
(2004) 10 AHC CK 0089
In the Allahabad High Court
Case No : Special Appeal No. 1396 of 2004

Moinuddin	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 26-10-2004

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1), 311(2)
Official Secrets Act, 1923 — Section 3, 9

Citation : (2005) 6 AWC 5404 : (2005) 1 ESC 572

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Pankaj Shukla, for the Appellant; Yadav and K.C. Sinha, S.S.C., for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—Facts and circumstances giving rise to this special appeal are that the appellant had been working as a Senior Accounts Clerk in National Cadet Corps Office at Mathura and had been working there since 1967. On 13.7.2002, at about 6 p.m. Police levelled allegation u/s 3/9, Indian Official Secret Act, being Case Crime No. 212 of 2002, P.S. Sadar Bazar, District Mathura and made accused in the aforesaid commission of the crime. A photostat copy of the map of certain other co-accused filed the revision petition before this Court and further proceedings in the criminal case have been stayed vide order dated 19.8.2004. While entertaining the Revision No. 3383 of 2004, Moinuddin v. State of U.P. and Ors. On the same charges, petitioner stood suspended vide order dated 9.8.2002 and vide order dated 23.8.2004, petitioner had been dismissed from service without affording any opportunity to defend. Being aggrieved, petitioner appellant filed the writ petition which has been dismissed as mentioned aforesaid. Hence this appeal.

2. This special appeal has been filed against the judgment and order dated 20.9.2004 of the learned Single Judge, wherein the writ petition filed by the

petitioner-appellant has been dismissed only on the ground that the protection given under Article 311(1) may not be available in a case like the instant, placing reliance upon the judgment of the Constitution Bench of the Hon"ble Apex Court in Union of India and Another Vs. Tulsiram Patel and Others, , as the case fall under Clause (2) of Article 311 of the Constitution.

3. We have heard learned counsel for the appellant Mr. Pankaj Shukla and Mr. Yadav, learned counsel appearing for the respondents.

4. The issue of resorting to the provisions of Article 311(2) of the Constitution of India, which provides for circumstances in which services of an employee can be terminated without holding inquiry, has been considered by the Hon"ble Apex Court time and again and it has been held that the existence of the circumstances mentioned therein is a condition precedent to resort to this exceptional and extraordinary procedure. The normal rule to deal with a delinquent employee is to hold enquiry under the Statutory Rules and only in exceptional circumstances Departmental Enquiry may be dispensed with in which the waiving of normal rule of enquiry may be justifiable as the order cannot be passed on strenuous and irrelevant considerations. [Vide Union Territory, Chandigarh and Others Vs. Mohinder Singh, ; Kuldip Singh Vs. State of Punjab and Others, ; Chandigarh Administration, Union Territory, Chandigarh and others Vs. Ajay Manchanda, etc., ; Jaswant Singh Vs. State of Punjab and others, ; Chief Security Officer and Others Vs. Singasan Rabi Das, ; A.K. Sen and Others Vs. Union of India (UOI) and Others, ; Shivaji Atmaji Sawant Vs. State of Maharashtra and Others, ; Satyavir Singh and Others Vs. Union of India (UOI) and Others, ; and Ex. Constable Chhotelal v. Union of India and Ors., (2000) 10 SCC 196].

5. Removal of an employee on the ground of misconduct where the enquiry is required to be conducted and charges to be proved has categorically been held by the Constitution Benches of the Hon"ble Supreme Court to be quasi-judicial functions. [Vide Bachhittar Singh Vs. The State of Punjab, ; and Union of India (UOI) Vs. H.C. Goel,). In the aforesaid cases, it has been held that a writ Court can interfere where the order was based on evidence or has been passed in mala fide exercise of power and even to see as to whether he was passing the order in exercise of the powers conferred under Article 311(2)(b) and (c) of the Constitution.

6. In Nishi Kant Jha Vs. The State of Bihar, , the Supreme Court held that when an order passed under Article 311(2)(c) of the Constitution is challenged in a writ Court, "it is incumbent upon the authority passing the order to prove that the requisite satisfaction was achieved."

7. In Union of India and Another Vs. Balbir Singh and Another, , the Hon"ble Supreme Court considered the scope of judicial review against the order of the Competent Authority to terminate the services of an employee without holding an inquiry and after placing reliance on its earlier judgments in A.K. Kaul and

another Vs. Union of India and another, ; and S.R. Bommai and others Vs. Union of India and others etc. etc., , reached the conclusion that the order of the Authority can be examined to ascertain whether it stood vitiated either by malafides or is based on wholly extraneous and/or irrelevant grounds. However, it observed that the Court cannot sit in appeal over such an order or substitute its own decision for the satisfaction of the Authority. So long as there is a material before the Authority which is relevant for arriving at his satisfaction as to action being taken or dispensation of inquiry. The Hon''ble Court enumerated the following principles for judicial review in such a case :

(i) That the order would be open to challenge on the ground of malafides or being based wholly on extraneous and/or irrelevant grounds ;

(ii) The burden is upon the authority who has passed the order to establish that circumstances which warranted the application of the provisions Article 311(2) were existing and the authority concerned had been subjectively satisfied on that count;

(iii) Even if some of the material, on which the action is taken, is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action :

(iv) The truth or correctness of the material cannot be questioned by the Court, nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the Authority;

(v) The ground of malafides takes in, inter alia, situations where the proclamation is found to be clear case of abuse of power or what is sometimes called as fraud on power; and

(vi) The Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the Authority is the best judge of situation and it was also in possession of information and material, on which the decision was based. However, its opinion/decision may not be conclusive.

8. Therefore, in a particular case, the Court may examine the circumstances, on which the decision of the Authority was based and if it finds that the said circumstances have no bearing whatsoever on the security of the State, the Court can hold that the satisfaction of the Authority which was required for passing such an order stood vitiated by wholly extraneous or irrelevant considerations.

9. In the instant case, the learned Single Judge did not even ask for filing the counter-affidavit to the respondents and dismissed the petition merely making reference to the enabling provision for passing the order of termination. The learned Single Judge ought to have asked the respondents to place the materials before the Court and satisfied that the circumstances were so that holding the enquiry against the appellant-petitioner ought to have been against the interest of the State.

10. In the instant case, there is nothing in the order dated 23rd August, 2004, as under what circumstances it was considered not necessary to hold the inquiry and there is nothing on record to show that the charges against the petitioner-appellant were so grave that it was necessary to dismiss him from service with immediate effect without waiting the result in a criminal case pending against him. Thus, we are of the considered opinion that the matter could not have been disposed of by the learned Single Judge by such a lacunae order.

11. In view of the above, Special Appeal succeeds and is allowed. The judgment and order of the learned Single Judge dated 20.9.2004, passed in Writ Petition No. 38631 of 2004, is hereby set aside and the matter is remanded to the learned Single Judge to decide the same on merit.