
(1998) 09 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 446 of 1995

Ram Bahadur Singh

APPELLANT

Vs

General Manager (Administration) U.P.Co-operative Union
Society Limited,Lucknow & Ors.

RESPONDENT

Date of Decision : 22-09-1998

Acts Referred:

Cooperative Federal Authority (Business) Regulations, 1976 — Regulation 70

Citation : (1998) 09 AHC CK 0102

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner's services were terminated on the basis of an enquiry report held against him in a domestic enquiry by an order of dismissal dated 14/9/1979. Out of the selfsame allegation, a criminal case was also initiated against the petitioner.

2. Regulation 70 of the Cooperative Federal Authority (Business) Regulation, 1976 provides for an appeal within 90 days further providing extension of the period by a further period of 30 days and thereafter no appeal could be entertained by the appellate authority. Whereas the petitioner has filed an appeal on 24/2/1982. The petitioner had attained the age of superannuation on 30/9/1982. Though the appeal was taken up earlier by the appellate authority but the same could not be decided. Ultimately by an order dated 6/9/1982 the appellate authority had kept the appeal in abeyance in view of the pendency of the criminal case. After the petitioner had submitted the order of the criminal court acquitting him, the appeal was decided on 14/9/1994 which was communicated by a letter dated 6/12/1994 which is Annexure 1 to the writ petition. By the said order while disposing of the appeal, the order of termination was treated to be ineffective and during the period of suspension, it was held that the petitioner was entitled to the suspension allowance only while salary for the period between the date of termination and the date of retirement was treated to be as

on no work no pay. This order has since been challenged in this writ petition.

3. Mr. Pankaj Bhatia, learned Counsel for the petitioner contends that since the petitioner has been exonerated from the charges by virtue of the fact that the appeal was allowed, therefore, the appellate authority was wholly without jurisdiction to pass an order of no work no pay. He relies on the decision in the case of Union of India and others v. K. V. Jankiraman and others, 1991 (4) SCC109. He contends that the appellate authority has no jurisdiction to substitute the punishment as it is not an order of punishment. It is in effect a decision that since the petitioner did not work during the said period, therefore, he should be treated to be as on no work no .pay. The said decision not being a punishment is wholly outside the scope of jurisdiction of the authority. Such question can be decided only by the authority incharge of the general administration and not by the disciplinary authority. Relying on paragraphs 25 and 26 of the decision in the K.V. Jankiraman (supra), he contends that since the decision of the appeal was delayed at the instance of the appellate authority and not on account of, latches on the part of the petitioner, he cannot be blamed for the same and be deprived of the salary for the period during which the appeal remain pending in view of the ratio decided in the said decision. Therefore, he prays that the salary for the period between the date of termination of service and till his retirement should be paid to him together with all other service benefits.

4. Mr. K.N. Mishra, learned Counsel for respondents, on the other hand contends that it was only on sympathetic ground that the petitioner had been retired during pendency of the appeal and that he was exonerated from the criminal proceeding, the appellate authority had taken a lenient view though the appeal was time barred and could not be entertained by reason of Regulation 70 of the Regulation, therefore, the petitioner cannot claim any legal right on the basis of the said order. He further contends that the order though seems to be a decision but in effect having been passed by the appellate authority on the basis of the finding that the petitioner was guilty of depositing the money of the society in false account and withdrawing the same there from and that he was guilty of negligence and committing of irregularities though he was relieved of the charges of embezzlement, therefore, the punishment of termination was substituted by two punishments namely he will not be entitled to get any amount except the suspension allowance during the period of suspension and that he will not be paid any salary for the rest of the period. Therefore, the ratio decided in the case of K. V Jankiraman (supra) does not apply. He relies on the decision in the case of Ram Chandra Dixit v. Deputy Registrar, Cooperative Societies, 1980 UPLBEC 325, in order to contend that the petitioner was governed by the said 1976 Regulation with a view to counter the contention of Mr. Pankaj Bhatia that the petitioner is not covered by the said regulation. He also relies on the decision in the case of Pareshwar Dayal Shukla v. Deputy Registrar, Cooperative Society and others, 1982 UPLBEC 398, in order to support the same contention. On these grounds he submits that the writ petition should be dismissed.

5. I have heard both Mr. Pankaj Bhatia and Mr. K.N. Mishra as well as Mr. K.R. Singh, learned Standing Counsel at length.

