
(1993) 05 AHC CK 0060
In the Allahabad High Court
Case No : Writ Petition No. 3499 (S/S) of 1991

Mataraj Pandey

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 19-05-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 05 AHC CK 0060

Hon'ble Judges : S.N.Sahay, J and Shobha Dikshit, J

Final Decision : Allowed

Judgement

Shobha Dikshit, J.—The petitioner, Mataraj Pandey, started his career with opposite party No. 2Uttar Pradesh Khad and Village Industries Board (hereinafter referred to as the "Board", where he initially joined on the post of Assistant Organiser in the year 1961. This post was later on redesignated as Assistant Superintendent (Production). The petitioner was thereafter promoted/selected on the post of Village Industries Officer on 25569 and was confirmed as such in the year 1974. The then Secretary of the Board, with the approval of its Chairman, promoted him further on the post of Assistant Director of Industries (Khadi) on purely adhoc and temporary basis vide order dated 1679. The petitioner accordingly continued on this post till he was dismissed from service vide orders dated 16190/22290.

2. It was all smooth sailing for the petitioner as he served the Board uninterrupted from 1961 to 1981 without any complaint or adverse report. Thereafter the situation changed and the petitioner faced several problems for which he had, in past, to take recourse to litigation on different issues ranging from transfer to dismissal. The details of such litigation in brief are as follows:

3. The petitioner was transferred from Lucknow to Varanasi vide orders dated 24481 which was resented by him because according to the petitioner the post which he was holding at the relevant time i.e. Assistant Director of Industries (Khadi), was a post at Head Quarters and nontransferable. Soon thereafter the

Board issued an advertisement in the news papers on 3581 for filling up the post of Assistant Director on regular basis. The petitioner challenging both, transfer and selection, filed a writ petition no. 2126 of 1981 (first in series) before this Hon"ble Court for cancellation of his transfer orders as also not to fill the post of Assistant Director already held by him. This Court, through an interim order, directed the petitioner to meanwhile appear in the selection which though he did but could not succeed and instead one Prakash Narain Tripathi was selected and the petitioner was reverted back to his substantive post of Gramodyog Adhikari¹¹ (previously designated as Village Industries Officer) vide order dated 221281.

4. Petitioner Mataraj Pandey did not join this post and was therefore suspended vide order dated 4282. The State Government lateron revoked these orders viz. suspension and reversion both, vide order dated 26682 and the petitioner alongwith others was reinstated on the post of Assistant Director of Industries.

5. The State Government, due to some technical flaws in the selection made for the post of Assistant Director, cancelled the same vide order dated 28682. Sri Prakash Narain Tripathi, who was selected in this selection as aforesaid, was therefore reverted back. Aggrieved by this reversion Sri Tripathi challenged the validity of the order dated 22682 before the U.P. Public Services Tribunal which by its judgment and order dated 261285 quashed the G. O. dated 28682 and treated Sri Tripathi to have been appointed on the post of Assistant Director for which he was duly selected. Petitioner was arrayed as respondent No. 3 in this claim petition.

6. Petitioner Mataraj Pandey filed a second writ petition bearing No. 6891 of 1985 against the judgment of the U.P. Public Services Tribunal. The State Government also filed a separate writ petition challenging the same judgment of the Tribunal, bearing No. 976 of 1986. This Hon"ble Court stayed the operation of the impugned judgment and that is how, according to the petitioner, he continued to hold the post of Assistant Director. It has been informed that while this writ petition No. 6891 of 1985 is pending Sri Prakash Narain Tripathi who had succeeded in the claim petition has superannuated on 31788 whereas the opposite party No. 2 i.e. the Board, withdrew writ petition No. 976 of 1986 preferred by it. There is a reference in the instant writ petition that some other employees of the Board also challenged the correctness of the aforesaid selection in which Sri Prakash Narain Tripathi was selected as also the validity of the constitution of the selection committee independently through Writ Petitions No. 2555 of 1982 and 4596 of 1982 which are perhaps still pending.

