
(2016) 02 AHC CK 0152
In the Allahabad High Court
Case No : Writ A No. 20686 of 1994

Pritam Singh

APPELLANT

Vs

A.M.U.

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Citation : (2016) 02 AHC CK 0152

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : J.J. Munir and H. Kumar, for the Appellant; D. Gupta, S.C. and Sunita Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Ashwani Kumar Mishra, J.—1. This writ petition was heard on 11th February, 2016, and following orders were passed in the matter:--

"Petitioner contends that in response to the charge sheet, he had specifically denied the charges and the observation of the enquiry officer that he had admitted his guilt in enquiry proceedings was factually incorrect. Petitioner in his show cause notice has stated that he has only passed class VIth and is not well conversant with English and the proceedings of enquiry do not bear the correct description of the proceedings, but such specific reply of the petitioner has not even been noticed by the disciplinary authority nor the same appears to have been considered by the appellate authority.

Since matter has remained pending for the last 21 years, it would be appropriate to peruse the enquiry proceedings before proceeding any further in the matter.

Learned counsel appearing for the respondent university may produce original records of enquiry, including the minutes of enquiry proceedings, which is stated to have been signed by the petitioner.

Let this matter appear once again on 23.2.2016."

2. Pursuant to the order passed, Sri Ikram Ahmad, learned counsel appearing for the respondent Aligarh Muslim University, has produced the original records relating to the enquiry proceedings, which have been perused by the Court.

3. Petitioner was an Office Attendant in Aligarh Muslim University, who was placed under suspension, as allegations surfaced against him of having fraudulently encashed pension cheques issued to various retired employees of University or their dependents. Petitioner's explanation was called in the matter, to which he submitted his reply, and his statement was also recorded. The original records, which have been produced before the Court contain the reply of petitioner, submitted before the authority concerned, which reads as under:--

4. The explanation submitted by petitioner was not found acceptable, and consequently, disciplinary proceedings were initiated against him. A chargesheet was served upon the petitioner on 3rd August, 1992, containing five charges. Article 1 of the charge related to fraudulent encashment of Cheque No. 817020 dated 1.5.1991, amounting to Rs. 540/- issued in the name of Smt. Piyari Bua. Similarly, charge No. 2 related to encashment of Cheque No. 558986 dated 1.5.1990 for a sum of Rs. 387/- issued in the name of Late Piarey Miyan. Third charge was in respect of encashment of Cheque No. 575324 dated 1.8.1990 for a sum of Rs. 786/- issued to Piarey Miyan. Article 4 of the charge related to encashment of Cheque No. 809830 dated 1.5.1991 issued to Mrs. Anwari Begum for a sum of Rs. 701/-, and last charge for encashment of Cheque No. 809852 dated 1.5.1991 issued to Shahar Bano for a sum of Rs. 671/-. Petitioner submitted his reply to the chargesheet, which is annexed as Annexure-3 to the writ petition. Reply to the charge No. 1 submitted by petitioner reads as under:--

".... It is submitted that the correct position as submitted in his statements recorded on earlier occasions that he got some Cheques encashed which were handed over to him by Shri Mohd. Wasi for encashment with the representation that they belonged to his relatives who needed money urgently, but the bank time being over, defendant's help was solicited. As the defendant knew Wasi on a level of personal acquaintance, he used his good officer with Mr. Vijay Kumar Kashyap, private banker to get the cheques encashed. The amount upon encashment was immediately made over to Wasi, and the defendant emphatically denies having over to personally appropriated any of the cheque money or even to have temporarily retained the same.

The defendant further submits that the defendant's conduct cannot be eyed with any suspicion for another reason. All the cheques in question were bearer cheques and open once which were capable of negotiation by delivery. Each of these were encashable across the counter. In these circumstances, the defendant's act in getting the same encashed for Wasi is totally above any cloud of suspicion."

5. The petitioner, however, denied the charges levelled against him, and stated that whatever was done by him, was in good faith, and upon the asking of Mohd.

Wasi, a co-worker.