6. The question that the petitioner is not covered by the said Regulation 70 of 1976 Regulation need not be gone into in view of the fact that the petitioner himself has preferred the appeal under Section 70 of 1976 Regulation. Once the petitioner has taken resort to the provisions of the appeal contained in the said regulation pursuant to the disciplinary proceeding held against him as is contemplated in the said regulation, he is estopped from contending that he is not governed by the said Regulation. At the same time, the petitioner has been relying on the very decision of the appellate authority in order to claim benefit out of the said order which has been passed under Regulation 70 of the said Regulation, therefore, he is precluded from contending that he is not covered/governed under the said Regulation. Be that as it may. Admittedly, the petitioner being a supervisor as held in the decisions cited by Mr. Mishra, he is governed and covered by the said Regulation. There cannot be any second opinion about the same.

7. The other contention of Mr. Bhatia that the appellate authority has no jurisdiction to inflict a punishment of no work no pay does not seem to be sound in view of the specific provisions contained in subregulation (2) of Regulation 70 which provides that the appellate authority after considering the appeal as to whether the order of the disciplinary authority was based on true facts or not or whether the proofs were sufficient to hold the delinquent guilty and whether the punishment was disproportionate, or not and may pass order as it might deem fit. Thus, it appears from the said provision that the appellate authority is competent to substitute the punishment and pass any kind of order having regard to the facts and circumstances of the case as it may deem fit.

8. Having perused the impugned order which is Annexure 1 to the writ petition it appears that the reasons have not been communicated by the said order. Whereas only a decision was communicated. In the supplementary counteraffidavit the respondents have disclosed the reasoned order which is Annexure SCA1. It appears from the said order dated 1491994 passed by the appellate authority that it had recorded the reasons to the extent that the appeal against the order of termination passed against the petitioner on 1491979 was taken up by the appellate committee but could not be decided finally. On 691992 the appellate committee has decided that since a criminal proceeding is pending against the petitioner, therefore, the appeal may be kept in abeyance. On 13101993, the petitioner had produced a copy of the order passed by the Special Judicial Magistrate, Kanpur in the criminal case from which it appears that the petitioner was acquitted of the charges.

9. When the order dated 691992 was passed the petitioner did not insist that the appeal should be decided immediately. Neither after the said order was passed he had ever applied for early disposal of the appeal. He had acquiesced to the adjournment. Only when he is acquitted from the criminal case he pressed for

the disposal of the appeal on 13101993. Thus, it can neither be said that the delinquent was not responsible for the delay nor it can be said, that the employer not responsible for the delay. Therefore, the ratio with regard to delay as laid down in the case of Jankiraman (supra), cited by Mr. Bhatia cannot be attracted to the facts and circumstances of this case.

10. Now let us examine the contention of Mr. Bhatia with regard to the question. That the decision to treat the petitioner as on no work no pay for the period between order of termination and the date of retirement is not a punishment but an administrative decision which is outside the competence of the appellate authority.

11. The petitioner had appeared before the committee and had contended that one Shri Raghunath Singh, Accountant was responsible for the embezzlement of the proceeds received out the sale of fertilizers and clothes. Thereupon he was asked as to whether he had lodged any FIR against said Shri Raghunath Singh who was under his supervision. It was also held that the petitioner was responsible for the general administration. It was his responsibility to bring this fact to the notice of the higher authorities. However, he could not give satisfactory reply. Therefore, the appellate committee had found him guilty that he was responsible for depositing amount in a false account and withdrawing the same. Though the committee had relieved him of the charges of embezzlement but the committee had found him guilty of negligence to his duty as well as guilty of irregularities. Since he had attained the age of superannuation on 3091982, therefore, having regard to the facts and circumstances, the committee had taken a decision as mentioned in the said order dated 14994 to the extent that the order dated 1491979 terminating the petitioner's shall be treated to be inoperative and that petitioner will not be entitled to emoluments other than subsistence allowance during the period he remained under suspension and that on account of attainment of superannuation the petitioner should be treated to have been retired on 3091982. But, however, from the date of termination till the date of .retirement the petitioner shall be treated as of no work no pay.

12. Thus, it appears from the said order that the petitioner was found guilty of two charges as mentioned there. The appellate authority has not said anything about the report of the enquiry officer or the order passed by the disciplinary authority. It has not held that it was either perverse or the petitioner was not guilty. It had only relieved him of the charge of embezzlement in order to facilitate him to get his retirement benefits and that was one of the reason which promoted the authority to relieve the petitioner of the charges of embezzlement. After having found guilty and the petitioner having been directed to be on suspension during the period of suspension and for which it was held that he will not be entitled to any benefit, it shows that the appellate authority had maintained that the petitioner is guilty and had not exonerated him from the charges. Therefore, the direction that the petitioner will not get any salary during

the, petitioner when he was terminated till the date of his retirement is also a punishment inflicted on him and thus it was not administrative decision.