7. The petitioner during all this period continued to work on the post of Assistant Director of Industries on the basis of interim orders passed by this Court till 1987 when he approached this Court for the third time by filing Writ Petition No. 8659 of 1987 with the prayer that he should also be considered for promotion to the next higher post of Deputy Chief Executive Officer and the opposite parties be restrained from recommending the name of anyone else for this post. This Court,

vide order dated 25888 (passed in Writ Petition No. 8659 of 1987) directed the Board, including the State Government, to first consider the claim of the petitioner for this post and till such time they will not make any appointment and if made, that shall be subject to further orders of this Court. The petitioner though was not promoted to the post of Deputy Chief Executive Officer, higher scale of Rs. 8501720 was given to him in compliance of the interim orders passed by this Court. This writ petition is also pending and according to the petitioner he was permitted to cross the efficiency bar twice i.e. in the year 1974 and 1988.

8. Sri Mataraj Pandey was once again placed under suspension vide order dated 6989 passed by then Chief Executive Officer in contemplation of departmental enquiry. The petitioner once again approached this Court, fourth time, by filing another writ petition No 8693 of 1989 challenging the suspension order primarily on the ground of competence of Chief Executive Officer as also personal malafides. However, this writ petition was disposed of finally vide orders dated 6101989 with the direction to the opposite parties to expedite the enquiry and meanwhile to pay full salary to the petitioner.

9. The aforesaid enquiry commenced, a charge sheet was given and enquiry officer was appointed. The petitioner, feeling aggrieved, filed yet another (fifth) writ petition bearing No. 9318 of 1989 praying for quashing of the charge sheet dated 23989 primarily on the ground that the Chief Executive Officer of the Board is not the competent authority and it is the Vice Chairman of the Board who is competent to initiate disciplinary proceedings, if any, against the petitioner because the powers for this purpose stand delegated in favour of the Vice Chairman. The allegations of bias and illwill against the then Chief Executive Officer were also made. It is informed that this writ petition has been withdrawn by the petitioner after he was dismissed from service as stated above.

10. The aforesaid enquiry proceeded though the petitioner objected and resisted the same by addressing several letters raising various grounds against holding of the enquiry. It appears that the petitioner did not participate in the said enquiry and pursuant to the said enquiry, order of dismissal of the petitioner from service was passed by the Administrator who was the then Chief Executive Officer also, vide orders dated 6190/22290 agreeing with the findings of the enquiry officer that practically all the twelve charges levelled against the petitioner and contained in the charge sheet stood fully proved.

11. The petitioner preferred a representation before the State Government against this order of dismissal as the Board had been dissolved under Section 6B of the U.P. Khadi and Village Industries Act and an Administrator had been appointed. This representation was rejected by the State Government on 111290. On the reconstitution of the Board a Vice Chairman was again appointed and according to the petitioner on various requests and representations made by him and to the then Chief Minister his case was referred to the said Vice Chairman who after looking into the matter passed a detailed order dated 6491

thereby setting aside the order of dismissal, both on the ground of legality and validity i.e. the whole of the enquiry being initiated and conducted by an incompetent authority is vitiated in view of the delegation of powers in favour of the Vice Chairman and on merit, that the allegations made against the petitioner are baseless and cannot be treated as proved against him. The order of dismissal was set aside by the then Vice Chairman one Sri Ramasrey Agnihotri and order for reinstatement and payment of salary etc. to the petitioner was made by him. Pursuant to this order, the petitioner submitted his joining report also on the same day in the Board, i.e. on 6491. However, the then Chief Executive Officer referred the matter to the State Government on the question of validity of this order dated 6491 vide his letter dated 8491. There is also a reference in the pleadings that the petitioner even challenged this order dated 8491 also through yet another writ petition bearing no. 3605 of 1991 which was subsequently dismissed as not pressed on 9791.

12. Pursuant to the above noted reference made to the Government, it seems that the matter was considered by the Governor who was pleased to pass an order dated 5691 quashing the order dated 6491. This order of quashing was communicated to the petitioner by the Joint Chief Executive Officer (Establishment) vide order dated 7691.

13. Sri Mataraj Pandey has now challenged the orders dated 5691 and 7691 through the instant writ petition (No. 3499 of 1991) with the prayer that these orders (contained in annexures 1 and 2 respectively) be quashed and no effect be given to them. The main ground on which the impugned orders have been challenged finds reference in the interim orders passed by this Court on 28691 which runs as under :

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The petitioner has challenged the order passed by the Governor firstly on the ground that the Governor does not have the jurisdiction to set aside the order passed by the Deputy Chairman of the respondent Board and also on the ground that no opportunity was afforded to the petitioner before setting aside the order of his reinstatement passed by the Deputy Chairman. In view of this, the impugned order may not be given effect to till the next date of listing. It will however be open to the opposite parties to proceed in accordance with law."

