
(2010) 08 AHC CK 0024
In the Allahabad High Court
Case No : Special Appeal No. 123 of 2010

Rajendra Pratap Srivastava	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2012) 132 FLR 363

Hon'ble Judges : Ritu Raj Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Advocate : S.K. Kalia and Y.K. Mishra, for the Appellant; Saurabh Lawaniya, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant and Ritu Raj Awasthi, JJ.—Heard Sri S.K. Kalia, senior advocate, assisted by Sri Y.K. Mishra learned Counsel for the appellant and Sri Saurabh Lawaniya, learned Counsel appearing for the respondents and perused the records. Assailing the order passed by the learned Single Judge dismissing the writ petition of the appellant challenging the order of dismissal from service dated 12.10.2009 passed by Nideshak, Homoeopathy, U.P. Lucknow, learned Counsel for the petitioner submitted that despite the directive issued by the High Court in writ petition No. 5454 (SS) of 2001, while quashing the termination order dated 11.9.2001 to pass a fresh order after giving proper show cause notice containing full details and adequate opportunity of hearing to the appellant, the order of dismissal has been passed without holding any enquiry. The learned Single Judge has dismissed the writ petition after taking note of the fact that the appellant was issued charge-sheet to which reply was submitted by the appellant and after considering the reply the order impugned has been passed. After perusing the record, the learned Single Judge made an observation that the appellant had procured appointment on the basis of forged letter and he could not prove the authenticity of the appointment letter issued in his favour

from any of the documents and further the documents, which were supplied to him he could not deny the same. The learned Single Judge has recorded a finding that from the perusal of the pleadings, it reveals that the appellant procured appointment on the basis of forged letter, hence this Court has no sympathy against such unscrupulous person.

2. Before proceeding further, it would be appropriate to mention the plea of the appellant that the State Government in the instant case on 30.1.2004 issued a letter to the Director, Homoeopathy, saying that all such dismissal orders passed against the pharmacists including the appellant should be withdrawn and fresh orders be passed after affording opportunity of hearing as provided under Article 311(2) of the Constitution but despite the aforesaid directive, the impugned order has been passed without following the said procedure.

3. The impugned order also recites that the opportunity has been afforded to the appellant as required under Article 311(2) of the Constitution but factually the aforesaid statement of fact made in the impugned order is not borne out from the record.

4. The sole argument of the learned Counsel for the appellant is that the order of dismissal has been passed in violation of the principles of natural justice and against the constitutional provisions aforesaid and also in violation of Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999, hence the same can not be sustained.

5. Learned Counsel for the State could not dispute that after submission of reply to the charge-sheet, no opportunity was afforded to the appellant nor any date, time and place was fixed for holding enquiry but he made a half hearted attempt to justify the order by saying that since in the charge-sheet, no witness was mentioned, therefore, there was no occasion for holding any oral enquiry and that the appellant also did not ask for producing any witness or for cross-examining any witness, therefore, it was not obligatory upon the enquiry officer to fix a date for holding enquiry.

6. Time and again, the Hon''ble Apex Court as well as this Court has pronounced that in the matter of enquiry for awarding major punishment, no short-cut is permissible. The charge-sheet has to be furnished to the delinquent to apprise him of the charges, which should be specific along with the evidence, both oral and documentary, which the department intends to rely for upholding the charges. In case after service of charge-sheet, the delinquent needs any documents or copy thereof, such prayer is to be considered by the enquiry officer and the documents which are found relevant for enquiry are to be supplied to the delinquent. In case copies of any such document can not be supplied for any valid reason, free access has to be afforded to the delinquent for making inspection of such records. After this stage, the reply is to be submitted by the delinquent within the given time and the enquiry is to proceed, fixing the date, time and place and calling the delinquent. Normally, the evidence of the

department is required to be led, first to prove the charges wherein the delinquent is also allowed to participate, who can cross-examine the witness, with opportunity of adducing the evidence either in rebuttal or for disproving the charges. It is thereafter that the enquiry officer has to submit his report either saying that any of the charges stand proved or not:

7. Recourse to Evidence Act would not be applicable in the departmental proceedings but this does not mean that without there being any corroborating evidence or without any other material being placed by the department to substantiate the documentary evidence, the charges can be found to be proved. There has to be a corroboration of facts from the documents on record and if any report is also being relied upon, the said report is also required to be authenticated by the person, who has submitted the report.

8. In the instant case the charge against the appellant was that he had procured appointment on the post of Pharmacist without taking the required training of one year of compounder from National Homoeopathy College, Lucknow. The defence was taken in the reply, wherein it was stated that because of his experience he was issued the appointment order/letter. The impugned order says and it does not dispute that at the relevant time appointments could be given on the post of Pharmacist, even to those persons who were not trained, but it is the competence of the authority who issued the appointment order/letter in favour of the appellant, which is in dispute.

9. The argument of the learned State Counsel is that only the Director, was empowered to make the appointment, if the incumbent has a training certificate from the National Homoeopathy College, Lucknow and if the appointment was to be made on the basis of experience, then the Chief Medical, Officer was empowered to issue the appointment orders/letters.

10. The plea of the appellant is that he was not involved in the preparation of his appointment order/letter and that it was not the fraudulent act on his behalf and even if it is found that the authority who had issued the appointment order was not competent to do so, the appellant can not be held guilty of committing any fraud, unless his connivance and participation in the issuance of such appointment order is proved.

11. Attention of the Court has also been drawn towards the averments made in paragraph-33 of the writ petition that on the aforesaid issue, a detailed investigation/enquiry had been conducted by the CB CID, wherein the appellant has been found innocent. But in the department enquiry without affording any opportunity of hearing, the impugned order has been passed.

12. We also take notice of the fact that the earlier dismissal order dated 1.9.2001 was set aside by this Court in earlier writ petition with the specific direction to the respondents to pass a fresh order after affording adequate opportunity to the appellant but the department though was conscious, that the opportunity as required under Article 311(2) of the Constitution need be

afforded, actually did not afford the said opportunity. There cannot be a presumption of guilt where the law requires that the charges should stand proved before any major punishment is awarded, unless there is an unqualified admission of the delinquent to the charges levelled against him.

13. We under the circumstances, do find that the order passed by the learned Single Judge, which does not touch the merits of the writ petition and the pleadings contained therein, cannot be sustained and this is liable to be set aside, which is hereby set aside.

14. Since the impugned order of dismissal dated 12.10.2009 has been passed in violation of principles of natural justice and against the constitutional provisions as well as relevant service rules, the same is also quashed.

15. The appellant shall be reinstated in to service forthwith and he shall be paid salary from the date of his joining. The salary for the period commencing from the date of order of dismissal dated 12.10.2009, till his reinstatement into service shall not be paid to him, which shall be abide by the result of the enquiry. But the period aforesaid shall not be treated as break in service for other service benefits. We further direct that fresh enquiry be held from the stage of submission of reply to the charge-sheet, which shall be completed within a maximum period of four months from the date of receipt of certified copy of this order.