
(2010) 03 UK CK 0033
In the Uttarakhand High Court

Managing Director Garhwal Mandal Vikas Nigam Ltd.	APPELLANT
Vs	
Kamal Nayan Nautiyal	RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 4 LLJ 79

Hon'ble Judges : Nirmal Yadav, J;B.C.Kandpal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nirmal Yadav, J.—By means of present special appeal preferred by Managing Director Garhwal Mandal Vikas Nigam Limited (herein after to be referred as "Corporation) against the judgment and order dated 27th May 2004 passed by the learned Single Judge in Civil Misc. Writ Petition No. 2250 (SS) of 2001 whereby the learned Single Judge allowed the writ petition with a direction to reinstate the petitioner in service with 50% back wages.

2. Brief facts of the case relating to the present appeal are that the petitioner-respondent, namely, Kamal Nayan Nautiyal was appointed as a Trainee Assistant Manager on 14.05.1985. His services were regularized with effect from 10th December 1987 and he was appointed on the post of Assistant Manager in the pay scale of 550-865 with effect from 19th May 1987. On 12th June 1990 disciplinary proceedings were initiated against him. He was placed under suspension on the ground of disciplinary proceedings being pending against him. He was served with the charge sheet on 18th January 1991 wherein seven charges were levelled against him. However, during the pendency of disciplinary proceedings the delinquent officer was reinstated into service in the interest of "Corporation" vide order dated 2nd April 1993. He joined his duties at Tourist Rest House, Srikot on 5th April 1993 and he was again transferred from Srikot to Tourist Rest House, Sone Prayag on 21st April 1993.

3. After completion of enquiry he was served with the inquiry reports dated 20th January 1992 and dated 30th April 1994 vide letter dated 16th May 1994. He was required to submit his reply within the stipulated time. The delinquent officer was directed to appear in the office of the "Corporation" on 5th June 1995 for personal hearing. But the delinquent officer alleged that he was not given any personal hearing. On 9th June 1995 the competent authority passed the order of dismissal from the post of Assistant Manager on the basis of the inquiry report submitted by the Inquiry Officer.

4. The delinquent officer challenged the order of dismissal before the Allahabad High Court in Writ Petition No. 21820 of 1995, which was allowed on 11th August 1995, mainly on the ground that the punishing authority had not given any opportunity of hearing to the delinquent officer with regard to an incident dated 8th June 1995, thus the order of dismissal was violative of principles of natural justice. It was, however, left open for the competent authority to pass fresh order on the basis of report submitted by the Inquiry Officer without being influenced by the incident of 8th June 1995 or to serve additional charge sheet with regard to the said incident and pass fresh composite order after giving opportunity to the petitioner to submit his reply and such evidence in his defence as he may be advised.

5. As per the observation of Allahabad High Court the competent authority passed fresh dismissal order on 28th September 1995. In the said order the charge levelled against the petitioner with regard to the incident dated 8th June 1995 was not taken into consideration. The delinquent officer preferred writ petition No. 2250 of 2001 challenging order dated 28.09.1995, which was allowed by the learned Single Judge of this Court on 27th May 2004. Against the said judgement and order a special appeal was filed by the "Corporation" which was allowed by the Division Bench of this Court setting aside the judgment and order dated 27th May 2004 and the punishment order dated 28th September 1995 passed by the competent authority was upheld. The delinquent officer challenged the order of the Division Bench of this Court before the Apex Court. The Apex Court vide order dated 1st September 2008 set aside the judgment of the Division Bench of this Court and requested to dispose of the matter afresh.

6. We have heard Mr. U.K. Uniyal, Sr. Advocate assisted by Mr. Sandeep Kothari, learned Counsel for the appellant-Corporation and Mr. A. Rab, learned Counsel for the respondent.