14. In response to the show cause notice issued to the opposite parties, counter and supplementary counter affidavit have been filed on behalf of opposite parties No. 2 to 4 to which the petitioner has also filed rejoinder and supplementary rejoinder affidavit. All surviving writ petitions, referred to hereinabove, were directed to be clubbed together hence they have been listed together for final hearing. All the facts stated hereinabove and the orders passed from time to time by this Court as also the opposite parties alongwith other documents are contained in and form part of Writ Petition No. 3499 of 1991 which shall be referred henceforth as and when necessary.

15. Before noticing the rival contentions of the parties it would be expedient to look into the relevant provisions of U.P. Khadi and Village Industries Act, 1960 as amended from time to time.

16. U.P. Khadi and Village Industries Act was enacted in the year 1960 with a view to implement the village industries programme expeditiously. A Board was duly established under Section 4 of the Act and constituted under Section 5, with a Chairman and a Vice Chairman. The State Government is empowered under Section 10(1) to appoint Secretary (subsequently redesignated after the amendment as Chief Executive Officer) and Accounts Officer whereas rest of the other officers and employees were to be appointed by the Board in accordance with the regulations to be framed under Section 37 of the Act. Section 11 of the Act provides for powers and duties of the Secretary/Chief Executive Officer and Accounts Officers and Section 15 enumerates functions of the Board. The Board, so constituted, has been empowered under Section 31A to delegate these powers by general or special orders to the Vice Chairman, Secretary or any other Officer. Rule making power is contained in Section 36 of this Act. Section 16, however, imposes limitations on the discharge and functions of the Board by providing that the Board shall be bound by such directions as the State Government may issue from time to time. Under Section 32, if the State Government is of opinion that the Board has failed to carry out the functions under this Act or for any other reason, it may by notification in gazette dissolve the Board and all the powers to be exercised by the Board shall then be exercised by the State Government. Section 6B empowers the State Government to appoint an Administrator where the term of office or extended term of office of all the nonofficials expires or determined. It is under this provision that the Administrator was appointed for the period there was no Board to continue till reconstitution of the Board.

17. The learned counsel for the petitioner has assailed the impugned order on various grounds. As mentioned earlier, the main ground of challenge is that no opportunity of hearing was afforded to the petitioner before passing the impugned orders dated 5691 and 6691 (annexures 1 and 2). According to the petitioner, had such an opportunity been given to him he would have demonstrated that the order of dismissal passed against him was illegal, without jurisdiction and perverse and that the order dated 6491, contained in annexure 25 to the writ petition, was validly passed by the Vice Chairman of the Board who was the competent authority to pass the same.

18. It has further been urged on behalf of the petitioner that the impugned orders have firstly been passed by an authority who is not competent to pass it i.e. The Governor, in this case and, secondly, principles of natural justice stand violated as no reasonable opportunity of hearing was afforded to him for setting aside the favourable orders passed in his favour by the Vice Chairman dated 6491 as contained in annexure 25 to the writ petition. According to the petitioner the Vice Chairman was the competent authority to initiate the disciplinary proceedings against him as the Board had delegated these powers to the Vice

Chairman in the years 1967-68 being annexures 4 and 5 to the writ petition, and subsequently reiterated in 1977 (annexure RA 2 to the rejoinder affidavit).

19. Both these arguments have been repelled by the counsel for the opposite parties 2 to 4 on the ground that the Governor is the head of the State and exercises powers over all the affairs of the State under Article 53(1) read with Article 154(1) of the Constitution of India. Reliance has also been placed on the provisions of Section 16 of the Act of 1950 as amended. On the question of delegation it has been urged that the same stood cancelled/superseded in view of the resolution dated 211089 passed by the Board ratifying the action taken by the Chief Executive Officer and contained in annexure B5 to the counter affidavit filed on behalf of the said opposite parties. In this meeting the powers of the Board as contained in Section 10(3) were delegated under Section 31A to the Commissioner and Chief Executive Officer with certain conditions. Under resolution 2 all the actions taken against petitioner from time to time were ratified and approved by resolution 8 including the initiation of departmental proceedings against the petitioner Sri Mata Raj Pandey. On the question of nonaffording of opportunity in compliance of principles of natural justice it has been submitted by the learned counsel for the opposite parties that since the order dated 6491 passed by the Vice Chairman was void, illegal and without jurisdiction, hence, as per settled law opportunity of hearing was not required to be given to the petitioner.

