

(2015) 08 AHC CK 0196

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32254 of 1996

Molhu Prasad Chaudhary

APPELLANT

Vs

D.I.O.S., Siddharthnagar and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Citation : (2015) 9 ADJ 56

Hon'ble Judges : B. Amit Sthalekar, J.

Bench : Single Bench

Advocate : A.K. Srivastava and S.K. Srivastava, for the Appellant

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—Heard Sri Hari Shankar Chaurasiya holding brief of Sri A.K. Srivastava, learned counsel for the petitioner, Sri Pramod Kumar Singh holding brief of Smt. Anita Tripathi, learned counsel for the respondent Nos. 2 and 3 and Sri Upendra Singh, learned Standing Counsel for the respondent No. 1. This writ petition was filed seeking quashing of the order dated 2.7.1996 whereby his services were terminated with effect from 5.7.1996. During the pendency of the writ petition petitioner Molhu Prasad Chaudhary has expired and has been duly substituted by his heirs.

2. The submission of Sri Hari Shankar Chaurasiya is that the petitioner Molhu Prasad Chaudhary was not given any opportunity of hearing before passing the order of termination nor any charge-sheet was given and in any case charges have not been held to be proved against late Molhu Prasad Chaudhary. He further submitted that the order of termination is a cryptic order and all that it records is that Molhu Prasad Chaudhary did not submit his explanation to the charges and he did not appear before the Enquiry Committee and therefore his services have been terminated.

3. His submission is that even assuming that charge-sheet had been issued to late Molhu Prasad Chaudhary and he did not appear before the Enquiry

Committee, the Disciplinary Authority i.e. namely the Principal or Enquiry Committee was duty bound at least to prove the charges against late Molhu Prasad Chaudhary. Charges cannot be accepted in toto as proved.

4. Respondents have in their counter-affidavit on the other hand stated that charge-sheet was duly given to the petitioner and the petitioner was also required to submit his explanation before the Enquiry Committee but he neither appeared nor submitted any explanation before the Enquiry Committee and, therefore the Disciplinary Authority i.e. Principal of the College had no option but to accept the charges as proved and terminate the services of the petitioner.

5. A Division Bench of this Court in Special Appeal No. 486 of 2015, Ramesh Mohan Shukla v. State of U.P. and others, decided on 28.7.2015 has held as under:

"The only submission which has been urged in support of the appeal is that even if an employee against whom a charge of misconduct is being enquired into does not participate in the enquiry, that does not obviate the burden which is cast upon the employer to prove the charge of misconduct during the course of the enquiry. In the present case, it was submitted that a reading of the enquiry report would establish that there is no finding that the misconduct had been proved. The Enquiry Officer has merely held that the appellant did not participate in the enquiry and must therefore be deemed to have admitted the charges in the enquiry.

On reading the report of the Enquiry Officer, we find merit in the submission of the appellant. The Enquiry Officer has adverted to the four charges and has itemised the evidence below each of the charges. Having said this, the Enquiry Officer has found fault with the appellant for not participating in the enquiry and has come to the conclusion that the appellant must be deemed to have admitted the charges. There is a basic fallacy in the findings of the Enquiry Officer. The burden to establish a charge of misconduct lies on the employer. Whether or not the charge of misconduct is established has to be deduced on the basis of the evidence on the record. When an employee whose misconduct is being inquired into does not participate in the enquiry despite notice, the consequence is that the employee would not be entitled to urge that the enquiry was in violation of the principles of natural justice. However, that does not enable the employer to obviate the duty to establish the charge of misconduct by leading appropriate evidence. The report of the Enquiry Officer in the present case has no discussion at all in regard to the nature of the evidence and whether the charge of misconduct would stand established on an evaluation of the evidence adduced during the enquiry. The mere fact that the appellant did not participate in the enquiry cannot be held to imply that the charge of misconduct stands established. The learned Single Judge has, in the circumstances, erred in coming to the conclusion that there would be no infirmity in the order of the disciplinary authority. The learned Single Judge was of the view that since the appellant did not participate in the enquiry, it was not open to him to assail the enquiry report

on the ground that the enquiry was held ex parte. The fact that the appellant did not participate in the enquiry would mean that it would not be open to him to contend that he was not furnished an adequate opportunity of hearing. However, from that, it cannot be inferred that the charge of misconduct has been established unless the evidence is duly discussed and findings arrived at on the basis thereof by the Enquiry Officer. In the present case, there is a material flaw in the report of the Enquiry Officer as noted above."

6. In my opinion, the impugned order is illegal and cannot survive inasmuch as even if it is accepted that the charge-sheet has been issued to the petitioner and the petitioner did not submit any explanation thereto and did not appear before the Enquiry Committee, it was the duty of the Enquiry Officer or the Enquiry Committee, as the case may be, to examine the charges and the evidence on record before the charges could be accepted as correct or proved and in any case without adopting this procedure the finding of guilt could not have been recorded nor services of the petitioner could have been terminated. Therefore, the impugned order dated 2.7.1996 is absolutely illegal and contrary to the law laid down by the this Court in the case of Ramesh Mohan Shukla (supra) and is accordingly quashed.

7. Case of the petitioner was that he was appointed as Assistant Teacher and not as Peon. In para-4 of the writ petition although it is stated that he was appointed as Assistant Teacher but he was throughout given the salary of a Peon. There is no document on record to show that late Molhu Prasad Chaudhary was appointed as Assistant Teacher. The case of the respondents also is that late Molhu Prasad Chaudhary was never appointed as Assistant Teacher but rather he was appointed as Peon.

8. In this view of the matter, the order of termination having been held to be illegal and quashed, legal heirs of late Molhu Prasad Chaudhary shall be entitled to the entire back wages except for the period from 4.5.2011 when the writ petition was dismissed in default till 16.9.2014 when it was restored. The writ petition stands allowed.