7. Learned Counsel for the appellant-Corporation submitted that the services of the delinquent officer-Kamal Nayan Nautiyal were terminated after conducting an inquiry and giving due opportunity of hearing to substantiate his case. The competent authority had conducted the fresh inquiry after excluding the additional charge with regard to incident dated 8th June 1995. He vehemently argued that the learned Single Judge did not take into consideration the allegation against the delinquent officer, which consists of serious misconduct, financial irregularities and misappropriation of public money. It is further argued

that the learned Single Judge has not discussed all the charges and had dealt with the charges in a very vague and perfunctory manner. It is argued that charges No. 1, 2, 4 and 5 have been partly proved while charge Nos. 3, 6 and 7 stood proved against the delinquent officer which relate to the allegation of absence from duty and financial irregularity. It is further argued that there was no mala fide in passing the order of dismissal, rather the order of dismissal perfectly commensurate with the charges levelled against the delinquent officer. The charges of financial irregularity, misappropriation of public money and misconduct certainly calls for major punishment of dismissal, thus the order passed by the learned Single Judge deserves to be set aside. Learned Counsel for the appellant also argued that the learned Single Judge erred in ignoring the plea of alternative remedy. It is argued that specific preliminary objection was raised by the appellant that the delinquent officer could approach the tribunal seeking his grievances against the order of dismissal.

8. On the other hand learned Counsel for the respondent submitted that the impugned order passed by the "Corporation" is wholly illegal and arbitrary. It is submitted that all the allegations and charges levelled against the delinquent officer are not of serious nature and the competent authority could impose only minor penalties. He referred to the Discipline And Appeal Rules, which provide for stoppage of increment or stoppage of promotion or in case of any financial loss to the employer the said amount could be recovered by the authorities. He further argued that the writ petition filed by the delinquent officer challenging order of dismissal, which was allowed by the Allahabad High Court. However, a fresh dismissal order was passed on the same charges within a span of one and half month which shows mala fide on the part of the competent authority. He therefore, argued that the order of dismissal is disproportionate to the allegation levelled against the delinquent officer. With regard to the alternative remedy the learned Counsel for the respondent argued that availability of an alternative remedy does not oust the jurisdiction of High Court under Article 226 of the Constitution of India.

9. After going through the arguments and the material available on record, we are prima facie of the view that most of the charges against the delinquent officer are vague and general in nature. We would discuss in brief the charges, findings of the inquiry report and the evidence available on record.

10. After going through the allegation as per the charge sheet supplied to the delinquent officer, his reply as well as the report of the inquiry officer, we find that a part of charge No. 1 with regard to the misbehaviour with Smt. Chandrakala Kala is not proved. The only allegation proved against him is that he had caught hand of Dronanchal Prasad a class IV employee, and used un-parliamentary language. At the same time it is also the finding that both Dronanchal Prasad and Om Prakash were found guilty of groupism.

11. Similarly with regard to charge No. 2, the Inquiry Officer has given a categoric finding that the delinquent officer had not included different items in

the menu for the lunch other than the directed, as there was no written direction in this regard. With regard to the absence on 6th June 1985 the same has already been regulated, therefore, the charge does not survive. The charge No. 3 is also with regard to the absence on 6th June 1985 and as mentioned above the same has become infructuous.

12. Charge No. 4 is with regard to non-payment of Rs. 113/- on account of personal telephone call booked by the delinquent officer. The delinquent officer in his reply submitted that no bill was given to him with regard to the said telephone call. The finding of the Inquiry Officer in this regard is that the Officer has proved to be irresponsible for non payment of this amount. To our mind this charge does not appear to be serious as this amount could be recovered by the competent authority.

13. Charge No. 5 is also of not serious nature. It simply mention about some altercation between one of the official, to whom the delinquent officer had already expressed his regret. Moreover, these are the minor incidents, which keep happening in day today working.

14. Charge No. 6 is quite vague and it is not proved that who had informed at the Tourist Guest House, Uttarkashi with regard to arrival of the Managing Director alongwith seven persons and for arranging meals for them. It has rather come in the evidence that one Gajendra Singh Rana and Satendra Singh Bisht alongwith their friend had come to Uttarkashi. It has been stated by Ramesh Chand Gaur that Kamal Nayan Nautiyal did not take meals nor stayed at the Tourist House, Uttarkashi

