

(2013) 01 AHC CK 0311

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 6531 of 2006 and 6688, 2672 and 2298 of 2000

Niyaz Ahmad Ansari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Citation : (2013) 1 ADJ 621

Hon'ble Judges : Surendra Vikram Singh Rathore, J

Bench : Single Bench

Advocate : R.P. Pandey and Alok Sharma, for the Appellant; D.R. Mishra and M.M. Asthana, for the Respondent

Final Decision : Disposed Of

Judgement

Surendra Vikram Singh Rathore, J.—The instant writ petition has been filed challenging the order of dismissal of the petitioner dated 14.7.2006.

In brief the facts giving rise to the present petition are that in the year 1998 entrance examination of BTC training was held in which the petitioner appeared and selected. On 14.8.2000 call letter was issued to the petitioner and thereby he was required to appear with documents in original by 15.8.2000. The petitioner completed all the formalities required for taking admission in BTC training and after completing BTC training the petitioner has acquired legal right to be admitted in the institution, but he was shocked when his name was not called for attendance in the class. The petitioner moved representation against the said action of the respondents. His representation was not decided, therefore, he filed writ petition No. 6688 (S/S) of 2000 wherein by interim order dated 21.11.2000 this Court directed the opposite parties to permit the petitioner to continue his BTC training till the next date of listing and the same shall be subject to the further orders of this Court.

The petitioner was appointed as Assistant Teacher Primary School, Mozariha,

Block Sheopur, Bahraich and for certain allegations he was placed under suspension and thereafter dismissed from service on the ground that the certificate of teacher's ward and caste certificate filed by the petitioner were forged and fabricated. The suspension order was challenged by him in writ petition No. 1368 (S/S) of 2006 which was disposed of with the direction to the opposite parties to complete the inquiry within a period of two months. Since the inquiry was not completed within the aforesaid period, the contempt petition was filed by the petitioner. The allegation of the petitioner is that feeling aggrieved by the notice of the said contempt proceedings the petitioner was dismissed from service without holding any inquiry vide impugned order 14.7.2006. A perusal of the impugned order shows that on the basis of the Teacher's ward certificate additional 10-marks were awarded to the petitioner on the basis of which his name appeared in the select list. The caste certificate filed by the petitioner was also found to be fabricated. Charges were framed against the petitioner and notice was issued to him. It is submitted that he had not admitted the charges and only on the basis of the explanation submitted by him he was held to be guilty and his services were terminated.

2. Learned counsel for the respondents has stated during the course of argument that in this case no oral inquiry was conducted and on the basis of the charge-sheet and other documents and keeping in view the explanation submitted by the petitioner his services were terminated. Now the moot question involved in this petition is as to whether such an inquiry can be said to have been completed in accordance with law and principle of natural justice. The Division Bench of this Court in the case of Lucknow Kshetriya Gramin Bank v. Shri Devendra Kumar Upadhyay, 2009 (27) LCD 990, has held in para 11 as under:

In case an employee is charged of misconduct and charge-sheet is issued, it has to contain precise and specific charges along with the evidence which the department wants to rely upon, in proving the charge and the charges along with the copy of documents should be provided to the delinquent. After asking the reply from the delinquent, the enquiry is to proceed where the charges are to be proved by the department concerned, on the basis of the evidence which the department chooses to produce, oral as well as documentary. The delinquent also has to be provided, adequate and reasonable opportunity to lead evidence in rebuttal, may be oral or documentary or both. It is on the basis of evidence so led and the material available on record that the Inquiry Officer has to apply his mind to find out whether the charge levelled against him stands proved or not.

3. In the case of Gyandas Sharma v. State of U.P., 2009 (27) LCD 926, this Court has held in para 5 and 6 as under:

It is settled proposition of law that regular inquiry means opportunity to submit reply to charge-sheet and also to lead evidence in defence. Even if the delinquent employee does not cooperate it shall always be incumbent on the inquiry officer to record oral evidence to substantiate the charges. Since the oral inquiry was not recorded to substantiate the charge as a natural consequence the delinquent

employee could not avail the opportunity to cross-examine witness vide judgment in *Om Pal Singh Vs. District Development Officer, Ghaziabad and others*, *Lalta Prasad v. State of U.P. and others*, 1998 (16) LCD 358; *Ram Bhul Sharma Vs. State of U.P. and Others* ; *Subodh Kumar Trivedi Vs. State of U.P. and others*, ; *Uma Shankar Yadav Vs. Registrar of Coop. Societies and Others*, . Submission of the petitioner's counsel in view of the above, seems to be correct.

4. In the present case, undoubtedly, no oral evidence was recorded during the course of inquiry proceedings. It was incumbent on the inquiry officer to record oral evidence to substantiate charges. Documents on record should have been proved by cogent reasons by recording finding of fact on merit by the inquiry officer but the same has not been done. The inquiry has been conducted in utter disregard to principles of natural justice. Since the impugned order has been passed on the basis of the inquiry report which suffers from substantial illegality and violative of principles of natural justice, the order of punishment vitiates. The writ petition deserves to be allowed.

5. The Division Bench of this Court in the case of *Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another*, , has observed that after service of the charge-sheet evidence has to be led and opportunity has to be given to the employee to cross-examine the witnesses. The relevant observations are as follows;

In our opinion after the petitioner replied to the charge-sheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an ex parte enquiry should have been held but the petitioner's services should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the charge-sheet, he was given a show-cause notice and thereafter the dismissal order was passed. In our opinion, this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice.

Again in the case of *Om Pal Singh Vs. District Development Officer, Ghaziabad and others*, , this Court held that after service of charge-sheet and submission of reply no date was fixed for evidence or for examination of witnesses which clearly shows that the principle of natural justice were violated. Thus the entire enquiry proceedings and the order of dismissal were bad and liable to be quashed including the order of dismissal. In *Hulashi Ram Sagar v. State of U.P. and others*, 2002 (1) ESC 497 (All)(DB), a Division Bench of this Court also set

aside the order of punishment on the ground that it had been passed only after obtaining the reply to the charges, without holding any regular enquiry.

In the facts of the instant writ petition it is an admitted fact that no oral inquiry was conducted. This fact has been admitted by the counsel for the respondents during the course of his argument. Therefore, in view of the above mentioned settled legal position the order of dismissal becomes unsustainable under law as the inquiry has been conducted without following the principles of natural justice. Therefore, this writ petition deserves to be allowed and is hereby allowed.

The impugned order of dismissal is hereby set aside.

The respondents are directed to proceed with the inquiry afresh from the stage of charge-sheet and the same shall be concluded within a period of four months from today. Reinstatement of the petitioner and the payment of back wages shall be subject to final outcome of the inquiry.

All the writ petitions stand disposed of accordingly.