of the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . He further submitted that in accordance with the Provisions of Regulation 87 of the U.P. Co-operative Societies Employees Service Regulation, 1975 no concurrence of Institutional Service Board was taken by the respondent No. 4 before passing the order of dismissal dated 20.3.98.

5. Sri R.K. Ojha, learned Counsel for the respondents, submitted that the U.P. Co-operative Societies Employees Service Regulation, 1975 is not applicable to the petitioner inasmuch as the service is governed by the Rules framed in 1991 which does not require any concurrence from the Institutional Service Board. He further submitted that the respondents have paid subsistence allowance to the petitioner for the dates on which he had reported at the Federation Kanpur Office. He further submitted that the copy of the charge-sheet was sent to the petitioner at permanent address by registered post on 18.11.97 and copy of the same was also sent by peon to his residence at Fatehpur Factory Unit Campus. It was not received by the petitioner. Thus, it cannot be said that no copy of the charge-sheet was given to the petitioner.

6. Sri R.K. Ojha, learned Counsel for the respondents had made a statement before the Court that neither copy of the enquiry report nor the show-cause notice proposing the punishment was given to the petitioner.

7. Having heard learned Counsel for the parties, I find in the present case the entire proceedings have been taken in a manner which does not speak well of the conduct of the respondents. The petitioner was placed under suspension vide order dated 14.8.97 and he was attached at the Federation Office at Kanpur. However, he had been paid the subsistence allowance only for five days in August, 1997 and one day in September, 1997 as stated in the supplementary affidavit of Ashrfi Lal filed on behalf of the respondents. The copy of the charge-sheet is alleged to have been sent by the registered post to the petitioner at the permanent address in the State of Bihar whereas it was well known to the respondents that he is living in the campus of Fatehpur Factory Unit. No effort was made to send the copy of the charge-sheet to the petitioner's residence at Fatehpur by registered post when the peon is alleged to have made a report that the petitioner has refused to receive the copy of the charge-sheet. Further it is not in dispute that when the petitioner had requested for giving the charge-sheet

on 17.1.98, 19.2.98 and 7.3.98 the respondents did not care to give the copy of the charge-sheet to the petitioner. If the enquiry had been completed on 12.1.98 then atleast they ought to have told to the petitioner, which for reasons best known to the authorities was not done. Moreover, it is an admitted case of the respondents that neither any show-cause has been given to the petitioner regarding the proposed punishment nor the enquiry report was given to the petitioner so as to enable him to put his defence or to give an explanation. Even in the absence of any reply submitted by the petitioner to the charge-sheet, it was incumbent upon the enquiry officer to fix the date in the enquiry and to intimate the petitioner about the same which has not been done in the present case. Moreover, from a perusal of the order of dismissal dated 20.3.98 it will be seen that the management had produced the evidence in support of the charges levelled against the petitioner making had been accepted by the enquiry officer without making any effort to confront the same to the petitioner. Thus, the entire proceedings have been conducted in gross violation of equity, fair play and is in breach of the principles of natural justice.

8. Admittedly in the present case, the petitioner has not been paid the subsistence allowance for the period during which he has been placed under suspension. He was asked for duty to Federation Kanpur office. The petitioner had gone there. He has been paid the subsistence allowance for only five days in the month of August and one day in the month of September, 1997. It was thus for non-payment of subsistence allowance the petitioner had suffered prejudice and as held by the Hon"ble Supreme Court in the case of Capt. M. Paul Anthony his constitutional right have been violated. Further for non-issuance of the show-cause notice for the proposed punishment and also for not giving the enquiry report as also the petitioner was not given the charge-sheet the petitioner has suffered great hardship and has been denied his right to put his explanation which has vitiated the entire proceedings. Each one of the circumstances individually may not vitiate the proceedings but when taken cumulatively viz. non-payment of subsistence allowance, not furnishing the charge-sheet, not informing the date fixed in the enquiry and not giving the copy of the enquiry report and the show-cause notice regarding proposed punishment only leads to the inference that the respondents have conducted the entire proceedings in a manner which is not warranted in law and has thus vitiated the entire proceedings. Thus the entire proceedings commencing from suspension of the petitioner leading to his dismissal being actuated with malice in law is liable to be quashed as held by this Court in the case of Bajrang Prasad Srivastava Vs. U.P. Pariyojana Prabandhak and others,

9. In view of the foregoing discussions, the writ petition succeeds and is allowed. The entire proceedings commencing from suspension of the petitioner to the dismissal is quashing the petitioner is entitled for all consequential benefits.