15. The main allegation are contained in charge No. 7 (Ka to Gha), which were taken into consideration while passing the dismissal order dated 28th September 1995. The allegation 7 (Ka) is with regard to misappropriation of an amount of Rs. 10,564/-, however, the delinquent officer has submitted his explanation that out this an amount of Rs. 3958/- has been mentioned twice, a sum of Rs. 3254/- was with Mr. Vijay Pal Singh Aswal and a sum of Rs. 500/- is also not mentioned anywhere, thus charge is not at all proved against the delinquent officer. With regard to charge No. 7 (Kha) a sum of Rs. 14,356/- was to be paid as water and electricity charges but only a sum of Rs. 11,236/- was paid. As per the Inquiry Officer a sum of Rs. 1347.65/- was paid in excess as electricity charges without prior permission because only a sum of Rs. 9889.25/- was to be deposited as electricity charges. This charge is connected with charge No. 7 (Ga) which is with regard to the payment of water charges. It appears that Rs. 4466.75 was to be paid as water charges and Rs. 11,236.90 was to be paid as electricity charges out of which only a sum of Rs. 2630/- was paid as water charges. It has come in the evidence this amount was paid on account of some dispute, therefore, it was informed in writing to the Executive Engineer, Jal Sansthan. Rest of the amount could be paid only after appropriate inquiry by the Executive Engineer. With regard to charge No. 7 (Gha) the Inquiry Officer has given a finding that to hold the delinquent officer guilty of misappropriation of Rs. 13,683.60 separately

would not be appropriate as said amount has already been taken into consideration in charges No. 7 (Ka) to 7 (Ga). In these circumstances it is apparent that there was no misappropriation on the part of the delinquent officer.

16. In view of the above discussion, we are of the opinion that the charges against the delinquent officer are not of grave nature. He has not attained any personal gain nor caused loss to the employer. There appears to be non-communication of actual facts to the authorities. In these circumstances, we agree with the observation made by the learned Single Judge that the punishment awarded by the competent authority does not commensurate with the charges levelled against the delinquent officer. We do not find any basis for the observation made by the punishing authority that the working of the delinquent officer has caused financial loss and has adversely affected the image of the corporation. There is no evidence to prove that from the working of the delinquent officer, the image of the "Corporation" or the Tourist Guest House has been adversely affected. Even if there are minor irregularities, it would serve purpose by awarding minor punishment under the Discipline And Appeal Rules, rather than imposing the major punishment of dismissal from service.

17. We are unable to accept the argument advanced by the learned Counsel for the appellant/"Corporation" that the charges levelled against the delinquent officer are grave and serious in nature. We are of the opinion that in the present facts and circumstances of the case any one or more of minor punishments provided under the Discipline And Appeal Rules would have been appropriate and imposition of major penalty appears to be totally harsh and disproportionate. We are conscious of the fact that the High Court should be very slow in interfering with the quantum of punishment awarded by the punishing authority unless it is found to be shocking to one's conscience. However, the Doctrine of proportionately can be invoked in the circumstances if it is found to be pricking one's conscience or there is some mala fide seen apparent on the part of the punishing authority. We may mention here that it appears from the facts in the present case that there was some mala fide or ulterior motive on the part of the "Corporation" to see that the respondent-Kamal Nayan Nautiyal was out of service. Initially the petitioner was placed under suspension in the month of June 1990. He was reinstated in the month of April 1993 and dismissal order was issued on 9th June 1995. Thereafter when the writ petition of delinquent officer was allowed by the Allahabad High Court on 11th August 1995 reinstating him in service with 50% back wages a fresh dismissal order was passed almost on the same charges on 28th September 1995. The delinquent officer has undergone the agony of facing the litigation since 1990 and remaining out of job.

18. With regard to the alternative remedy we may mention that though the Courts need to maintain restrain while exercising jurisdiction under Article 226 of the Constitution of India, if the petitioner has adequate alternative remedy, but at the same time it is now well settled that exhaustion of alternative remedy is a rule of convenience and discretion rather than rule of law. Thus the availability of

an alternative remedy does not oust the jurisdiction of the Courts under Article 226 of the Constitution of India. This issue has been discussed in detail by the learned Single Judge while overruling the objection with regard to maintainability of the writ petition raised by the learned Counsel for the appellant. We agree with the learned Single Judge on this point and hold that the writ petition filed by the delinquent officer is maintainable.

19. In view of the above, we uphold the order of the learned Single Judge and find no merit in the special appeal. The special appeal is dismissed. No order as to costs.