
(1999) 09 AHC CK 0069
In the Allahabad High Court
Case No : C.M.W.P. No. 40653 of 1999

Pasupati Singh

APPELLANT

Vs

Collector, Gorakhpur and others

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 4 AWC 3563 : (1999) AWC 3563 : (1999) 3 UPLBEC 2304

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Prakash Padia, R.G. Padia and Bhim Singh, for the Appellant; A. Upadhaya, S.C., for the Respondent

Judgement

A.K. Yog, J.—Heard Sri Prakash Padia, Senior Advocate, assisted by Sri Bhim Singh Advocate, learned counsel for the petitioner and Sri. A. Upadhya, learned standing counsel for all the respondents.

2. Learned counsel for the parties are agreed that petition may be decided finally at the admission stage as contemplated under rules of the Court.

3. Petitioner claims a writ of mandamus, unfortunately for a purpose, not considering while Article 226 was incorporated in the Constitution. Sole purpose of the present petition is that authority be awakened from slumber and required to pass appropriate orders on the representation, first one, according to the petitioner, was filed as early as in December, 1998.

4. It is, however, interesting to note that when petition was filed and taken up for admission, on 22nd September, 1999, learned single Judge hearing the case was pleased to grant time to the learned standing counsel for obtaining Instruction.

5. Learned standing counsel, after perusing the file of the case maintained in the Office of Chief Standing Counsel, states that no instructions have been received.

6. Petitioner contends that he was working as Assistant Development Officer

(ISB). According to him, he was suspended vide order dated 27.12.1997. Suspension order (Annexure-3 to the petition) was quashed by the High Court on the ground that authority purported to have Issued an order of suspension at that stage was not competent. This Court has left it open to the competent authority to pass necessary order of suspension. Petitioner joined for short period on one or two occasions. There is some dispute about payment of salary for a few days.

7. Petitioner again purports to have been suspended vide order dated 15.10.1998 (Annexure-4 to the petition) but it was served on the petitioner, as submitted by the learned counsel for the petitioner, on 22nd December. 1998. It is further submitted that petitioner has attained the age of superannuation on 31st December, 1998.

8. Petitioner made representation dated 30.12.1998 for illegal withholding of his salary for certain period and also representation dated 4.3.1999 complaining that he is being kept under suspension without any positive step being taken for holding disciplinary enquiry.

9. Petitioner is aggrieved by nostalgic "over-delay" of disciplinary proceedings inasmuch as it has resulted in withholding of his pension and other post-trial benefits. The situation, which boils down in the facts of the present case, is that petitioner is deprived of salary and he is also not getting pension and post trial benefits since he has attained the age of superannuation. Above all respondents are not bothered to take steps for holding disciplinary enquiry.

10. Petitioner contends that he is being subjected to such mental torture and physical Inconvenience which will surpass "punishment" even if he is to face one in distant future.

11. In para 13 of the writ petition, it is asserted that in spite of repeated request, no charge-sheet has been issued to him.

12. Who is to be blamed for waste of public exchequer which is but natural when a Government servant is kept out of work and paid subsistence allowance without holding an "enquiry" which ought to have been a follow-up action. As otherwise, action of suspension gets vitiated because of abuse of lawful authority.

13. Respondents cannot be permitted to take advantage of their inaction/negligence or apathy in such a matter. Perusal of the suspension order dated 15th October, 1998 (Annexure-4 to the writ petition) shows that charges relate to the year 1992 to 1994.

14. Respondents, in the facts of the present case, are not going to suffer if the order of suspension is quashed with liberty to proceed with disciplinary enquiry if at all permissible under law subject to the condition that it shall be completed in accordance with law within a period of six months.

15. The facts of the case and over-all situation demands that petitioner be paid

his post-retrial benefits forthwith. Concerned authority may, at best, take an undertaking of the petitioner or security (other than cash and bank guarantee) for some reasonable amount which may secure the interest of the employee also during the period of enquiry keeping in mind relevant circumstances and factors e.g., nature and gravity of charges, financial status and implications etc.

16. Suspension order dated 15th October, 1998 (Annexure-4 to the petition) Is quashed.

17. Learned standing counsel submits that since respondents had no opportunity to file counter-affidavit on factual aspect of the case, this Court may not issue an order for post-retrial benefits at least for a period of six months, during which enquiry is required to be completed.

18. I have considered the above submission on behalf of the respondents and fail to find favour with the same. At the same time. I grant opportunity to the respondents to file an application for review, in case respondents feel that this order require modification.

19. Writ petition is allowed subject to the observations/directions made above.

20. Parties will bear their own costs.