
(2010) 03 AHC CK 0027
In the Allahabad High Court
Case No : Writ Petition No. 6269 (S/S) of 1993

Lal Bahadur Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Citation : (2011) 3 AWC 2262

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard learned Counsel for the Petitioner and learned standing counsel appearing for the Respondents.

2. Under challenge is an order of removal passed on 30.4.1993 by which the services of Petitioner Lal Bahadur Singh a Supervisor Kanoongo in Tehsil, Akbarpur, district Faizabad were terminated.

3. It emerges from record that on account of some irregularities committed by the Petitioner, he was suspended vide an order dated 30.11.1992. A charge-sheet containing four charges was issued on 2nd December, 1992 and Sub-Divisional Officer Tanda, Faizabad was appointed as Inquiry Officer. It was indicated in the first charge that the Petitioner did not carry out revision of the voter lists. The process had delayed because of his slow working. The second charge is in respect of late submission of zamabandi reports. In the third charge, it was Indicated that the Petitioner was not regular in attending the Tehsil. The last charge was regarding Petitioner's non-availability on a particular date, i.e. 14.10.1992 in village Rasoolabad, Hauza Patti. It appears that an inquiry report was submitted by the Sub-Divisional Officer and the District Magistrate, Faizabad, the appointing authority had ordered for removal of the Petitioner from services.

4. The order of removal has been assailed on various grounds. According to him,

no proper inquiry was conducted by the Inquiry Officer. The inquiry report was not made available to Petitioner. He was also not issued a show-cause notice alongwith the Inquiry Officer's report since it was a case of removal from services. It was a case of awarding major penalty in such circumstances the Petitioner ought to have been afforded an opportunity to show-cause against the inquiry report submitted by the Sub-Divisional Officer, Faizabad. It was also alleged that the Inquiry Officer had not kept the Petitioner associated with the inquiry. No date, place and time of the inquiry was fixed, nor the documents cited in the charge-sheet were made available to the Petitioner.

5. Learned Counsel for the Petitioner has laid much stress that in support of all the four charges, a report of Tehsildar, Akbarpur said to have been submitted on 11.11.1992 has been relied. The report of Registrar Kanoongo dated 9.10.1992 was also relied upon by the Appointing Authority. The letter dated 30.10.1992 issued by Commissioner, Faizabad was also used against the Petitioner in proving the charges. The author of the reports, Le. Tehsildar Akbarpur and Registrar Kanoongo were not directed to appear before the Inquiry Officer. He ought to have been summoned by the Inquiry Officer, who could have proved the report dated 11.11.1992. The Petitioner was not afforded an opportunity of cross-examining Tehsildar, Akbarpur, who had submitted a report against the Petitioner on 11.11.1992. This is a serious illegality, which has been committed by the Inquiry Officer and the Punishing Authority. The Petitioner's counsel has categorically submitted that the Tehsildar's report dated 11.11.1992, which was the foundation of the charge-sheet, was not made available to Petitioner to enable him to rebut the same.

6. learned Counsel for the Petitioner has drawn attention of the Court that the Petitioner was going to attain the age of retirement, i.e. 58 years on 31.7.1993. The order of punishment has been passed on 30.4.1993, which was communicated to Petitioner on 20.5.1993. Since it is a case of removal of the Petitioner, he was deprived of his pension, gratuity and other benefits. Much emphasis has been laid that the Petitioner had 29 years uninterrupted, unblemished and satisfactory services to his credit. In the said circumstances, the Petitioner ought not to have been removed from services. The Petitioner has placed reliance on following judgments to strengthen his submissions.

1. Ambika Prasad Srivastava Vs. State Public Services Tribunal and Others,
2. Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another,
3. Surya Bhan Singh Vs. U.P. Lok Sewa Adhikaran and Others,
4. Radhey Kant Khare Vs. U.P. Co-operative Sugar Factories Federation Ltd.,
5. Subodh Kumar Trivedi Vs. State of U.P. and others,
6. R.K. Mehrotra Vs. U.P. Sahkari Sansthaat Sewa Mandal and Others,

7. Abhai Pal Singh Vs. State of U.P. and Others,
8. Mohd. Abbas v. Settlement Officer, Consolidation Gonda and Ors. 2005 (25) LCD 906, para 11.
9. Cyan Das Sharma v. State of U.P. and Ors. 2009 (27) LCD 936.
10. Sher Bahadur Singh (Dead), Substituted by Smt. Phool Pati and Shanti Kumar Singh v. State of U.P. and Ors. 2009 LCD 1412.
11. Ram Kumar Singh v. U.P. Pollution Control Board and Ors. 2009 (2) AWC 1438.
12. Radhey Shaym Mishra Vs. State of U.P. and Others,