13. The decision in the case of K. V. Jankiraman (supra), cited by Mr. Bhatia lays down the ratio in paragraph 25 having regard to the facts of the said case as observed in paragraph 26. The text of said paragraph would be essential for our purpose and as such is quoted hereinbelow:

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR 17 (1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post alongwith the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with the benefit of doubt or on account of nonavailability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interest....."

14. Thus, the ratio decidendi in the said case clearly indicates that the punishment on the ground of no work no pay may not be applied normally in cases where the employee was willing to work if he was kept away work by the authorities for no fault of his. But in cases where the workman is guilty of keeping out of the work offered on him in that event the said rule may not be applied. This normal rule would also apply in a case where the exoneration is on the ground of benefit of doubt in a criminal proceeding or on account of nonavailability of evidence in a disciplinary proceeding. It was held that in such circumstances, the concerned authority must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if

he does, extent to which he deserves it. The said decision was also alive to the aspect of the life which is very complex and therefore did not lay down any inflexible rule for every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period since it would undermine the discipline in the administration and jeopardise public interests.

15. Having regard to the said ratio, in the present case it appears that the order of punishment was inflicted on 1491979, the appeal was preferred on 2421982 viz., after two years and six months. Thus, it appears that the petitioner himself was guilty of lack of diligence for this period in preferring the appeal and therefore he cannot claim any right in regard to the period 1491979 till 2421982 on the analogy of the ratio decidendi in the case of K.V Jankiraman (supra). So far as the period between 24282 till 3091982 is a very insignificant period during which the appeal was not decided in view of the pendency of the criminal proceeding. It cannot be said that it was on account of fault of the appellate authority that the appeal was kept pending. But it shows that the appellate authority was fair enough to keep the same pending so that it may not give a decision which might be in conflict with the order that might be passed in the criminal proceeding and had awaited the decision thereof. Then again only having regard to the fact that he was exonerated from the criminal proceeding, the appellate committee did not enter into the merits of the disciplinary proceeding and the order passed by the disciplinary authority and had relieved him of the charges of the embazzlement holding him guilty of the two other charges. Therefore, it cannot be said that the petitioner was exonerated from the charges altogether. Since the petitioner was not exonerated altogether from the charges, therefore, the ratio decidendi in the case of Jankiraman, (supra), cannot be applied on the ground that the appeal was kept pending. From the order it appears that the appeal was allowed to the extent as indicated therein viz., that he was relieved of the charge of embazzlement while he was found guilty of the other charges for which two punishments were maintained one that he will not get anything in excess of the suspension allowance during the period he was kept under suspension and that between the dismissal and till date of his superannuation he will not be paid any amount on the basis of no work no pay.

16. The contention of Mr. Bhatia that no such order of no work no pay could be passed by way of punishment is also appears to be contradictory in view of the ratio decidendi in the case of K.V. Jankiraman (supra), wherein it has been held that the concerned authority is empowered to pass an order of no work no pay even when the delinquent is exonerated as defined in paragraph 26 of the said judgment. In the present case the petitioner having been exonerated from one charge but having been found guilty of two charges, the appellate authority had inflicted two punishments as mentioned hereinbefore.

17. The attitude of the appellate authority was on sympathetic ground. The appeal having been preferred after long time, the same became time barred but

it was not dismissed on the ground of limitation as provided in Regulation 70 which prescribes that an appeal maybe preferred within 90 days of the punishment and the said period may be extended by the appellate authority for a period of 30 days and the same could not to be entertained if it was preferred beyond the said period of 120 days. Therefore, as rightly contended by Mr. Mishra, the appeal, having been preferred beyond the said period, the appellate authority has no jurisdiction to entertain the appeal which is apparent from the express provision contained in Regulation 70. Then again such extension of 30 days can be made on the basis of ground made out by the delinquent explaining the delay. Admittedly, in the present case no such application was filed by the delinquent explaining the delay.

18. Be that as it may, the appeal of the petitioner having been allowed to the extent indicated above, in the facts and circumstances of the case, after such long lapse of time, I do not find any reason to interfere with the order of the appellate authority as has been sought to be contended by Mr. Mishra. At the same time, I do not find any infirmity in the said order as contended by Mr. Bhatia.

19. In that view of the matter, I am not inclined to interfere with impugned order. The writ petition fails and is accordingly dismissed. No order as to cost.

20. However, the respondents shall take steps for payment of all retrial benefits as might be available to the petitioner in accordance with law in terms of the order dated 1491994 passed by the appellate authority, if not already paid, as early as possible preferably within a period of six months from the date a copy of this order is produced before the concerned authority. Petition dismissed.