6. It may be noticed, at this stage, that Mohd. Wasi was also proceeded with departmentally, and he was also dismissed from service, which statement made at the bar by learned counsel for the respondent University is not disputed.

7. The enquiry proceeded further and a preliminary hearing was conducted on 24th September, 1992, in which the enquiry officer was present alongwith the presenting officer and the petitioner. The minutes of enquiry proceedings, which have been annexed as Annexure-4 to the writ petition and original whereof has also been produced before the Court, records that charges were read out to the petitioner in Hindi, and was explained to him, and that the petitioner accepted the charges in toto. It is also recorded that petitioner on 3-4 times was asked and he specifically accepted the charges levelled against him. Based upon the minutes of enquiry proceedings dated 24.9.1992, an enquiry report was submitted by the enquiry officer holding that in view of the admission made, the petitioner is found guilty of the charges levelled, and that the allegation of violation of Rule 49 of the service regulations are established against him. A show cause notice was consequently issued to the petitioner, to which a reply was submitted by the petitioner stating that he was employed as a Class-IV employee, and since had limited knowledge, as such, he was not aware of the proceedings recorded by the enquiry officer, although his signatures upon it were not disputed. It has been stated that no oral confession was made, as alleged, and once the charges had been denied by the petitioner, no question otherwise arose for petitioner to confess his complicity in the matter. After considering the reply of the petitioner, an order of dismissal came to be passed against the petitioner on 14.10.1993 by Prof. M. Mustaffa Ali Khan, Member In-charge (Purchase). Petitioner, aggrieved by the order of dismissal, preferred an appeal, which has also been rejected on 26th April, 1994. Aggrieved by the order of dismissal, as affirmed in appeal, petitioner has filed the present writ petition.

8. Learned counsel for the petitioner has assailed the orders of disciplinary authority as well as appellate authority on the ground that in fact no oral confession was made by him, and the recording of proceedings by enquiry officer do not correctly reflect the proceedings, and consequently, the enquiry report is not worthy of placing any reliance. It is also submitted that the explanation submitted by petitioner pursuant to the show cause notice has not been considered and the order is cryptic. It is also contended that appointing authority of petitioner was the Purchase Officer of the University, whereas the order impugned has been passed by the Officer In-charge (Purchase), who was exercising the power of Purchase Officer, pursuant to an authorization made by the Vice-Chancellor on 7.8.1993, which in turn was not adopted by any resolution of the Executive Council, consequently, no valid authority existed in the Officer-In-Charge (Purchase) to have passed the order of dismissal. Submission is that the order impugned, in such circumstances, is without jurisdiction.

9. In the counter affidavit, averments made in the writ petition have been denied, and it has been stated that petitioner had categorically admitted his guilt. It is also submitted that since there was no regular Purchase Officer available in the University, as such, the authority of Head of Department of Purchase was conferred upon the Officer-In-Charge, who was to act as Head of the Department, and therefore, the order of punishment has been passed by the person, who was acting as Head of the Department of Purchase, which was in accordance with the Rule 6 (iii)(c) of the University Non-teaching Employees (Terms and Conditions of Service) Rules, 1972, duly approved by the Executive Council, vide Item No. 8 in its meeting dated 8th April, 1972.

10. I have heard Sri Hemant Kumar, learned counsel for the petitioner and Sri Ikram Ahmad, learned counsel appearing for the respondent University, and have perused the records.