7. Learned standing counsel has submitted that the departmental inquiry was conducted in accordance with the relevant service rules. The Petitioner was remiss and negligent in discharging his duties. Four charges were of serious nature and the same were found proved against him. Now, there is no legal necessity of issuing show-cause notice and providing Inquiry Officer's Report. The Petitioner was kept associated with the departmental trial. The Inquiry Officer has conducted a detailed inquiry and found that the Petitioner had not remained present in the village at the time of visit of officers of the Revenue Department. The Petitioner cannot persuade this Court to judicially scrutinize the action taken by the Appointing Authority in removing the Petitioner, when four serious charges were found against him. Learned standing counsel placed reliance on following judgment in support of his submissions.

Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another,

8. I have heard learned Counsel for the parties and perused the record.

9. It is evident from the records that the Appointing Authority/ Punishing Authority had not supplied the Inquiry Officer's Report to the Petitioner. There is nothing on record to demonstrate that the Tehsildar's report dated 11.11.1992 was supplied to the Petitioner. In fact, it was not supplied to the Petitioner. There is another defect in the departmental inquiry, i.e. the Tehsildar, Akbarpur, who had submitted a report on 11.11.1992 against the Petitioner was not summoned to prove his report. The Petitioner was not permitted to cross-examine him during departmental inquiry. He should have proved the report dated 11.11.1992. The Tehsildar should have been summoned to enable the delinquent officer to cross-examine him. The main three charges are based on the report of Tehsildar dated 11.11.1992 and in such a situation it was incumbent upon the Inquiry Officer, to have supplied this report to the Petitioner and the author of the report must have been called for cross-examination by the Petitioner during the course of departmental inquiry. It is noteworthy that a report of Registrar Kanoongo dated 9.10.1992 had also been relied upon by the Inquiry Officer. The

author of the report, i.e. Registrar Kanoongo was also not called by the Inquiry Officer to afford an opportunity to the Petitioner to cross-examine him. Thus, both the reports dated 11.11.1992 and 9.10.1992 were not proved by the Inquiry Officer during departmental trial. Moreover, the principles of natural justice have been violated as an ex parte report, which was submitted against the Petitioner and relied upon by the Inquiry Officer for finding the charges proved was neither proved nor supplied to him. The delinquent was not afforded opportunity to cross-examine the authors/reporters of the said two reports. Principles of natural justice have been flagrantly violated.

10. This Court has noted from the pleadings of the parties that the past conduct and service record of the Petitioner during his 29 years service has remained wholly satisfactory. Para three of the writ petition, in which the Petitioner has categorically submitted that his work conduct and performance has remained satisfactory through out his services has been admitted in para 4 of the counter-affidavit filed by the Respondents.

11. In view of this, the Court has noted that the Petitioner was to retire on attaining the age of superannuation on 31st July, 1993 and about three months prior to the date of retirement, he has been removed from services. The Court has noted that the Petitioner a Government servant, whose 29 years service record has remained satisfactory, has been removed from services on account of charges, which were not so serious, on the basis of which a person could have been thrown out of employment. Even if the Petitioner was found negligent in revising the electoral roll or absenting on the date, when the inspection was carried out in the village, admonition or minor penalty could have been sufficient. Removing a Government servant having 29 years satisfactory services that too at the verge of his retirement, is highly unjust, unfair and improper. It appears that the punishment is too excessive in the circumstances of the case.

12. The punishment awarded does not commensurate with the nature of charges. The Petitioner has not been dealt with fairly and justly by the Appointing Authority. The Petitioner would certainly be deprived of his pensionary benefits, despite rendering 29 years of satisfactory services rendered to the Government. The Court has already noted that principles of natural justice have been violated and inquiry has not been conducted in accordance with relevant service rules. Moreover, the Petitioner's case is squarely covered by the judgments rendered by Hon''ble Apex Court and this Court as indicated above.

13. There is no charge-sheet, which casts aspersions on integrity of the working of the Petitioner. It also appears from the order of penalty that the Petitioner's defence and his version has not been taken into account and dealt with by the Inquiry Officer and the punishing authority.

14. In view of above discussion this Court is of the opinion that the order of removal dated 30.4.1993 deserves to be quashed. Accordingly, the order of removal dated 30.4.1993 is quashed. All the consequences shall follow and the

legal heirs and legal representatives of the Petitioner shall be entitled to get full pay admissible to Petitioner from the date of his removal from services from 30.4.1993 till 31.7.1993, the date of retirement. Thereafter, the legal heirs and legal representatives shall be entitled for other retiral benefits admissible to Petitioner Lal Bahadur Singh, as if the order of removal dated 30.4.1993 was never passed against him.

With these observations the writ petition is allowed.