
(2009) 12 AHC CK 0123
In the Allahabad High Court
Case No : Writ Petition No.5504 (S/S) of 2008

Mewa Lal

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Citation : (2009) 12 AHC CK 0123

Hon'ble Judges : Sheo Kumar Singh, J

Final Decision : Disposed Of

Judgement

Sheo Kumar Singh, J.—Heard Sri R.C. Tewari, learned Advocate in support of this petition and learned Standing Counsel.

2. As pleadings are complete,as rightly submitted this petition is to be finally heard and decided.

3. Challenge is to the order passed by the Executive Engineer dated 14.8.2008, Patrank 1322 (Annexure1) and Patrank 1321 (Annexure2 to the writ petition).

4. Both orders were passed by the Executive Engineer on the same date. By the first order, as noted above, petitioner was placed under suspension and Block Development Officer Mishrikh was appointed as Inquiry Officer. By the second order a penalty was imposed on the petitioner for deposit of Rs.40,000/= for the same charge and an amount of Rs.1,000/= was directed to be recovered from the subsistence allowance of the petitioner.

5. When the matter was entertained by this Court on 8.9.2008 operation of the second order (Patrank 1321) dated 14.8.2008 by which recovery from the subsistence allowance, as noted above, was stayed by this Court.

6. Submission is that so far second order by which direction for recovery of the amount from the subsistence allowance is concerned?? that is illegal for the basic fact that simultaneous to the order of suspension the authority cannot be said to be empowered to conclude against the petitioner?? in respect to the correctness

of the charge and unless that is finally decided against the petitioner, no recovery can be directed.

7. Submission is that besides the aforesaid from the subsistence allowance direction to recover the amount should not have been given. Submission is that so far order of suspension is concerned the very first line of the order indicates that passing of the order is not an independent exercise of the competent authority rather it was at the dictate/command of the concerned District Magistrate.

8. Submission is that there is some charge of wrong dealing by the petitioner in respect to some amount which is said to have been deposited towards Animal Tagging and although in the preliminary report it is said that the charge is of the year 2006 whereas in the year 2004 itself petitioner stood transferred from Vikas Khand Kutubnagar to Vikas Khand Sahab Nagar, Gulriha.

9. Submission is that besides the aforesaid the Block Development Officer cannot be said to be the person authorized under the Rules to be appointed by the respondent No. 3 as Inquiry Officer and thus that is to be taken care.

10. Submission is that so far inquiry is concerned that can be always directed by the competent authority and that is to be carried out by the authority so empowered under the Rules?? but there has to be independent exercise by the competent authority.

11. Lastly, it is submitted that till date to the information of the petitioner no chargesheet has been submitted/served although one and half year has passed and therefore petitioner cannot be permitted to remain under suspension for indefinite period.

12. Learned Standing Counsel in response to both the aspects submits that if the competent authority was satisfied on preliminary exercise to the facts that order of recovery of the amount for which petitioner is charged is to be passed and at the same time petitioner is to be placed under suspension then no exception can be taken to it.

13. Submission is that of course argument about submission of the charge sheet and completion of the inquiry with expedition can be correct and thus if inquiry has not progressed then the concerned authority is to expedite.

14. On examination of the facts, so far second order dated 14.8.2008, Patrank 1321 (Annexure1) is concerned this court straightway can say that on the date of passing of the order of suspension in respect to the charge on which petitioner is to be proceeded/inquired, passing of the order for recovery of the amount and that too from the subsistence allowance in no way can be said to be justified.

15. The charge of some indecent behaviour in respect to the amount concerning to the society of Kutubnagar is said to be totally misconceived as in the year 2004 itself petitioner claims to have been transferred from that place and in the

preliminary report it is said that the issue is of the year 2006 and thus direction to recover the amount from the petitioner without conclusion of inquiry and any progress in that respect in no way can be said to be justified thus?? is to be interfered by this court.

16. So far first order passed by the respondent No. 3 dated 14.8.2008 Patrank 1322 (Annexure1 to the writ petition) is concerned on perusal it is clear that the authority has referred to the direction given by the learned District Magistrate and thus it may not be an independent exercise of the competent authority. It was required by the competent authority to get the things assessed/examined independently at his level. The fact as submitted before this court that the issue is of the year 2006 whereas petitioner was not placed there since two years back is to be taken note. The authority who has been appointed as inquiry officer cannot be said to be the person authorised under the Rules is also to be taken note.

17. Submission of the learned counsel if is found to be correct that till date no charge sheet has been submitted is also very serious and therefore so far inquiry proceeding is concerned as this court is not to assess the correctness of the factual aspect so far inquiry is concerned that cannot be interfered but at the same time the competent authority can always be asked to get the needful done in accordance with law.

18. Accordingly, this petition succeeds and is allowed. The order of respondent No. 3 dated 14.8.2008, Patrank 1321 (Annexure2 to the writ petition) in respect to the direction for recovery of the amount is hereby quashed.

19. So far the order of respondent No. 3 dated 14.8.2008 (Patrank 1322, Annexure1 to the writ petition) is concerned as it is said that it has been passed at the dictate of the concerned District Magistrate, this court directs that competent authority will apply its mind to the facts and will pass fresh orders in respect to the inquiry and its completion within a time bound frame.

20. In view of the aforesaid, this court directs that till passing of the fresh orders by the competent authority, as permitted, the effect henceforth to the impugned order will be kept in abeyance. On passing of the fresh orders, as permitted, the law will take its own course.

21. Writ petition stands decided/disposed of accordingly.

(Petition allowed)