
(2003) 02 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 35872 of 2001

Prahlad Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 13

Citation : (2003) 2 AWC 1326(2) : (2004) 1 LLJ 260

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Ashok Khare, N.K. Pandey, Sudha Pandey and Harish Chandra Dwivedi, for the Appellant; V.B. Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for quashing the impugned order dated 15.9.2001 Annexure-1 to the writ petition and the order dated 29.7.2000 Annexure-14 to the writ petition.

2. Heard learned counsel for the parties.

3. The respondent No. 3 is a company registered under the Companies Act, and it is a Government Corporation. The petitioner was an employee of the Corporation and he was charge-sheeted for financial Irregularities. True copy of the charge-sheet dated 19.11.1997 is Annexure-9 to the petition. A perusal of the same shows that there were serious allegations of financial irregularities against the petitioner. The petitioner sent reply to the charge-sheet vide Annexure-10 and thereafter an enquiry was held in which the petitioner was found guilty. True copy of the enquiry report is Annexure-S.A.-2 to the supplementary affidavit filed by the petitioner. The enquiry officer found that the petitioner illegally and with oblique motive of personal gain manipulated the records and made illegal payments towards fake purchases. On the basis of this report, the petitioner was dismissed from service vide order of the Managing

Director dated 29.7.2000 Annexure-14. The petitioner filed an appeal against the dismissal order before the Chairman of the Corporation and that appeal was partly allowed and the petitioner was reinstated with the observation that the Managing Director who passed the dismissal order can give the petitioner a censure entry for his negligence. In the appellate order, it has been mentioned that the charge of embezzlement and financial irregularities against the petitioner are not found proved. However, it was found by the appellate authority that the petitioner had been negligent.

4. Thereafter, by means of the impugned order of the State Government dated 15.9.1991 copy of which is Annexure-1 to the petition, the termination order of the Managing Director was restored and the appellate order was set aside. The short point in this petition is whether there is any provision for revision, which empowers the State Government to set aside the order of the Chairman of the Corporation. It is well-settled that revision, like an appeal, is a creature of the Statute and hence, unless there is a provision for revision, no revision is maintainable against the appellate order of the Chairman of the Corporation. The submission of the learned counsel for the petitioner is that there is no provision for revision, and hence, the impugned order is without Jurisdiction,

5. The submission of the learned counsel for the respondents is that the Board of Directors of the Corporation had passed a resolution by which the U. P. Government Servant (Discipline and Appeal) Rules, 1999 had been adopted by it mutatis mutandis vide Annexure-S.C.A.-1 and Annexure-S.R.A.-1. Hence, it is submitted that a revision lay before the State Government under Rule 13 of the U. P. Government Servant (Discipline and Appeal) Rules, 1999. On the other hand, the submission of the learned counsel for the petitioner is that the mere adoption of the rule by the Corporation does not confer revisional power on the State Government and hence the impugned order Annexure-1 to the petition is without jurisdiction. It is submitted that employees of the Corporation are not Government servants and hence, the State Government is not the revisional authority in service matters relating to the employees of the Corporation.

6. Counter-affidavit and rejoinder-affidavits have been filed in this case and we have perused the same. A supplementary counter-affidavit has also been filed and in Para 2 of the same, it is stated that by resolution of the Board of Director dated 10.7.2001, the U. P. Government Servant (Discipline and Appeal) Rules, 1999 have been adopted vide Annexure-S.C.A.-1.

7. In our opinion since by resolution dated 10.7.2001, the Corporation has mutatis mutandis adopted the U. P. Government Servant (Discipline and Appeal) Rules, 1999, the provisions in the aforesaid rules are applicable to the employees of the Corporation. A copy of the 1999 Rules is Annexure-S.A.-3 to the supplementary affidavit filed by the petitioner. Rule 13 of the same gives power to the State Government of revision.

8. Rule 13 states as follows :

"13. Revision.--Notwithstanding anything contained in these rules, the Government may of its own motion or on the representation of concerned Government servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules ; and

(a) confirm, modify or reverse the order passed by such authority ; or

(b) direct that a further inquiry be held in the case ; or

(c) reduce or enhance the penalty imposed by the order ; or

(d) make such other order in the case as it may deem fit."

9. In our opinion, since the Corporation has adopted Rule 13 mutatis mutandis, hence the State Government has power of revision. In the impugned order dated 14.9.2001, the revisional authority has considered the factual aspects of the matter in detail and has found the petitioner guilty of the misconduct charged. These charges are very serious in nature. The finding of guilt by the revisional authority is a finding of fact and hence, we cannot interfere with it in writ jurisdiction. The writ petition is dismissed.