20. In rejoinder, to this argument, the learned counsel for the petitioner submitted that neither the Governor was competent to pass the impugned order nor there can be subsequent ratification of the action initiated earlier by an incompetent authority, i.e. the Chief Executive Officer, without proper or valid delegation in latter's favour. In support of this contention reliance has been placed on two decisions of Hon'ble Supreme Court, Bar Council of Delhi Vs. Surjeet Singh (AIR 1980 SC 1612) where it has been held that mere approval of an invalid Rule cannot make the Rule valid; in other case which is directly on delegation Marathwada University Vs. Sheshrao Balwant Rao Chavan (1989) 3 SCC 133) it has been held that when statute prescribes a particular body to exercise powers it must be exercised by that body alone and not by others unless it is delegated, hence any action taken without authority is void ab initio and cannot be ratified later on. It is made clear at this juncture that we are only referring to the authorities, referred by the learned counsel but are refraining from recording any finding on this issue for the reasons to be recorded hereinafter.

21. We have heard the learned counsel for the parties at great length who have taken us through the pleadings on the record and other annexures etc. and we are of the considered view that the petitioner ought to have been afforded a fair opportunity before the order dated 6491 was considered by the State Government and was quashed specially because this order has in effect nullified the order of dismissal passed against the petitioner thereby restoring him to his

post and status. Cancellation of this order, no doubt, shall effect and alter the position of the petitioner prejudicially. Counsel for the opposite parties admits that no opportunity was given to the petitioner at the time the Governor considered the validity of the order dated 6491 as he was not entitled for the same either in law or in the facts of the case.

22. The sole question, therefore, for determination in this case is as to whether the petitioner was entitled to reasonable opportunity of hearing before passing of the impugned orders or not ? Whether this is not a case governed by the well settled maxim of *audi alteram partem* and whether the principle of natural justice of affording a reasonable opportunity are not attracted where the order which is challenged by the aggrieved party is said to be an invalid order. It is, therefore, to be examined whether any opportunity at all was to be given to the aggrieved person to establish his stand and to show that the decision of the public authority has adversely affected his legal and valid rights.

23. Even assuming that the void acts are devoid of legal effects and can be ignored on the ground of being void *ab initio* thus ineffective but the aggrieved party is certainly entitled to an opportunity to show cause to the contrary. By now, in administrative law the principles of natural justice are very well defined, that the same comprises of, besides other fundamental principles, that a man's defence must always be fairly heard. Rules of natural justice are not only confined to judicial power, they apply equally to administrative power and its observance is implied mandatory requirement in quasijudicial proceedings also and the nonobservance of the same invalidates the very exercise of executive powers. Consistently the Courts of law have invalidated such administrative acts where any less fair procedure has been adopted. H.W.R. Wade in Administrative Law (VI Edn.) while dealing with the topic of Right of fair hearing in administrative cases said, "The character of the authority was not what mattered; what mattered was the character of the power exercised ; If it adversely affected the legal rights or interests, it must be exercised fairly." It is not always a decision that matters but it is decision making process which matters. We, therefore, come to the conclusion that the petitioner has been denied a fair opportunity to show or to support that the Vice Chairman was and is the competent authority at all relevant times to initiate disciplinary proceedings against the petitioner and therefore the order passed by the said authority dated 6491 contained in annexure 25 to this writ petition ought not to have been quashed by the Governor without affording reasonable opportunity of hearing.

24. In the light of the above observations the impugned order contained in annexures 1 and 2 dated 5691 and 7691 are hereby quashed with the direction that the opposite parties shall decide the matter afresh after providing opportunity of hearing to the petitioner. It shall be open to the petitioner to raise all such points/issues as are open to him in the facts and circumstances of the case. The authorities shall decide the matter within two months from the date a

certified copy of this order is produced before them. Till then the order dated 6491 shall be treated to remain in operation and the petitioner shall be entitled to all such benefits as have been provided in that order. The writ petition (No. 3499 of 1991) is accordingly allowed but with no orders as to cost.