(1989) 11 AHC CK 0023

In the Allahabad High Court

Case No : C.M.W. No. 9606 of 1979

Mangal Sen APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

Citation : (1990) 60 FLR 161 : (1992) 1 LLJ 179 : (1990) 1 UPLBEC 114

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Advocate : V.S. Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.N. Misra, J.—Having been dismissed from service and having lost his appeal and also his case before the Public Service Tribunal, the petitioner seeks relief from this court under Article 226 of the Constitution. The petitioner was working as a peon in the City Board of Muzaffarnagar in a permanent cadre. On June 30/ July 1, 1972 he was on duty between 6 p.m. and 2 a.m. at Toll Tax Chauki No.3 at Shamli Road along with two other peons and a munshi. In course of the night it was reported that the petitioner had unauthorisedly released 9 out of 18 bags of grapes belonging to one Sri Vishnu without charging octroi duty on the same in collusion with his colleagues. Thereafter respondent No. 3, Chairman, City Board, Muzaffarnagar issued the charge-sheet (Annexure 7) on the allegation that on account of his lapse, there was loss of revenue. In his reply (Annexure 8) the petitioner explained that Sri Vishnu had paid the octroi duty on 9 bags around 11.30 p.m. while the petitioner was busy around 12.15 a.m. in checking trucks which had arrived at the time at the toll gate, Sri Vishnu carried away the other 9 bags of grapes through the toll gate without paying the octroi dues on the said nine bags. In his reply the petitioner also pleaded that he was innocent and had begged to be excused. By his order, dated August 11, 1972 (Annexure

13) respondent No. 3 found the petitioner guilty for having caused a loss of 0.62 NP. to the revenue. The petitioner was thereafter served with a second notice asking him to show cause why he should not be dismissed from service, vide Annexure 13. Annexure 14 is the petitioner''s reply to the second notice. Finally, by order, dated September 4, 1972 (Annexure 15) respondent No.3 dismissed the petitioner from service with immediate effect and directed that for the service of suspension from July 8, 1972 the petitioner should be paid one-fourth of his salary and D.A. in the same proportion. The petitioner next filed an appeal before the Commissioner, respondent No. 4 and his appeal was dismissed, vide order dated March 25, 1973 (Annexure 16). The petitioner then filed a civil suit challenging the order of dismissal. While the suit was pending, the U.P. Public Services Tribunal Act came into force and the suit was transferred to the U.P. Public Services Tribunal -II, Lucknow. The Tribunal by its order, dated August 30, 1979 (Annexure 17) dismissed the reference petition of the petitioner. The aforesaid three orders passed against the petitioners are under challenge in this writ petition.

2. Learned counsel appearing for the petitioner urged before this court that his dismissal was illegal as no proper enquiry, as contemplated under the Rules, was held. It is submitted that respondent No.3, no doubt, issued a charge-sheet against the petitioner but the order, dated August 11, 1972 (Annexure 13) clearly shows that no witnesses were examined in support of the charges raised against the petitioner. It is only stated that on enquiry it was found that Sri Vishnu had carried away nine bags of grape without paying the octroi duty on the same. It is also pointed out that the petitioner was not given any opportunity to cross-examine the witnesses on whose statements respondent No.3 had placed reliance and he was also denied his right to adduce materials and evidence in support of his explanation. A perusal of Annexure 13 does not indicate that any opportunity had been given to the petitioner either to cross examine Sri Vishnu or to produce materials and evidence in support of his case. The Tribunal appears to have over-ruled this objection on the ground that the petitioner had accepted the charge and pleaded guilty and there was no need of any further enquiry. Annexure 8 is the petitioner''s reply to the charge-sheet. This document contains the petitioner''s explanation as well as his clear assertion that he was not guilty (Bekasoor). Merely because he asked to be excused it does not mean that he had pleaded guilty. His apology must be read in the context of his explanation. Therefore, a full and proper enquiry was necessary before imposition of the major punishment of dismissal. This lacuna renders the order of dismissal void.

3. Further, it is worthy of note that in this case the loss to revenue was only 0.62 NP. The amount is so meagre that punishment of dismissal is, no doubt, highly disproportionate. In any event since the order of dismissal has been passed without a full and proper enquiry into the charges, the said order must be set aside. In the interest of justice it would not be proper to remand the case for fresh enquiry as the incident had taken place more than 17 years ago and the loss of revenue is negligible. In his application, dated March 10, 1989, the

petitioner has stated that since his dismissal from service along with the members of his family he is on the verge of starvation being out of employment since September 1972.

4. In the facts and circumstances of this case and for reasons aforesaid the writ petition is allowed with costs and the order of dismissal, dated September 4, 1972, the appellate order dated March 25, 1973, and the order of the Tribunal dated August 30,1979(Annexures 15, 16 and 17 respectively) are quashed. The petitioner shall be immediately re-instated in service and paid full back wages from the date of his suspension till the date of re-instatement and thereafter he shall be paid his salary and other dues to which he may be entitled under law. It is further directed that the petitioner shall be deemed to have continued in service from the date of dismissal till the date of reinstatement. As undertaken by learned counsel on behalf of the petitioner, a copy of this order shall be produced by the petitioner before respondent No.3 and the said respondent No.3 shall comply with the directions contained in this order forthwith. The hearing fee is assessed at Rs. 200/-