11. From the materials placed before the Court, it transpires that precise charge levelled against the petitioner was of having fraudulently encashing the pension cheques issued to other retired employees of the University or their dependents. In this regard, initially an explanation had been called, in which the petitioner had given his statement, which has already been extracted above. Thereafter, disciplinary proceedings had been initiated, in which petitioner has again submitted his reply. From the statement made by the petitioner before the authority conducting preliminary investigation, which had been referred to and relied upon by the petitioner, while submitting his reply to the chargesheet, as well as from the contents of the reply submitted by the petitioner to the chargesheet, it is undisputed that petitioner had admitted to have encashed the cheques issued in favour of other retired employees or their dependents. The allegation thus levelled against the petitioner, relating to encashment of cheques by the petitioner, issued to other retired employees or their dependents, therefore is not disputed. However, it was stated by the petitioner that whatever he did, was upon the asking of a co-worker, who had misrepresented to him that the cheques belonged to his relatives, and consequently, acting upon such misrepresentation, the petitioner got these cheques encashed from a private banker and delivered the amount received to Mohd. Wasi. This statement of the petitioner does not inspire much confidence, inasmuch as the factum of petitioner having encashed the cheques is not in dispute, and whether the money had gone to Mohd. Wasi or to the petitioner was a matter between two of them, and in such circumstances, if the University proceeded to take disciplinary action against both these employees, and petitioner as well as Mohd. Wasi, both, had been dismissed by the University, no illegality could be attributed to it. It is not in dispute that cheques issued to retired employees or their dependents had not reached them, and had been fraudulently encashed by two employees of the University, and therefore, the action of University in proceeding to dismiss both these employees was based upon materials available on record. So far as the petitioner's defence pleaded before this Court on the count that no oral confession had been made by him is concerned, the same is also not worthy of

reliance, inasmuch as no allegation of mala fide has been levelled against the enquiry officer, and the minutes of enquiry dated 24.9.1992 is otherwise duly signed by the petitioner, which records that contents of charge had been read out and explained to the petitioner, and the petitioner had accepted his guilt. I am inclined to take this view, particularly keeping in view the reply submitted by the petitioner to the chargesheet itself, in which he had categorically mentioned that the cheques had in fact been got encashed by him, though it was issued to other retired employees or their dependents. Even if the oral confession is ignored, even then the guilt of petitioner could be safely inferred from the reply of the petitioner submitted to the chargesheet, in which he had admitted that cheques were got encashed by him. In such view of the matter and for the reasons and discussions, aforesaid, this Court is not inclined to accept the contention of petitioner that charges levelled against him had not been proved or made out. The action of the disciplinary proceeding was clearly based upon consideration of materials available on record, which did establish the guilt of petitioner, and consequently, the argument raised on the first aspect is liable to be rejected.

12. Coming to the second limb of petitioner's submission that the order of disciplinary authority is not a reasoned one, and no independent finding has been returned, apparently appears to have substance, inasmuch as the disciplinary authority has merely recorded that upon consideration of the reply submitted by the petitioner, his explanation is not found convincing, and consequently, the penalty of dismissal is being imposed. However, as the matter has remained pending before this Court for the last 22 years, and petitioner is otherwise at the fag end of his retirement, therefore, this Court has proceeded to summon the original records, in order to examine the claim of petitioner on merits, and since the charges have been found to have been made out against the petitioner, particularly in view of the reply of the petitioner himself, as such, no interference with the order of disciplinary authority is called for on the ground that the order under challenge does not contain adequate reasons.

13. Coming to the contention of petitioner that the order has been passed by an authority, who had no jurisdiction in the matter, it is to be noticed that in terms of the University Non-teaching Employees (Terms and Conditions of Service) Rules, 1972, the appointing authority of a Subordinate Staff (Class-IV/Group-D Staff), is the Head of Department. It is not in dispute that petitioner was working in Purchase Department. It further transpires that a regular Purchase Officer was otherwise heading the department, but at the relevant point of time, no such officer was available, and the charge of Purchase Officer was being exercised by the Officer-In-Charge (Purchase), pursuant to an authorization made by the Vice-Chancellor of the University. The contention made in Para-17 of the counter affidavit that there was no regular Purchase Officer, and that charge of the Head of Department was being exercised by the Member In-Charge (Purchase) has not been disputed. In such circumstances, I am of the opinion that being the Head of Department, the Officer-In-Charge (Purchase) was the competent authority to pass the order of dismissal, and therefore, the order under challenge does not

suffer from any lack of jurisdiction on part of the authority concerned.

14. No other ground has been pressed. The writ petition, consequently, fails, and is dismissed.