
(1991) 04 AHC CK 0122
In the Allahabad High Court
Case No : Writ Petition No. 13926 of 1990

Lallan Prasad Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 37, 37(3)

Citation : (1991) 2 AWC 10

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : A. Kumar, for the Appellant; B.P. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

D.P.S. Chauhan, J.—The Petitioner is a Tax Inspeotor in the Nagar Mahapalika, Varanasi. He has invoked the jurisdiction of this Court under Article 226 of the Constitution of India impeaching the order of his suspension dated 25-6-1990 (Annexure 2 to the petition) passed by the Mukhya Nagar Adhikari. The Petitioner has prayed for quashing the order of his suspension and for issuance of a writ of mandamus directing the Respondents not to give effect to the said order.

2. Since the counter and rejoinder affidavits have been exchanged, with the consent of the parties I propose to dispose of the writ petition on merits finally.

3. Heard learned Counsel for the Petitioner, Sri A. Kumar, and the learned Counsel for the Respondent Sri B.P. Agarwal.

4. Learned Counsel for the Petitioner has submitted that the Petitioner is a member of the centralised service created under the U.P. Palika (Centralised) Service Rules, 1966, as amended from time to time. Rule 37 was amended by the U.P. Palika (Centralised)(Thirteenth amendment) Service Rules, 1987. Rule 37(3) which is relevant, is extracted below:

37(3). The power to suspend an officer of the centralised services shall be exercised by the State Government only.

5. So far as the question of the Petitioner being a member of the centralised service, the parties are not at variance and on the question of applicability of the rules, the position is accepted.

6. The submission of the learned Counsel for the Petitioner is that the impugned order of suspension is null and void being without jurisdiction as the Mukhya Nagar Adhikari, who had passed the order, had no authority under the Rule 37(3) of the Rules whereunder it was the exclusive authority of the State Government.

7. Learned Counsel for the Respondent made two-fold submissions. He submitted that against the impugned order the Petitioner had already represented to the State Government on 31-1-1991 and, therefore, he is not entitled to maintain the petition unless his representation is decided. Secondly, the order of suspension has been sent to the State Government for approval which is still Pending consideration for approval and in the meantime the Mukhya Nagar Adhikari himself had kept in abeyance the impugned order and, therefore, on receipt of approval, the impugned order would be valid one and this Court should not interfere until the matter of approval is disposed of by the State Government.

8. So far as the question of pendency of the Petitioner's representation before the State Government is concerned, the same is not made under any statutory provision and it is in the discretion of the State Government to decide the same or not. The State Government has not yet decided the representation of the Petitioner and, in such a situation, this Court cannot wait for the disposal of the representation declaring the impugned order as without jurisdiction.

9. So far as the legal position is concerned, the Rules provide that the power to suspend a member of the Centralised service shall vest in the State Government only. It is apparent that the impugned order was not passed by the State Government. In fact, Mukhya Nagar Adhikari vide his letter dated 1-10-1990 addressed to the Director, Local Bodies, had accepted the position that the power in this respect vested in the State Government and realising the position, he kept the impugned order in abeyance till its approval by the State Government.

10. Learned Counsel for the Respondent strenuously urged that the approval of the State Government in the matter has been sought and after the approval, the impugned order would be given effect to. The question involved is that of competence of the Mukhya Nagar Adhikari to pass such order. Under law, he has not been invested with such power.

11. Learned Counsel for the Respondent has emphasized more on the approval, but has not been able to point out any such provision in the rules requiring approval of a suspension. It is a settled position of law that if an order is without jurisdiction, the same is treated as lifeless and approval by competent authority cannot resuscitate the same. Since the impugned order is without jurisdiction, it

cannot survive and has to be quashed.

12. In the result the writ petition is allowed and the impugned order of suspension dated 25-6-1990 (Annexure 2 to the petition) is quashed. No order as to costs.